Alert Digest No. 14 of 2019
Tuesday, 12 November 2019

on the following Bills

   Building and Environment Protection Legislation Amendment Bill 2019
   Commercial Passenger Vehicle Industry Amendment Bill 2019
   Environment Protection Amendment (Refund on Bottles and Cans) Bill 2019
   Justice Legislation Amendment (Serious Offenders and Other Matters) Bill 2019
   Planning and Environment Amendment (Local Democracy) Bill 2019
   Retail Leases Amendment Bill 2019
   Transport Legislation Amendment Bill 2019
   Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Bill 2019

and Subordinate Legislation

   SR No. 61 – Marine Safety Amendment (Expiry Date) Interim Regulations 2019
The functions of the Scrutiny of Acts and Regulations Committee are –

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

(b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament –
   (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the Constitution Act 1975, or raises an issue as to the jurisdiction of the Supreme Court;
   (ii) if a Bill repeals, alters or varies section 85 of the Constitution Act 1975, whether this is in all the circumstances appropriate and desirable;
   (iii) if a Bill does not repeal, alter or vary section 85 of the Constitution Act 1975, but an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;
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Useful information

Role of the Committee

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

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

Interpretive use of Parliamentary Committee reports

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

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

When may human rights be limited

Section 7 of the Charter provides –

Human rights – what they are and when they may be limited –

(2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—

(a) the nature of the right; and
(b) the importance of the purpose of the limitation; and
(c) the nature and extent of the limitation; and
(d) the relationship between the limitation and its purpose; and
(e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

Glossary and Symbols

‘Assembly’ refers to the Legislative Assembly of the Victorian Parliament
‘Council’ refers to the Legislative Council of the Victorian Parliament
‘DPP’ refers to the Director of Public Prosecutions for the State of Victoria
‘human rights’ refers to the rights set out in Part 2 of the Charter
‘IBAC’ refers to the Independent Broad-based Anti-corruption Commission
‘PCA’ refers to the Parliamentary Committees Act 2003
‘penalty units’ refers to the penalty unit fixed from time to time in accordance with the Monetary Units Act 2004 and published in the government gazette (as at 1 July 2019 one penalty unit equals $165.22)
‘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
Building and Environment Protection Legislation Amendment Bill 2019

Summary

The Bill makes a number of amendments to the Architects Act 1991 and the Building Act 1993 to generally improve regulation of the architect, building and plumbing industries and to modernise and strengthen relevant governance arrangements. The Bill:-

- Amends the Architects Act 1991 to provide that an applicant for registration as an architect be a fit and proper person having regard to a number of probity matters. [3,4] Clause 2¹ is the commencement provision. It provides that provisions that have not come into operation before 1 December 2020 will come into operation on that day. [2] Architects who do not comply with any prescribed continuing professional development requirements may face disciplinary action. [5,8]

- Provides for further information gathering powers for the Architects Board. [6]

- Provide for the immediate suspension of the registration of an architect in certain circumstances.² An architect may apply to VCAT for review of a decision. [10] It increases the term of appointment for Architect Board members from two to three years. [12] It provides for a new power of delegation by the Architects Board to the Registrar and an officer appointed under section 57 of that Act. [14] The Governor in Council may make regulations in relation to continuing professional development requirements. [15]

- Amends the Building Act 1993 to insert a definition of swimming pool³ which includes spas. [19] Registration of a pool may be for a limited or indefinite period. [22] The Governor in Council may make regulations with respect to swimming pools, the swimming pool register and certificates of accreditation. [22,35]

- Makes further provision in relation to the accreditation of products. New accreditation certificates issued under the Building Act 1993 remain in force for three years. [20]⁴ The Victorian Building Authority must keep a register of all building products. [21]

¹ Note the Explanatory Memorandum:- ‘Clause 2(1) provides for Parts 1 and 4 of the Bill to come into operation on the day after the day on which the Act receives the Royal Assent. Clause 2(2) provides for the remaining provisions of the Bill to come into operation on a day or days to be proclaimed. Clause 2(3) provides that any provision that has not come into operation before 1 December 2020 will come into operation on that day.’

² See new section 36A which provides additional grounds for immediate suspension of the registration of an architect.

³ Section 216D of the Building Act 1993 requires councils to establish and maintain a register of swimming pools located in the municipal district of the council.

⁴ Note the Second Reading Speech:- ‘Expiry and renewal of accreditations provides opportunity for review and reassessment of compliance with standards and legislative requirements that may have changed over time, as well as changes in industry practices, technological developments and community expectations. Given inherent defects in building products, such as combustible cladding, the government considers
• Abolishes the Building Advisory Council. Its functions are transferred to the Building Regulations Advisory Committee. [25,41]

• Provides for the immediate suspension of the registration or licence of a plumber in certain circumstances if it considers it is in the public interest to do so pending an inquiry. VCAT may review the decision and any disciplinary action. [31,34]

• Provides for the transfer of outstanding inquiries regarding building practitioners from the Building Practitioners Board to the Victorian Building Authority. [37]

• Makes consequential and miscellaneous amendments to the Environment Protection Amendment Act 2018. It clarifies the operation of the Environment Protection Amendment Act 2018. It clarifies that an eligible person cannot apply to VCAT for review of the decision to issue a development licence. This is in the case of an application for a licence that specifies an activity (public works) to which the Environment Effects Act 1978 applies. The relevant licence must be substantially in accordance with the Minister’s assessment of the Environment Effects Statement prepared under that Act for those works. [45,46] Note the Second Reading Speech: ‘The Bill will amend the EP Amendment Act 2018 to: • integrate advertising an environment effects statement under the Environment Effects Statement Act 1978 with advertising of a development licence under the EP Amendment Act 2018 to ensure that the provisions exempting a decision on the development licence from review by the Victorian Civil and Administrative Tribunal are functionally the same as those for a works approval decision under the current Environment Protection Act 1970; • ensure that references to procedures and processes under the Environment Effects Act are correctly aligned with the provisions of and practices under that Act;’

Comments under the PCA

Privilege against self-incrimination – (s.17(a)(i), PCA)

Clause 6 inserts new Part 3A which contains broad information gathering powers for the Architects Board. New section 188⁵ provides that the Board may give a person a notice in writing requiring the person to provide information or documents in the custody or control of the person in relation to various matters. [6] New section 17D(1)⁶ provides protection from self-incrimination. It is a reasonable excuse for a natural person to refuse or fail to give information to the Board or appointed person if the giving of that information would tend to incriminate that person. However, section 17D(2) provides that is not a reasonable excuse to refuse or fail to produce a document that a person is required to produce if the production of the document would tend to incriminate the person.

Note the Statement of Compatibility: ‘This may constitute a limited abrogation of the privilege against self-incrimination because a document required to be produced may contain evidence that would tend to incriminate the person. The privilege against self-incrimination generally covers the compulsion of any information or documents which might incriminate a person. However, the application of the privilege to pre-existing documents is considerably weaker than that accorded to oral testimony or documents that are required to be brought into existence to comply with a request for information.

⁵ accreditation should be subject to review to validate continued accreditation and support consumer protection.’

⁶ See new section 17B inserted by clause 6.

New section 17D provides: ‘(1) It is a reasonable excuse for a natural person to refuse or fail to give information to the Board or an appointed person under section 17B, if the giving of the information would tend to incriminate the person. (2) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce to the Board or an appointed person under section 17B, if the production of the document would tend to incriminate the person.’
Some jurisdictions have regarded an order to hand over existing documents as not engaging the privilege against self-incrimination. In my view, even if it does, it is reasonable and justified.

The primary purpose of this limited abrogation is to enable the ARBV to require production of information or documents to support its regulatory activity... The documents that the ARBV can require to be produced are limited to those necessary for the purposes of determining contravention or compliance with the regulatory scheme, assisting enforcement of standards of professional conduct and practise for architects, or deciding whether an inquiry should be held into an architect’s fitness to practise or professional conduct. Importantly, the requirement to produce a document to the ARBV does not extend to explain or account for the information contained in that document. If such an explanation would tend to incriminate, the privilege would still be available.’

The Committee is of the view the provision is justified.

**Charter Issues**

The Bill is compatible with the rights set out in the *Charter of Human Rights and Responsibilities Act 2006.*


**Commercial Passenger Vehicle Industry Amendment Bill 2019**

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<th>Hon Rodney Barton MP</th>
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**Summary**

The Bill amends the *Commercial Passenger Vehicle Industry Act* 2017. The Bill:

- Provides for the reinstatement of the offence of touting. The penalty is 50 penalty units;
- Inserts a new offence of advertising for the provision of a commercial passenger service by using electronic means whilst not a registration holder. The penalty is 50 penalty units.

**Comments under the PCA**

**Strict liability offences – (s.17(a)(i), PCA)**

Clause 3 inserts new sections 267A and 267B which create the offences of touting for a commercial passenger vehicle service and advertising the provision of a commercial passenger service whilst not a registration holder. [3] The Committee notes that an offence is one of strict liability if there is no requirement to prove *mens rea* on the part of the accused but where the defence of ‘honest and reasonable mistake of fact’ is available.

Note the Statement of compatibility: ‘Theses offences engage the presumption of innocence as they are all strict liability offences, with no requirement to prove the state of mind of the accused. The defence of reasonable mistake is, however, still available. The requirement to prove the intention of a person to do a particular act is an important safeguard for the rights of an accused person. Strict liability offences may be appropriate where the offences are of a regulatory nature (rather than serious criminal offences), don’t attract a penalty that includes imprisonment; and don’t require a person to rely on information from, or actions by, third parties to ensure compliance. This is the case in relation to each of the offences above.’

**The Committee is of the view the provisions are justified.**

**Charter Issues**

The Bill is compatible with the rights set out in the *Charter of Human Rights and Responsibilities Act 2006.*

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7 New section 267A provides: ‘(1) A person must not – (a) tout for the provision of a commercial passenger service; or (b) make an offer to provide a commercial passenger service; or (c) solicit custom for the provision of a commercial passenger service; or (d) induce a person to agree to the provision of a commercial passenger service – by personally approaching a person on their own behalf or on behalf of another person or by displaying advertising material on or about their person. Penalty: 50 penalty units.’

8 *Mens rea* is a Latin term which means ‘guilty mind’. Different standards of mens rea apply depending on the offence, i.e., that the accused: actually intended to do the act for which they have been charged; or had knowledge as to the possible harmful consequences of that act; or was negligent regarding the likelihood of the harm that would be caused by the act.
Planning and Environment Amendment (Local Democracy) Bill 2019

Member               Hon Clifford Hayes MP
Private Member’s Bill

Introduction Date    17 October 2019
Second Reading Date   30 October 2019

Summary

The Bill amends the Planning and Environment Act 1987. The Bill:-

- Provides for increased local council control of maximum building heights in their municipal districts and increased council control of local planning policy.

- Provides the Minister must not prepare an amendment to maximum building heights for a planning scheme in force in a municipal district without the consent of the relevant council. [4] A municipal council does not need Ministerial authorisation to prepare a maximum building height planning scheme amendment for a planning scheme in force in its municipal district. [6] It inserts new section 35A with special rules for maximum building height limit amendments. [12,13] It inserts new section 31A in relation to the submission process for maximum building height limit planning scheme amendments to the Minister. The Minister may suggest changes to the amendment. The council may adopt or refuse to adopt one or more suggestions of the Minister. [11]

- Requires VCAT to give effect to any strategic plan, policy, statement, code or guideline which has been adopted by a municipal council. [16] It prevents a Minister from granting a permit which is inconsistent with a maximum building height for a planning scheme that covers the building to which the permit relates. [17]

Comments under the PCA

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

Charter Issues

The Bill is compatible with the rights set out in the Charter of Human Rights and Responsibilities Act 2006.
Summary

The Bill amends the Building Act 1993 and the Retail Leases Act 2003 in respect to obligations of landlords and tenants under retail premises. The Bill:

- Amends the Building Act 1993 to clarify the obligations of landlords and tenants under retail premises leases in respect of essential safety measures. It amends section 251 of that Act to clarify and provide that an occupier cannot recover from a building owner expenses relating to the installation, repair or maintenance of essential safety measures that the occupier has agreed to bear under a retail premises lease to which the Retail Leases Act 2003 applies. [3]

- Amends the Retail Leases Act 2003 to clarify obligations of landlords and tenants under retail premises leases in respect of essential safety measures; [7] Note the Explanatory memorandum:-

  ‘New section 52(6) provides for the landlord and tenant to agree for the tenant to carry out (or cause to be carried out) repairs or maintenance work in respect of an essential safety measure on behalf of the landlord. However, such an agreement is not intended to displace the landlord’s obligations as a building owner under the Building Act and regulations under the Building Act in respect of essential safety measures. New section 52(7) makes clear that the landlord remains responsible to comply with their obligations under the Building Act and regulations under the Building Act.’

- Requires landlords to give information to tenants under retail premises leases in a more timely manner. A disclosure statement and copy of the lease must be given to the tenant at least 14 days prior to entering the lease. A landlord must also notify the tenant of changes to the previous copy of the lease provided when providing a copy of the proposed lease. [9]

- Clarifies the timeframe within which landlords must return security deposits to tenants under retail premises leases. Security deposits must be returned within 30 days after the end of the lease. [10]

- Creates a new early rent review process for tenants under retail premises leases at least 3 months before the option to renew the lease may be exercised. [12,13]

- Establishes a cooling off period for the renewal of retail premises leases in particular circumstances. [13]

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9 See the Second Reading Speech:- ‘Essential Safety Measures Reforms This Bill seeks to provide clarity on this issue, guided by the principle that the obligation for building safety remains that of the building owner, however landlords and tenants should be able to negotiate to pass on the costs as part of the overall lease negotiation.’

10 See new section 28B(1) provides:- ‘If a tenant has exercised an option to renew a retail premises lease and has not requested an early rent review under section 28A, the tenant may give the landlord a written notice, in the cooling off period, that the tenant no longer wishes to exercise that option to renew the lease.’ Note subsection (3) which provides that the ‘cooling off period, in relation to a retail premises lease, means the period ending 14 days after the day on which the tenant exercises an option to renew the lease.’
Comments under the PCA

Retrospectivity – (s.17(a)(i), PCA)

The Bill inserts a new Part 15 into the Retail Leases Act 2003 which contains transitional provisions which clarify the obligations of landlords and tenants. [3,7,8] New section 122(1) sets out the retail premises that are covered by the transitional provisions. Note the Explanatory Memorandum11: ‘New section 122(2) provides that in respect of outgoings incurred after the amendments have commenced retail premises leases covered by the transitional provision have the same force and effect as they would have had if the amendments had been in operation at the time the leases were entered into. This provision is intended to give effect to the intention of the parties at the time the lease was entered into and clarify the future operation of provisions in existing retail premises leases relating to essential safety measures.’

Note the Second Reading Speech: ‘The Bill includes amendments to the Retail Leases Act 2003 and the Building Act 1993 to increase certainty in retail leasing arrangements about who pays for costs relating to the installation, repair and maintenance of essential safety measures... Longstanding industry practice in Victoria, consistent with other jurisdictions, has been for landlords to recover expenses associated with meeting Essential Safety Measures by charging tenants as outgoings. Leases commonly provide for this arrangement. This practice was thrown into doubt by a VCAT Advisory Opinion in 2015 to the contrary... The VCAT Advisory Opinion issued in May 2015 found that in relation to Essential Safety Measures the Building Act 1993 prevailed. It provided that the landlord must bear the cost of compliance with Essential Safety Measures obligations and cannot pass these costs on to the tenant as outgoings under the Retail Leases Act 2003.

While not binding, the Advisory Opinion could be persuasive in relation to future court decisions. Consequently, landlords and tenants have raised concerns about liability for Essential Safety Measures costs, and uncertain[ty] about how Essential Safety Measures costs can be recovered. This has particularly impacted leases that were negotiated in good faith by both parties before the Advisory Opinion was issued. This Bill seeks to provide clarity on this issue, guided by the principle that the obligation for building safety remains that of the building owner, however landlords and tenants should be able to negotiate to pass on the costs as part of the overall lease negotiations. The Bill also seeks to validate those leases that were negotiated and entered into in good faith by both parties before the Advisory Opinion was issued.’

The Committee is of the view the provisions are justified.

Charter Issues

The Bill is compatible with the rights set out in the Charter of Human Rights and Responsibilities Act 2006.

11 See also the Explanatory memorandum: ‘The provision seeks to address uncertainty in the retail leases sector as a result of an advisory opinion provided by the Victorian Civil and Administrative Tribunal (VCAT) suggesting that provisions in retail premises leases that provide for tenants to pay costs associated with essential safety measures are void as they as inconsistent with the Building Act.’
Transport Legislation Amendment Bill 2019

Member: Hon Jaala Pulford MP
Portfolio: Roads
Introduction Date: 29 October 2019
Second Reading Date: 30 October 2019

Summary

The Bill generally amends the Transport Integration Act 2010 and makes consequential amendments to other Acts to modernise the objects, powers and functions of transport bodies in Victoria. The Bill:-

- Abolishes the Roads Corporation (VicRoads), the Public Transport Development Authority, the Linking Melbourne Authority and the Transport Infrastructure Development Agent; [56,57,58,60-64]
- Provides for the reallocation of functions and powers between the Secretary to the Department of Transport and the reconstituted Office of the Head, Transport for Victoria. Part 2 establishes the Head, Transport for Victoria (Head, TfV) as a body corporate which represents the Crown. [3-5,15] It sets out the functions and powers of the Secretary. [6-8,15,16] The Secretary may give written directions to a sector transport agency. [10] It establishes a Public Transport Fund and a Roads Fund. [11] Performance reports must be tabled annually in the Parliament. [22]
- Makes consequential amendments to a number of transport related Acts as a consequence of the reallocation of functions and powers referred to above. It inserts new Part 4B into the Transport Integration Act 2010 in relation to transport restructuring orders and transfer orders. [33] It contains various savings and transitional provisions. [62,64] It amends various delegation provisions including the delegation power of the Secretary by removing superfluous references. [83,91,93,95,69]
- Makes amendments to the Road Safety Act 1986 to implement a range of measures relating to zero blood alcohol and the deployment of vehicle immobilisation devices to promote road safety; [112] The use of a vehicle immobilising device can be used by police officers in stopping a vehicle from entering a place on or near a road or road related area at which there is a public gathering or a non-road activity. [114] Fees for applications under the Accident Towing Services Act 2007 will be prescribed in regulations. [127-138] It also contains further transitional provisions. [139]
- Provides a process for the cancellation of the registration of vehicles with offensive advertisements on them. The determination of the Board in relation to whether an advertisement on a motor vehicle or trailer is in breach of the advertising code is final. [119]

Note the Second Reading Speech:- ‘This Bill gives legislative effect to the consolidation of the Department of Transport (DoT), the Public Transport Development Authority (PTV) and the Roads Corporation (VicRoads) under a new operating model whereby all functions are transferred from PTV and VicRoads to DoT... the Secretary will take over strategic policy and legislative functions in relation to the transport system from the Head, Transport for Victoria (TfV). The Secretary will also assume strategic planning functions for all forms of transport and responsibility for improving the safety of the road system. The Head, TfV will be responsible for consolidated operational responsibilities across the road and public transport networks, including being the road authority for arterial roads. The Head, TfV also takes on responsibility for managing the provision of information about public transport services, fares and timetables. The Bill will constitute the Head, TfV as a body corporate. This will facilitate the performance of the operational range of functions the Head, TfV is taking on.’

The amended delegation power of the Secretary in section 39 reads as follows:- ‘(1) The Secretary by instrument may delegate to any person any power, duty or function of the Secretary conferred or imposed by or under any Act including, subject to subsection (3), this power of delegation.’

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13
• Amends the Heavy Vehicle National Law Application Act 2013, the Road Safety Act 2004 and the Road Safety Act 1986 to enable staff of the National Heavy Vehicle Regulator transferred to it from VicRoads to continue to act as authorised officers under those Acts. [187] It inserts Part 5 which makes various consequential amendments required due to the abolition of the Roads Corporation and reallocation of functions and powers between transport entities. [141-155]

• Part 7 provides for miscellaneous and consequential amendments required to the Road Management Act 2004, the Transport (Compliance and Miscellaneous) Act 1983, the Emergency Management Act 2013 and other Acts. [173-181] It inserts new Part 8 into the Road Management Act 2004 to provide for other transitional provisions. [182,183] Note the Second Reading Speech: ‘The Bill makes a number of amendments including: • the Road Management Act 2004, to make it optional for the Minister to increase the property damage threshold in a financial year, rather than being automatically indexed each year. This can prevent automatic threshold increases so road users are not prohibited from claiming damages.’ [181]14

• Part 8 provides for consequential amendments to the Road Management Act 2004, Road Safety Act 1986 and the Heavy Vehicle National Law Application Act 2013 required due to the transfer of Transport Safety Officers employed by VicRoads to be employees of the National Heavy Vehicle Regulator. The amendments are required to enable staff from the National Heavy Vehicle Regulator to be appointed as authorised officers under those Victorian Acts for enforcement purposes. [187]

• Part 9 contains Schedules 1 to 4 which make consequential amendments arising from the change in terminology to a number of Acts. [196]

Comments under the PCA

Delegation of legislative power – delayed commencement – (s.17(a)(vi), PCA)

Clause 2 is the commencement provision. Subclause (1) provides that Part 1 and Division 3 of Part 2, Division 1 of Part 3, sections 117 to 119, sections 144, 148, 150 to 153 and 155 and Part 8 come into operation on the day after the day on which the Act receives Royal Assent. Subclause (2) provides that subject to subclause (3), the remaining provisions of the Bill come into operation on a day or days to be proclaimed. Subclause (3) provides that if a provision of the Bill does not come into operation before 30 June 2021, that provision will come into operation on that day. Note the Explanatory memorandum: ‘This provision enables commencement more than 12 months after the introduction of the Bill to ensure that any transitional requirements relating to the abolition of PTV and VicRoads have been addressed.’

The Committee is of the view the provision is justified.

Non-reviewable decisions – (s.17(a)(iii), PCA)

Clause 119 inserts new Division 2A into Part 2 of the Road Safety Act 1986 which relates to the cancellation of registration of motor vehicles and trailers for offensive advertisements. [119] Clause

14 Note the Explanatory memorandum: ‘Clause 181 amends section 111 of the Road Management Act 2004, which requires the indexation of the threshold liability amount (applicable to a road authority for property damages under section 110 of the Road Management Act 2004) to be applied in accordance with the consumer price index and applied to the threshold amount for the preceding financial year. Clause 181(2) inserts a new subsection (4A) after section 111(4) of the Road Management Act 2004 to provide that if the formula in section 111(1) is not applied for a financial year, any increase in the amount, resulting from the application of the formula for a subsequent financial year, applies only to the amount currently in use for the purposes of section 110. This amendment clarifies that there is no requirement for the indexation calculation to account for the increase in the consumer price index in the year or years when the property damage liability threshold may have remained unchanged.’
118\\textsuperscript{15} amends section 12(1) of the Road Safety Act 1986 to provide there is no right of appeal to the Magistrates’ Court in relation to the Secretary’s decisions under new section 16AH and new section 16AE. Note the Second Reading Speech:- ‘This Bill will introduce measures to address offensive advertising on vehicles. Vehicles that display offensive, sexist or obscene slogans such as the Wicked campervans have no place on Victorian Roads. The government has been working closely with other States and Territories to develop a national approach to this issue.’

The Committee notes the above and refers to the Charter report.

**Charter Issues**

*Operation of the Charter – Transport restructuring order has force and effect despite any other Act*

**Summary:** The effect of clause 34 may be that the Governor in Council may give force and effect to changes to a transport sector agency’s constitution, membership, functions or powers that are incompatible with human rights. The Committee will write to the Minister seeking further information.

**Relevant provisions**

The Committee notes that clause 34, inserting a new section 65AA into the Transport Integration Act 2010, provides:

A Transport Restructuring Order has force and effect despite anything to the contrary in any other Act.

A ‘Transport Restructuring Order’ is an order in council made by the Governor in Council that provides for ‘any of the matters or things that can be included in a Transport Restructuring Order’, including altering or providing for ‘the constitution and membership of a’ sector transport agency and conferring powers or functions on such an agency.\\textsuperscript{16}

The Explanatory Memorandum explains:

The purpose of this new provision is to clarify that if a Transport Restructuring Order transfers a function under transport legislation from one sector transport agency to another, the transfer is effective and the transferee agency becomes responsible for the function, despite the relevant transport legislation still referring to the transferor agency.

However, the Committee notes that the express terms of new section 65AA may apply to all aspects of Transport Restructuring Orders (rather than just the transferral of functions) and may override all other contrary Acts (rather than just relevant transport legislation), including the Charter’s requirement that public authorities act compatibly with human rights.\\textsuperscript{17}

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\\textsuperscript{15} Note the Explanatory Memorandum:- ‘Clause 118 amends section 12(1) to provide that there is no right to appeal to the Magistrates’ Court against a decision under new section 16AH... New section 16AH provides that the Secretary must refuse to accept an application for registration of a motor vehicle or trailer if it is not accompanied by the statutory declaration under that provision. Clause 1118 also amends section 12(1) to provide that there is not right to appeal to the Magistrates’ Court against a decision under new section 16AE... New section 16AE provides that the Secretary may cancel the registration of a motor vehicle that is subject to a registration cancellation notice.’

\\textsuperscript{16} *Transport Integration Act* 2010, s. 65A.

\\textsuperscript{17} Charter s. 38(1).
The Committee observes that the effect of clause 34 may be that the Governor in Council may give force and effect to changes to a transport sector agency’s constitution, membership, functions or powers that are incompatible with human rights.

Charter analysis

The Statement of Compatibility remarks:

The Bill provides for the consolidation of Public Transport Victoria and VicRoads into the Department of Transport, the abolition of the Linking Melbourne Authority, and the reallocation of functions and powers between the Secretary to the Department of Transport and the reconstituted office of the Head, Transport for Victoria. This integration and reallocation is effected through a combination of legislative and administrative instruments, including the use of transport restructuring orders and transfer orders under the Transport Integration Act 2010, the delegation of various functions and powers, and the use of orders for the transfer of employees.

...This Bill transfers or reallocates the relevant powers between persons and bodies; it does not expand their scope or alter the purposes for which the powers can be exercised. Accordingly, these amendments do not create any new, or expand any existing, interferences with human rights. In my view, these provisions therefore remain compatible with the Charter and do not require detailed consideration in this Statement.

However, the Statement does not discuss clause 34.

Conclusion

The Committee will write to the Minister seeking further information as to the compatibility of clause 34 with Charter rights.

Freedom of expression – Secretary may deregister a vehicle if an Ad Standards board finds that an advertisement on the vehicle breaches an AANA code of ethics

Summary: The effect of clause 119 is that, if Ad Standards makes a finding that an advertisement on a vehicle breaches the AANA code of ethics, then the Secretary may bar the vehicle’s use. The Committee will write to the Minister seeking further information.

Relevant provisions

The Committee notes that clause 119, inserting a new sub-section 16AB(1) into the Road Safety Act 1986, provides:

Ad Standards may send a notice to the Secretary if—

(a) a board determines that an advertisement on a motor vehicle or trailer is in breach of the advertising code; and

(b) the determination of the board is final and any internal review of the determination has concluded; and

(c) no action has been taken to modify or remove the advertisement on the motor vehicle or trailer.
Scrubtny of Acts and Regulations Committee

The ‘Secretary’ means the Secretary to the Department of Economic Development, Jobs, Transport and Resources. ‘Ad Standards’ means ‘Ad Standards Limited ACN 084 452 666’. Ad Standards’s website states: \(^{18}\)

Ad Standards is not a government body. It is the secretariat for the Ad Standards Community Panel and the Ad Standards Industry Jury. Ad Standards is governed by a Board of Directors and is funded by a levy.

‘board’ means ‘a board appointed by Ad Standards that has the function of considering complaints about advertising made by members of the public to determine whether the advertising breaches the advertising code’. Ad Standards’s website states: \(^{19}\)

The Community Panel includes people from a broad range of age groups and backgrounds and is gender balanced — representative of the diversity of Australian society... It meets twice a month to consider complaints and reaches its decision by way of simple majority.

‘advertising code’ means ‘the Code of Ethics published by the Australian Association of National Advertisers ACN 003 179 673, as in force from time to time’. The AANA’s website states: \(^{20}\)

The AANA is focused on safeguarding the rights of advertisers to commercial free speech and protecting their interests. AANA implements a comprehensive self-regulatory affairs program to ensure that the self-regulation of marketing communications continues to be regarded by Government and stakeholders as the preferred model in Australia... The AANA Code of Ethics is the core self-regulatory code which provides the overarching set of principles with which all advertising and marketing communications, across all media, should comply... The AANA, together with Ad Standards, represent two halves of Australia’s gold standard system of self-regulation. Both are funded by industry.

‘advertisement’ is not defined.

New sub-section 16AC(1) provides that, if the Secretary receives a notice under new sub-section 16AB(1) that is in writing, includes ‘the details of the board’s determination’ and states that the determination is ‘final’, then the Secretary may notify the registered operator of the vehicle about the notice and that the Secretary may cancel the vehicle’s registration after at least 14 days unless Ad Standards withdraws its notice. The vehicle’s registration cannot be transferred during that period.

New sub-section 16AE(1) provides that the Secretary may cancel the registration after that date unless Ad Standards withdraws its notice. If the Secretary does so, the vehicle is unregistered for the purposes of Part 2 of the Road Safety Act 1986 (preventing it from being used on a road, apart from being left to stand on a road), the registered operator is not entitled to a refund of any registration fee and the vehicle cannot be reregistered unless the applicant provides a statutory declaration stating that the advertisement has been removed.

The Committee observes that the effect of clause 119 is that, if Ad Standards makes a finding that an ‘advertisement’ on a vehicle is in breach of the AANA code of ethics and hasn’t been removed, then the Secretary may, with notice, bar the vehicle’s use on a road until the advertisement is removed and without any refund of the registration fee.


\(^{19}\) <https://adstandards.com.au/frequently-asked-questions>, ‘Who is on the Ad Standards Community Panel?’ and ‘How are decisions of the Community Panel made?’


12
Charter analysis

The Statement of Compatibility remarks:

Requiring a person to remove an advertisement on a vehicle or trailer will engage the right to freedom of expression in section 15 of the Charter, which provides that every person has the right to hold an opinion without interference, and to seek, receive and impart information and ideas of all kinds. In my view, any restriction on the freedom of expression occasioned by Division 2A of Part 2 will be a lawful restriction reasonably necessary to respect the rights and reputation of other persons, or for the protection of public order or public morality. Accordingly, the provisions will either fall within section 15(3) of the Charter as a special duty or responsibility that is attached to the right, or will be reasonable and justified under section 7(2) of the Charter. Advertisements to which this provision applies will be those determined to fall below prevailing community standards as enshrined in the advertising code, which prohibits advertising that employs sexual appeal in an exploitative or degrading manner, uses strong or obscene language, or discriminates against or vilifies a section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief. Further, in balancing a person’s right to freedom of expression against other rights and public morality, commercial expression is generally treated as of less significance than political or artistic expression.

However, the Committee notes that clause 119 may not be expressly limited to commercial expression and may include political advertisements.

The Committee observes that restrictions on Charter rights must be ‘lawful’ or ‘under law’.21 The Committee notes that the AANA code of ethics and the Ad Standards community standards panel are industry-funded non-government standards and bodies, whose contents and membership are changeable at the discretion of those bodies. Neither body’s decisions are subject to either judicial review or the Charter’s obligations for public authorities.22

Conclusion

The Committee will write to the Minister seeking further information as to whether clause 119, to the extent that it applies to non-commercial expression and imposes restrictions via non-government standards and bodies, is compatible with the Charter’s right to freedom of expression.

21 Charter s. 15(3) provides that the right to freedom of expression ‘the right may be subject to lawful restrictions’. Charter s. 7(2) provides: ‘A human right may be subject under law only to such reasonable limits’.

22 In particular, neither body is required to make decisions ‘in a judicial manner’ (see Administrative Law Act 1978) or is ‘established by a statutory provision’ or exercises functions ‘on behalf of the State or a public authority’ (see Charter s. 4(1)(b) & (c.).)
Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Bill 2019

Summary

The Bill amends the *Occupational Health and Safety Act* 2004 and the *Workplace Injury Rehabilitation and Compensation Act* 2013. In particular the Bill:-

- Provides for offences of workplace manslaughter. It inserts new Part 5A into the *Occupational Health and Safety Act* 2004 which defines negligent conduct, applicable duty, the standard of care required and when a person is owed an applicable duty of care. The applicable penalties are 20 years imprisonment for a person and 100,000 penalty units for a body corporate. [3] Note the Second Reading Speech: ‘The Bill will provide that organisations may be held criminally liable where their conduct amounts to criminal negligence, either directly, where an organisation’s unwritten rules, policies, work practices or conduct fail to create a culture of compliance with its responsibilities and duties, or through the actions of or omissions of their employees, agents or contractors acting within the actual or apparent scope of their employment... The Bill will also hold individual officers to account. An ‘officer’ includes those individuals at the highest level of the organisation, for example, directors of bodies corporate or partners of partnerships... The offences will not apply to employees who are not ‘officers’... the offences will not apply to volunteers’.

- New section 39C(2) provides that an omission to perform an act on or after the commencement is conduct for the purposes of new Part 5A regardless of whether an occasion for performing that act arose before the commencement. [3] Note the Explanatory memorandum: ‘This subsection provides that a person cannot avoid liability by arguing that negligent action occurred before commencement where an opportunity to correct the negligent conduct also arose after commencement. For example, if an organisation implements an unsafe policy before commencement that would be taken to be negligent conduct, and which causes death after commencement, the organisation’s omission to amend the unsafe policy after commencement would be relevant conduct for the purposes of prosecution.’

- Provides for the establishment of the Workplace Incidents Consultative Committee. [4]

- Removes the requirement for the Chief Executive Officer of the Victorian WorkCover Authority to sit as a Director on the Board of the Victorian WorkCover Authority in line with current best practice governance arrangements. [11]

Comment under the PCA

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

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23 Note the Second Reading Speech: ‘The Bill introduces, workplace manslaughter laws that will apply to an employer, self-employed person or officer who, by their negligent conduct, causes the death of anyone who is owed an existing duty under the OHS Act.’

24 Note the Second Reading Speech: ‘the maximum penalties for these offences will be around $16.5 million for bodies corporate and 20 years’ imprisonment for individuals.’
Charter Issues

The Bill is compatible with the rights set out in the *Charter of Human Rights and Responsibilities Act* 2006.
Ministerial Correspondence

The Committee received responses on the Bills listed below.

Responses are reproduced here – please refer to Appendix 3 for additional information.

*Environment Protection Amendment (Refund on Bottles and Cans) Bill 2019*

*Justice Legislation Amendment (Serious Offenders and Other Matters) Bill 2019*
Mr Mark Gepp MLC  
Chairperson  
Scrutiny of Acts and Regulations Committee  
Parliament House  
Spring St  
East Melbourne VIC 3002  

7 November 2019  

Dear Mr Gepp,

Thank you for your letter of 29 October 2019 regarding the Scrutiny of Act and Regulations Committee’s consideration of the Environment Protection Amendment (Refund on Bottles and Cans) Bill 2019.

The bill would establish a container deposit scheme, whereby consumers are able to receive a refund for returning eligible bottles and cans. In order for this scheme to operate, beverage suppliers enter into a supply arrangement with the scheme coordinator, which includes paying a contribution towards the running cost of the scheme.

New section 132Q of the bill makes it an offence to supply a beverage without such an arrangement in place. This provision is necessary to the functioning of the scheme, as it shares the cost of the scheme across all beverage suppliers. New sub-section 132Q(2) clarifies that the supply arrangement is only required for the first supply in the state, ensuring that retailers selling beverages which have already been supplied by another company are not required to contribute to running costs again. New sub-section 132Q(3) puts the onus on establishing that a supply was not the first supply on the defendant. This provision has been included as the bill is modelled on the New South Wales’ Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Bill 2016. As SARC noted, New South Wales’ Legislation Review Committee determined that this placing of the onus on the defendant did not trespass unduly on rights and liberties.

Establishing that a supply is not a first supply is unlikely to be difficult, given the extensive records kept throughout the beverage supply chain, including invoices and delivery paperwork. Sub-section 7(2) of the Charter of Human Rights and Responsibilities allows for reasonable limits to human rights based on human dignity, equality and freedom. Given the likely ease of establishing that a supply is not a first supply, I believe there would not be a significant impact on human dignity, equality or freedom. As a result, I believe that the Environment Protection Amendment (Refund on Bottles and Cans) Bill 2019 is compatible with the rights in the Charter.

Please do not hesitate to contact me if I can be of further assistance in this matter.

Yours sincerely,

Samantha Ratnam MLC
Mr Mark Gepp MLC
Chair
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Mr Gepp,

Justice Legislation Amendment (Serious Offenders and Other Matters) Bill 2019

In Alert Digest No. 13 of 2019 dated 29 October 2019 the Scrutiny of Acts and Regulations Committee (the Committee) seeks further information in respect to the Justice Legislation Amendment (Serious Offenders and Other Matters) Bill 2019 (the Bill). In particular, the Committee seeks information about clause 14 of the Bill’s intersection with the right in the Charter of Human Rights and Responsibilities Act 2006 (the Charter) that protects against arbitrary interferences with privacy.

The main purpose of the Bill is to amend the Serious Offenders Act 2018, Corrections Act 1986 and the Children, Youth and Families Act 2005 to strengthen the operation of prisons, parole and the post-sentence supervision scheme to further enhance community safety.

Privacy – information sharing by relevant people obtained when exercising a statutory function to any person to reduce risks or lessen threats to safety

New section 284(1A) of the Serious Offenders Act inserted by clause 14(2) permits information sharing only if the use or disclosure is authorised by the person to whom the information relates, or if the relevant person reasonably believes that the use or disclosure is necessary to reduce the risk of an offender committing certain serious offences or engaging in any behaviour that threatens a person’s safety, or to lessen or prevent a threat to the life, health, safety or welfare of any person.

The Committee noted that the new section 284(1A)(b) of the Serious Offenders Act inserted by clause 14(2) of the Bill permits a relevant person (such as an employee of the Department of Justice and Community Safety) to use or disclose information obtained when exercising any statutory function to anyone where the disclosure is necessary to lessen or prevent a threat to life, health, safety or welfare of any person.
The Committee further noted that the new provision was not limited to use or disclosure of information related to serious offenders, and permitted sharing of information in circumstances inconsistent with the Information Privacy Principles on disclosure of personal information contained in the Privacy and Data Protection Act 2014 (Vic.).

The Serious Offenders Act currently allows a relevant person to share information in carrying out a function under the Act or any other Act to another relevant person if they reasonably believe that the disclosure is necessary to lessen or prevent a threat to a person’s life, health, safety or welfare. Currently, section 284 of the Serious Offenders Act sets out the circumstances in which a relevant person can disclose information that was obtained in carrying out a function under the Serious Offenders Act or any other Act to another relevant person. Unlawful disclosure is an offence and clause 14(3) extends that offence to include disclosure contrary to new section 284(1A) inserted by clause 14(2) of the Bill.

The circumstances in section 284 include where the person disclosing the information reasonably believes that the disclosure is necessary in order to lessen or prevent a threat to the life, health, safety or welfare of any person. The reduction in the threshold from serious and imminent threat to a threat was made by the Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016 to make clear information can be shared where there is a risk of violence or a threat to the safety or welfare of any person. The legal threshold of a serious and imminent threat was too high, as risks of violence may fluctuate over time — for example, in cases of family violence, stalking, harassment or other dangerous behaviour.

The Bill inserts new section 284(1A) which extends the existing provision to allow the relevant person to disclose information to any person, instead of another relevant person. In this way, the Bill acknowledges that it may not be possible to ensure that every person or agency that may be able to use the information disclosed to lessen or prevent a threat to a person’s life, health, safety or welfare is included in the list of relevant persons under the Act prior to any information being shared. Clause 14(2) ensures that the legislation allows the information to be shared with any person so that a threat to a person’s life, health, safety or welfare can be lessened or prevented.

Clause 14(2) of the Bill does not explicitly limit the information disclosed to only be in relation to serious offenders but also for other related lawful purposes. In this respect, clause 14(2) of the Bill is the same as section 284(1)(d) of the Serious Offenders Act, which allows a relevant person to disclose information obtained in carrying out a function in any other Act to another relevant person. The difference is that clause 14(2) of the Bill is, in effect, only removing the restriction that disclosure must be to only another relevant person. In this way, the new provision broadly aligns with the information sharing provisions of the Corrections Act, specifically section 104ZY(2)(a). Community safety is the paramount consideration.
Section 285 of the Serious Offenders Act requires certain relevant persons with primary functions under the Serious Offenders Act to develop guidelines to ensure that access to information under section 284 is restricted to the greatest extent that is possible without interfering with the purpose of that Act or a relevant Act. The guidelines can specify what, how and when information may be disclosed under section 284, including limiting the use or disclosure of information about serious offenders in line with the operational requirements of the key agencies. The mandatory guidelines under section 285 will apply to the provisions inserted by clause 14(2) of the Bill.

Section 285 of the Serious Offenders Act requires the Chairperson of the Adult Parole Board, Chairperson of the Post Sentence Authority, the Secretary of the Department of Justice and Community Safety, the Secretary of the Department of Health and Human Services, the Chief Commissioner of Police and the Director of Public Prosecutions to develop guidelines for information sharing. These guidelines attempt to ensure that access to the information is restricted to the greatest extent that is possible consistent with the Serious Offenders Act and other relevant Acts.

Other relevant persons including personnel from agencies such as Commonwealth departments and the Australian Federal Police are subject to Commonwealth laws in relation to privacy and confidentiality, including information disclosed in accordance with Victorian law such as the Serious Offenders Act and Corrections Act.

Therefore the amendment made by clause 14(2) of the Bill regarding information sharing is not an arbitrary interference with privacy.

Submission from the Office of the Victorian Information Commissioner (OVIC)

I have also considered the issues raised by OVIC in their submission to SARC in relation to the Bill. OVIC raised concerns in the context of publication of public transport datasets and possible re-identification from third party sources in the public domain. In particular, OVIC raised concerns relating to the efficacy of de-identification as a privacy protection and noted that unit-record level findings may still carry a risk of re-identification.

While criminal record information is a type of sensitive information under Schedule 1 of the Privacy and Data Protection Act, the use of the information is related to the primary community protection purpose of the Serious Offenders Act regarding serious offenders whom a court has found poses an unacceptable risk of further offending.

OVIC’s concerns have been noted, and are currently managed by existing departmental processes to assess and approve research projects before any information is disclosed. These existing processes consider the types of data sought, including whether they are unit-level record or aggregated, and the proposed research methods and processes to ensure that information is handled, stored and disposed of safely. It is highly unlikely that unit-level record data would be approved for publication, and where there is a reasonable chance that an offender or victim could be identified through publication of research, the project would not be approved.
Clauses 15 and 42 of the Bill allow research to be published about criminal offending while still ensuring there are appropriate privacy protections to prevent re-identification. The Bill provides the Secretary with a power to authorise, by instrument in writing, the use or disclosure and publication of de-identified information for research purposes. The authorisation will specify the persons or class of persons to whom the authorisation is provided, the research project for which the use or disclosure is authorised and any other conditions that may apply to the authorisation.

The Department of Justice and Community Safety has existing robust ethical and quality assurance processes in place that support the Bill. The approval processes for publishing research ensure that privacy is appropriately protected, data is secure and risks of re-identification are mitigated. The department will also continue to liaise with the Victorian Centre for Data Insights in relation to information sharing matters.

Thank you for raising these important matters.

Yours sincerely

[Signature]

The Hon Ben Carroll MP
Minister for Corrections

11 18/19
Report on Subordinate Legislation

SR No. Marine Safety Amendment (Expiry Date) Interim Regulations 2019

The Committee wrote to the Minister in relation to the above regulations.

The Committee thanks the Minister for the attached response.
10 September 2019

The Hon. Jaala Pulford
Minister for Fishing and Boating
Level 20
1 Spring Street
Melbourne VIC 3000

By email: jaala.pulford@parliament.vic.gov.au

Dear Minister

**SR No. 61/2019 – Marine Safety Amendment (Expiry Date) Interim Regulations 2019**

The Regulation Review Subcommittee (the Subcommittee) considered the Marine Safety Amendment (Expiry Date) Interim Regulations 2019 at a meeting on 9 September 2019. The Regulations have been approved by the Subcommittee.

**Section 9(1) Premier’s certificate**

The Subcommittee notes that the Regulations are made with a Premier’s certificate, pursuant to section 9(1) of the *Subordinate Legislation Act 1994*. The reasons for the exemption are as follows:

- Part 14 of the Marine Safety Regulations 2012 (the Principal Regulations), which prescribes fees under the *Marine Safety Act 2010*, will expire on 12 July 2019. Part 13 of the Principal Regulations prescribes fees for marine safety regulatory services. This includes the fees for the issue and renewal of marine licenses, the boating facilities and safety education fee, which is paid on the registration of a vessel and the renewal of that registration, and fees in relation to pilot licenses and local knowledge certificates;
- the responsible Minister announced on 25 March 2019 (affirming an election commitment) that:
  - Better Boating Victoria would be established to oversee the introduction of free parking and launching at all public Victorian boat ramps and the delivery of upgrades and important maintenance at Mordialloc, Queenscliff, Point Richards, Hastings, Rhyll and Cowes Jetty; and
  - it would establish a Better Boating Fund to make possible boating facility upgrades and major maintenance of Victoria’s boating infrastructure and to allocate all marine licensing and vessel registration revenue to those upgrades and major maintenance;
- these Better Boating initiatives impact on the determination of the appropriate level of marine safety regulatory services fees;
- the Department of Transport is currently implementing these initiatives. Consultation with key industry stakeholders in the fishing and boating industry has commenced to further refine the scope of the Better Boating initiatives;
- consultation on these initiatives cannot be completed before the responsible Minister can reasonable consult on new fees. Therefore, it is not possible to implement these initiatives, assess the implications on marine fees, prepare a Regulatory Impact Statement and draft regulations to be released for public comment before Part 13 of the Principal Regulations expire;
• failure to make the Regulations will mean that Part 13 of the Principal Regulations will expire, resulting in a reduction in revenue equivalent to $44 million per annum. This reduction would likely result in reduced expenditure on marine safety regulation, or use of funds from consolidated revenue which would have otherwise been available for other government services; and
• the Regulations will apply for 12 months, while a Regulatory Impact Statement is prepared, and new regulations to replace Part 13 are finalized in accordance with the Act.

Fifth time made with a Premier’s certificate

This is the fifth time the Regulations have been made with a Premier’s certificate.

The Subcommittee notes the following reasons for extensions:

• 21 December 2015 to 18 December 2016 due to interfaces between the fee regulations and the transaction for the long-term lease of the Port of Melbourne, which may have impacted fees.
• 18 December 2016 to 16 July 2017 to allow for the Government to properly consider the outcomes of consultation on proposed funding options for waterway safety and marine search and rescue functions, which may have impacted fee regulations.
• 16 July 2017 to 14 July 2018 to allow time to consider the outcomes of budget submissions regarding funding proposals for waterway safety and marine search and rescue functions, and their implications for the fee regulations, and to consider changes to the annual levies under the Regulations. The levies may have been introduced following the passage of the Ports and Marine Legislation Amendment Bill 2017 through Parliament in late 2018.
• 14 July 2018 to 12 July 2019 to provide time to complete a base review of the funding model for Transport Safety Victoria and for the Government to confirm its preferred approach to funding the Safe and Accessible Waterways strategy and marine search and rescue functions on an ongoing basis.
• 12 July 2019 to 12 July 2020 due to the announcement of the Better Boating initiatives.

While the Subcommittee notes each extension was for different and additional public interest reasons, the repeated making of regulations with a Premier’s certificate may be the subject of comment.

Request for information

The Subcommittee requests further information as to when it is anticipated the Regulations will be made with a Regulatory Impact Statement.

The Subcommittee would appreciate your response by no later than Thursday 8 October 2019.

Please contact Ms Lauren Cook, the Subcommittee’s senior research officer, in the first instance if you require any further information.

Yours sincerely

[Signature]

Mr Mark Gepp MP
Chair
Regulation Review Subcommittee
Mr Mark Gepp MP
Chair, Regulation Review Subcommittee
Scrutiny of Acts and Regulations Committee, Parliament of Victoria
Parliament House
Spring Street
EAST MELBOURNE VIC 3002
sarc@parliament.vic.gov.au

Dear Mr Gepp,

Thank you for your letter dated 10 September 2019, regarding the Marine Safety Amendment Interim Regulations (the Regulations) and advice on the anticipated timing of new regulations and the associated regulatory impact statement (RIS).

The effect of the Regulations is to extend the operation of Part 13 of the Marine Safety Regulations 2012 (the Principal Regulations) for a period of 12 months. Part 13 of the Principal Regulations prescribes fees under the Marine Safety Act 2010, including fees for the issue and renewal of marine licences, and the boating facilities and safety education fee, which is a fee paid upon registration of a vessel and renewal of that registration.

The operation of Part 13 of the Principal Regulations has been extended for 12 months to enable the Department of Transport (DoT) to implement election commitments that relate to the fishing and boating portfolios before commencing consultation on new regulations. DoT has advised me that that the election commitments may affect the marine safety fees prescribed in the Principal Regulations.

I am confident that the RIS process, including public consultation, will be completed and new regulations made before the expiry of Part 13 of the Principal Regulations on 12 July 2020. DoT advises that a RIS will be ready for my approval early in 2020.
I trust that this information has assisted in answering the Subcommittee’s concerns.

If you require further information, please contact Ashley Cook, Acting Director, Regulation, Road Safety and Evaluation of the Department of Transport on telephone (03) 8392 5917.

Yours sincerely

[Signature]

Hon Jaala Pulford MP
Minister for Fishing and Boating

22 Nov 2019
## Appendix 1
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Appendix 2
Committee Comments classified by Terms of Reference

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

Alert Digest Nos.

Section 17(a)

(i) trespasses unduly upon rights or freedoms

Flora and Fauna Guarantee Amendment Bill 2019 9, 10
Justice Legislation Miscellaneous Amendment Act 2018 (House Amendment) 1, 5
Primary Industries Legislation Amendment Bill 2019 4, 11
Sale of Land Amendment Bill 2019 5, 6
Spent Convictions Bill 2019 2, 3
State Taxation Acts Amendment Bill 2019 7, 9
West Gate Tunnel (Truck Bans and Traffic Management) Bill 2019 3, 5

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

Professional Engineers Registration Bill 2019 4, 5

(iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the Privacy and Data Protection Act 2014

Justice Legislation Amendment (Serious Offenders and Other Matters) Bill 2019 13, 14

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

Assisted Reproductive Treatment Amendment (Consent) Bill 2019 8, 9
Audit Amendment Bill 2018 1, 2
Births, Deaths and Marriages Registration Amendment Bill 2019 9, 11
Building Amendment (Cladding Rectification) Bill 2019 13
Children Legislation Amendment Bill 2019 10, 11
Crimes Amendment (Trespass) Bill 2019 12
Dangerous Goods Amendment (Penalty Reform) Bill 2019 11, 13
Environment Protection Amendment (Refund on Bottles and Cans) Bill 2019 13, 14
Firefighters’ Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2019 8, 9
Health Legislation Amendment and Repeal Bill 2019 11, 12
Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Bill 2018 1, 2
Justice Legislation Amendment (Serious Offenders and Other Matters) Bill 2019 13, 14
Justice Legislation Miscellaneous Amendment Act 2018 (House Amendment) 1, 5
Legal Profession Uniform Law Application Amendment Bill 2019 8, 9
Local Government (South Gippsland Shire Council) Act 2019 9, 11
Open Courts and Other Acts Amendment Bill 2019 3, 4
Police Legislation Amendment (Road Safety Camera Commissioner and Other Matters) Bill 2019 11, 12
Primary Industries Legislation Amendment Bill 2019 4, 11
Professional Engineers Registration Bill 2019 4, 5
Racial and Religious Tolerance Amendment Bill 2019 11, 12
Sale of Land Amendment Bill 2019 5, 6
Spent Convictions Bill 2019 2, 3
State Taxation Acts Amendment Bill 2019 7, 9
Transport Legislation Amendment Bill 2019 14
Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Bill 2019 2, 3
West Gate Tunnel (Truck Bans and Traffic Management) Bill 2019 3, 5
Wildlife Amendment (Protection of Birds) Bill 2019 12, 13

**Section 17(b)**

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

Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Bill 2019 2, 3
Appendix 3

Table of Ministerial Correspondence

Table of correspondence between the Committee and Ministers or Members

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

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Appendix 4
Statutory Rules and Legislative Instruments considered

The following Statutory Rules were considered by the Regulation Review Subcommittee on 11 November 2019.

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SR No. 76 – Coroners Regulations 2019
SR No. 77 – Births, Deaths and Marriages Registration Regulations 2019
SR No. 78 – Births, Deaths and Marriages Registration (Fees) Regulations 2019
SR No. 79 – Relationships (Fees) Regulations 2019
SR No. 80 – Sheriff Regulations 2019
SR No. 81 – Magistrates’ Court (Miscellaneous Civil Proceedings) (Arbitration Costs Amendment) Rules 2019
SR No. 82 – Magistrates’ Court Authentication Amendment Rules 2019
SR No. 83 – Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Amendment Regulations 2019
SR No. 84 – Parliamentary Salaries, Allowances and Superannuation Regulations 2019
SR No. 85 – Child Wellbeing and Safety Amendment Regulations 2019
SR No. 86 – Assisted Reproductive Treatment Amendment Regulations 2019
SR No. 87 – Magistrates’ Court General Amendment Regulations 2019
SR No. 89 – Subordinate Legislation (Road Safety (Vehicles) Regulations 2009) Extension Regulations 2019
SR No. 90 – Supreme Court (Chapter I Appendices A and B Amendment) Rules 2019
SR No. 91 – Gene Technology Amendment Regulations 2019
SR No. 94 – Parliamentary Salaries, Allowances and Superannuation Amendment Regulations 2019
SR No. 95 – Magistrates’ Court (Judicial Registrars) Further Amendment Rules 2019
SR No. 96 – Road Safety Road Rules Amendment Regulations 2019
SR No. 97 – Coroners Court Rules 2019

Legislative Instruments