No. 11 of 2010

Tuesday, 10 August 2010

On the

Bail Amendment Bill 2010

Climate Change Bill 2010

Consumer Affairs Legislation Amendment (Reform) Bill 2010

Control of Weapons Amendment Bill 2010

Liquor Control Reform Amendment Bill 2010

Local Government and Planning Legislation Amendment Bill 2010

Mineral Resources Amendment (Sustainable Development) Bill 2010

Personal Property Securities (Statute Law Revision and Implementation) Bill 2010

Personal Safety Intervention Orders Bill 2010

Plant Biosecurity Bill 2010

Private Security Amendment Bill 2010

Subordinate Legislation Amendment Bill 2010

Superannuation Legislation Amendment Bill 2010

Tourist and Heritage Railways Bill 2010

Traditional Owner Settlement Bill 2010

Transport Accident and Accident Compensation Legislation Amendment Bill 2010

Table of Contents

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 –

Bail Amendment Bill 2010
Climate Change Bill 2010
Consumer Affairs Legislation Amendment (Reform) Bill 2010
Liquor Control Reform Amendment Bill 2010
Local Government and Planning Legislation Amendment Bill 2010
Mineral Resources Amendment (Sustainable Development) Bill 2010
Personal Property Securities (Statute Law Revision and Implementation) Bill 2010
Plant Biosecurity Bill 2010
Private Security Amendment Bill 2010
Subordinate Legislation Amendment Bill 2010
Traditional Owner Settlement Bill 2010
Transport Accident and Accident Compensation Legislation Amendment Bill 2010
Tourist and Heritage Railways Bill 2010

The Committee notes the following correspondence –

Control of Weapons Amendment Bill 2010
Personal Safety Intervention Orders Bill 2010
Superannuation Legislation Amendment Bill 2010

Scrutiny of Acts and Regulations Committee

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. 11 of 2010

Bail Amendment Bill 2010 *

Introduced	29 July 2010
Second Reading Speech	29 July 2010
House	Legislative Council
Member introducing Bill	Hon. Justin Madden MLC
Minister responsible	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General

** The Committee intends to table a further report on this Bill on 31 August 2010.*

Purpose and Background

The Bill –

- amends the *Bail Act 1977* (the 'Act') to –
  1. restructure the Act with Parts. **[3, 6, 14, 16 and 18]**
  2. require a decision-maker to take into account any cultural background or other relevant cultural issues that arise due to the Aboriginality of a person when making a determination under the Act in relation to the person. **[4 and 5]**
  3. clarify and amend the sections relating to conditions of bail **[8]**, sureties and deposits, variation of bail, revocation of bail, further bail applications and appeals. **[6 to 26]**
  4. abolish the common law and statutory right of a surety to apprehend the principal to bring them before a bail justice or a court. **[20]**

  Note: *A surety may still apply to a court to have their liability discharged. (s. 24(1)(b))*

- amends the *Magistrates' Court Act 1989* to provide a new legislative framework for the appointment, re-appointment, qualifications, training, oversight, a code of conduct prescribed in regulations, suspension, retirement of bail justices and acting bail justices. The Bill also provides for the removal of bail justices and acting bail justices by the Governor in Council upon the recommendation of the Attorney-General after an independent investigation. Bail justices are volunteer office holders. **[29 to 34]**

  The Bill makes it clear that outside ordinary court hours an accused may be remanded in custody by a bail justice under the Act and under the interim accommodation orders under the *Children, Youth and Families Act 2005* and that an accused so remanded in custody is to be brought before a court on the next available court sitting day, with a maximum remand period permitted by a bail justice of two working days. An accused person may appeal a decision of a bail justice to a court without having to establish that new facts or circumstances have arisen.

- makes consequential amendments to these and other Acts.

Charter report

Rights of people awaiting trial – Bail conditions imposed to reduce likelihood of offending – Restriction on variation of bail conditions

Summary: The Committee will report on clauses 8 and 15 in its next Alert Digest.

The Committee considers that clauses 8, substituting existing s. 5, and 15, inserting a new section 18AD, may raises issues of compatibility with the rights of people awaiting trial set out in Charter s. 21(6).[1]

The Committee will report on these clauses in its next Alert Digest.

[1] Charter s. 21(6) provides that: 'A person awaiting trial must not be automatically detained in custody, but his or her release may be subject to guarantees to attend— (a) for trial; and (b) at any other stage of the judicial proceeding; and (c) if appropriate, for execution of judgment.'

Climate Change Bill 2010

Introduced	27 July 2010
Second Reading Speech	29 July 2010
House	Legislative Assembly
Member introducing Bill	Hon. John Brumby MLA
Minister responsible	Hon. Gavin Jennings MLC
Portfolio responsibility	Minister for Environment and Climate Change

Purpose and Background

The Bill proposes an Act to provide for a framework for action on climate change in Victoria.

The Bill –

1. commences with a Preamble recognising the overwhelming scientific consensus that human activity is causing climate change and include overarching policy objectives for Victoria's response to climate change, together with guiding principles which the Minister is to apply in administering certain sections of the Act. **[Preamble]**
2. establishes a target to reduce Victoria's greenhouse gas emissions by 20 per cent compared with 2000 levels by 2020. **[Part 2]**
3. creates an obligation for government decision-makers to take into account climate change when making decisions or taking any action under a specified legislative provision. **[Part 3]**
4. requires the preparation of a climate change adaptation plan every four years which will provide for an outline and a risk assessment of climate change impacts on Victoria and the government's priorities in response to those impacts and risks. **[16]**
5. requires the preparation of biennial reports on climate change science and emissions data for Victoria, which will include reporting on Victoria's progress in meeting the legislative target. **[17]**
6. provides that if a national emissions trading scheme is introduced by the Commonwealth Parliament an immediate review of the Act will be conducted. **[19]**
7. provides for a once-off independent review of the Act by 31 December 2015 to establish whether further action is needed at the State level. **[18]**
8. makes amendments to the *Environment Protection Act 1970* to expressly empower the Environment Protection Authority (EPA) to regulate the emission or discharge of greenhouse gas substances, facilitate the operation of the climate communities fund account, and enable the Premier and the Minister to enter into climate covenants for the purpose of facilitating measures and activities directed at climate change. **[Part 7]**
9. establishes a new forestry and carbon sequestration rights framework to facilitate the development of the emerging carbon sequestration industry on private and Crown land, repeal the *Forestry Rights Act 1996* [75] and make consequential amendments to other Acts. **[Part 4 and 8]**
10. empowers the Secretary of the Department to manage Crown land for the purposes of carbon sequestration on behalf of the Crown, facilitates the strategic assessment of Crown land available for carbon sequestration and enables carbon sequestration rights and soil carbon rights to be granted in relation to Crown land to third parties through Carbon Sequestration Agreements. **[Part 5]**
11. provides regulation-making powers and transitional provisions to give effect to the Act. **[64 and Schedule 2]**

12. declares that any rights created by the Act in relation to Crown land are not intended to extinguish native title to the extent that they already exist in relation to that land. **[41]**

Schedule 1 to the Bill specifies the Acts and the decisions and actions authorised by those Acts to which the climate change decision making framework applies.

Schedule 2 to the Bill provides transitional arrangements to preserve the status of existing agreements under the *Forestry Rights Act 1996* and to require existing forest property agreements to be ended before new rights are created under Part 4 of the Bill.

The Committee makes no further comment.

Consumer Affairs Legislation Amendment (Reform) Bill 2010

Introduced	27 July 2010
Second Reading Speech	28 July 2010
House	Legislative Assembly
Member introducing Bill	Hon. Tony Robinson MLA
Portfolio responsibility	Minister for Consumer Affairs

Purpose

The Bill implements the second tranche of reforms arising from the Consumer Affairs Legislation Modernisation project. The purposes of the Bill are to consolidate, modernise or repeal many of Victoria's Consumer Acts.

The Bill –

1. repeals the *Disposal of Uncollected Goods Act 1961* and inserts a new framework for dealing with the disposal of uncollected goods into the *Fair Trading Act 1999.* **[3 to 5]**
2. repeals the *Introduction Agents Act 1997* and replaces protections contained in that Act with new provisions in the *Fair Trading Act 1999*. The new provisions remove the regulation of the sector and instead introduce a negative licensing system which will prohibit a range of people including sex work providers and persons convicted of certain serious offences from operating as an introduction agent. A prohibited person may apply for permission to be relieved of the disqualification. **[7 to 11]**
3. repeals the remaining provisions of the *Carriers and Innkeepers Act 1958* and inserts modernised provisions into the *Fair Trading Act 1999* allowing accommodation providers to limit their common law liability. The provisions limit the liability of accommodation providers to $300 for goods not in safekeeping and $3000 for goods kept in safekeeping provided the provider display the relevant signage. The liability limits will not apply where the loss is caused by the intentional or negligent act or omission of the accommodation provider. **[12 to 14]**
4. re-enacts the *Sale of Goods (Vienna Convention) Act 1987** (the 'Convention') and the *Sea-Carriage Documents Act 1998* in the *Goods Act 1958* (the 'Act'), and repeals an obsolete offence in the *Goods Act 1958*. The Convention becomes a Schedule to the Act. **[15 to 21]**

   **United Nations Convention on Contracts for the International Sale of Goods*

5. amends the *Consumer Affairs Legislation Amendment Act 2010* to prohibit certain debt collection practices (physical force, undue harassment and coercion) and make available compensation of up to $10,000 to consumers who have experienced humiliation or distress as a result of those practices. Other prohibited practices include impersonation of a public official, use of of documents resembling infringement notices or threats to take possession where there is no entitlement, disclosure of debt information and representations that a debt is a fine or a form of penalty. The provisions include ability to award costs for frivolous or vexatious litigation. The Bill also makes various statute law revision amendments to the Act. **[22 to 34]**

   Note: *Of interest in respect to the award of damages for consumer detriment (distress and anxiety) arising from harassment and oppressive conduct is the United Kingdom legislation, the Protection from Harassment Act 1997 (UK).*

6. amends the *Estate Agents Act 1980* to remove redundant provisions, simplify compliance requirements and strengthen penalties for breaches of audit requirements. **[35 to 50]**
7. amends the *Conveyancers Act 2006* to simplify compliance requirements and strengthen penalties for breaches of audit requirements. **[51 to 56]**
8. amends requirements for off-the-plan sales by amending the *Sale of Land Act 1962* to increase the cap from 10 per cent to 20 per cent on deposits for off-the-plan sales, enhance disclosure requirements and strengthen safeguards for the handling of deposits and repeals a provision which currently restricts the ability of purchasers of land to exercise cooling-off rights if they have sought and received advice from a legal practitioner. **[57 to 60]**
9. amends the *Funerals Act 2006*, the *Owners Corporations Act 2006*, the *Travel Agents Act 1986*, the *Residential Tenancies Act 1997*, the *Retirement Villages Act 1986* and the *Sale of Land Act 1962* to standardise powers for the issuing of infringement notices. **[61 to 66]**
10. amends the *Fair Trading Act 1999* to impose restrictions on costs orders where proceedings are transferred to the Victorian Civil and Administrative Tribunal (VCAT), and ensures that in addition to criminal remedies civil remedies can be ordered against directors of corporations who are knowingly involved in the corporation's contraventions.* The amendments also make consequential amendments in respect to prohibited debt collecting practices. **[67 to 72]**

    Note: From the explanatory memorandum – *This is intended to prevent further problems in interpretation of the sort that arose in the case Astvilla v Director of Consumer Affairs Victoria [2006] VSC 289 and thereby allow injunctions to be obtained in a broader range of situations.*

11. amends the *Business Licensing Authority Act 1998* in relation to the constitution of the Authority. **[73]**
12. repeals the balance of the *Landlord and Tenant Act 1958* and inserts a savings provision for prescribed premises under that Act into the *Residential Tenancies Act 1997* to ensure protected tenants can maintain their tenancies. **[75]**
13. modernises definitions in the *Motor Car Traders Act 1986* and allows certain people to apply for permission to act as a licensee. **[76]**
14. makes miscellaneous amendments to the *Owners Corporations Act 2006* in respect to delegations of powers and functions to a committee of the owners corporation and in respect to the witnessing of the owners corporation seal. **[77]**
15. amends the *Travel Agents Act 1986* by clarifying management supervision requirements for a licensee of a travel agency. **[79]**
16. amends the *Victorian Civil and Administrative Tribunal Act 1998* to give VCAT greater capacity to award costs in disputes about arrears of owners corporation fees. **[80]**
17. makes statute law and consequential amendments relating to the change of the short title of the *Prostitution Control Act 1994* (new title 'Sex Work Act 1994'). The short title of the Act was amended by section 42 of the *Consumer Affairs Legislation Amendment Act 2010.* **[81]**

The Committee makes no further comment.

Liquor Control Reform Amendment Bill 2010

Introduced	27 July 2010
Second Reading Speech	28 July 2010
House	Legislative Assembly
Member introducing Bill	Hon. Tony Robinson MLA
Portfolio responsibility	Minister for Consumer Affairs

Purpose

The Bill amends the *Liquor Control Reform Act 1998* (the 'Act') –

1. the completion of approved responsible service of alcohol programs and refresher programs by licensees, management and staff. **[11 and 19]**
2. to require licensees to make free drinking water available to patrons on licensed premises when liquor is consumed and on application to the Director of Liquor Licensing (the 'Director') provide exemptions in certain circumstances. **[15]**
3. require licensees to notify the Director of Liquor Licensing that they intend to provide sexually explicit entertainment and to make it an offence to fail to do so and impose graduated fees where there have been one or more non-compliance incidents (a successful prosecution or a paid infringement notice) in a relevant period. **[5, 10 and 17]**
4. provide for the exemption of certain businesses that claim an exemption from the licensing requirements of the Act and provide that these exemptions are subject to certain conditions specified in respect to each business type, such as not to supply alcohol to minors. The business types defined in the Bill are small bed and breakfast accommodation providers, butchers, florists and hairdressers businesses. **[4 and 6]** Further to allow regulations to prescribe other low risk businesses to be exempt from the licensing requirements of the Act subject to conditions. **[28]**
5. create powers to serve infringement notices in respect to items 1 to 3 above. **[21]**
6. simplify the terminology used in the act when referring to members of the police. **[22 to 27]**
7. require that licence and permit applications be publicly displayed for 28 days from a date specified by the Director. **[12]**
8. require licensees to display on their premises the most recently issued and received copy of their licence. **[16]**
9. correct an unintentional drafting error to allow on-premises licences to authorise the supply of liquor on premises (other than licensed premises) for up to three periods of the day, rather than for one of three periods of the day. **[7]**

The Committee makes no further comment.

Local Government and Planning Legislation Amendment Bill 2010

Introduced	27 July 2010
Second Reading Speech	28 July 2010
House	Legislative Assembly
Member introducing Bill	Hon. Richard Wynne MLA
Portfolio responsibility	Minister for Local Government

Purpose

The Bill amends the –

1. *Local Government Act 1989* – The amendments include measures dealing with conflict of interests, disclosure of interests and the register of interests for Councillors and Council staff; removal of a reverse onus defence provision concerning conflicts of interest (see note below); prohibited electoral advertising by a Council during an election period; and the timing and conduct of electoral representation reviews; a changed definition of 'senior officer' and the annual indexation of remuneration defining 'senior officer'. **[Part 2]**

   Note: From the Second Reading Speech – *The other pre-2008 requirement is one that states that it is a defence in a conflict-of-interest prosecution if the defendant can prove that he or she did not know of the conflict of interest. This is inconsistent with the right to be presumed innocent under the Charter of Human Rights and Responsibilities because it places the onus of proof on the defence. The provision will be replaced by a general exemption where a person does not know and could not be reasonably expected to know the circumstances giving rise to the conflict of interest.*

2. *City of Melbourne Act 2001* – The amendments enable the Melbourne City Council to enter into environmental upgrade agreements with lending institutions and building owners to encourage building environmental improvements approved by the Council and to enable the Council to levy environmental upgrade associated charges on the property. **[35]**
3. *Planning and Environment Act 1987* – The amendments make miscellaneous amendments relating to Development Assessment Committees (DAC). **[36 to 43]**

   Note: From the Second Reading Speech – *In order to address these technical issues, the Bill renames and amends a number of definitions. This includes specifying a 'DAC activity centre area' as a contiguous area in a planning scheme, and subject to a planning scheme amendment, as the areas where Development Assessment Committees would operate, and amendments to the suburbs identified as 'relevant activity areas' to ensure consistency with suburb names under the Geographic Place Names Act 1998.*

4. *Crown Land (Reserves) Act 1978* and the *Environment Protection Act 1970* – The amendments make consequential amendments to those Acts. **[44 to 48]**

The Bill repeals the *Local Government (Consequential Provisions) Act 1989.* The amendments made by this Act have taken effect and the Act is now spent. The Bill however provides appropriate savings provisions in the *Local Government Act 1989* for a number of provisions that need continued application notwithstanding the repeal. **[33 and 49]**

The Committee makes no further comment.

Mineral Resources Amendment (Sustainable Development) Bill 2010

Introduced	27 July 2010
Second Reading Speech	28 July 2010
House	Legislative Assembly
Member introducing Bill	Hon. Peter Batchelor MLA
Portfolio responsibility	Minister for Energy and Resources

Purpose

The Bill amends the —

Mineral Resources (Sustainable Development) Act 1990 (the 'Act') to —

1. provide for 2 new licences (prospecting licences and retention licences); and require mining licence applications and applications for retention licences to describe the mineral resources to which they will relate. **[8 and 9]**

   Extract from the Second Reading Speech –

   > *A retention licence will apply where a mineral resource has been identified but is not currently commercially viable to mine. It will enable the holder to undertake certain activities. This includes intensive exploration, economic and other studies and research and development, targeting the definition of a feasible mining and/or processing venture. A retention licence will also provide the holder with the right to apply for a mining licence when the holder is ready to mine.*
   >
   > *A prospecting licence will provide greater clarity on the right of small-scale prospectors and miners but will ensure a healthy turnover of ground. Holders of prospecting licences will be granted a prospecting licence for a relatively short term -- up to five years. Prospecting licences will not require identification of a mineral resource. The licence will not be renewable but the holder will have the right to apply for a retention licence or mining licence.*

2. provide for a new procedure for the endorsement of work plans and variations to approved work plans before they are approved. **[45]**
3. provide statutory clarification for the grounds for which an applicant for a licence is to be considered a 'fit and proper' person and extend that test to prescribed associates of an applicant. **[10]**
4. increase the Miner's Right and Tourist Fossicking Authorities from 2 to 10 years. **[37 and 38]**
5. abolish the Mining and Environment Advisory Committee. **[39, 40 and 50]**
6. clarify the purpose of the Act. **[31]**
7. repeal redundant provisions and make statute law amendments. **[51]**

The Bill amends the *Victorian Energy Efficiency Target Act 2007* to further provide in that Act and the regulations how an assignment of the right to create energy efficiency certificates may be made. **[52 and 53]**

The Committee makes no further comment.

Personal Property Securities (Statute Law Revision and Implementation) Bill 2010

Introduced	29 July 2010
Second Reading Speech	29 July 2010
House	Legislative Council
Member introducing Bill	Hon. Justin Madden MLC
Minister responsible	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill revises Victoria laws as a consequence of the referral of legislative powers to the Commonwealth through the *Personal Property Securities (Commonwealth Powers) Act 2009* (the referral Act). The referral Act enabled the Commonwealth to enact its *Personal Property Securities Act 2009 (Cth)* (the 'PPS Act') and provide for the application of the Commonwealth legislation in Victoria. Similar referrals have been made by New South Wales, Queensland and South Australia and other jurisdictions are expected to follow with referrals throughout the remainder of 2010.

The personal property securities (PPS) scheme is designed to provide a single registration system for security interests such as financing leases, hire-purchase and retention of title agreements over personal property. The registers are to be administered by the Commonwealth. The PPS scheme will provide a legal framework of rules for determining the priority of security interests over personal property and for the enforcement of those interests.

The Bill will facilitate the transition of security interests currently recorded on certain State registers to the national PPS Register and declare a number of security interests as not subject to the referral Act.

Extract from the Statement of Compatibility –

> *The PPS Act creates a uniform national scheme (the PPS scheme) for the regulation of security interests over personal property, broadly being any property other than land/buildings. In broad terms, the PPS Act regulates the registration of security interests in personal property and provides rules that govern the priority among competing security interests in personal property and for the enforcement of those interests. Operating alongside the Uniform Consumer Credit Code, the PPS act will outline the circumstances in which a security interest in personal property upon debtor default can be enforced, and the enforcement procedures to be undertaken.*
>
> *The PPS Act establishes a single national register of personal property securities (the PPS register). In general, the priority between competing security interests will be determined by the date of registration on the PPS register.*
>
> *The PPS register will help prospective purchasers and lenders determine whether personal property is or may be subject to a security interest and will facilitate the resolution of priority disputes.*
>
> *... Once the PPS register commences, security interests in motor vehicles, crops, wool, stock and the personal property of co-operatives will be capable of registration on the national PPS register.*

From the commencement date of the PPS register (default commencement not later than by 1 February 2012) the Bill repeals the relevant provisions in the *Chattel Securities Act 1987*, *Instruments Act 1958* and *Co-operatives Act 1996* that create current Victorian registers. The Bill includes savings provisions into these Acts to continue to protect those security interests and preserve the rights attached to those interests that have been created pursuant to the

Victorian schemes, but not yet fully registered on Victorian registers prior to the registration commencement date of the PPS register.

To facilitate the migration of security interests registered by the respective Victorian registers to the Commonwealth PPS register the Bill provides records information sharing powers and includes a reasonable belief 'good faith' immunity for relevant administering bodies exercising these powers.

The Bill will exclude certain statutory rights, licences and entitlements and authorities from the operation of the PPS Act by declaring them not to be personal property for the purposes of the PPS. Many of these statutory rights are covered by regulatory and industry specific State registration arrangements.

The Bill preserves the operation of section 6 of the *Chattel Securities Act 1987* that relates to security interests in goods affixed to land which is, pending future consideration and agreement, not to be regulated under the PPS Act.

Charter report

Privacy – Transfer of Victorian registers to national register – No current regulations on privacy of national register

Summary: Clauses 6, 18, 19 and 20 permit the transfer of individuals' records to the Registrar of Personal Property Securities. Clause 21 immunises the Victorian bodies from liability for 'good faith' transfers. However, regulations for the federal register have not been published or enacted to date. The Committee will write to the Minister for more information.

The Committee notes that clauses 6, inserting a new section 41 into the *Chattel Securities Act 1987*, 18, 19 and 20 permit the Roads Corporation, the Registrar-General and the Registrar of Co-operatives to transfer their records, including private information on various securities registers, to the Registrar of Personal Property Services to assist in the establishment of the Personal Property Securities Register. The Committee considers that Part 5 engages the Charter's right to privacy.[2]

The Statement of Compatibility remarks:

> *Registrars will be required to deal with the information held on their registers and exercise the powers in the bill in a manner that is consistent with the Information Privacy Act 2000. The PPS registrar in receiving that information will be bound by the Privacy Act 1988 (Commonwealth). The provisions of the PPS act that establish and regulate the PPS register are compatible with the rights set out in the charter.*

However, the Committee is concerned that there are presently gaps in the protection of the privacy of information transferred pursuant to clauses 6, 18, 19 and 20.

In relation to acts by the Victorian authorities, the Committee observes that clause 21 provides that these bodies are 'not liable for anything done or omitted to be done in good faith' in exercise (or in reasonable belief that they are exercising) powers under new section 41 or clauses 18, 19 and 20.

In relation to acts by the Registrar of Personal Property Securities, the Committee observes that regulations governing the privacy of the federal Personal Property Securities Register have not yet been settled or enacted. In relation to this issue, the Committee's *Alert Digest No. 10 of 2009*, reporting on the Personal Property Securities (Commonwealth Powers) Bill 2009, remarked:

[2] Charter s. 13(a).

> *[T]he Committee observes that ss. 153, 170 & 171 of the proposed Commonwealth Act, which regulate the storage and searching of personal information about grantors (i.e. people who borrow money with personal property as collateral) on the Personal Property Securities Register, engage the Charter right of grantors (who are typically natural persons) to privacy, (e.g. if grantors have to supply their date of birth, address and other personal details and if the database can be searched in a way that can reveal these details.)…*
>
> *[T]he main automatic protections for grantors' privacy depend on the passage and content of regulations made by the Governor-General under s. 303 of the proposed Commonwealth Act. In particular, the regulations will define:*
>
> - *the details that grantor must provide to register financial statements in relation to particular property (s. 153, items 2 & 8)*
> - *prohibitions on some searches of the register (s. 170(3)(d))*
> - *permitted search criteria (s. 171(1)(e))*
> - *the way in which the results of searches are worked out (s. 171(3))*

In its *Alert Digest No. 12 of 2009*, the Committee published the Minister's response, which confirmed that neither the federal regulations nor the Registrar of Personal Property Services will be subject to the Charter. The Minister also remarked:

> *In relation to future amendments to the PPS Act and the future promulgation of PPS regulations by the Commonwealth, the Commonwealth Government has an obligation under clause 3.3 of the PPS Agreement to consult with the States and Territories on such proposals prior to introducing amending legislation into the Commonwealth Parliament.*
>
> *The Commonwealth Government has stated that it will be releasing draft regulations for public consultation later this year and will be consulting with the States and Territories pursuant to the PPS Agreement. The Victorian Government will be scrutinising these regulations for compatibility with the Charter and will advocate for Charter-compatible outcomes. Further, the Victorian Government will scrutinise the extent to which the draft regulations add to, or modify the operation of, clauses 153, 170 and 171 of the PPS Bill.*

However, the Committee observes that, while an updated discussion paper on the proposed regulations was released in October 2009,[3] no draft regulations have been released for public discussion and no regulations have been promulgated.

The Committee will write to the Minister seeking further information as to the progress of the regulations of the Personal Property Securities Act 2009 (Cth).

Pending the Minister's response the Committee refers to Parliament for its consideration the questions of whether or not clauses 8, 17, 18, 19 and 20, by authorising the transfer of Victorians' information to the federal Personal Property Securities Register when Victorian authorities are immunised from liability for good faith transfers and no regulations have yet been published regulating the privacy of the federal register, are compatible with the Charter's right to privacy.

The Committee makes no further comment.

[3] See Personal Property Securities Branch, *Personal Property Securities Reform: Regulations To Be Made Under the Personal Property Securities Act,* October 2009 , available at < http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(3A6790B96C927794AF1031D9395C5C20)~PPS+-+Regulations+-+revised+Regulations+Paper+October+2009+-+CONSOLIDATED.pdf/$file/PPS+-+Regulations+-+revised+Regulations+Paper+October+2009+-+CONSOLIDATED.pdf>

Plant Biosecurity Bill 2010

Introduced	27 July 2010
Second Reading Speech	28 July 2010
House	Legislative Assembly
Member introducing Bill	Hon. Joe Helper MLA
Portfolio responsibility	Minister for Agriculture

Purpose

The Bill provides a new legislative framework to enhance biosecurity plant measures. The Bill will apply to pests and diseases of agricultural, forest, native and amenity plants, as well as plant products such as fruit, grains, vegetables, herbs, cut-flowers and timber.

The purposes of the Bill are to –

1. prevent the entry of pests and diseases into Victoria.
2. strengthen boarder protection by broadening the list of things such as moving machinery, rocks, sand and gravel that can carry pests or disease into Victoria.
3. provide Governor in Council power to declare certain areas 'control areas' and specify prohibitions and other measures to prevent the spread of pests and diseases.
4. require property owners to apply for a Property Identification Code (PIC).
5. revise penalties and introduce enforceable undertakings and adverse publicity orders as an alternative to court proceedings.
6. manage and control the spread of pests and diseases within the State.
7. maintain productivity and market access for plants and plant products.
8. repeal the *Plant Health and Plant Products Act 1995*.

The Bill will apply to pests and diseases of agricultural, forest, native and amenity plants, as well as plant products such as fruit, grains, vegetables, herbs, cut-flowers and timber.

Content and Committee comment

Rights and freedoms – Entry without consent or judicial warrant – Regulatory monitoring scheme – Pest and disease prevention or eradication – Public health and safety – Standard of personal protection from State intrusion

The Bill provides a power of entry at a reasonable time (but not residential premises) by an inspector appointed under the Act without the owners consent and without the need of a warrant where entry is necessary for monitoring pests and diseases. **[76]**

The Bill provides powers to stop and search vehicles **[77 and 114]** and power to examine and copy documents, inspect plants, packaging, equipment, and to take samples. **[79 to 81]**

The Bill provides for search warrants in respect of premises including residential premises. **[89 and 90]**

The Bill provides powers to enter private property (after a 24 hour notice is given) in a control area (clause 19) to apply bait or monitor and control or eradicate any pest or disease. **[108]** In relation to exotic pests and diseases inspectors have additional powers of search including with the consent of the occupier, search of residential premises. In addition there are powers to test, fumigate, treat and perform other like functions. **[113]**

Extract from the Statement of Compatibility –

> *Clause 76 provides for a power to enter and inspect premises at any reasonable time. To exercise the power under clause 76, the inspector must reasonably believe that the premises are being kept for the propagation, growing, sale, storage, delivery, treatment, packaging, or preparation for sale of any plants or plant products and entry is necessary to monitor for pests and diseases. It would create a significant burden on inspectors if they were required to obtain a warrant in respect of each premises such that it would risk frustrating the monitoring regime set up under the act or, alternatively, require commitment of significantly greater resources. In contrast, given the regulatory context within which the sale of plants and plant products occurs, owners and occupiers of premises are likely to have a lower expectation of privacy. The power does not extend to entering residential premises, where a greater expectation of privacy would arise (see R v. Grayson [1997] 1 NZLR 388, 407).*
>
> *The Canadian case law supports the proposition that searches in a regulatory or administrative context may attract a lower standard of protection than searches in a criminal context reflecting the different interest in privacy in both contexts (see, for example: Thomson Newspapers v. Canada (1990) 67 DLR (4th) 568 (SCC); R v. McKinlay Transport (1990) 68 DLR (4th) 568 (SCC); Comite Paritaire de l'Industrie de la Chemise v. Potash (1994) 115 DLR (4th) 702 (SCC)). The entry and inspection power in clause 76 is restricted to monitoring for pests and diseases only. Further, when exercising the power under clause 76, an inspector must cause as little inconvenience as possible and must not remain on the land any longer than is reasonably necessary.*
>
> *...*
>
> *In respect of the powers in clauses 108 and 113, it has been recognised in both the New Zealand and Canadian case law that a search without a warrant will be appropriate where the process of obtaining a warrant would have a disproportionate adverse effect. Powers of warrantless search have been accepted where there is an emergency or potentially dangerous situation (see K. Tronc et al, Search and Seizure in Australia and New Zealand (1996), 47-53), a serious threat to safety or property (R v. Williams [2007] 3 NZLR 207, at [20]), or where there is a risk to the safety of the public (R v. Feeney (1997) 115 CCC (3d) 129). In that regard, before the power in clause 108 can be exercised, an area has to be designated a control area and before the power in clause 113 can be exercised an inspector must reasonably believe that entry is necessary to monitor for exotic pests and diseases.*

Rights and freedoms – Presumption of innocence – Power to obtain information – Privilege against self-incrimination – Deemed proof

The Bill provides a power to obtain information and provides that there is no privilege against self-incrimination. A person is not excused from answering a question or producing a document on the grounds of self-incrimination, however if before answering a question or producing a document, a person claims that the answer or document might tend to incriminate the person, then neither the question nor the answer nor any document produced is admissible in proceedings against the person other than in relation to proceedings for refusal or failure to answer a question or produce a document or for furnishing any answer or document that is false or misleading. **[117 and 118]** *(Refer to the Charter report below and the relevant passage from the Statement of Compatibility)*

The Bill provides that 'in any prosecution or proceedings under this Act a contravention proved in regard to any sample is deemed to have been proved with regard to the lot from which the sample was taken'. **[129]** *(Refer to the Charter report below and the relevant passage from the Statement of Compatibility)*

Repeal, alteration or variation of section 85 of the Constitution Act 1975 (unlimited jurisdiction of the Supreme Court)

No proceedings may be brought to prevent urgent action – The Bill provides that when the Minister makes an order under clause 42 certifying that an exotic pest or disease outbreak exists in Victoria or in a part of Australia outside Victoria and it is necessary or expedient to

take action to prevent the spread of the pest or disease to Victoria no legal proceedings in the Supreme Court may be commenced to prevent or restrain the Minister, Secretary, or an inspector from taking action in relation to an outbreak of an exotic pest or exotic disease in Victoria or another part of Australia. **[137]**

Damages permitted for negligent actions taken – The Bill also provides that nothing in clause 137 prevents the institution or continuation in any court or any action or proceedings to recover damages in respect of any loss or damage as a result of any act or omission in the negligent exercise or purported exercise by any person of a power or authority conferred under the Bill. **[138]**

The Bill declares that it is the intention of clause 137 to alter or vary section 85 of the *Constitution Act 1975* (limit the jurisdiction of the Supreme Court). **[139]**

Section 85 *Constitution Act 1975* statement from the Second Reading Speech –

> *Clause 137 of the Bill will prevent the institution or continuation of court proceedings that may stop, prevent or restrain the Minister, the Secretary, an inspector or any other person from taking any action under the Bill in response to certification by the Minister under clause 42 that an outbreak of an exotic pest or disease exists in Victoria or in any part of Australia outside Victoria.*
>
> *Clause 42 will enable the Minister to certify that an outbreak of an exotic pest or disease exists in Victoria, or that an outbreak of an exotic pest or disease exists in a part of Australia outside of Victoria and it is necessary or expedient to take action, including making an order under the new Act, to prevent or reduce the risk of the spread of the pest or disease to Victoria. This clause replaces the existing section 28A(1) of the Plant Health and Plant Products Act 1995 which was inserted in 2004.*
>
> *The reason for preventing the institution or continuation of any proceedings in the Supreme Court that would seek to stop, prevent or restrain action taken in response to an outbreak or suspected outbreak of an exotic pest or an exotic disease in Victoria or in any part of Australia outside Victoria, is that any preventive action to be taken following such an outbreak must be put in place immediately. Any delays in taking such action caused by proceedings before a court, even by a matter of hours, could result in the rapid spread of a pest or disease, adding significantly to the impact and costs of any eradication response.*
>
> *If there is an outbreak of an exotic pest or disease such as fire blight in another state, Victoria would have to take immediate response actions such as imposing bans on the movement of plants until the situation and the risks to Victoria were fully evaluated.*

Constitution Act 1975, section 85 – Repeal, alteration or variation of the unlimited jurisdiction of the Supreme Court

The Committee notes that clause 137 provides a limitation in bringing proceedings against a Ministerial certificate issued under clause 42 of the Bill and clause 139 declares that it is the intention of section 137 to alter or vary section 85 of the Constitution Act 1975.

The Committee having reviewed the section 85 statement made in the Second Reading Speech, the enabling and declaratory clauses the Statement of Compatibility and the Explanatory Memorandum is of the opinion that the proposed provision altering or varying section 85 of the Constitution Act 1975 is appropriate and desirable in all the circumstances.

Charter report

Self-incrimination – People can be compelled to lead inspectors to evidence of their criminal conduct – Whether reasonable limit – Practice Note No 3

Summary: Clauses 117 & 118 allow a person to be compelled to lead an inspector to evidence of their criminal conduct. The Committee considers that the clauses may be

incompatible with the Charter's right against compelled self-incrimination. It will write to the Minister seeking further information.

The Committee notes that clauses 117(1)(a) and 118(1) provide that an inspector may require anyone to answer any question bearing on the prevention, control or eradication of an exotic pest or disease, including answers that might tend to incriminate the person. Although clause 118(2) provides that those answers aren't admissible in most criminal proceedings, it does not bar the use of information derived from those answers in proceedings against the person. **So, clauses 117 & 118 allow a person to be compelled to lead an inspector to evidence of their criminal conduct.** The Victorian Supreme Court has held that schemes of this sort limit the Charter's right against self-incrimination, subject to the test for reasonable limits on rights in Charter s. 7(2).[4]

The Statement of Compatibility remarks:

> *[T]he questioning powers may only be used for the regulatory purpose of preventing, controlling or eradicating an exotic pest or disease or any plant or product that the inspector has reasonable grounds for suspecting is infected or infested with an exotic pest or disease. To the extent that incriminating evidence may be derived from those answers, it is incidental to that purpose.*
>
> *…Answers to questions posed by an inspector… are likely to be information in the sole knowledge of the questioned. The abrogation of the privilege facilitates compliance with the act by enabling an inspector to access to [sic] information and evidence that is difficult or impossible to ascertain by alternative evidentiary means. There is a significant public interest in maintaining Victoria's biosecurity, and in prosecuting any regulatory breaches.*
>
> *There are very real difficulties with the inclusion of a derivative use immunity in the context of these regulatory powers. In particular, it would risk exclusion of the principal evidence of an offence, namely the actual exotic plant or disease. A person could effectively immunise themselves against prosecution simply by disclosing to inspectors the location of an exotic plant of disease.*

While the Committee agrees that protections against self-incrimination can be reasonably limited in narrow regulatory contexts, it is concerned that clause 117 is not limited to people who have voluntarily engaged in regulated activities and that clause 118(2)'s abolition of derivative use immunity is not limited to prosecutions under the Act.

The Committee observes that the Victorian Supreme Court rejected similar arguments to those in the Statement of Compatibility in relation to court-supervised investigations of organised crime and, in particular, held that derivative use immunity would only prevent the admission of evidence that 'could not have been obtained' without compelling the defendant to speak. All other evidence that the investigators discover would remain admissible. The balance of Australian statutes on plant biosecurity, including Victoria's current statute, either leave the privilege untouched or expressly provide for a derivative use immunity.[5]

In light of these factors and the Supreme Court's clear ruling that a more protective scheme relating to organised crime was incompatible with the Charter, the Committee considers that clauses 117 and 118 may be incompatible with the Charter's right against compelled self-incrimination.

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4 *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381, applying Charter s. 25(2)(k), guaranteeing that a criminal defendant is 'not to be compelled to testify against himself or herself or to confess guilt.'

5 Not disturbing the privilege: *Pest Plants and Animals Act 2005* (ACT), s. 35; *Plant Diseases Act* 2002 (ACT); *Plant Diseases Act 1924* (NSW); *Plant Health and Plant Products Act 1995* (Vic), s. 71; *Plant Diseases Act 1914* (WA); Preserving derivative use immunity: *Plant Protection Act 1989* (Qld), s. 20AA(8); Abolishing derivative use immunity: *Plant Health Act 2008* (NT), s. 26; *Plant Health Act* 2009 (SA), s. 52; *Plant Quarantine Act 1997* (Tas), s. 65.

The Committee draws attention to its *Practice Note No 3*, published during the last sitting, which remarked:

> *The Committee would prefer that the analysis of reasonable limits set out the demonstrable justification for: the coercive power itself; any removal of the privilege against self-incrimination; any permission to use the answers or information derived from them in later proceedings; and any preconditions on the availability of protections against self-incrimination. The Statement's discussion of less restrictive alternatives reasonably available to achieve the purpose of the provision may address whether the privilege against self incrimination could be abrogated in a narrower way.*

The Committee observes that the Statement does not address the reasonableness of clause 118(2)'s provision that a person will only be immune from having their answers used against them at a later criminal proceeding if the person claimed the privilege prior to answering the question. Also, the discussion of less restrictive alternatives only addresses the options of complete retention or complete abolition of derivative use immunity, rather than a narrower abrogation, such as retaining derivative use immunity but expressly permitting the admission of the actual plant or disease.

In addition, the Committee notes that clause 118's terms may be ineffective for two reasons. First, clause 118(1), abolishing the privilege, appears to be in conflict with clause 132(2), retaining the privilege. Second, on current Victorian authority, Charter s. 32(1) would require clause 118(2) to be read as including derivative use immunity, even if a narrower immunity would be a reasonable limit of the Charter's right against self-incrimination.[6]

In accordance with its Practice Note No 3, the Committee write to the Minister seeking further information as to whether or not:

- ***clause 118(2)'s provision that a person will only be immune from having their answers used against them at a later criminal proceeding if the person claimed the privilege prior to answering the question is a reasonable limit of the Charter's right against self-incrimination***
- ***a narrower abrogation of derivative use immunity (such as retaining it but expressly permitting admission of evidence of the actual exotic plant or disease) would be a less restrictive alternative reasonably available to achieve the purpose of clause 118(2)***

The Committee will also seek information as to the relationships between clause 118(1) and clause 132(2); and between clause 118(2) and Charter s. 32(1). Pending the Minister's response, the Committee draws attention to clauses 117 & 118.

Presumption of innocence – Deeming provision – Practice Note No 3

Summary: The Committee will write to the Minister seeking further information as the compatibility of the deeming provision in clause 129 with the Charter's right to be presumed innocent until proved guilty.

The Committee notes that clause 129 provides that, 'in any prosecution… under this Act… a contravention… proved in regard to any sample… is deemed to have been proved with regard to the lot from which the sample was taken.' This provision appears to create an irrebuttable factual presumption. Similar provisions elsewhere allow the presumption to be

[6] This results from the combined effect of *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381, [167] and *R v Momcilovic* [2010] VSCA 50, [105]-[110].

refuted by evidence to the contrary.[7] The Committee considers that clause 129 engages the Charter's right to be presumed innocent until proved guilty.[8]

The Committee draws attention to its *Practice Note No 3*, published during the last sitting, which remarked:

> *The Statement of Compatibility for any Bill that creates… a provision that reduces the prosecution's burden to prove the accused's guilt… should state whether and how that provision satisfies the Charter's test for reasonable limits on rights. Examples of such provisions include ones that… deem a fact to be proved in any circumstance…*

The Committee will therefore write to the Minister seeking further information as the compatibility of clause 129 with the Charter's right to be presumed innocent until proved guilty.

The Committee makes no further comment.

7 E.g. *Dangerous Substances Act 2004* (ACT), s. 201; *Fertilisers Act 1985* (NSW), s. 38; *Noxious Plants Act 1978* (NZ), s. 48(2).

8 Charter s. 25(1).

Private Security Amendment Bill 2010

Introduced	27 July 2010
Second Reading Speech	29 July 2010
House	Legislative Assembly
Member introducing Bill	Hon. Bob Cameron MLA
Portfolio responsibility	Minister for Police and Emergency Services

Purpose

The Bill amends the *Private Security Act 2004* (the 'Act') to implement a nationally consistent approach to the regulation of the private security industry.

Extract from the Second Reading Speech –

> *As a result of the Council of Australian Government's directive, all Australian States and Territories are bringing their private security legislation in line with the changes now being made to the Victorian Act. This will help harmonise the law that applies to the manpower sector and will facilitate those persons from interstate to assist Victoria in its times of greater need in private security services while also helping Victorians travel and work elsewhere in Australia.*

Provisions in the Bill –

1. extend the application of the Act to a new licensable activity of providing 'private security training' and apply relevant offences to this activity. **[5 to 8, 10, 11 and 24]**
2. provide that a person must not undertake or hold out an entitlement to undertake a business or an activity under the Act when they do not hold an appropriate licence under the Act. **[5 to 8]**
3. prescribe additional offences such as offences that involve assault, dishonesty, firearms, robbery, drugs, and terrorism and thresholds that will result in mandatory disqualification (a 'prohibited person') from licensing. **[9]**
4. make fingerprinting mandatory for license applicants and allows for the retention and use of those fingerprints for ongoing probity checks and for limited law enforcement purposes. **[12 and 17]**
5. allow the Chief Commissioner to cancel a licence if its holder, or any officer of the body corporate who is a holder, or any 'close associate' of the holder (as defined in the Act) is convicted of certain specified offences and provide an appeal against such a decision to VCAT. **[18 and 22]**
6. create a procedure for the decisions on licensing applications to be made by the Chief Commissioner or reviewed by the VCAT on the basis of intelligence information ('protected information') that is not disclosed to the applicant. *(see comments below)* **[16 and 23]**

Content and Committee comment

The Bill amends section 17 of the Act to provide that the following persons will be required to provide fingerprints when applying for (and in some cases, when renewing) a private security licence: individual applicants (in all cases); officers of corporate applicants (in all cases); and close associates of applicants (when requested by the Chief Commissioner).

The Chief Commissioner will be required to destroy the prints when he or she no longer has use for them. The Chief Commissioner will no longer have a use for the prints when the

licence to which they relate is cancelled or lapses and is not renewed or if an application that they were provided in support of is not granted. **[12]** *(Also see Charter report below)*

Administrative law – Reviewable decisions – Rights or Freedoms – Natural justice – Fair hearing – Right to know the evidence against applicant in civil application for review – Public Interest immunity – Protected information not made known to the applicant

The Bill inserts new provisions providing that where the Chief Commissioner refuses a licence application for failure to meet the necessary probity requirements on evidence that is protected information, the applicant does not receive reasons for the decision. The applicant is advised that they may apply for a review of the decision in VCAT. **[16]**

The Committee notes the insertion in the Act of the protected information procedure introduced in respect to a VCAT review. The procedure allows special counsel to communicate with and take instructions from the applicant before (but not after) attending the hearing or having access to the protected information. Further instructions may be permitted by way of VCAT approved written questions between special counsel and the applicant. The hearing then is in closed court with the Chief Commissioner and the special counsel in attendance and allowed to make submissions but in the absence of the applicant. The applicant may only attend the hearing if VCAT determines that none of the evidence actually amounts to protected information. **[23]** *(Also see Charter report below)*

The question whether the public interest in preventing disclosure of protected information outweighs the review and appeal rights of a licence applicant in any set of circumstances is a matter for Parliament to consider.

Charter report

The Committee may report on additional human rights issues raised by this Bill in its next Alert Digest.

Privacy – Mandatory fingerprinting – Use to investigate crimes

The Committee notes that clause 12, amending existing s. 17, requires all applicants for private security individual licences, and all applicants (and, in the case of corporate applicants, all nominated persons and corporate officers) for private security business licences, to provide 'proof of identity… being… a full set of fingerprints'. This alters the existing regime, where fingerprints can only be required where 'there is a reasonable doubt as to the identity of' any of these people which cannot be resolved by 'other reasonably available means'.[9] Clause 12 also only mandates the destruction of the fingerprints once the licence ceases.

The European Court of Human Rights has unanimously held that:

- 'the retention of fingerprints constitutes an interference with the right to respect for private life'[10]
- A 'blanket and indiscriminate' power of retention 'constitutes a disproportionate interference… cannot be regarded as necessary in a democratic society'.[11]

The therefore Committee considers that clause 12 may engage the Charter's right against 'arbitrary' interferences in privacy.

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9 *Private Security Act 2004* (Vic), s. 22(2)

10 *S & Marper v UK* [2008] ECHR 1581, [86]

11 *S & Marper v UK* [2008] ECHR 1581, [125].

The Statement of Compatibility remarks:

> *[T]his allows the chief commissioner to ensure the ongoing probity of the applicant by identifying any licencees whose fingerprints are found in suspicious circumstances…*
>
> *[T]he collection of fingerprint data is essential to enable the chief commissioner to accurately verify the identity of an applicant and any existing criminal convictions they may have. The retention of that information for the duration of the licence will be of vital assistance in ensuring the licensee's ongoing fitness to work in the security industry.*

The Committee observes that these remarks make clear that the fingerprints will be used, not merely to confirm the identity of the applicant, but to investigate any crimes by the applicant, presumably via a fingerprint matching database, without any reasonable suspicion of criminality.

The Committee refers to Parliament for its consideration the question of whether or not clause 12, by authorising the mandatory taking of fingerprints from all applicants for private security licences, their retention for the life of the licence and their use to investigate any crimes by the applicant, is an arbitrary interference in the privacy of applicants for and holders of private security licences.

Fair hearing – Protected information – Closed hearings

The Committee notes that clause 23, inserting new sections 150A to 150E, provide rules for the conduct and determination of proceedings to review a refusal to give or renew, or to cancel, a private security licence or registration, where the Chief Commissioner specifies under new section 150A that the grounds for refusal or cancellation were based on protected information.

New section 150C(1) provides that VCAT must first determine whether the information is 'protected information'. Clause 4, amending existing s. 4, defines 'protected information' to mean intelligence, a document or a thing whose production or inspection either:

- 'is likely to… reveal the identity of':
  - 'a member of the police force who provided [the] information'
  - 'a person who has provided a member of the police force with [the] information'
  - 'a person whose name appears in… information provided to a member of the police force'
  - 'a person who is or has been the subject of an investigation by a member of the police force'
- 'is likely to… put' any of the above persons' 'safety at risk'
- 'places at risk an ongoing investigation'
- 'risks the disclosure of any investigative method'
- 'is otherwise not in the public interest'

To the extent that VCAT decides that the information is protected information, new section 150D(3)(a) provides that 'VCAT must take all steps and precautions to prevent the release of that information' and new sections 150D(4) and 150E(4) exempt the Commissioner and VCAT from explaining their reasons for any decision to the extent that those reasons involve protected information.

New section 150C(3) provides for closed sessions where only the Chief Commissioner and a 'special counsel' 'are entitled to be present' and to make submissions. New section 150C(2)

permits VCAT to determine whether or not information is 'protected information' in such a closed session. New section 150D(1) provides:

> *Without limiting any other power of VCAT conferred by or under this or any other Act, if VCAT decides that any of the evidence adduced under section 150C(3) is protected information, the provisions of that subsection continue to apply to the hearing of the proceeding to the extent that it relates to that protected information.*

New section 150B requires VCAT to appoint a 'special counsel' to represent the applicant's interests. New section 150B(4) bars the special counsel from taking 'instructions' for the applicant or the applicant's representative once the counsel has received a confidential application or the hearing has commenced, except for 'written questions' approved by VCAT 'after hearing submissions from the Chief Commissioner on their content' under new section 150D(3)(b).

The Committee observes that the above regime appears to differ from:

- other Victorian regimes for hearings based on protected information, which provide for several options for dealing with that information, including merely limiting the disclosure of confidential affidavits to some persons, based on the court's judgment of the 'public interest'.[12]
- other Australian regimes that the High Court has upheld as constitutional on the basis that decision-makers under those regimes are 'not directed as to which particular steps may be taken' to maintain confidentiality and provide that 'steps taken may be provisional in the sense that they may be varied, added to or subtracted from, as the exigencies of the litigation… progressively appear'.[13] In this regard, it is not clear whether new section 150D(1) requires VCAT to continue to hold a closed hearing under new section 150C(3) if it determines that the information is protected information.
- fair hearing requirements specified by the European Court of Human Rights, which bar decisions being made on the basis of closed information unless that information is a minor part of the decision or where it consists of specific factual assertions that can be and are put to the party affected by them.[14]

The Committee therefore considers that clause 23 may engage the Charter right of applicants to have their civil proceeding 'determined… after a fair… hearing'.[15]

The Statement of Compatibility remarks:

> *The limitation will operate in some cases to prevent applicants from knowing the full case against them and directly presenting their case to VCAT. However, protections are in place to ensure that the right to a fair hearing is not unreasonably limited. These include:*
>
> > *The fact that VCAT must determine whether or not the information does actually constitute 'protect information' for the purposes of the bill (new section 150C). This ensures that the special procedures will only apply where there is a genuine need to maintain the confidentiality of that information.*
> >
> > *The fact that VCAT (itself a 'public authority' for the purposes of the charter) is given the power to determine what weight to give to protected information in its decision-making process (new section 150D(2)(a))*
> >
> > *The appointment of special counsel to ensure that the rights of the applicant are represented at the hearing….*

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12 *Casino Control Act 1991* (Vic), s. 74A(2)(a), (3), (4); *Major Crime (Investigative Powers) Act 2004* (Vic), ss. 12A(1)(a), (2), (3). *Racing Act 1958* (Vic), ss. 35E(2)(a), (3), (4)

13 *K-Generation Pty Limited v Liquor Licensing Court* [2009] HCA 4, [146]

14 *A v United Kingdom* [2009] ECHR 301, [220]

15 Charter s. 24(1).

> *…[T]he scheme at issue here differs in two fundamental ways from those at issue in the European… decisions. First, the matters at stake for the appellants in those cases… were of far greater consequence than the matters at stake for applicants for a private security licence. Secondly, new section 150D(3)(b)… ensures that the special counsel can adequately represent the applicant's interests at the hearing…*

However, the Committee observes that:

- The definition of 'protected information' inserted by clause 4 is not limited to information where there is a 'genuine need… to maintain… confidentiality'. Rather, para (a) covers information that 'is likely to… reveal the identity' of various people, without any assessment of whether that information is confidential and the extent to which there is a need to maintain confidentiality. To this extent, the definition is broader than similar definitions in regimes that have been upheld as confidential by the High Court.[16] While a similar definition is used in other Victorian laws, those other regimes do not specify any mandatory consequences that follow if information is held to fall within that definition and, in particular, permit courts to vary the approach they take according to 'the extent' to which the information falls within the definition.[17]
- VCAT's determination of the weight to be given to the information will be made without reference to the applicant's response to the information. For example, VCAT will not know whether a source relied upon by the Commissioner for Police is biased against the applicant. Also, it is not clear whether VCAT's obligations under the Charter will apply to decisions made under new sections 150A to 150E, as VCAT's obligations only extend to decisions in an 'administrative capacity' and do not apply if another provision (such as new section 150D(3)(a)) makes it unreasonable to act compatibility with human rights.[18]
- The special counsel is generally barred by new section 150B(4) from receiving instructions from his or her client. While the process in new section 150D(3)(b) does provide for seeking further instructions, that process requires prior approval of VCAT after submissions from the Commissioner of Police, it is limited by their discretionary nature and the complete lack of confidentiality of the counsel's communication to his or her client.

The Committee will write to the Minister seeking further information as to whether or not new section 150D(1) makes it mandatory for VCAT to continue to hold a closed hearing once it has determined that any information on which the Commissioner based his or her decision is protected information. Pending the Minister's response the Committee refers to Parliament for its consideration the question of whether or not clause 23, by providing for procedures to determine applications for review of licensing decisions on the basis of information that is not disclosed to the applicant, is compatible with the Charter's right to a fair hearing.

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16 *Corruption and Crime Commission Act 2003* (WA), s. 76, providing that '[t]he Commissioner of Police may identify any information provided to the court for the purposes of the review as confidential if its disclosure might prejudice the operations of the Commissioner of Police'; *Liquor Licensing Act 1997* (SA), s. 4, defining 'criminal intelligence' as 'information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or endanger a person's life or physical safety'

17 *Casino Control Act 1991* (Vic), s. 74A(4)(b); *Major Crime (Investigative Powers) Act 2004* (Vic), ss. 12A (3)(b). *Racing Act 1958* (Vic), ss. 35E(4)(b)

18 Charter ss. 4(1)(j) & 38(2). Whether or not licensing reviews have an 'administrative character' was left open by the High Court in *K-Generation Pty Limited v Liquor Licensing Court* [2009] HCA 4, [134].

Subordinate Legislation Amendment Bill 2010

Introduced	27 July 2010
Second Reading Speech	27 July 2010
House	Legislative Council
Member introducing Bill	Hon. Justin Madden MLC
Minister responsible	Hon. John Brumby MLA
Portfolio responsibility	Premier

Purpose

The Bill amends the *Subordinate Legislation Act 1994* (the 'Act') to extend the application of certain provisions of the Act concerning consultation, certification, tabling, scrutiny and gazettal requirements in relation to legislative instruments (as defined by the Bill), similar to those existing for statutory rules in the current Act.

The general provisions in the Bill (Part 2) come into operation on 1 January 2011 and the provisions in respect to legislative instruments commence on 1 July 2011

The Bill will –

1. require legislative instruments which are likely to impose a significant economic or social burden on a sector of the public to undergo a regulatory impact assessment (through the preparation of a regulatory impact statement or (RIS) and public consultation.
2. require legislative instruments to be tabled in Parliament.
3. require legislative instruments to be published in the Government Gazette.
4. require Ministerial certificates, including human rights certificates, accompanying both statutory rules and legislative instruments to be tabled in Parliament and scrutinised by the Parliamentary Scrutiny of Acts and Regulations Committee (the 'Scrutiny Committee').
5. allow the Scrutiny Committee to recommend disallowance of a legislative instrument in certain circumstances.
6. allow certain legislative instruments to be exempt from the consultation and regulatory impact statement requirements.

Content and Committee comment

The Bill introduces a new requirement that before a Minister intends to issue a once only, 12 month extension certificate for the continuance of a statutory rule beyond the 10 year sunset provision the Premier must also issue a certificate approving of the extension of the statutory rule. **[5]**

The test for public consultation is amended to a threshold of 'significant economic or social burden' instead of 'appreciable economic or social burden'. **[6]**

Exemption and exception certificates will now be listed under one section and known as exemption certificates. **[8]**

Introduce a mandatory requirement that where an RIS is prepared which includes fees that a table of existing fees and proposed fees be included and that percentage increases or decreases to those fees be shown. **[9]**

Enable the Scrutiny Committee to report to the Parliament on any failure to publish a notice in the Government Gazette and a daily newspaper advising of the decision to make or not

make a proposed statutory rule where a regulatory impact assessment has been prepared. **[11]**

Certificates issued under the Act must be signed and dated by the Minister and may now also be issued as composite certificates incorporating a number of certificates that are mandatory under the Act. **[13]**

Allow the Chief Parliamentary Counsel (CPC) to qualify a section 13 CPC certificate in circumstances where the CPC considers the matters contained in a document applied, adopted or incorporated by a statutory rule is technical in nature and the CPC considers that he or she is not qualified to advise about the matter. **[14]**

Requiring that certain related documents accompanying statutory rules such as certificates and the recommendation to the Governor in Council to make a statutory rule be tabled in the Parliament. Failure to table does not invalidate the statutory rule but the Scrutiny Committee may report the failure to the Parliament. **[16]**

Mandate that the Scrutiny Committee be given certain certificates and documents associated with the making of a statutory rule. Failure to comply with these provisions does not invalidate the statutory rule. **[17]**

Amend the wording of the scrutiny terms of reference to require the Scrutiny Committee to consider whether the authorising Act authorises a shift of the legal burden of proof to an accused instead of 'to shift the onus of proof to the accused'. **[19]**

The Bill amends the disallowance power in section 23 of the Act to allow disallowance of a statutory rule for failure to comply with new section 15(1A) (failure to table the require certificates or recommendation). **[20]**

Legislative instruments

The Bill defines 'legislative instruments' and 'instrument maker'. A 'legislative instrument' is an instrument made under an Act or statutory rule that is of a legislative character. The definition then provides a list of instruments that are not included such as prescribed instruments, local government laws, licences and permits, certificates and purely administrative instruments. **[25]**

The Bill provides a transitional measure for a period of 2 years after its commencement (1 July 2011) and declares that any legislative instrument made during that period is not invalid for failure to characterise or identify the instrument as a legislative instrument and failure to comply with the requirements of the Act applying to legislative instruments. **[26]**

The Governor in Council may prescribe which instruments or class of instruments are to be legislative instruments and which instruments or class of instruments are to be exempt instruments. **[27]** *(note clause 36 below)*

In general the effect of the amendments is to subject legislative instruments to the same RIS processes, certification, scrutiny, publication in the Government Gazette, tabling and disallowance requirements as statutory rules are currently subject (new Parts 2A, 3A, and 5A). **[30, 31 and 34]**

The Scrutiny Committee is given an additional advisory role to the Minister in respect to which prescribed 'legislative instruments' should or should not be legislative instruments for the purposes of the Act or part of the Act, and whether an exempt legislative instrument should be subject to the operation of part or all of the Act. **[36]**

The Bill amends the regulation making powers and allows guidelines and regulations to be made in respect to legislative instruments and for regulations to be made of a transitional nature as a consequence of the provisions in the Bill. **[37 to 39]**

Extracts from the Second Reading Speech –

> *The Act currently applies a range of scrutiny and consultation processes to some, but not all, types of subordinate legislation made in Victoria.*
>
> *The changes in the Bill will mean more types of subordinate legislation that have a significant burden on the public will be the subject of analysis, public consultation and scrutiny through the regulatory impact statement (RIS) process.*
>
> *… To do this, the Bill introduces a process for legislative instruments that parallels the existing process for statutory rules under the Act.*
>
> *... The trigger for the RIS requirements of the Act will be revised from 'appreciable economic or social burden' to 'significant economic or social burden'. … Guidelines made under the Act (known as the Premier's Guidelines) and the Victorian Guide to Regulation will continue to provide support to the interpretation of what constitutes a significant burden.*
>
> *… The Bill requires the RIS and the proposed legislative instrument to undergo a minimum public consultation period of 28 days.*
>
> *… The Bill also recognises that it may not be practical or desirable to subject all delegated instruments to the RIS process. It therefore provides for a sensible system of Ministerial exemptions which mirrors the current system for statutory rules. … For example, exemptions can be provided if the proposed legislative instrument is of not more than 12 months duration and is necessary to respond to: a public emergency; an urgent public health or safety issue; or potential or actual significant damage to the environment, resource sustainability or the economy.*
>
> *… The Bill will generally require that, when a legislative instrument is made, a copy of the legislative instrument and any accompanying Ministerial exemption certificate must also be laid before each House of the Parliament.*
>
> *To further improve Parliamentary scrutiny of legislative instruments, SARC's role will be extended to ensure that those responsible for making legislative instruments comply with the new requirements. The Bill gives SARC the power to recommend the whole or partial disallowance of a legislative instrument to Parliament, as is currently the case for statutory rules.*
>
> *… Under the Bill SARC can report to Parliament regarding whether a legislative instrument:*
>
> - *appears to exceed the power authorised by the enabling act or statutory rule;*
> - *without clear authority in the enabling Act or statutory rule, has retrospective effect, imposes penalties, shifts the burden of proof to an accused, or provides for subdelegation of delegated powers;*
> - *is incompatible with the Charter of Human Rights; or*
> - *has been prepared in substantial or material contravention of the Act or the Premier's Guidelines.*
>
> *To assist instrument makers, the government will prescribe in regulations under the Act a list of:*
>
> - *legislative instruments subject to the Act;*
> - *legislative instruments exempt from specified requirements of the Act; and*
> - *administrative instruments, which are not subject to the requirements of the Act.*
>
> *… To further support departments and to enable a smooth transition to the new regime for legislative instruments, a two-year transitional period from the commencement of the new legislative instrument requirements is provided for in the Bill. During this two-year transitional period, no legislative instrument can be invalidated on the basis of an incorrect assessment of legislative character.*

> *… Human rights certificates will also be required to be lodged with SARC and tabled in Parliament for both statutory rules and legislative instruments.*

The general provisions in the Bill (Part 2) come into operation on 1 January 2011 and the provisions in respect to legislative instruments (Part 3) commence on 1 July 2011. **[2]**

The Committee makes no further comment.

Tourist and Heritage Railways Bill 2010

Introduced	27 July 2010
Second Reading Speech	28 July 2010
House	Legislative Assembly
Member introducing Bill	Hon. Justin Madden MLC
Minister responsible	Hon. Martin Pakula MLA
Portfolio responsibility	Minister for Public Transport

Purpose

The Bill creates a modern regulatory scheme to provide for the sustainability of the tourist and heritage sector.

The Act proposes to —

1. establish a register of assets used, controlled or managed by tourist and heritage railway operators. **[9 to 18]** The Act establishes a Registrar and Advisory Committee for this purpose. **[6 to 8]**

   Notes:

   1. *The Act will not apply to certain railway related activity such as static and non-operational displays, mine operation railways, amusement park railways. Further the Act does not apply to Puffing Billy which operates under the Emerald Tourist Railway Act 1977.*

   2. From the Statement of Compatibility – *The asset register will provide a central information source that records detailed information about rail assets used, managed and controlled by tourist and heritage rail groups. The information will be collected by an appointed registrar. The Bill also allows groups and individuals to voluntarily list privately owned rail assets on the asset register to maximise information-sharing opportunities in the sector. Information about State-owned assets listed on the asset register will be available to the general public. Information on voluntarily listed assets will be available to tourist and heritage operators registered with the voluntary registration scheme.*

2. provide improved land tenure and asset management schemes for tourist and heritage railway operators. **[19 to 21]**

   Note: From the Statement of Compatibility – *The Bill facilitates the replacement of current land agreements for groups operating on Crown land vested in VicTrack with modern community lease agreements comprising common core terms. Existing orders in council made under the Transport Act 1983 will also be replaced with leases. This will provide land tenure security for groups and promote transparency, fairness and consistency in the sector.*

3. establish a voluntary registration scheme administered by the Department of Transport for tourist and heritage railway operators under which registered operators may access training and development programs, access to industry knowledge and other initiatives made available under the scheme. **[22 to 29]**

The Committee makes no further comment.

Traditional Owner Settlement Bill 2010

Introduced	27 July 2010
Second Reading Speech	28 July 2010
House	Legislative Assembly
Member introducing Bill	Hon. John Brumby MLA
Portfolio responsibility	Premier

Purpose

The Bill proposes a new Act to advance reconciliation and promote good relations between the State and traditional owners and to recognise traditional owner groups based on their traditional and cultural associations to certain public land in Victoria by —

1. providing for the making of recognition and settlement agreements between the State and traditional owner groups to recognise traditional owner rights and to confer rights on traditional owner groups as to access to or ownership or management of certain public land; and as to decision making rights and other rights that may be exercised in relation to the use and development of the land or natural resources on the land.
2. amending the *Conservation, Forests and Lands Act 1987*, *Forests Act 1958*, *Crown Land (Reserves) Act 1978*, *Land Act 1958*, *National Parks Act 1975* and *Wildlife Act 1975* to expand the role of Traditional Owner Land Management Boards in relation to the management of public land.

Content and Committee comment

The Minister on behalf of the State may enter into an agreement with a 'traditional owner group entity' as defined by the Bill (an entity) must be a corporation, a company limited by guarantee or body corporate representing the traditional owner group in relation to the relevant land. **[3]**

A recognition and settlement agreement may be a land agreement (Part 3), a land use activity agreement (Part 4), a funding agreement (Part 5) or a natural resource agreement (Part 6). **[4 to 8]**

Private rights over public land

The Bill provides that any exiting lease, licence, authority, contract or agreement granted or entered into (a right) before a grant of aboriginal title in land is made under the Act (section 19) is taken to continue to be in force as though it was a right granted under the Act which granted the right. **[22]**

There are savings provisions in respect to land use activity agreements for existing public land authorisation or land use activity (defined in clause 28) or old earth resource approval (defined in clause 73) approved under the *Native Title Act (Cth)* in existence before the coming into effect of the agreement. **[73]** There is to be a publicly available register of land use activity agreements entered into under the Act. **[74 to 76]**

A funding agreement is to be administered by way of a trust approved by the Minister. **[78]**

An authorisation order under a natural resources agreement must be published in the Government Gazette. **[89]**

Extract from the Second Reading Speech –

Overview of the Bill

This Bill establishes the legal framework for a state-based system that enables the government to enter into agreements directly with traditional owner groups, outside any court setting.

Through these agreements, the government will recognise traditional owner groups based on their traditional and cultural associations to certain land in Victoria and recognise their rights in relation to access, ownership, management, use, and development of certain public land.

The Bill's approach is to put the question of native title to one side in exchange for recognition and a range of benefits related to that recognition.

Traditional owner groups will agree to withdraw existing native title claims, if they have one, and agree to not make native title or compensation claims into the future.

This is an important step forward because these agreements continue in perpetuity, and will give all the parties finality and certainty.

The agreement is registered as an indigenous land use agreement under the Native Title Act and all potential native title claimants are legally bound to that agreement. It will also allow for existing settlement groups such as the Gunaikurnai people to take up these new options.

Extract from the Statement of Compatibility –

The Bill is enabling legislation that creates a framework for agreement-making between the State and a given traditional owner group entity for an area of Crown land. The legislation will only be given effect as and when the Attorney-General, on behalf of the State, enters into a recognition and settlement agreement (RSA) with a traditional owner group entity.

… The Bill does not affect the property rights of individual people as the granting of land and procedural rights over land only apply to Crown land and the Charter does not protect the property rights of the Crown. The introduction of the Bill will not affect any existing property rights, in particular, land use agreements do not apply to any rights such as leases that are in existence at the time at which a land use activity agreement is registered [clause 73(2)].

Extract from the Explanatory Memorandum –

The principal agreement under the Bill is a recognition and settlement agreement between the State and a traditional owner group entity for an area of public land. A recognition and settlement agreement will primarily provide recognition for traditional owners and will record a settlement of a native title claim.

In addition to this principal agreement, a recognition and settlement agreement may contain other, separate components known as land agreements, land use activity agreements, funding agreements and natural resource agreements.

Land agreements may relate to any or all of the following —

- *granting land in fee simple, with or without conditions, in relation to unreserved public land (as that term is defined in clause 3);*
- *granting an aboriginal title to public land (as that term is defined in clause 11), subject to various conditions including that the land be managed as Crown land for a public purpose, and subject to a traditional owner land management agreement under the Conservation, Forests and Lands Act 1987 concerning the establishment of a Traditional Owner Land Management Board in respect of that land; and*
- *establishing a Traditional Owner Land Management Board in relation to any other public land (as that term is defined in clause 11), subject to a traditional owner land management agreement under the Conservation, Forests and Lands Act 1987.*

Land use activity agreements confer decision making rights on traditional owner group entities in relation to land use activities (as that term is defined in clause 27) carried out on public land.

Funding agreements provide funding to the traditional owner group entity.

Natural resource agreements document the aspirations of the traditional owner group relating to use of and access to natural resources, participation in the management of natural resources and agreed strategies to assist in the realisation of those aspirations.

In addition to the above heads of power to make agreements, the Bill contains provisions which enable the State to give effect to these agreements. These include —

- *new powers to grant unreserved public land in fee simple, with or without conditions, under Division 3 of Part 3;*
- *new powers to grant an aboriginal title to public land, under Division 4 of Part 3;*
- *new requirements for decision makers and others to adhere to new processes in relation to land use activities, where a land use activity agreement is in force, under Part 4;*
- *powers to enter into funding agreements and arrangements under Part 5;*
- *new powers to authorise members of traditional owner group entities to use and access natural resources for traditional purposes, under Part 6.*

Charter report

Cultural rights – Recognition of rights of traditional owner groups – Limits on recognition of non-native-title claimants and holders – Resolution of questions about membership of traditional owner groups

Summary: Clauses 4 and 9 provide for the recognition of rights of traditional owner groups and therefore engage Aboriginal persons' Charter right not to be denied their distinctive relationship to the land. The Committee is concerned that clause 3's definition of 'traditional owner group' appears to give precedence to native title claimants and holders and to lack an independent mechanism to resolve questions about the membership of traditional owner groups. It will write to the Premier seeking further information.

The Committee notes that clauses 4 and 9 provide for the recognition of rights of traditional owner groups in an area via an agreement reached between the State and the traditional owner group entity for that area. Clause 3 defines a 'traditional owner group entity' to be corporation appointed by 'a traditional owner group for the area of public land to represent them in relation to that area'. The definition of 'traditional owner group, in relation to an area of public land' is as follows:

> *(a) if there is a group of persons who are the persons in the native title group in relation to the area in accordance with section 24CD of the Native Title Act, that group of persons…*
>
> *(b) if there are native title holders (within the meaning of the Native Title Act) in relation to the area, the native title holders; or*
>
> *(c) in any other case, a group of persons who are recognised by the Attorney-General… as the traditional owners of the land, based on Aboriginal traditional and cultural associations with the land.*

The Committee considers that the Bill engages Charter s. 19(2)(d), which provides that 'Aboriginal persons… must not be denied the right, with other members of their community… to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs'.

The Second Reading Speech remarks:

> *This bill provides for the recognition of distinctive traditional owner groups in Victoria, identified by their group name, and to enter into agreements that give effect to the rights they hold in land and natural resources in concrete and meaningful ways…*

> *Until now, traditional owner groups have had no concrete avenue for the recognition of their rights in land, other than through the commonwealth's native title system – a complex legal system that was never intended to address land justice in the more settled regions of Australia…*
>
> *[T]he events and policies of nearly two centuries cast traditional owners from country, broke their means of subsistence and undermined their systems of law and relationships to country and to each other. This, of course, makes the task of meeting contemporary connection tests almost insurmountable…*
>
> *The bill's approach is to put the question of native title to one side in exchange for recognition and a range of benefits related to that recognition.*

While the Committee appreciates that the bill promotes Charter s. 19(2)(d), it is concerned that clause 3's definition of 'traditional owner group' appears to give precedence to native title claimants and holders, i.e. those who claim or have proved that they have had a continuous tie to the relevant area of land, over other potential holders of rights under Charter s. 19(2)(d). As para (c) of the definition is limited to 'any other case', it appears that people whose tie to their land was interrupted or who have developed ties to land to which they were displaced can only be recognised as traditional owners if there are no people who claim or have proved an uninterrupted tie to that area of land. So, clause 3's definition may deny some people's rights under Charter s. 19(2)(d).

The Committee also observes that, aside from the provisions of the federal Native Title Act, the only mechanisms provided in the Bill for resolving disputes about membership of a traditional owner group, either before or after an agreement is reached, are para (c)'s mechanism for groups of persons to be 'recognised' by the Attorney-General as traditional owner groups and any internal regulations of the entity that group appoints. **While the Committee appreciates that the Bill's purpose is to avoid litigation, the Committee is concerned that the apparent absence of a mechanism independent of the parties to the agreement to resolve questions about the membership of traditional owner groups may also result in the denial of some people's rights under Charter s. 19(2)(d).**

The Committee will write to the Premier seeking further information as to the operation of the Bill in areas where there are both native title claimants/holders and other traditional owners, and as to the availability of independent mechanisms to resolve questions about the membership of traditional owner groups. Pending the Premier's response, the Committee draws attention to clause 3's definition of 'traditional owner group'.

Property – Fair hearing – Determination of land use activities – Ministerial substitutions of VCAT determinations if in the interests of the State

Summary: The Committee refers to Parliament for its consideration the questions of whether or not clause 66, by permitting the Minister to substitute VCAT's determination about a land use activity if 'it is in the interests of the State to do so', is compatible with the rights of traditional owners to not be deprived of property other than in accordance with law and to have civil proceedings determined by 'an independent court or tribunal'.

The Committee notes that clause 66 provides that the Minister may make a determination 'substituting' a determination by VCAT about a land use activity. The substitution power requires notice within a week of the VCAT decision, a substitute determination within two months, the Minister's satisfaction that the substitute determination is in the interests of the State and that VCAT could have made the same determination. The Committee considers that clause 66 engages the Charter rights of members of traditional owner groups to not be

deprived of their property 'other than in accordance with law' and to have civil proceedings determined by an 'independent and impartial court or tribunal'.[19]

The Statement of Compatibility remarks:

> *The minister, who is not an 'independent court or tribunal', has no obligation to comply with section 24 of the charter in exercising powers under subdivision 3 of [division 4 of] Part 4. However, clause 63 of the bill provides that the minister will afford procedural fairness by allowing each party to make written submissions and make written comments in response to submission made by other parties involved in the matter. However, the minister… would… be subject to judicial review in the Supreme Court pursuant to the Administrative Law Act 1978.*

However, the Committee observes that

- clause 63's procedural requirements do not apply to determinations under clause 66 to substitute a decision VCAT has properly made.[20] So, it is not clear that substitute determinations under clause 66 would be subject to review pursuant to the *Administrative Law Act 1978*.[21] In any event, the terms of the Minister's discretion are so broad that it is doubtful that judicial review would be an effective constraint on the exercise of that discretion.[22]
- clause 66(2)'s precondition that 'the Minister is satisfied that it is in the interests of the State to' make a substitute determination has been specifically rejected by the Supreme Court of Canada in the context of overrides of Aboriginal rights as 'so vague as to provide no meaningful guidance and so broad as to be unworkable as a test for the justification of a limitation of' those rights.

The Committee refers to Parliament for its consideration the question of whether or not clause 66, by permitting the Minister to substitute VCAT's determination about a land use activity if 'it is in the interests of the State to do so', is compatible with the Charter rights of traditional owners to not be deprived of property 'other than in accordance with law' and to have civil proceedings determined by 'an independent court or tribunal'.

The Committee makes no further comment.

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19 Charter ss. 20 & 24(1).

20 Clause 63 is limited to 'determinations made under section 60', which only arise when VCAT has failed to meet a statutory time limit for making its own determination.

21 The *Administrative Law Act 1978* only applies to decisions by 'a person who… in arriving at the decision in question, is or are by law required, whether by express direction or not, to act in a judicial manner to the extent of observing one or more of the rules of natural justice.': s. 3, defining 'tribunal'.

22 *R v Sparrow* [1990] 1 SCR 1075

Transport Accident and Accident Compensation Legislation Amendment Bill 2010

Introduced	27 July 2010
Second Reading Speech	29 July 2010
House	Legislative Assembly
Member introducing Bill	Hon. Tim Holding MLA
Portfolio responsibility	Minister for Finance, WorkCover and the Transport Accident Commission

Purpose

The Bill amends the *Transport Accident Act 1986*, the *Accident Compensation Act 1985* and the *Accident Compensation (WorkCover Insurance) Act 1993*.

The Bill amends the *Transport Accident Act 1986* to provide —

1. that the Commission is not liable to pay compensation other than medical and like services to the driver of a motor vehicle who is convicted of dangerous driving causing death or serious injury at the time of the transport accident. **[3]**
2. that a person who is injured in a transport accident and who is convicted of a drug driving offence has their compensation reduced by one third. **[4]**
3. clarity to time limits for the making of an impairment determination by providing a deemed impairment of zero percent where no impairment assessment has been undertaken or applied for within six years of a transport accident. This is equivalent to the statute of limitations period for common law actions. **[5]**
4. an option to clients entitled to compensation as a result of accidents before 16 December 2004 to buy-out in the form of a lump sum their weekly annuity entitlements. **[6]**
5. that domestic partners of pregnant women who are injured as a result of a transport accident have the same equivalent entitlement to child care assistance as their injured partner would have. **[7]**
6. the form of a claim is one which is approved by the Commission. **[8]**
7. that a child who is injured as a result of a transport accident who did not make a claim or have a claim made on their behalf within the required time frames has three years from attaining the age of 18 to make a claim. **[9]**
8. that only a natural person who has a serious injury or dies as a result of a transport accident can claim damages under the TAC scheme. This clause confirms the abolition of *per quod servitium amisit** actions. **[11 and 13]** *(also refer to section 85, Constitution Act 1975 report below)*

   **loss of the service of another person.*
9. that a document or information acquired under or in accordance with the Act may be used for the purposes of any other proceeding or claim for compensation under the Act. **[12]**

The Bill amends the *Accident Compensation Act 1985* to —

1. refine and clarify a range of definitions.
2. simplify and streamline the method of assessing pre-injury average weekly earnings.

3. clarify the status of specific categories of worker, including students, contractors, and outworkers and deter sham arrangements to avoid premiums obligations and to avoid collecting double premium in contract arrangements.
4. address certain anomalies concerning the payment of lump sum benefits.
5. restructure and clarify the Division of the Act covering liability for medical and like services
6. amend to change the name of the Victorian WorkCover Authority to WorkSafe Victoria.
7. permit the making of legal costs orders that would enable the introduction of a fixed costs model in relation to certain plaintiff litigated costs.
8. provide that 'hold harmless' clauses are unenforceable under the Act and are also void for the purposes of any proceedings under the Wrongs Act.
9. provide that appeals from County Court proceedings under the Act should be heard by the Court of Appeal.
10. provide a range of miscellaneous technical amendments which consolidate and clarify the existing provisions of the Act. **[15 to 133]**

Content and Committee comment

Rights or freedoms – Retrospective provisions – Inadequate explanatory material

The Committee notes that a number of provisions in the Bill have retrospective commencement (clauses 2(2) to 2(6)). In each case neither the explanatory memorandum nor the Second Reading Speech provide any reasons as to the date chosen or the effect the retrospectivity may have on existing rights. The Committee once again draws attention to Practice Note No. 1 of 2005 concerning the need to provide adequate reasons for the inclusion of retrospective provisions in Bills and the rationale for choosing a particular date.

The Committee will seek the relevant advice from the Minister.

Repeal, alteration or variation of section 85 of the Constitution Act 1975 (alter or vary the unlimited jurisdiction of the Supreme Court)

The Bill includes a number of provisions that limit the jurisdiction of the Supreme Court in both the *Transport Accident Act 1986* and the *Accident Compensation Act 1985*. **[11, 44, 80, 98 and 99].** The Bill declares that these sections are intended to alter or vary section 85 of the *Constitution Act 1975.* **[13 and 123]**

The section 85 statement in the Second Reading Speech* provides –

> *Clause 11 inserts a new section 93A into the Transport Accident Act 1986, which confirms the abolition of actions for damages by an employer for the loss of services of an injured employee under the Act. As a result it is the intention of clause 13 to alter or vary section 85 of the Constitution Act 1975.*
>
> *Clause 44 substitutes section 39(1A) of the Accident Compensation Act 1985 to clarify that a determination by WorkSafe regarding an extension of the period of time within which either a serious injury application may be made or proceedings for the determination of a serious injury may be brought pursuant to section 134AB and section 135A, is not reviewable. It is the intention of this clause to alter or vary section 85 of the Constitution Act 1975.*
>
> *Section 39(1) of the Accident Compensation Act 1985 establishes the exclusive jurisdiction of the County Court to hear and determine any question or matter arising from, inter alia, any decision of WorkSafe or a self insurer. New section 39(1A), clarifies the intention of old section 39(1A) to exclude review of any WorkSafe decision to exercise its discretion to extend mandatory time limitations imposed under sections 134AB and 135A of the Accident Compensation Act 1985.*

This discretion continues to operate to limit the jurisdiction of the Supreme Court, as previously provided for by section 252C. These provisions provide some leeway for a worker to bring a proceeding if WorkSafe is satisfied that the failure to comply with the usual process is not the fault of the worker, or where the defence has not been prejudiced. The decisions of the authority to which this clause relates provide an additional procedural protection, but are not in themselves decisions about the substance of a claim.

Clause 80 re-enacts section 99(10) of the Accident Compensation Act 1985 to continue to provide that a court is not to entertain an action, suit or other proceeding against workers, their representatives or dependants where that proceeding relates to:

- *the recovery of any costs which WorkSafe, self-insurer or employer is liable to pay under that section; or*
- *a notice, determination or order referred to in sections 249AA, 249AB, 249B or 249BA. These notices and determinations relate to circumstances where WorkSafe or self-insurer does not have to pay a service provider (for example, where the service provider has committed a relevant offence under the Accident Compensation Act 1985).*

A person seeking to recover costs or dispute a notice or determination retains the ability to bring a proceeding against WorkSafe, self-insurer or employer, whoever is the appropriate defendant in such a proceeding. Accordingly there remains appropriate provision for recovery rights for service providers as previously existed under the section.

Clause 98 amends section 134AG of the Accident Compensation Act 1985 to confirm that legal costs in respect of any claim, application or proceeding under sections 134AB, 135, 135A or 135B, must only be recovered in accordance with an order made under section 134AG. This is to preserve the intention of section 252D, which similarly provided for an intention to vary the jurisdiction of the Supreme Court in the introduction of section 134AG into the Act in 2000. Accordingly, clause 98 preserves this intention.

Clause 99 inserts new sections 134AGA and 134AGB into the Accident Compensation Act 1985. The proposed new sections provide that the Governor in Council may make orders specifying the legal costs that may be recovered from WorkSafe, self-insurers or workers in respect of any claim, application or proceeding under sections 134AB, 135, 135A or 135B. Litigated legal costs must only be recovered in accordance with such an order, which has the effect of limiting the court's jurisdiction with regards to costs.

The limitation of the court's jurisdiction is necessary because the enabling provision will allow for the making of orders that fix legal costs that may be recovered in connection with litigated serious injury claims. This is a different approach to costs recovery, which is currently determined under court scales and by its nature requires limitation of the jurisdiction of the courts to award such costs. The fixing of legal costs under these new provisions will be limited to serious injury claims and not claims for the recovery of damages at common law.

** Also refer to the Statement of Compatibility for discussion concerning clauses 11, 44, 80 and 99.*

Constitution Act 1975, section 85 – Repeal, alteration or variation of the unlimited jurisdiction of the Supreme Court

The Committee notes that clauses 11, 44, 80, 98 and 99 *provide for some limitation in bringing proceedings in the statutory compensations schemes amended by this Bill. Clauses 13 and 123 declare that it is the intention of these limitation provisions to alter or vary section 85 of the Constitution Act 1975.*

The Committee having reviewed the section 85 statement made in the Second Reading Speech, the enabling and declaratory clauses, the Statement of Compatibility and the Explanatory Memorandum is of the opinion that the proposed provisions altering or varying section 85 of the Constitution Act 1975 are appropriate and desirable in all the circumstances.

The Committee makes no further comment.

Control of Weapons Amendment Bill 2010

The Bill was introduced into the Legislative Assembly on 24 May 2010 by the Hon. Bob Cameron MLA. The Committee considered the Bill on 7 June 2010 and made the following comments in Alert Digest No. 8 of 2010 tabled in the Parliament on 8 June 2010.

Committee's Comments

Charter report

Age discrimination – Ban on sale of knives to children – Whether reasonable limit

Summary: Clause 6 makes it an offence for a child to 'purchase a controlled weapon' and for anyone to knowingly sell such a weapon to a child. While the Committee accepts that a restriction on sales of dangerous items may be a reasonable limit on the Charter's rights with respect to age equality, it has a number of concerns about clause 6. It will write to the Minister seeking further information.

The Committee notes that clause 6, amending s. 6, makes it an offence for a child to 'purchase a controlled weapon' and for anyone to knowingly sell such a weapon to a child. *The Committee considers that clause 6 engages the Charter's rights with respect to age discrimination.*

The Statement of Compatibility remarks:

> *I accept that some young persons may experience the blanket prohibition on the purchase of weapons (including, within the definition of "controlled weapons", knives of all kinds) as demeaning. The extent to which it ought objectively to be regarded as so, however, it tempered to some degree by the fact that, as discussed below, the difference in treatment is justified by statistical evidence.*
>
> *…[T]he detriment imposed by the limit is not particular severe. It is hard to imagine that there will be many, if any, cases in which a young person wishes to purchase a prohibited or controlled weapon for a legitimate purpose will not be able to find someone who can make the purchase on their behalf.*
>
> *…It is not unreasonable to conjecture that the ban on direct purchase of weapons by children will increase the likelihood of responsible adult supervision of children with regards to obtaining and using such weapons.*

While the Committee accepts that a restriction on sales of dangerous items may be a reasonable limit on the Charter's rights with respect to age equality, it has a number of concerns about clause 6:

First, despite its reliance on 'the fact that, as discussed below, the difference in treatment is justified by statistical evidence', the Statement of Compatibility does not provide or otherwise discuss any statistical evidence.

Second, clause 3's definition of 'child' extends to all persons under 18 and therefore will include some teenagers living away from home. The Committee is concerned that clause 6 may make it difficult for such persons to obtain knives for cooking or eating. The equivalent United Kingdom legislation exempts sales to persons age 16 or older of knives that are 'designed for domestic use'. The Statement of Compatibility remarks:

> *A carve-out of this kind might have the effect of encouraging the use of kitchen knives in criminal offending. A carve-out might also create potential uncertainty for both sellers and purchases as to what is or is not domestic use. For that reason, the government prefers in this instance to draw a clear line in the sand. I note that the proposal is not otherwise overbroad…*

Third, the existing broad definition of controlled weapons in s. 6, while appropriate when all regulation is subject to a defence of 'lawful excuse', may be capricious under the blanket prohibitions in clause 6. In particular, the definition extends to a 'knife', without any requirement of sharpness or danger. The Committee observes that clause 6 will bar unaccompanied teenagers from purchasing plastic cutlery and may also prevent them from purchasing take-away food that includes such cutlery. The ACT and NSW statutes avoid this difficulty by specifically exempting plastic knives designed for eating from their sales prohibitions.

The Committee will write to the Minister seeking further information as to the statistical evidence mentioned in the Statement of Compatibility and whether or not plastic knives should be excluded from the definition of 'controlled weapon'.

Pending the Minister's response, the Committee refers to Parliament for its consideration the question of whether or not an exemption allowing 16- and 17-year-olds to purchase domestic knives would be a less restrictive alternative reasonably available to achieve clause 6's purpose of protecting the public from the violence and intimidation associated with weapons-related crime.

Minister's Response

Thank you for your letter of 9 June 2010 on behalf of the Scrutiny of Acts and Regulations Committee of the Parliament (the Committee), requesting my advice in relation to certain amendments to the Control of Weapons Act 1990 (the Act) as contained in the Control of Weapons Amendment Bill 2010 (the Bill).

I note that the Committee considers that clause 6 of the Bill engages rights with respect to age discrimination under the Charter of Human Rights and Responsibilities Act 2006 (the Charter). Clause 6 will amend section 6 of the Act regarding the purchase of controlled weapons by children (defined by the Bill as being persons under the age of 18 years). Indeed, in my Statement of Compatibility tabled in respect of the Bill, I identified clause 6 of the Bill as engaging the right to freedom from discrimination under section 8(3) of the Charter. Further, I concluded that the limit placed by the Bill upon section 8(3) of the Charter was demonstrably justified, in terms of section 7(2) of the Charter, for a number of reasons, as detailed in my Statement.

Clause 6 of the Bill will amend section 6 of the Act to make it an offence, subject to a maximum penalty of 12 penalty units, for a child to purchase a controlled weapon (proposed new section 6(1AA). The Act defines the term "controlled weapon" to be a knife, other than a knife that is a prohibited weapon, or an article that is prescribed by the regulations to be a controlled weapon. Under the Control of Weapons Regulations 2000 (the Regulations), a further five types of weapon are prescribed to be controlled weapons, including spear-guns, batons or cudgels, bayonets, imitation firearms and cattle prods.

In relation to the particular issues raised by the Committee, I note that the Committee seeks further information regarding the statistical evidence upon which the differential treatment of minors under section 6 of the Bill is based. The Committee also expresses concern that the definition of "child" under the Bill will extend to all persons under the age of 18 years and that this will include some young people who are living away from home and who, as a consequence of the proposed changes, will be precluded from purchasing knives for cooking or eating. Finally, the Committee expresses concerns that the term "knife" is not defined by reference to any particular degree of sharpness or danger and will extend to include plastic cutlery. The Committee has indicated a concern that the purchase of take-away food that includes plastic cutlery may be affected by clause 6 of the Bill.

I now turn to each of the concerns directed to me in the Committee's Charter Report, as contained within Alert Digest No.14 of 2009 and as tabled in Parliament on 24 November 2009.

I remain of the strong view that the prohibition on the purchase of weapons by children will advance the purpose of protecting the public from the violence and intimidation associated with weapons-related crime. There is readily available published data, available from such sources as Victoria Police, the Australian Institute of Criminology and the Australian Bureau of Statistics, to demonstrate a concerning upward trend in weapons related offending and knife carriage in the community and by young people.

As the Committee will also appreciate, published crime statistics will not reveal the true extent of knife and other weapons carriage, use and possession by children nor the use of weapons by children in violent or potentially violent incidents. This is because police will often give a child a formal caution rather than charging the child for their first offence, as a means of preventing and deterring any further offending. Additionally, the youngest cohort of children who can be subject to the criminal justice system, aged between 10 and fourteen, are less likely to be charged, depending upon the individual child's level of maturity. However, police have advised me that they have observed a growing and disturbing trend in younger children carrying, and even using, weapons.

I accept that there will be some young people living away from home who may have a need to obtain knives for the purpose of cooking and eating. Likewise, I appreciate that some young people will need to obtain knives for the purpose of particular occupations, for example butchers' apprentices. However, it is important to understand that, whilst the Bill will make it unlawful for a person under the age of 18 to purchase a controlled weapon, there will be no prohibition on the purchase of controlled weapons by an adult on behalf of a young person. In this way, the community can be assured that an adult has turned his or her mind to the appropriateness of the young person having access to such weapons. Similarly, it will still be permissible for a young person to use, possess and carry a controlled weapon in a public place, provided they have a lawful excuse for doing so.

Under the Act, in conjunction with the Regulations, a plastic cutlery knife is a "controlled weapon". I understand that the Committee is seeking information on whether plastic knives should be excluded from that definition. I do not believe that it is appropriate to exclude plastic knives from the definition of controlled weapon. There are wide varieties of plastic knives, some of which are highly dangerous due to the hardened plastic material out of which the entire knife may be made. Unlike metal knives, metal detection devices cannot detect plastic knives. This makes the manufacture and purchase of dangerous hardened plastic knives an unfortunately attractive alternative to metal knives for some people. Therefore, excluding plastic knives from the definition of controlled weapon is likely to have the perverse effect of promoting the circulation of a greater number of these undetectable and dangerous knives.

In relation to plastic cutlery provided by take-away food retailers, in those situations people purchase the food and any cutlery that is provided is ordinarily complementary. For example, in food courts cutlery, including metal cutlery, is often available in a central location for the use of customers. That cutlery not purchased by those customers from an individual retailer from whom food is purchased. Unless a take away food retailer expressly requires a person to purchase cutlery in addition to the purchase of food, I do not accept that customers are purchasing the cutlery in these circumstances. Where a person uses plastic or other cutlery for the consumption of take-away food, they will have a lawful excuse for that use.

The purpose of the prohibition on the purchase of knives and other controlled weapons by minors is to introduce a significant deterrent that will have the desired effect of reducing knife carriage in the community, especially amongst Victoria's youngest and most vulnerable cohort. The recent experience in Victoria, other Australian jurisdictions and overseas is of an increasing carriage and use of knives in the community and of children, in particular, carrying knives for self-defence or due to peer group pressure. It is appropriate that the Government takes steps now to turn this trend around before a knife culture becomes entrenched.

To that end, I am of the view that prohibiting the sale of controlled weapons to children, while still allowing for children to obtain such weapons with some degree of adult oversight and continuing to allow children to use, possess and carry such weapons with a lawful excuse, strikes a reasonable balance. The amendment is directly aimed at achieving the purpose of protecting the community from the dangers of weapons related violence.

For each of the reasons set out above and in my Statement of Compatibility under the Charter, I have concluded that the ban on children purchasing weapons and the limitation that this ban will place on the right under section 8(3) of the Charter is reasonable and demonstrably justified in a free and democratic society.

Thank you for bringing these matters to my attention and for giving me the opportunity to respond to the Committee's queries and concerns.

Bob Cameron MP
Minister for Police & Emergency Services

27 July 2010

The Committee thanks the Minister for this response

Personal Safety Intervention Orders Bill 2010

The Bill was introduced into the Legislative Assembly on 8 June 2010 by the Hon. Rob Hulls MLA MLA. The Committee considered the Bill on 21 June 2010 and made the following comments in Alert Digest No. 9 of 2010 tabled in the Parliament on 22 June 2010.

Committee's Comments

Charter report

Fair hearing – Interim orders imposed without a fair hearing – Limits on speedy listing for final hearing, reviews and re-hearings

Summary: Clause 37 permits an interim order to be made without giving the respondent a fair hearing. While overseas courts have held that interim orders made without a fair hearing can be compatible with human rights if they are for a short-term, of fixed duration, of a mild nature and readily reviewable, the Committee is concerned that the Bill's interim orders scheme goes beyond this description. It will write to the Attorney-General seeking further information.

The Committee notes that clause 35 provides for a court to make 'an interim order' that is 'necessary' to ensure an affected person's safety or preserve an affected person's property and 'is appropriate to make… in all the circumstances of the case'. The European Court of Human Rights has recently held that such orders fall within the ambit of the right to a fair hearing. ***Clause 37 permits an interim order to be made without notice to the respondent and in the absence of the respondent. The Supreme Court has held that such a provision permits an interim order to be made without giving the respondent a fair hearing, even if the respondent is present in the court.*** *The Committee therefore considers that clause 37 engages the Charter's right to a fair hearing.*

The Statement of Compatibility remarks:

> *The extent of the limitation is confined because the duration of an interim order is limited. The order ceases to have effect as soon as the application is determined, which is likely to occur within a short period of time. …In addition, the bill provides scope for an application to be made for the variation or revocation of an interim family violence [sic – personal safety] intervention order (clause 85)*

While overseas courts have held that interim orders made without a fair hearing can be compatible with human rights if they are for a short-term, of fixed duration, of a mild nature and readily reviewable, the Committee is concerned that the Bill's interim orders scheme goes beyond this description, *as follows:*

- *Clause 42 provides that, if a court makes a 'mediation direction', then the interim order does not need to be 'listed for a decision about the final order as soon as practicable'. Rather, any listing must allow 'a reasonable time' for mediation assessment and mediation.*
- *Clause 43 provides that an interim order continues until the interim order is revoked, or the application is withdrawn or resolved at a final hearing. There is no provision for a fixed expiry date (even for orders made after electronic applications and without sworn evidence.)*

- *Clause 67(2)(c) & (e) provides that orders may include conditions excluding the respondent from a shared residence or barring the respondent from other specified places.*
- *Clause 86 bars a respondent from seeking a variation or revocation of any order unless 'there has been a change in circumstances' and the court grants leave.*
- *Clause 99(5)(a)'s provision for rehearing orders made without notice is limited to final (not interim) orders.*

In 2002, the Supreme Court of Ireland unanimously struck down a scheme for interim orders excluding respondents from their homes and other places for 'failing to prescribe a fixed period of relatively short duration during which an interim barring order made ex parte is to continue in force', even though a respondent to such an order was permitted to apply to a court at any time to have the order discharged or varied.

While the Committee appreciates that interim orders may be necessary to protect personal safety and are subject to court scrutiny, it observes that overseas jurisdictions' schemes for personal safety intervention orders provide for enhanced protections when intrusive interim orders are made ex parte, including fixed short-term expiry dates and unrestricted rights to have the interim orders reviewed or reheard.

The Committee will write to the Attorney-General seeking further information as to whether, if an interim order excluding a respondent from a shared residence or other locations is made without notice to or hearing from the respondent, one or more of the following alternatives:

- ***providing for a swift final hearing without any delay for mediation***
- ***setting a fixed expiry date for the interim order***
- ***permitting the respondent to ask a court to vary or revoke the interim order without proving a change of circumstance***
- ***permitting the respondent to seek a rehearing of the interim order***

would be reasonably available to achieve the purpose of swiftly protecting affected persons from prohibited behaviour or stalking. Pending the Attorney-General's response, the Committee draws attention to clauses 37, 42(2), 43, 67(2)(c) & (e), 86 and 95(5)(a).

Minister's Response

Thank you for your letter of 23 June 2010 enclosing a copy of the report of the Scrutiny of Acts and Regulations Committee (the Committee) in Alert Digest No. 9 of 2010 regarding the Personal Safety Intervention Orders Bill 2010 (the Bill).

The Bill was introduced into Parliament on 8 June 2010. It is intended that the Bill will replace the Stalking Intervention Orders Act 2008.

The Committee has asked for further information on the provisions relating to interim personal safety intervention orders.

The purposes of the Bill are twofold.

- *The Bill aims to establish a system of protection for those who have suffered assault, sexual assault, harassment, property damage or interference, serious threat, or stalking.*
- *The Bill also recognises that many intervention order applications stem from interpersonal disputes, and so aims to encourage the use of mediation services for appropriate matters to settle these disputes.*

Aligned with Family Violence Protection Act 2008

The Bill is procedurally aligned with the Family Violence Protection Act 2008 (FVPA), with the FVPA providing the protection of an intervention order for people in family or family-like relationships and the Bill providing the protection of an intervention order for people in non-family situations. This means that many procedural provisions of the Bill are identical with the FVPA.

The procedural provisions shared by the Bill and the FVPA include applicable rules of evidence, procedures for application and hearing of interim and final intervention orders, and variation, re-vocation and extension of intervention orders. The Bill contains many of the protections for victims that exist in the FVPA, such as alternative methods of giving evidence and search and seizure powers for police with respect to weapons. Many of the same conditions may be included in a personal safety intervention order as a family violence intervention order. The Bill also replicates the tenancy changes that were made in the family violence sphere, which allow residential leases to align with the conditions of final personal safety intervention orders.

Exclusion conditions

Personal safety intervention orders (both interim and final), like family violence intervention orders, can include any conditions that appear to the court necessary or desirable in the circumstances, such as excluding the respondent from the protected person's residence ("exclusion conditions") and prohibiting the respondent from being at or near a specified place.

Exclusion conditions are utilised to protect the safety of the protected person in his or her home. For example, if a protected person is being stalked, the condition would prevent the stalker from visiting, or attempting to visit, the protected person at home. Occasionally, these conditions will have the effect of excluding the respondent from his or her home, where he or she cohabits with the protected person. Cohabitation arrangements will usually fall under the family violence system, because cohabitants are usually in a family or a family-like relationship, but they may occasionally arise in the personal safety system, for example, in boarding house arrangements. In such cases, they may form an important protection for the protected person, for example, in a situation where a fellow resident has assaulted or threatened to kill the protected person.

Similarly, a personal safety intervention order may prohibit the respondent from being at or near a specified place. This may be necessary, for example, to prevent a stalker from attending the protected person's workplace or school.

In each case, the conditions must, in the opinion of the court, be necessary or desirable in the circumstances. This means that there must be some nexus between the purposes of the Act (in this case, to protect the safety of victims) and the conditions imposed.

Ex-parte interim intervention orders

The reason interim personal safety intervention orders, as with family violence intervention orders, are able to be made ex-parte is because an interim order is a temporary measure of protection prior to a final hearing for an intervention order. The ex-parte provision recognises that a person may need protection in the period before the matter can be finally determined. This is an important feature, recognising that the state has a positive obligation to protect those whose safety is at risk from another (in accordance with sections 9 and 21 of the Charter).

The court has the discretion to determine whether to make an interim personal safety intervention order if it is necessary on the balance of probabilities to ensure the safety of the affected person or preserve the property of the affected person; and if it is appropriate to make the order in all the circumstances of the case. Conditions that may be included in orders are flexible and are adapted by the court to the scenario and information before it. Further, an order will not be enforceable until the respondent has been personally served with a copy of the order or had it explained to them by the court.

Providing for a swift final hearing without delay for mediation

As detailed above, the personal safety intervention order system has two purposes, one of them being to encourage the use of mediation services for appropriate matters.

Mediation will have a central role in the personal safety intervention order system because many of the applications for intervention orders under the current system result from neighbourhood, schoolyard and other interpersonal disputes. Mediation has been shown to be an effective method of resolving these types of disputes.

Intervention orders may stop problematic behaviour but are not designed to settle the substance of a dispute. Allowing mediation to occur before the hearing for a final personal safety intervention order will reduce the likelihood of a long term limitation being placed on the respondent's rights. This is because it is more likely that the parties will resolve the dispute

underlying the application for an intervention order at mediation, and the alleged problematic behaviour that caused the application will cease.

If the court directs a mediation assessment and/or mediation to occur, but the matter returns for a final hearing before that mediation has occurred, then the substantial benefits of mediation are lost. The parties no longer have the opportunity to resolve an interpersonal dispute unless the matter is further adjourned by the court. As such, the respondent may be granted their fair hearing in a speedy manner, but is more likely to have a long term limitation placed on their rights after that hearing, as the causes of the alleged problem behaviour are unlikely to have been resolved.

Because of the dual aims of the Bill, this is not the way that all applications for a personal safety intervention order will be dealt with. Only suitable disputes will be mediated, and only then within a set of confined conditions and after the expert determination of a Dispute Assessment Officer as to whether they are suitable. This is dictated by the Bill and the guidelines I will issue under clause 34 of the Bill. The draft guidelines are attached for the Committee's reference.

The provision allowing a sufficient time before a final hearing so that mediation can occur ensures that the Dispute Settlement Centre of Victoria has the time to assess and mediate matters that are directed to mediation by the court. It assists the court in the substantive decision it will make at the bearing for a final personal safety intervention order, and it reduces the likelihood of a long term limitation on a person's behaviour, movement or otherwise as directed by conditions of a final personal safety intervention order.

So, although allowing time for mediation may extend the time during which the respondent is excluded from a residence, this limitation on the respondent is balanced by the fact that encouraging mediation is likely to result in a less restrictive order on the respondent and, possibly, obviate the need for an order at all.

Setting a fixed expiry date for the interim order

Interim orders under the FVPA, and proposed under the Bill, are of short duration. There is no provision for a fixed expiry date because of the potential for orders to lapse while they are still necessary to protect the safety of the person subject to the order. If an interim order has a fixed expiry date, then the protected person may be left without protection without a court having an opportunity to extend the duration of the order if necessary.

While allowing an interim order to continue until the hearing of a final order may lengthen the time the respondent is subject to its restrictions, this is necessary in order to protect the applicant. In these cases, the court has already come to the conclusion that an interim order is necessary to provide short-term protection to the protected person pending the final hearing. I believe the Bill has struck the correct balance between protecting applicants and preserving the rights of respondents.

Permitting the respondent to ask a court to vary or revoke the interim order without proving a change of circumstance or permitting the respondent to seek a rehearing of the interim order

Variations and revocations of interim orders are only available if a change of circumstances is proved, because a substantive hearing of the issues is pending, and this is the appropriate venue for the issues to be determined, as the court will be deciding whether to place a long term limitation on the respondent. If variation and revocation applications were allowed for interim orders without a change in circumstances the risk is that such hearings would involve a de facto testing of the substance of the application. It is also to ensure that respondents cannot use the variation and revocation proceedings to further harass the protected person with baseless applications. The testing of the substance of the application is properly reserved for the final hearing.

Additionally, if the court has previously decided that an interim order is necessary on the balance of probabilities to ensure the safety of the affected person or preserve the property of the affected person pending a final decision about the application and that it is appropriate to make the order in all the circumstances of the case, then it is appropriate that the respondent will need to prove a change in the circumstances that warranted the granting of the interim order. If there is no change in the circumstances that warranted granting the interim order, then it follows that the order should remain in place until a hearing for a final order is held. This is in keeping with the protective intention of the Bill.

In conclusion, I believe that the system of interim personal safety intervention orders has struck the right balance between curtailing the rights of some people to protect the safety of others. These decisions are made by courts, on grounds clearly set out in the Bill, with the opportunity to challenge the orders in appropriate circumstances.

Thank you for the opportunity to respond to the issues raised by the Committee in relation to this Bill.

ROB HULLS MP
Attorney-General

27 July 2010

ASSESSING SUITABILITY FOR MEDIATION – CRITERIA GUIDELINES

The Dispute Assessment Officer must have regard for the following criteria when assessing the suitability of a case for mediation.

1. The existence of pursuit-type stalking

For example, a party repeatedly follows, telephones or sends messages (including SMS, email), loiters or keeps an individual under surveillance and any other repeated behaviour towards another party which makes that person fear for her/his safety. In such cases, mediation would be assessed as unsuitable.

2. The history between parties

The Dispute Assessment Officer will conduct a risk assessment that takes into account the past history between the parties including any violence, fear and power imbalances.

3. Fear or concern expressed by either party

The Dispute Assessment Officer will consider any level of fear expressed by either party and may determine the matter as unsuitable for mediation.

4. The future risk of harm, including escalation of the threat or violence

The Dispute Assessment Officer will take into account the likelihood that any negative behaviour may increase in the future and mediation may not be of assistance.

5. The existence of any power imbalance between the parties

For example, a younger party mediating with an older party. The matter may be unsuitable for mediation due to a power imbalance. The Disputer Assessment Officer will identify whether this can be addressed by parties attending mediation with a support person. If the power imbalance cannot be rectified, mediation will not proceed.

6. The level of vulnerability of the Applicant (eg. Mental health, disability, age) and whether the vulnerability results in a power imbalance.

The Dispute Assessment Officer will conduct a face to face interview with at risk (vulnerable) clients, conduct an assessment of their needs and determine whether they are capable of engaging in the mediation process. The DAO may consult with external agencies with relevant expertise to assist the Applicant.

The Dispute Assessment Officer will explore whether the presence of a support person may assist the at risk (vulnerable) person and overcome the power imbalance.

For example, if a person with a physical or cognitive disability alleges that they have experienced violence from their carer, the power imbalance would be too great and the matter would he referred back to the Registrar.

7. The capacity of both parties to understand and participate in the mediation process

For example, a party who has a cognitive disability and has difficulty in understanding the mediation process may be able to participate with a support person or advocate assisting them.

If it is deemed that the party is unable to fully participate (with or without support) in mediation, the matter would be assessed as unsuitable.

8. The availability of support persons to assist parties in the process

For example, a non-English speaking party mediating with an English speaking party. The DSCV can arrange for an interpreter to be present to assist the mediation process.

Parties may request that a family member or friend attend the mediation in a support role.

9. The duration of the behaviour

For example, a dispute between tenants. The Dispute Assessment Officer will assess the duration and types of behaviour involved in the dispute, and assess how entrenched the conflict is. High level, long standing disputes might not be suitable to mediate.

10. If the Application for a Personal Safety Intervention Order was brought by a police officer on behalf of the Applicant.

Police involvement may be an indicator that the matter is unsuitable for mediation.

The Dispute Assessment Officer will consider the severity of the Respondents behaviour if the police have applied for a PSIO on behalf of the Applicant and may determine the matter unsuitable for mediation.

11. If the Parties are family members

Matters between family members are covered under the Family Violence Protection Act 2008.

The definition of "family member" has the meaning given in the Family Violence Protection Act 2008.

If a DAO identifies during intake that a matter may involve family members, the DAO will refer the parties back to the Registrar to discuss and apply the Common Risk Assessment Framework for Family Violence. The Registrar will discuss the need for the family member to apply for a Family Violence Intervention Order and will refer the member to protective or support services.

12. Whether both parties genuinely want to resolve the dispute

For example, a Magistrate has directed the parties to attend a mediation assessment.

Through thorough intake, the Dispute Assessment Officer will discuss the mediation process with the parties and determine that each party is voluntarily attending mediation and will participate in good faith. This would make a matter suitable for mediation.

13. If mediation has failed in the past

For example, two parties have mediated previously but were unable to either reach a resolution or subsequently adhere to the agreement.

The Dispute Assessment Officer will clarify with the parties what the current issues are and whether the parties are open to negotiating these in good faith.

If the circumstances of the dispute have not changed from the previous intake and there is no good faith being demonstrated by one or either party and neither party has reconsidered their position, then mediation is not appropriate.

14. If there is a substantive 'dispute' to be mediated

For example, in a small community supermarket car park, one party takes the car park which the other party was about to drive into and becomes verbally abusive.

Mediation would not be suitable as there is no substantive issue requiring discussion, no dispute that needs to be mediated, and no ongoing relationship.

15. Any other matter that the Dispute Assessment Officer considers relevant.

The Committee thanks the Attorney-General for this response

Superannuation Legislation Amendment Bill 2010

The Bill was introduced into the Legislative Assembly on 25 May 2010 by the Hon. Tim Holding MLA. The Committee considered the Bill on 7 June 2010 and made the following comments in Alert Digest No. 8 of 2010 tabled in the Parliament on 8 June 2010.

Committee's Comments

Charter report

Sexuality discrimination – Equal eligibility for reversionary pensions for same-sex and opposite-sex partners of long-term and police pensioners – Exclusion of surviving same-sex partners of deceased pensioners – Whether reasonable limit

Summary: The Bill makes same-sex partners of living pensioners eligible for reversionary pensions on the same basis as opposite-sex partners, but preserves different eligibility rules for same-sex partners of deceased pensioners. The Committee will write to the Minister seeking further information.

The Committee notes that:

- *clauses 4(1), 17(1), 46(1), 73(1), 97(1) and 98(1) make same-sex partners of emergency services employees, parliamentarians, state employees, state superannuation recipients, state employees who have changed jobs and transport workers who retired prior to 23 August 2001 eligible for a reversionary pension upon that person's death.*
- *clauses 104(1), 105, 107, 109(1) and 110(1) make same-sex partners of judges, associate judges, magistrates and solicitors-general who retired prior to 4 June 2008 eligible for a reversionary pension upon that person's death.*
- *clause 26 makes same-sex partners of police officers eligible for a reversionary pension upon that officer's death.*

In its Alert Digest No 1 of 2008, the Committee found that the ineligibility of same-sex partners of long-term pensioners for a reversionary pension may be incompatible with the Charter's rights with respect to sexuality discrimination. The above clauses remove that potentially incompatibility in the case of same-sex partners of currently living pensioners. However, clause 4(2), 17(1), 46(2), 73(2), 97(2), 98(2), 104(2), 106, 108, 109(2) and 110(2) preserve the existing rules in the cases of same-sex partners of pensioners who died before the Bill commences. Clause 26's new entitlement for same-sex partners of deceased police officers does not provide for partners of already deceased officers.

So, while the Bill makes same-sex partners of living pensioners eligible for reversionary pensions on the same basis as opposite-sex partners, it preserves the existing differential treatment of same-sex and opposite-sex partners of deceased pensioners. *In 2007, the Supreme Court of Canada unanimously held that an identical exclusion of same-sex partners of deceased pensioners from a statute similarly removing sexuality distinctions from that nation's reversionary pension schemes was incompatible with the Canadian Charter's rights against sexuality discrimination and was not a reasonable limit that can be demonstrably justified in a free and democratic society.*

The Statement of Compatibility does not address the compatibility of clauses 4(2), 17(1), 26, 46(2), 73(2), 97(2), 98(2), 104(2), 106, 108, 109(2) & 110(2) with the Charter's equality rights. However, it does address those clauses' compatibility with the Charter's right against arbitrary interference in families:

The prospective nature of the proposal is justified on the grounds that it is administratively difficult and costly to provide a pension in circumstances when the member has died prior to the commencement of the bill. By way of example, all potential claimants may need to be contacted and notified, and it would be difficult in advance to identify who these claimants might be, and the extent to which they would have claims. Prospectively, by contrast, it would be possible to establish a scheme of notification and identification which would enable assessment of likely cost, and advance identification of whether or not a particular couple would qualify.

The Committee notes that the saving of administrative costs may be disproportionate to the Bill's impact of permanently denying a reversionary pension to same-sex partners based on the happenstance of the timing of a pensioner's death and the Bill's commencement. It observes that administrative costs of notification may be defrayed by requiring newly eligible survivors of deceased pensioners to apply for a pension and that administrative costs of proof may be low in some cases (e.g. where the survivor has a certificate of relationship registration.)

The Committee will write to the Minister seeking further information as to the compatibility of the Bill's different treatment of same-sex and opposite-sex partners of deceased pensioners with the Charter's equality rights and drawing his attention to the Canadian Supreme Court's decision in Canada (Attorney General) v. Hislop [2007] 1 S.C.R. 429. Pending the Minister's response, the Committee draws attentions to clauses 4(2), 17(1), 26, 46(2), 73(2), 97(2), 98(2), 104(2), 106, 108, 109(2) and 110(2).

Minister's Response

I refer to your letter of 9 June 2010 in relation to the Scrutiny of Acts & Regulations Committee's (SARC) concerns regarding the Superannuation Legislation Amendment Act 2010.

There are several factors that justify the non-retrospective nature of the amendment. Primarily, the actual cost of paying reversionary pensions retrospectively has been actuarially assessed as posing a significant, albeit unknown, cost to Government.

An additional justification for the prospective nature of the policy is that it is administratively difficult to identify potential claimants due to the fact same-sex partnerships are not legally certified. Even if potential claimants could be identified, it would be difficult to retrospectively establish the bona fides of any such individual. As such, a justifiable limitation exists in relation to a member's right to privacy because, in the absence of an established notification and identification scheme, the Board may be deemed to have interfered with a person's privacy when establishing potential claimants.

By comparison, on a prospective basis it is possible to establish a means of identifying same-sex relationships in advance or at the time of a potential claim. This would also protect the member's right to privacy and reduce the need for the Board to arbitrarily interfere with the member's privacy after their death.

There has been recognition by the British courts that developments in social policy, as reflected by entitling same-sex partners to a reversionary pension on a progressive basis, is an evolving phenomenon. Consequently, the non-retrospective nature of the amendment is a reasonable limitation to the Charter's right to equality before the law on the basis of discrimination on the grounds of sexuality.

In your letter you raise the case of Canada (Attorney General) v Hislop. While this case addresses the retrospective payment of pensions, the Canadian Government did not justify why they chose a particular date as the date their pensions commence. As a result, the Court did not rule upon the validity of commencing pensions at a particular point in time. Victoria's public sector superannuation schemes differ from the Canadian system in that all pensions are solely prospective in nature.

There is no basis for the Government to form a view that the position taken by the Court in Canada (Attorney General) v Hislop is what the law would be in Victoria if the matter were to be tested.

The Government considered a range of legitimate and reasonable options in relation to the commencement of the amendment and the decision ultimately taken was informed by legal advice obtained from one of Australia's leading lawyers in the field of human rights.

TIM HOLDING MP
Minister for Finance, WorkCover and the
Transport Accident Commission

Received 27 July 2010

The Committee thanks the Minister for this response

Committee room
9 August 2010

Appendix 1
Index of Bills in 2010

Alert Digest Nos.

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

Accident Compensation Amendment Bill 2009 1

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

Transport Accident and Accident Compensation Legislation Amendment Bill 2010 11
Transport Integration Bill 2009 1

(iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions

Transport Integration Bill 2009 1

(vi) inappropriately delegates legislative power

Justice Legislation Amendment Bill 2010 4
Public Finance and Accountability Bill 2009 1
Transport Integration Bill 2009 1
Transport Legislation Amendment (Compliance Enforcement and Regulation) Bill 2010 4
Water Amendment (Victorian Environmental Water Holder) Bill 2010 8

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

Associations Incorporation Amendment Bill 2010 8
Building Amendment Bill 2010 6
Child Employment Bill 4
Civil Procedure Bill 2010 10
Control of Weapons Amendment Bill 2010 8
Courts Legislation Miscellaneous Amendments Bill 2010 6
Crimes Legislation Amendment Act 2010 4
Crimes Legislation Amendment Bill 2009 1
Drugs, Poisons and Controlled Substances Amendment (Prohibition of Display and Sale of Bongs) Bill 2010 7
Equal opportunity Bill 2010 4
Firearms and Other Acts Amendment Bill 2010 10
Juries Amendment (Reform) Bill 2010 10
Justice Legislation Amendment Bill 2010 4
Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Bill 2010 5

Section 17(b)

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

Appendix 3
Ministerial Correspondence 2009-10

Table of correspondence between the Committee and Ministers during 2009-10

Bill Title	**Minister/ Member**	**Date of Committee Letter / *Minister's Response***	**Alert Digest No. Issue raised / *Response Published***
Electricity Industry Amendment (Critical Infrastructure) Bill 2009	Energy and Resources	10.11.09 *03.03.10*	13 of 2009 *3 of 2010*
Justice Legislation Miscellaneous Amendments Bill 2009	Police and Emergency Services	10.11.09 *16.03.10*	13 of 2009 *4 of 2010*
Constitution (Appointments) Bill 2009	Premier	24.11.09 *12.01.10*	14 of 2009 *1 of 2010*
Serious Sex Offenders (Detention and Supervision) Bill 2009	Corrections	24.11.09 *16.12.09*	14 of 2009 *1 of 2010*
Summary Offences and Control of Weapons Acts Amendment Bill 2009	Police and Emergency Services	24.11.09 *07.01.10*	14 of 2009 *1 of 2010*
Consumer Affairs Legislation Amendment Bill 2009	Consumer Affairs	08.12.09 *15.02.10*	15 of 2009 *2 of 2010*
Accident Compensation Amendment Bill 2009	Finance, WorkCover and the Transport Accident Commission	02.02.10 *09.03.10*	1 of 2010 *4 of 2010*
Crimes Legislation Amendment Bill 2009	Attorney-General	02.02.10 *15.03.10*	1 of 2010 *4 of 2010*
Transport Integration Bill 2009	Transport	02.02.10 *22.02.10*	1 of 2010 *2 of 2010*
Equal Opportunity Bill 2010	Attorney-General	23.03.10 *13.04.10*	4 of 2010 *5 of 2010*
Public Finance and Accountability Bill 2009	Treasurer	02.02.10 *15.04.10*	1 of 2010 *6 of 2010*
Severe Substance Dependence Treatment Bill 2009	Mental Health	02.02.10 *21.04.10*	1 of 2010 *6 of 2010*
Therapeutic Goods (Victoria) Bill 2010	Health	13.04.10 *29.01.10*	5 of 2010 *6 of 2010*
Building Amendment Bill 2010	Planning	05.05.10 *24.05.10*	6 of 2010 *7 of 2010*
Child Employment Amendment Bill 2010	Attorney-General	23.03.10 *19.05.10*	4 of 2010 *7 of 2010*
Justice Legislation Amendment Bill 2010	Attorney-General	23.03.10 *05.05.10*	4 of 2010 *7 of 2010*
Education and Training Reform Further Amendment Bill 2010	Education	13.04.10 *07.05.10*	5 of 2010 *7 of 2010*
Members of Parliament (Standards) Bill 2010	Premier	13.04.10 *13.05.10*	5 of 2010 *7 of 2010*

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Courts Legislation Miscellaneous Amendments Bill 2010	Attorney-General	05.05.10 *08.06.10*	6 of 2010 *9 of 2010*
Pharmacy Regulation Bill 2010	Health	25.05.10 *08.06.10*	7 of 2010 *9 of 2010*
Water Amendment (Victorian Environmental Water Holder) Bill 2010	Water	08.06.10	8 of 2010
Control of Weapons Amendment Bill 2010	Police and Emergency Services	08.06.10 *27.07.10*	8 of 2010 *11 of 2010*
Personal Safety Intervention Orders Bill 2010	Attorney-General	22.06.10 *27.07.10*	9 of 2010 *11 of 2010*
Superannuation Legislation Amendment Bill 2010	Finance	08.06.10 *27.07.10*	8 of 2010 *11 of 2010*

Outstanding correspondence

Crimes Legislation Amendment Act 2010	Attorney-General	23.03.10	4 of 2010
Transport Legislation Amendment (Compliance, Enforcement and Regulation) Bill 2010	Transport, Roads and Ports	23.03.10	4 of 2010
Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Bill 2010	Attorney-General	13.04.10	5 of 2010
Drugs, Poisons and Controlled Substances Amendment (Prohibition of Display and Sale of Bongs) Bill 2010	Mr Peter Kavanagh MLC	25.05.10	7 of 2010
Associations Incorporation Amendment Bill 2010	Consumer Affairs	08.06.10	8 of 2010
Civil Procedure Bill 2010	Attorney-General	27.07.10	10 of 2010
Firearms and Other Acts Amendment Bill 2010	Police and Emergency Services	27.07.10	10 of 2010
Juries Amendment (Reform) Bill 2010	Attorney-General	27.07.10	10 of 2010
Primary Industries Legislation Amendment Bill 2010	Agriculture	27.07.10	10 of 2010
Personal Property Securities (Statute Law Revision and Implementation) Bill 2010	Attorney-General	10.08.10	11 of 2010
Plant Biosecurity Bill 2010	Agriculture	10.08.10	11 of 2010
Private Security Amendment Bill 2010	Police and Emergency Services	10.08.10	11 of 2010
Traditional Owner Settlement Bill 2010	Aboriginal Affairs	10.08.10	11 of 2010
Transport Accident and Accident Compensation Legislation Amendment Bill 2010	Finance, WorkCover and the Transport	10.08.10	11 of 2010