

No. 15 of 2009

Tuesday, 8 December 2009

On the

Consumer Affairs Legislation
Amendment Bill 2009

Criminal Procedure Amendment
(Consequential and Transitional
Provisions) Bill 2009

Legislation Reform (Repeals No. 5)
Bill 2009

Royal Melbourne Institute of Technology
Bill 2009

Swinburne University of Technology
Bill 2009

University of Ballarat Bill 2009

Victoria University Bill 2009

Water Amendment (Entitlements)
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 \$116.82).
- ‘**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 –

Consumer Affairs Legislation Amendment Bill 2009
Legislation Reform (Repeals No. 5) Bill 2009
Royal Melbourne Institute of Technology Bill 2009
Swinburne University of Technology Bill 2009
University of Ballarat Bill 2009
Victoria University Bill 2009
Water Amendment (Entitlements) Bill 2009

The Committee notes the following correspondence –

Criminal Procedure Amendment (Consequential and Transitional Provisions) 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.

Alert Digest No. 15 of 2009

Consumer Affairs Legislation Amendment Bill 2009

Introduced	25 November 2009
Second Reading Speech	26 November 2009
House	Legislative Assembly
Member introducing Bill	Hon. Tony Robinson MLA
Portfolio responsibility	Minister for Consumer Affairs

Purpose and Background

The Bill deals with range of matters within the consumer affairs portfolio. The Second Reading Speech provides –

This Bill represents the first tranche of reforms from the Consumer Affairs Legislation Modernisation project, a project that will extensively reform the consumer affairs statute book ... cut red tape and reduce the regulatory burden on business. The Bill also strengthens the regulation of sex work in Victoria.

Extract from the Second Reading Speech –

Sex workers legislation

[Prostitution Control Act 2004]... One significant change will be to update references to 'prostitutes' in the legislation to 'sex workers', reflecting the changing nature of the industry. Similarly, the Prostitution Control Act will be renamed the Sex Work Act.

... the Bill significantly increases penalties for operating a brothel without a licence, bringing those penalties into line with penalties for operating a brothel without a planning permit. It also extends the powers of Consumer Affairs Victoria inspectors to allow them to seek information about reasonably suspected unlicensed brothels.

... The Bill will improve public health outcomes by requiring sex workers and their clients to adopt safer sex practices such as using condoms, and to take reasonable steps to minimise the risk of transmission of sexually transmitted infections.

The Bill also requires brothels to display signage about sex slavery to improve awareness that sex slavery exists, and that it is illegal.

...The Bill improves the operation of the licensing scheme for sex work service providers by, among other things, allowing a person to take over a licensee's business for 30 days, or longer if approved, upon the death or disability of the licensee. This will enable suitable transitional arrangements to be made to ensure the orderly winding up or transfer of a licensee's business.

The Bill also enables the Business Licensing Authority to grant permission to approved managers to continue operating where they become insolvent. This recognises that in some circumstances, insolvency of an approved manager is not necessarily a serious enough problem to require them to stop their role. For example, part IX debt agreements allow a person to negotiate an outcome with creditors to repay outstanding debts, but are still considered insolvencies.

The Bill will also require exempt small owner-operators of sex work service providers to provide an annual statement to ensure that the register of small owner-operators is kept up-to-date. This will ensure that regulators can more accurately determine who is currently relying on the exemption. [42 to 74]

Debt collectors

... The Bill repeals the *Private Agents Act 1966*, which regulates debt collectors. As part of this process, the licensing system established under the act will be abolished and replaced by a simplified compliance system to be included in the *Fair Trading Act 1999*.

... The new compliance system will allow any person to practise as a debt collector unless they are excluded from doing so because of specified criteria. One of the main criteria for excluding debt collectors will be any contravention of legislation that prohibits coercion, physical violence or undue harassment while collecting payments.

... It is expected that many debt collectors will be licensed under the forthcoming national credit legislation when handling the collection of debts under credit contracts. The proposals in the bill will avoid the regulatory duplication of having to hold two licences. **[18]**

Deposits for sale of land

The Bill will improve the flexibility around deposits held by legal practitioners, conveyancers and estate agents as stakeholders by allowing the transfer of deposits from a stakeholder to any legal practitioner, conveyancer or estate agent acting for the vendor. Previously, only certain types of transaction were permitted. For example, conveyancers acting for the vendor were not allowed to receive money from estate agents.

Common carrier liability limits

... The Bill repeals sections 3 to 12 of the *Carriers and Innkeepers Act 1958*. These sections limit the strict liability of stagecoach proprietors and other common carriers of goods to \$20 for the loss of certain types of goods such as gold, glassware, silks and title deeds.

Landlord and tenant

The Bill repeals Parts I to III and related schedules of the *Landlord and Tenant Act 1958*. ... Section 28(2) of the Act dealing with fixtures, remains of relevance today. Therefore, one consequential amendment is that a new section will be inserted into the *Property Law Act 1958* modernising the law of fixtures.

Estate agents

The Bill streamlines licensing requirements for estate agents under the *Estate Agents Act 1980*. The bill will remove certain requirements to obtain a licence such as a requirement to obtain character references. The Bill also simplifies the process by which institutions can be appointed to operate trust accounts and repeals redundant provisions such as the separate concept of stock and station agents and the little-used rural branch manager's licence category. **[4 to 16]**

Repeal of principal Acts

The Bill repeals these principal Acts.

- *Collusive Practices Act 1965*. The Act regulates collusive practices in tenders and auctions. However, the *Competition Policy (Reform) Act 1995* now regulates collusive practices through the Competition Code. **[77]**
- *Fuel Prices Regulation Act 1981*. The Act has not been used for at least 15 years. The *Fuel Emergency Act 1977* allows fuel prices to be set in times of fuel emergency. **[78]**
- *Marketable Securities Act 1970*. This Act was reviewed as part of the Scrutiny of Acts and Regulations Committee's review of redundant corporations legislation and determined to be redundant. **[79]**
- *Petroleum Retail Selling Sites Act 1981*. Petroleum retail selling sites are now regulated by the Commonwealth through Oilcode. **[80]**
- *Petroleum Products (Terminal Gate Pricing) Act 2000*. Terminal gate pricing is now regulated by the Commonwealth through Oilcode.
- *Private Agents Act 1966*. Transitional matters relating to this repeal are included in clause 19, as proposed clause 16 of Schedule 3 to the *Fair Trading Act 1999*. **[82]**

- *Trade Measurement Act 1995*. The Commonwealth will take over responsibility for trade measurement on 1 July 2010. Transitional matters relating to this repeal are included in proposed clause 17 of Schedule 3 to the *Fair Trading Act 1999* at clause 19 of the Bill. [83]
- *Trade Measurement (Administration) Act 1995*. The Commonwealth will take over responsibility for trade measurement on 1 July 2010. Transitional matters relating to this repeal are included in proposed clauses 18 and 19 of Schedule 3 to the *Fair Trading Act 1999* at clause 19 of the Bill. [84]
- *Utility Meters (Metrological Controls) Act 2002*. The Commonwealth will take over responsibility for trade measurement on 1 July 2010. [85]

Content

Rights or freedoms – Liberty of the person – Sexual slavery – Crimes Act 1958 – Prostitution Control Act 1994

The Bill provides that a licensee must display prescribed signage relating to sexual slavery in brothels in places where any person on the premises can read the signage the content and location of which may be prescribed by regulations. [60]

Notes

1. *Division 8EAA in Part I of the Crimes Act 1958 (sections 60AB to 60AE) that were inserted in the Act in 2004 and provide offences for sexual servitude, aggravated sexual servitude, deceptive recruiting and aggravated deceptive recruiting for sexual services.*
2. *See also Division 270 (Slavery, sexual servitude and deceptive recruiting) of the Criminal Code Act 1995 (Cth) inserted in that Act in 1999. The Commonwealth legislation does not exclude the operation of any other law of a State or Territory.*
3. *In respect to sexual servitude the High Court held in R v Tang (2008) 82 ALJR 1334 –*
'The factors relevant to determining whether a person has exercised a power attaching to the right of ownership include control of movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour'.

Rights or freedoms – Self-incrimination – Inspectors questioning powers – Persons entering or leaving unlicensed brothel – Prostitution Control Act 1994

The Bill inserts a new section 61DA empowering inspectors who suspect on reasonable grounds that a premises is being used as an un-licensed brothel to ask questions of persons entering or leaving the premises. Inspectors must comply with providing certain information before questioning a person and it is an offence to refuse to answer a question or to provide false information.

Section 61V of the Act provides that the rule against self-incrimination does not apply and that before questioning the inspector must inform the person that if the person claims before answering the question that if the answer may tend to incriminate the person then the answer is not admissible in evidence in any criminal proceedings, other than in proceedings in respect of the falsity of the answer. (*Refer to Charter report below*).

Rights or freedoms – Search without warrant – Urgent entry to unlicensed premises - Prostitution Control Act 1994

The Bill substitutes a new section 64(1) to provide that if outside office hours the Chief Commissioner of Police believes on reasonable grounds that a person is carrying on business at particular premises as a sex work service provider in contravention of the Act and that relevant evidence is likely to be lost if entry to the premises is delayed until a search warrant is obtained, the Chief Commissioner may authorise entry to the premises in accordance with the procedure set out in the section. This power may be delegated by the Chief Commissioner under section 6A of the *Police Regulation Act 1958*. Currently the Act specifies police of and above the rank of inspector may exercise this function. [69]

Charter report

Privacy – Self-incrimination – Compelled questioning of people who enter or leave premises believed to be unlicensed brothels – Prosecutions using information derived from answers – Adequacy of statement of compatibility

Summary: The Statement of Compatibility does not address clause 63's impact on the Charter's right against compelled self-incrimination. Clause 63 allows an inspector to force a person who enters or leaves a premises believed to be an unlicensed brothel to lead the inspector to information that may be used to convict him or her of any offence in the Prostitution Control Act 1994. The Supreme Court has recently held that a legal scheme of this sort is incompatible with the Charter. The Committee feels that a number of features of clause 63 mean that it may be incompatible with the Charter.

The Committee notes that clause 63, inserting a new section 61D into the *Prostitution Control Act 1994*, provides that an inspector may ask anyone entering or leaving any premises that the inspector believes on reasonable grounds is being used as an unlicensed brothel to answer (orally or in writing) 'any questions put by the inspector in relation to the use of the premises as a brothel'. Not answering, or giving a false answer, is an offence punishable by fine of over \$1,000.

The Statement of Compatibility remarks:

The proposal in clause 63 to empower inspectors to stop people entering and leaving reasonably suspected illegal brothel premises, question them, and require them to provide a name, address and statements, engages, but does not limit, the right to privacy. The evidence obtained by inspectors from Consumer Affairs Victoria may be used in subsequent proceedings. This proposal is compatible with the charter and not arbitrary or unlawful because section 15 of the Prostitution Control Act 1994 makes it an offence to be in, entering or leaving an unlicensed brothel without a reasonable excuse.

The Committee observes that:

- clause 63 does not empower inspectors to 'stop' anyone. (If clause 63 did so, it would engage the Charter's right to freedom of movement.)
- clause 63 is limited to premises that are reasonably believed to be (not 'reasonably suspected') illegal brothel premises
- the statement of compatibility's discussion does not address whether clause 63's interference with privacy is proportionate to its purpose and formulated with sufficient precision to allow people being questioned to understand what questions they are obliged to answer.¹ The Committee is concerned that a clause that potentially allows for compelled public questioning of anyone about the 'use' of premises (potentially including

¹ Charter s. 13(a) provides that: '[a] person has the right... not to have his or her privacy... correspondence unlawfully or arbitrarily interfered with'. In human rights law, 'unlawfully' refers not merely to whether an interference is legal, but also to the clarity and accessibility of that law. Likewise, 'arbitrary' refers not only to whether a law has a purpose but also to the proportionality between that purpose and the interference with privacy.

intimate questions about sexual activities) based merely on their entry or exit from premises that may contain an illegal brothel on pain of a significant fine may not meet these requirements.

Most importantly, the Statement of Compatibility does not address clause 63's impact on the Charter's right against compelled self-incrimination.²

New section 61DA(3), in contrast to other compelled questioning requirements in the *Prostitution Control Act 1994*,³ does not provide for any defence of 'reasonable excuse' for the offence of not answering an inspector's question. Moreover, the new section is subject to existing s. 61V(1) of the *Prostitution Control Act 1994*, which abrogates the privilege against self-incrimination. While existing s. 61V(3) bars the direct use of some self-incriminatory answers in criminal proceedings, it does not bar the admission of information derived from those answers (e.g. account books or testimony of a sex worker found as a result of the compelled answers) in criminal proceedings.⁴ New section 61DA(8)(b) allows the inspector to divulge information received from the questioning 'for the purposes of any legal proceedings arising out of this Act'. **So, clause 63 allows an inspector to force a person who enters or leaves premises believed to be an unlicensed brothel to lead the inspector to information that may be used to convict him or her of any offence in the *Prostitution Control Act 1994*.**⁵

The Committee observes that the Supreme Court has recently held that a legal scheme of this type (in the *Major Crimes (Investigative Powers) Act 2004*) is incompatible with the Charter.⁶ While compelled questioning without full immunity against self-incrimination may sometimes be compatible with the Charter if the absence of a full immunity is both reasonable and demonstrably justified,⁷ the Committee feels that, in light of the Supreme Court's ruling, a number of features of clause 63 mean that it may be incompatible with the Charter:

- The new compelled questioning power applies to people who the inspector may already reasonably believe is guilty of the offence of being found leaving or entering an unlicensed brothel.⁸ Its use therefore side-steps the usual requirements for people suspected of offences: notification of proceedings against them, a caution about the right to silence and an opportunity to seek legal advice.

² Charter s. 25(2)(k) provides that: 'A person charged with a criminal offence is entitled without discrimination to not to be compelled to testify against himself or herself or to confess guilt.' In *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381, [162], the Supreme Court has held that s. 25(2)(k) applies regardless of whether the person involved has been charged.

³ s. 61U, *Prostitution Control Act 1994*.

⁴ For a contrasting provision, see clause 15 of the recent Transport Legislation Amendment (Hoon Boating and Other Amendments) Bill 2009, inserting a new section 230ZE(1)(b) into the *Transport Act 1983*, referring to 'any information, document or thing obtained as a direct result or indirect consequence of information disclosed or provided'.

⁵ Part 2 of the *Prostitution Control Act 1994* provides for a range of offences, ranging not using condoms (clause 44, inserting a new section 18A, carrying a fine of over \$2,000) to entering into an agreement for a child to provide sexual services (existing s. 7, carrying a 15 year of imprisonment.)

⁶ *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381, [155]-[164]

⁷ Charter s. 7(2) provides: '(2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including— (a) the nature of the right; and (b) the importance of the purpose of the limitation; and (c) the nature and extent of the limitation; and (d) the relationship between the limitation and its purpose; and (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.'

⁸ s. 15, *Prostitution Control Act 1994*, provided for an offence of being 'found, without reasonable excuse, in or entering or leaving' an unlicensed brothel. If the inspector reasonably believes the premises is a brothel, then the only remaining doubt will be about whether or not the person has a defence to the charge, such as a reasonable excuse.

- The new compelled questioning scheme is less protective than the coercive powers scheme in the *Major Crimes (Investigative Powers) Act 2004*. New section 61DA(2) does not require court authorisation for compelled questioning or the provision of legal advice. Moreover, the use immunity in existing s. 61V(3) only applies if the person being questioned expressly claims the privilege against self-incrimination.⁹ While existing s. 61V(2) provides for anyone questioned by an inspector to be given a generic instruction about the need to expressly claim the privilege, the Committee notes that a lay person may lack the expertise to identify when to make such a claim and, in particular, may be unaware that it is an offence to enter or leave an unlicensed brothel, or that the offence carries a penalty of imprisonment.¹⁰
- In contrast to existing compelled questioning provisions in the Act,¹¹ the new power is not limited to licensed brothel holders or to corporations or public entities (all of whom may be considered to have voluntarily submitted to a compelled questioning regime.)
- Clause 63 facilitates investigations of offences ranging from minor licensing matters to extremely serious cases of sexual coercion and child sexual abuse. However, the Supreme Court has ruled that even the goal of investigating major organised crime in Victoria does not justify permitting a person to be prosecuted based on evidence derived from information compelled from that person that could not have been obtained in any other way.

The Committee considers that a less restrictive means reasonably available to achieve the important purpose of investigating unlicensed brothels (including the protection of the rights of sex workers to liberty and security) would be to immunise people questioned upon entering or leaving an apparent unlicensed brothel from prosecutions based on evidence obtained as either the direct result or indirect consequence of their compelled answers.¹²

While the Supreme Court used the Charter to reinterpret the *Major Crimes (Investigative Powers) Act 2004* to this effect, the Committee is concerned that this may not be possible in the *Prostitution Control Act 1994*, because existing s. 61V regulates multiple compelled questioning powers, including existing ones that are much more limited than new section 61DA.¹³ In any event, the Committee considers that the possibility of re-interpretation is not an adequate protection of rights against self-incrimination in the case of powers exercised against lay people without court supervision.¹⁴

The Committee will write to the Minister expressing concern about the statement of compatibility for clause 63 and seeking further information as to whether or not existing s. 61V(3) of the Prostitution Control Act 1994, interpreted in light of the

⁹ See s. 39(3), *Major Crimes (Investigative Powers) Act 2004*.

¹⁰ s. 15, *Prostitution Control Act 1994*, providing for 1 month imprisonment for a first offence, 3 months imprisonment for a second offence and 6 months imprisonment for subsequent offences.

¹¹ See ss. 61D-61G, *Prostitution Control Act 1994*.

¹² Charter s. 7(2)(e). For a comparable immunity provision, see clause 15 of the recent Transport Legislation Amendment (Hoon Boating and Other Amendments) Bill 2009, inserting a new section 230ZE(1)(b) into the *Transport Act 1983*

¹³ Charter s. 32(1) provides that: 'So far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.' In *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381, [165]-[177], the Supreme Court reinterpreted s. 39(3) of the *Major Crimes (Investigative Powers) Act 2004* to provide for both direct and derivative use immunity.

¹⁴ See *Scrutiny Report 13*, Standing Committee on Justice and Community Safety, ACT Legislative Assembly, p. 3, which analysed the Victorian Supreme Court's decision and observed: "The Committee does not consider that the issue of compatibility of a provision limiting the privilege can be avoided by the expression of a hope that a Territory court will interpret the provision in a way that avoids incompatibility. If there is a doubt as to compatibility, the doubt should be removed by amendment in the Assembly. A person should not be put to the expense of resort to a court to learn the extent of their entitlement to claim a right stated in the HRA."

Charter, bars the use in criminal proceedings of evidence obtained as an indirect consequence of the use of compelled questioning powers under Division 8A of the Act. Pending the Minister's response, the Committee draws attention to clause 63 and existing s. 61V of the Prostitution Control Act 1994.

The Committee makes no further comment.

Legislation Reform (Repeals No. 5) Bill 2009

Introduced	24 November 2009
Second Reading Speech	25 November 2009
House	Legislative Assembly
Member introducing Bill	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General

Purpose and Background

The Bill repeals a number of redundant Acts relating to companies and related matters (Schedule 1); and makes a consequential amendment to the Corporations (Ancillary Provisions) Act 2001 (Schedule 2).

Note: *The Committee has previously reported on these Acts to the Parliament in December 2008.*¹⁵

Schedule 1

The Schedule in the Bill repeals the following Acts.

Note: *These Acts are to be repealed because they contain matters that are now regulated by the Corporations Act 2001 of the Commonwealth. The Acts are now redundant. Any residual or continuing effect of any transitional or savings provisions in these Acts will be preserved under section 14 of the Interpretation of Legislation Act 1984. In addition, Schedule 2 inserts new section 26 into the Corporations (Ancillary Provisions) Act 2001 which enables regulations to be made for or with respect to any transitional matters relating to the repeal of the Acts.*

1. *Companies Act 1961 (No. 6839)*
2. *Companies Act 1975 (No. 8787)*
3. *Securities Industry Act 1975 (No. 8788)*
4. *Securities Industry (Application of Laws) Act 1981 (No. 9562)*
5. *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981 (No. 9563)*
6. *Companies (Acquisition of Shares) (Application of Laws) Act 1981 (No. 9564)*
7. *Companies (Application of Laws) Act 1981 (No. 9712)*
8. *Futures Industry (Application of Laws) Act 1986 (No. 56/1986)*

Schedule 2

Corporations (Ancillary Provisions) Act 2001

This Schedule amends this Act by inserting new section 26 which enables regulations to be made for or with respect to matters of a transitional nature relating to the repeal of the Acts listed in Schedule 1.

The Committee makes no further comment.

¹⁵ Report on Redundant Corporations Laws, *Scrutiny of Acts and Regulations Committee*, December 2008.

Royal Melbourne Institute of Technology Bill 2009

Swinburne University of Technology Bill 2009

University of Ballarat Bill 2009

Victoria University Bill 2009

Introduced	24 November 2009
Second Reading Speech	25 November 2009
House	Legislative Assembly
Member introducing Bill	Hon. Jacinta Allan MLA
Portfolio responsibility	Minister for Skills and Workforce Participation

Purpose and Background

Each of the above Bills is substantially identical other than a unique preamble and some minor provisions reflecting the distinctive history on the relevant institution and the consequential transitional provisions.

The Bills provide for –

- a governing body of each University to be the Council and allow each Council to determine the number of Council members in a range from a minimum of 14 to a maximum of 21. **[11]**
- a number of disqualifications from Council membership including membership of any Australian Parliament, conviction of an indictable offence and certain disqualification under the Corporations Act. **[14]**
- the appointment of major office holders such as the Vice-Chancellor. **[24 to 27]**
- university statutes and regulations to be made by the respective Councils and provides for the subject matters these statutes and regulations may cover. **[28 to 34]**
- powers to acquire and dispose of land. **[35 to 38]**
- powers for the creation and administration of trust funds. **[39 to 43]**
- borrowing and investment powers (within Ministerial guidelines). **[44 to 47]**
- joint ventures participation powers and audit requirements. **[48 to 51]**
- the re-enactment of the current provisions declaring that a fine imposed under university statutes or regulations is a civil debt recoverable summarily. **[61 and 62]**
- saving and transitional arrangements relevant to each University such as the continuation of the current Councils the and saving of existing gifts, trusts and dispositions.
- the repeal the Acts that originally constituted the respective Universities and their constituent bodies. **[63]**

From the Statement of Compatibility –

The University Bills are based on template legislation that will be used for all of Victoria's public universities, to ensure consistency with the agreed national protocols for university governance. The primary purpose of the template legislation is to rationalise existing separate pieces of legislation, remove obsolete provisions and provide each university with its own current Act reflecting best practice and a consistent approach to governance and reporting requirements.

The University Bills also amend governance provisions where appropriate to meet the requirements of the Commonwealth's revised national governance protocols.

The University Bills will each set out the objects and powers of each university, and its status as a body corporate and body politic consisting of a council, academic staff, graduates and students. The University Bills will provide for a seal, so that each university enjoys all the powers of an individual, such as the capacity to sue and be sued, enter into contracts and acquire land.

The University Bills will allow for the continued existence of the universities' respective governing council and set out its powers, functions and membership. The council of each university will have the power to make, revoke and alter any statutes and regulations pertaining to the university.

The Committee makes no further comment.

Water Amendment (Entitlements) Bill 2009

Introduced	24 November 2009
Second Reading Speech	25 November 2009
House	Legislative Assembly
Member introducing Bill	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General

Purpose and Background

The Bill amends the *Water Act 1989* (the 'Act') to —

- make further provision as to rights to water in publicly accessible waterways;
- make provision as to the assignment of water allocations under bulk entitlements and make other amendments to the provisions as to bulk entitlements;
- alter the meaning of water allocation;
- provide for various matters relating to environmental entitlements;
- provide for various matters relating to the provisions for water shares and the water register; and
- provide for other minor matters relating to the operation of the Act.

The Bill also amends the *Residential Tenancies Act 1997* to make further provision for the rating standards for water appliances in premises to which the Act applies.

Content

The Bill —

- amends section 8(3) of the Act which currently provides that a person has the right to use water taken by that person from a waterway or bore when the water is taken under a right conferred by section 8 (Continuation of private rights to water). New section 8(3) restricts the use of water taken for domestic and stock use from a waterway to which a person has access by a public road or a public reserve to the place at which they take the water. The clause does not limit the right to water cattle or other stock, colloquially known as the "drover's right" or the exercise of any cultural rights by Aboriginal persons. **[4]**
- makes provision to extend the right of review by the VCAT for a person whose interests are affected by a decision of the Minister under the Act in relation to an application to amend a licence under certain sections inserted by the Bill. **[46]**
- repeals the prohibition on addresses being made available as the result of a search of the water register. **[62]**

Extract from the Second Reading Speech —

... In particular, the Bill will provide that addresses recorded on the register will now be searchable. The register facilitates the responsible, transparent and sustainable use of the State's water resources. It is appropriate that the owners of water shares can be identified by searching the register. Safeguards in the Water Act will remain in place to ensure that registrants are aware of this change and of their right to apply for their personal information not to be publicly released under certain circumstances.

The Committee makes no further comment.

Ministerial Correspondence

Criminal Procedure Amendment (Consequential and Transitional Provisions) Bill 2009

The Bill was introduced into the Legislative Assembly on 16 September 2009 by the Hon. Rob Hulls MLA. The Committee considered the Bill on 12 October 2009 and made the following comments in Alert Digest No. 12 of 2009 tabled in the Parliament on 13 October 2009.

Committee's Comments

Charter report

Privacy – Fair hearing – Sexual history evidence

Summary: Clause 50 bars the admission of evidence as to the sexual activities of sexual offence complainants without the leave of the court. Whilst the Committee considers that the new Division generally balances the competing rights at stake, it has some concerns about the details of the scheme.

The Committee notes that clause 50, inserting a new section 342 into the Criminal Procedure Act 2009, bars the admission of 'evidence as to the sexual activities' of sexual offence complainants 'without the leave of the court'. The remainder of the new Division 2 of Part 8.2 places restrictions on when leave can be granted. The new sections largely reflect the previous s. 37A of the Evidence Act 1958, which was drafted and (in 2006) amended before the Charter was enacted.

The Statement of Compatibility remarks:

New division 2 of the scheme restricts the right of the accused to admit evidence or cross-examine with respect to the complainant's chastity and sexual history. The protections are designed to preserve the privacy and reputation of the complainant in sexual offence proceedings. I consider this protection to be well balanced against the right of the accused to examine witnesses and present relevant evidence to the court. New section 344 provides that the accused may seek leave to admit evidence or cross-examine a witness and the court may grant leave if it is satisfied that the evidence has substantial relevance to a fact in issue and it is in the interests of justice (new section 349). The bill also improves the scheme from its current form in section 37A of the Evidence Act 1958 by making it easier for an accused to apply for leave out of time or to waive the requirement that the application be in writing by amending the test from 'exceptional circumstances' to 'interests of justice' (new sections 345 and 347).

Whilst the Committee considers that the new Division 2 of Part 8 generally balances the competing rights at stake, it has some concerns about the details of the scheme:

First, the scheme's main protection for complainants' Charter right to privacy is s. 342's ban on admitting 'evidence as to the sexual activities... of the complainant' without leave. The High Court has held that this formulation applies to evidence of 'any occasion or episode of sexual activity involving the complainant' but does not extend to 'evidence that tends to prove the state of his or her sexual experience'. So, the Victorian statute, unlike some others in Australia, permits a complainant to be asked without prior leave about his or her lack of sexual experience.

Second, new section 349 bars a court from granting leave to admit sexual history evidence during a trial unless 'it is satisfied that the evidence has substantial relevance to a fact in issue.' Unlike some other Australian statutes, there is no provision for evidence that is relevant only to the complainant's credibility. While this approach appropriately excludes attempts to link the complainant's sexuality to his or her honesty, it also may exclude some relevant evidence, such as previous false complaints or transferred memories from earlier assaults.

Third, new section 350 bars a court from granting leave to admit sexual history evidence at a sentencing hearing unless the offender either pleads guilty to or is found guilty of 'all sexual offences charged against the offender'. This means that offenders who are acquitted of some but not all charged offences are barred from adducing any sexual history evidence at a sentencing hearing, even when it is substantially relevant to the issue of sentence. For example, such an offender will be unable to argue that any harm suffered by the victim was due to unrelated sexual assaults. No other Australian jurisdiction has such a rule or draws any such distinction.

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

- 1. new section 342, by permitting a complainant's lack of sexual experience to be adduced without leave, is compatible with complainants' Charter right against arbitrary or unlawful interferences in their privacy.**
- 2. new section 349, by barring defendants from adducing sexual history evidence that is relevant only to a complainant's credibility, is compatible with the Charter right to a fair hearing.**
- 3. new section 350, by barring offenders who are acquitted of some but not all charged offences from adducing any sexual history evidence at all at a sentencing hearing, is compatible with their Charter right to a fair hearing.**

Fair hearing – Unrepresented accused barred from contradicting a protected witness's testimony

Summary: Clause 50 inserts a new provision that is in identical terms to one that the Committee previously reported may limit the Charter's right to a fair hearing.

The Committee notes that clause 50, inserting a new section 357(5), provides that an accused person who refuses legal representation to cross-examine a protected witness in a sexual or family violence offence prosecution or otherwise refuses to co-operate must be told that he or she 'will not be permitted to adduce evidence in relation to a fact in issue in order to contradict the evidence of a protected witness'. **The new section is in the same terms as the existing s. 37CA(9) of the Evidence Act 1958, which was considered by the Committee in its report on the Family Violence Protection Bill in Alert Digest No 9 of 2008.**

The Committee observes that new section 357(5), like its predecessor, appears to mimic the rule of evidence known as the rule in *Browne v Dunn*; however, it is much stricter than that rule (which is ordinarily enforced through less drastic remedies, such as allowing witnesses to be recalled and drawing adverse inferences). The High Court of Australia has cast doubt on whether the rule in *Browne v Dunn* should be applied to criminal defendants at all, at least 'without serious qualification', given the prosecution's burden of proof: *MWJ v R* [2005] HCA 74, [41]. **The Committee therefore considers that new section 357(5) may limit such defendants' Charter right to a fair hearing.**

The Committee refers to Parliament for its consideration the question of whether or not new section 357(5), by completely barring uncooperative defendants from contradicting the evidence of a protected witness, is compatible with the Charter's right to a fair hearing.

Retrospective penalties – New maximum fine – Transitional provision

Summary: A transitional provision for a new maximum fine for indictable offences tried summarily does not address the situation where an indictable offence was committed before the commencement of the Criminal Procedure Act 2009 but the summary hearing was granted after that commencement. The Committee will write to the Attorney-General seeking further information.

The Committee notes that item 110.83 of schedule 1, inserting a new section 138 into the Sentencing Act 1991, provides that a new maximum fine of 500 penalty units for indictable offences tried summarily applies to any sentence imposed after commencement. New section 138(2) creates an exception where the new maximum is higher than the previous one, but only where 'the Magistrates' Court determined to grant a summary hearing of a charge for the offence' before the commencement of the Criminal Procedure Act 2009.

The Statement of Compatibility remarks:

The transitional provision in the bill ensures that the new maximum jurisdiction penalty does not impose a penalty that is greater than the penalty applying at the time the accused consented to, and the court granted, summary jurisdiction.

However, Charter s. 27(2) provides:

A penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed.

The Committee is concerned that the transitional provision does not address the situation where an indictable offence was committed before the commencement of the Criminal Procedure Act 2009 but the summary hearing was granted after that commencement.

The Committee will write to the Attorney-General seeking further information as to the maximum fine applicable in a summary hearing granted after the commencement of the Criminal Procedure Act 2009 in respect of an indictable offence committed before commencement that previously attracted a maximum fine of less than 500 penalty units when tried summarily.

Minister's Response

Thank you for your letter dated 14 October 2009 regarding the Committee's consideration of the Criminal Procedure Amendment (Consequential and Transitional Provisions) Bill 2009 (Bill).

The Committee has asked for my response to one issue concerning the consistency of the transitional arrangements in relation to indictable offences with the Charter of Human Rights and Responsibilities Act 2006 (Charter). The Committee also referred four other questions to Parliament for its consideration. In light of the complexity of these issues, I have responded to each issue separately below.

1. The Committee seeks further information as to the maximum fine applicable in a summary hearing granted after the commencement of the Criminal Procedure Act 2009 in respect of an indictable offence committed before commencement that previously attracted a maximum flue of less than 500 penalty units.

Section 27(2) of the Charter provides that "a penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed". This provision applies to the maximum penalty that is prescribed for an offence.

The Supreme Court in *Hansford v His Honour Judge Neesham* [1997] VR 233 drew a distinction between the maximum penalty for an offence which is set by Parliament and what is generally described as the "jurisdictional maximum penalty". The jurisdictional maximum penalty "leaves the statutory maximum penalty untouched, but imposes upon a

particular sentencing court a jurisdictional limit. It imposes its own maximum, not by reference to the nature of the offence and its gravity in relation to other offences, but by reference to the status of the sentencing court".

That is, the jurisdictional maximum penalty indicates the maximum penalty that may be imposed for an offence when the Magistrates' Court determines an indictable offence summarily. The Charter does not create any specific rights or limits on penalties in relation to jurisdictional maximum penalties.

The issue then must be considered against other principles of fairness. The critical issue is whether the accused has consented to summary jurisdiction and the court has granted a summary hearing before or after there is a change in the penalty. If the accused has not consented to summary jurisdiction and the court has not granted a summary hearing before the Criminal Procedure Act 2009 commences, the new jurisdictional maximum penalty will apply. In this situation, the accused is free to choose to consent or not to consent to the offence being determined summarily. Similarly, the Magistrates' Court will determine whether it is appropriate to determine the offence summarily in light of the applicable jurisdictional maximum penalty.

If the accused does not consent to summary jurisdiction, the offence will be heard in the County Court or the Supreme Court and the actual maximum penalty for the offence (which has not changed) will apply to the offence.

Questions referred to Parliament for its consideration:

The Committee referred four questions regarding evidentiary procedures in sex offence cases under Part 8.2 of the Bill to Parliament for its consideration.

The Bill re-enacts and improves upon a number of provisions concerning evidentiary procedures in sex offence cases previously contained in the Evidence Act 1958.

In 2006, the Government implemented major reforms to sex offence proceedings based on the recommendations of the Victorian Law Reform Commission (VLRC) report concerning sex offences. This led to changes to the admissibility of evidence concerning a complainant's sexual activities, prohibiting the accused from personally cross-examining witnesses and introducing special hearings for taking evidence from children and cognitively impaired complainants. The Bill builds upon these existing provisions and seeks to further improve victims' experience of the criminal justice system while ensuring a fair trial for the accused.

2. The Committee questioned whether or not new section 342, by permitting a complainant's lack of sexual experience to be adduced without leave, is compatible with complainants' Charter right against arbitrary or unlawful interferences in their privacy.

New section 342 requires the court's leave to be obtained to call evidence, or to cross-examine a complainant in relation to the complainant's sexual activities. In addition to the leave requirements set out under section 342, new section 341 prohibits questions about the complainant's chastity and new section 343 provides that sexual history evidence is not admissible to show that a complainant is the type of person who is more likely to have consented. These provisions are all part of the proposed new Part 8.2 of Criminal Procedure Act 2009 which provides special procedures and evidentiary provisions for sexual offences and family violence offences. These sections substantially re-enact sections 37A to 37E, 41A to 41E, 41G and 41H of the Evidence Act 1958 which were largely developed following a number of major reviews by the Victorian Law Reform Commission (VLRC) - the first in 1988 - 1991 and the second in 2004.

The Committee refers to the High Court's interpretation of section 36BC of the Evidence Act 1906 (WA) in Bull v R [2000] 24, [64] and indicates that this case is similarly applicable to the Victorian provision. However, the High Court's reasoning in that case is based on the use of the words "sexual experiences" which are expressly used in section 36BC of the Western Australian legislation. The Court distinguishes (at paragraph [62]) between

"evidence which describes any occasion or episode of sexual activity involving the complainant" which is excluded, and "evidence that tends to prove the state of [the complainant's] sexual experience" which it holds to be permissible under section 36BC.

The reasoning of the High Court cannot be applied directly to new section 342, or even new Part 8.2, of the Criminal Procedure Act 2009 which does not use the words "sexual experiences". Further, the combination of the prohibitions on evidence of the complainant's chastity and sexual history contained in sections 341 and 343 of the Act would automatically exclude some questions about a complainant's state of sexual experience.

Accordingly, unless a question about a lack of experience of sexual activities is prohibited by new sections 341 and 343, leave is required to adduce such evidence. The provisions apply in the same way irrespective of whether the complainant is being questioned about a lack of sexual experience or for having extensive sexual experience. The new provisions are therefore compatible with, and give effect to, the complainant's Charter right against arbitrary or unlawful interferences in their privacy.

3. The Committee questioned whether or not new section 349, by barring defendants from adducing sexual history evidence that is relevant only to a complainant's credibility, is compatible with the Charter right to a fair hearing.

New section 349 re-enacts section 37A of the Evidence Act 1958. New section 349 relates to applications for leave under new section 342, which stipulates that evidence as to a complainant's sexual activities (that do not relate to the offence charged) may not be admitted as evidence or be the subject of cross-examination without leave from the court. New section 349 provides that leave to cross-examine may be sought, provided that the evidence has substantial relevance to the facts in issue and that it is in the interests of justice to allow the cross-examination.

As the Committee noted in its report on the Bill, the approach adopted by new section 349 is to appropriately exclude attempts to link a complainant's sexuality, being a reference to the sexual history and sexual activity of a complainant, to his or her honesty. However, as provided by section 349, if the evidence as to a complainant's credibility is relevant, in the interests of justice (which requires the court to have regard to the right of the accused to fully answer and defend the charge) and outweighs any potential risk of trauma to the complainant, it may be admissible in evidence.

The Committee also noted in its report that section 349 may exclude relevant evidence such as previous false complaints or transferred memories from earlier assaults, where such evidence is only relevant to the credit of the witness. In practice the application of this section has not operated to unfairly exclude such evidence. Rather, leave to cross-examine in relation to this evidence will be granted where it has substantial relevance and it is in the interests of justice to admit the evidence.

The VLRC expressly considered this issue and noted that cross-examination in relation to a complainant's sexual activity is often used to justify questions on issues which have little or no relevance to the question in issue at trial. Further, if the evidence is genuinely relevant to a fact in issue the court will have the discretion to allow its admission.

The test applied in new section 349 appropriately restricts adducing evidence to where it has substantial relevance to a fact in issue. The criteria to be considered by the court protect the complainant's right against arbitrary or unlawful interference with their privacy and are compatible with the accused's right to a fair trial.

4. The Committee questioned whether or not new section 350, by barring offenders who are acquitted of some but not all charged offences from adducing any sexual history evidence at all at a sentencing hearing, is compatible with their Charter right to a fair hearing.

New section 350 continues the restrictions on evidence about a complainant's sexual activities that apply during a summary hearing or trial, to the sentencing hearing stage. This is essential in protecting the complainant's Charter right against arbitrary or unlawful

interference with their privacy. An application to lead this kind of evidence does not often arise in practice because often it is either not relevant or it is relevant and was adduced during the hearing or trial.

New section 350 refers to "all sexual offences charged against the offender". At the time of sentencing, new section 350 would apply to all live charges, that is, charges before the Court, against the offender. If the offender had been acquitted of some charges on the indictment, but had been found guilty of all remaining charges on the indictment, then section 350 would not inhibit any application for leave under section 342.

If the offender pleaded guilty to some charges and a trial was required on the remaining charges, the plea hearing will normally be adjourned and conducted after all related and outstanding charges against the offender have been determined. Where the offender seeks to adduce evidence of this kind the need to adjourn the plea hearing until all charges have been dealt with will be clear and necessary for the proceedings to be conducted fairly for the offender.

By adopting this process, new section 350 is designed to ensure that where, for example, the offender intends to enter a plea of guilty to some charges on the indictment, but elects to go to trial on others, sexual history evidence is not inappropriately and prematurely admitted into evidence. What is more appropriate and fairer to both the offender and the complainant, is for all sentencing and sentencing hearings to be deferred until all outstanding charges have been determined. Section 331 of the Criminal Procedure Act 2009 provides a general power to adjourn a proceeding if the court considers it appropriate to do so.

Section 350 will not operate to infringe upon fair hearing rights protected in the Charter. In practice, it will enhance the rights of the offender by further encouraging the good practice of deferring sentencing until all outstanding matters have been finalised and the offender can be sentenced once.

5. The Committee questioned of whether or not new section 357(5), by completely barring uncooperative defendants from contradicting the evidence of a protected witness, is compatible with the Charter's right to a fair hearing.

New section 357(5) applies to a criminal proceeding that relates (wholly or partly) to a charge for a sexual offence or an offence consisting of family violence within the meaning of the Family Violence Protection Act 2008. Section 357(5) prohibits an accused from personally cross-examining a protected witness and requires that cross-examination be conducted by an accused's legal representative.

If an accused is not legally represented, the court must inform the accused that they may not personally cross-examine a protected witness and, if the accused has not sought legal representation for the cross-examination, the court must order Victoria Legal Aid to provide legal representation for that purpose. If the accused refuses the legal representation provided by Victoria Legal Aid, the court must warn the accused that they will not be permitted to adduce evidence in relation to a fact in issue in order to contradict the evidence of a protected witness. This provision does not prevent a protected witness from being recalled if, at a later point in the trial, the accused does want to cross examine the witness. If this situation does arise, the cross-examination must still be conducted through a legal representative.

Section 25(2) of the Charter provides, relevantly, that "a person charged with a criminal offence is entitled without discrimination to the following minimum guarantees ... to examine, or have examined, witnesses against him or her, unless otherwise provided for by law". Given that the restriction on cross-examination of protected witnesses by the accused is not absolutely prohibited (only direct cross-examination by the accused personally is barred), it is not considered that the right to a fair hearing is limited.

If you would be assisted by a briefing from officers from my Department on the details of the issues you have raised, please contact Mr Stan Winford from my office (965 11146) to arrange a suitable time.

ROB HULLS MP
Attorney-General

26 November 2009

The Committee thanks the Attorney-General for this response.

Committee Room
7 December 2009

Appendix 1

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Children Legislation Amendment Bill 2009	5
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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.

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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

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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

Bus Safety Bill 2008	1
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Appendix 3

Ministerial Correspondence

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

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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
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Serious Sex Offenders Monitoring Amendment Act 2009	Corrections	26.02.09 22.04.09	2 of 2009 5 of 2009
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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
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Energy Legislation Amendment (Australian Energy Market Operator) Bill 2009	Energy and Resources	02.06.09 15.07.09	6 of 2009 8 of 2009
Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2009	Ms Colleen Hartland MLC	02.06.09 04.06.09	6 of 2009 7 of 2009
Superannuation Legislation Amendment Bill 2009	Finance	02.06.09 30.06.09 28.07.09 23.09.09	6 of 2009 8 of 2009 8 of 2009 12 of 2009
Fair Work (Commonwealth Powers) Bill 2009	Industrial Relations	23.06.09	7 of 2009
Courts Legislation Amendment (Sunset Provisions) Bill 2009	Attorney-General	28.07.09 26.08.09	8 of 2009 10 of 2009
Human Tissue Amendment Bill 2009	Health	28.07.09 10.08.09	8 of 2009 10 of 2009
Tobacco Amendment (Protection of Children) Bill 2009	Health	28.07.09 10.08.09	8 of 2009 10 of 2009
Courts Legislation Amendment (Judicial Resolution Conference) Bill 2009	Attorney-General	11.08.09 04.09.09	9 of 2009 11 of 2009
Local Government Amendment (Conflicting Duties) Bill 2009	Local Government	11.08.09 01.09.09	9 of 2009 11 of 2009
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 10.11.09	11 of 2009 14 of 2009
Criminal Procedure Amendment (Consequential and Transitional Provisions) Bill 2009	Attorney-General	13.10.09 26.11.09	12 of 2009 15 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 <i>18.11.09</i>	13 of 2009 <i>14 of 2009</i>
Justice Legislation Miscellaneous Amendments Bill 2009	Police and Emergency Services	10.11.09	13 of 2009
Constitution (Appointments) Bill 2009	Premier	24.11.09	14 of 2009
Serious Sex Offenders (Detention and Supervision) Bill 2009	Attorney-General	24.11.09	14 of 2009
Summary Offences and Control of Weapons Acts Amendment Bill 2009	Attorney-General, Police and Emergency Services	24.11.09	14 of 2009
Consumer Affairs Legislation Amendment Bill 2009	Consumer Affairs	08.12.09	15 of 2009