58th Parliament
Alert Digest

No. 7 of 2015

Tuesday, 23 June 2015
on the following Bills

Adoption Amendment Bill 2015
Associations Incorporation Reform Amendment
(Electronic Transactions) Bill 2015
Delivering Victorian Infrastructure
(Port of Melbourne Lease Transaction) Bill 2015
Energy Legislation Amendment
/Publication of Retail Offers) Bill 2015
Justice Legislation Amendment Bill 2015
Planning and Environment Amendment
(Infrastructure Contributions) Bill 2015
Road Safety Amendment
(Private Car Parks) Bill 2015
The Committee

Ms Lizzie Blandthorn MLA
Chairperson
Member for Pascoe Vale

Hon. Richard Dalla-Riva MLC
Deputy Chairperson
Member for Eastern Metropolitan

Mr Josh Bull MLA
Member for Sunbury

Mr Steve Dimopoulos MLA
Member for Oakleigh

Ms Emma Kealy MLA
Member for Lowan

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Member for Carrum

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Ms Sonya Caruana, Office Manager
Professor Jeremy Gans, Human Rights Adviser

Terms of Reference - Scrutiny of Bills

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

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

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

Parliamentary Committees Act 2003, section 17
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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 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.

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

‘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 2014 one penalty unit equals $147.61 )

‘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
Adoption Amendment Bill 2015

Introduced 10 June 2015
Second Reading Speech 10 June 2015
House Legislative Assembly
Member introducing Bill Hon. Martin Pakula MLA
Portfolio responsibility Attorney-General

Purpose

The Bill amends the Adoption Act 1984 (the Act) by:

- repealing the provisions in the Act relating to 'contact statements' that entitle an adult adopted person to lodge a contact statement to specify the contact they wish to have with their natural parents in relation to their adoption.
- repealing the associated criminal offence, whereby a natural parent who knowingly contacts or attempts to contact the adopted person in contravention of a 'no contact' contact statement commits an offence.

Charter report

The Adoption Amendment Bill 2015 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment
Associations Incorporation Reform Amendment (Electronic Transactions) Bill 2015

Introduced 10 June 2015
Second Reading Speech 10 June 2015
House Legislative Assembly
Member introducing Bill Hon. Jane Garrett MLA
Portfolio responsibility Minister Consumer Affairs, Gaming and Liquor Regulation

Purpose

The Bill amends the Associations Incorporation Reform Act 2012 (the Act) to:

- facilitate the making of applications, notifications and other transactions, such as paying annual renewals under the Act, through the use of electronic (digital and online) media.
- reduce the reporting requirements of smaller associations by simplifying annual reporting requirements for small incorporated associations (tier one associations) by removing the requirement that they lodge with the Registrar of Incorporated Associations a copy of their annual financial statements each year, with a requirement to submit an annual statement form.

Charter report

The Associations Incorporation Reform Amendment (Electronic Transactions) Bill 2015 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment
Energy Legislation Amendment (Publication of Retail Offers) Bill 2015

Introduced 10 June 2015
Second Reading Speech 10 June 2015
House Legislative Assembly
Member introducing Bill Hon. Lilly D’Ambrosio MLA
Portfolio responsibility Minister for Energy and Resources

Purpose

The Bill amends the:

- *Electricity Industry Act 2000* to require retailers who are relevant licensees to input general renewable energy feed-in terms and conditions into an Internet site nominated by the Minister.

- *Gas Industry Act 2001* to change the publication requirements in respect of gas retailer licensee standing offers and relevant published offers so that the requirements align with the requirements for electricity retailer licensee standing offers and relevant published offers under the *Electricity Industry Act 2000*.

Charter report

The Energy Legislation Amendment (Publication of Retail Offers) Bill 2015 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment
Planning and Environment Amendment (Infrastructure Contributions) Bill 2015

Introduced 10 June 2015
Second Reading Speech 10 June 2015
House Legislative Assembly
Member introducing Bill Hon. Richard Wynne MLA
Portfolio responsibility Minister for Planning

Purpose

The Bill amends the Planning and Environment Act 1987 to:

- introduce a new system for levying contributions towards the provision of works, services, facilities and plan preparation costs in relation to the development of land in areas where an infrastructure contributions plan applies.
- reduce the complexity, costs and delays involved in planning for and levying development contributions towards infrastructure provision.
- make other related consequential amendments and a related amendment to the Subdivision Act 1988.

Charter report

The Planning and Environment Amendment (Infrastructure Contributions) Bill 2015 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment
Road Safety Amendment (Private Car Parks) Bill 2015

Introduced 10 June 2015
Second Reading Speech 10 June 2015
House Legislative Assembly
Member introducing Bill Hon. Jane Garrett MLA
Portfolio responsibility Minister for Consumer Affairs, Gaming and Liquor Regulation

Purpose

The Bill amends the Road Safety Act 1986 (the Act) to remove any entitlement to a preliminary discovery order against the Corporation (VicRoads) to obtain the details of vehicle owners, for the purposes of recovering private car park fees.

Extract from the second reading speech:

... This amendment will inhibit the practice of car park operators abusing the process of preliminary discovery to support a dubious business model of posting mass demands to customers for liquidated damages that have been found to be unenforceable.

Preliminary discovery for the purposes of recovering private car park fees under a written contract signed by both parties would be exempt from this restriction. The purpose of this exemption is to enable private car park operators to commence legal proceedings in relation to breaches of long term, commercial, parking agreements. Such proceedings may involve legitimate claims for significant sums of money.

Charter report

The Road Safety Amendment (Private Car Parks) Bill 2015 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment
Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Bill 2015

The Bill was introduced into the Legislative Assembly on 26 May 2015 by the Hon. Tim Pallas MLA. The Committee considered the Bill on 9 June 2015 and made the following comments in Alert Digest No. 6 of 2015 tabled in the Parliament on 9 June 2015.

Committee comments

Charter report

Obligations of public authorities – Port of Melbourne operator

Summary: The Committee will write to the Minister seeking clarification regarding the Port of Melbourne operator that is provided for under clause 80 and their obligations under the Victorian Charter of Human Rights when exercising powers under clauses 119, 124, 125, 127 and 131.

The Committee notes that clause 80, inserting a new section 4A into the Port Management Act 1995, provides that the Minister for Ports may declare that a specified person is the ‘port of Melbourne operator’.

The Committee also notes that:

• clauses 119, 124, 125 and 127, amending existing Part 5B of that Act, empower the port of Melbourne operator to clean up, remove, move and dispose of certain property;

• clause 131, inserting a new Part 5C into that Act, empowers the port of Melbourne operator (and employees or agents authorised by the chief executive officer of the operator) to make various directions, to enter certain premises and to gather certain information.

The Statement of Compatibility remarks that clause 131 engages, but does not limit (or reasonably limits) various Charter rights.

The Committee observes that, under Charter s.38, entities that are established by a statutory provision to exercise functions of a public nature, or who exercise such functions on behalf of the State, must give proper consideration to human rights and to make decisions compatibly with human rights.\(^1\) However, unlike the existing Port of Melbourne Corporation,\(^2\) the port of Melbourne operator provided for under clause 80 may be neither established by a statutory provision nor act on behalf of the State.

The Committee will write to the Minister seeking clarification regarding the Port of Melbourne operator that is provided for under clause 80 and their obligations under the Victorian Charter of Human Rights when exercising powers under clauses 119, 124, 125, 127 and 131.

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\(^1\) See Charter ss. 4(1)(b), (c) and 38(1).
\(^2\) See Transport Integration Act 2010, s. 141B.
Minister’s response

Thank you for your letter dated 11 June 2015.

The Committee sought clarification of the obligations of the Port of Melbourne operator under the Victorian Charter of Human Rights (the Charter) when exercising powers under clauses 119, 124, 125, 127 and 131 of the Bill.

Clause 80 of the Bill provides that the Minister for Ports may declare that a specified person is the Port of Melbourne operator. Initially, it is intended that the Minister will declare a state owned company to be the Port of Melbourne operator under clause 80 and the Charter will apply to the company. Once declared that state owned company will be able to exercise the powers under clauses 119, 124, 125, 127 and 131 of the Bill. The Bill’s Statement of Compatibility outlined that of these powers only clause 131 engages (but does not limit) various Charter rights.

As part of the proposed lease of the Port of Melbourne the shares in the state owned Port of Melbourne operator will be sold to a private entity. After the sale of these shares the Port of Melbourne operator will be wholly owned by a private entity. It is likely that the sale of shares will occur early in 2016.

The private Port of Melbourne operator will not be controlled or act on behalf of the State and will not represent the State in running the commercial operations of the Port of Melbourne. The private Port of Melbourne operator will not be performing public functions so the Charter will not apply to it.

I trust this clarifies the application of Charter to the Port of Melbourne operator.

TIM PALLAS MP
Treasurer

22 June 2015

The Committee thanks the Treasurer for this response.
Justice Legislation Amendment Bill 2015

A House Amendment to the Bill was introduced into the Legislative Council on 25 May 2015 by the Hon. Steve Herbert MLC. The Committee considered the House Amendment on 9 June 2015 and made the following comments in Alert Digest No. 6 of 2015 tabled in the Parliament on 9 June 2015.

Committee comments

Charter report

Age discrimination – Unlicensed paintball marker use – Users aged under 16 – Firearms Act 1996

Summary: The Committee will write to the Attorney-General seeking further information as to whether or the amendments relating to firearms made to the Justice Legislation Amendment Bill 2015 in the Legislative Council are compatible with human rights.

The Committee notes that an amendment to the Justice Legislation Amendment Bill 2015 made in the Legislative Council, amending existing Schedule 3 of the Firearms Act 1996, extends the exemption from the licensing requirements in Part 2 of that Act for users of paintball markers to the non-prohibited persons over the age of 16. The Committee observes that, while this amendment increases eligibility for unlicensed paintball marker use, it nevertheless engages the Charter’s rights with respect to age discrimination in relation to users under the age of 16.

The Committee notes that, while Charter’s requirement for statements of compatibility is limited to Bills when introduced and does not apply to amendments to Bills, the amendments to the Firearms Act 1996 made in the Legislative Council broaden the purpose clause of the Bill as introduced and may in substance be equivalent to a new Bill.

The Committee will write to the Attorney-General seeking further information as to whether or not the firearms amendments relating to firearms made to the Justice Legislation Amendment Bill 2015 in the Legislative Council are compatible with human rights.

Minister’s response

I write in response to a query raised by the Scrutiny and Acts and Regulations Committee (the Committee) in Alert Digest No 6 of 2015, in relation to the Justice Legislation Amendment Bill 2015 (the Bill).

The Committee has noted that while lowering the minimum age of participation to 16 increases the eligibility for unlicensed paintball marker use, it nevertheless engages the Charter’s rights with respect to age-based discrimination relating to minors under 16.

The proposal to lower the minimum age of participation in paintball activities from 18 to 16 has the effect of treating minors under 16 differently. I accept that this may constitute a limitation on section 8(3) of the Charter of Human Rights and Responsibilities Act 2006 (the Charter Act), which provides for equal protection of the law, without discrimination. In my view, however, the limit placed on s 8(3) is demonstrably justified under s 7(2) of the Charter Act.

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iii Charter s. 8.
iv Charter s. 28.
All rights under the Charter, including section 8, are subject to reasonable limitations (section 7(2)). It is important to note that age-based restrictions have long been recognised and upheld as reasonable and appropriate in free and democratic societies, in order to reflect the particular vulnerabilities of young people. Restricted access to tobacco or alcohol consumption and the viewing of R18+ films are clear examples of such reasonable and justifiable limitations.

The restrictions in the Bill are designed to prevent potential harm and injury to persons aged under 16 years when participating in paintball games. It is reasonable and appropriate to consider that teenagers at that age are more physically and anatomically developed in order to use a paintball marker, which is designed akin to a longarm and requires considerable strength to carry during paintball activities.

Furthermore, it is reasonable to consider that 16 year olds can appropriately follow instructions from paintball field operators, particularly in the proper use of paintball goggles and associated equipment that ensures their safety and wellbeing at a paintball range. I note that paintball pellets can only be fired from a permissible distance of no less than eight metres, and are propelled at some force, which could cause injuries in younger juveniles if not appropriately supervised during paintball games.

There are no less restrictive options or measures available.

In the context of the above restriction in the Bill, I am of the opinion that it is a reasonable and justifiable limitation on that right and I am satisfied that the restriction is compatible with the Charter Act.

I appreciate you bringing this matter to my attention.

THE HON MARTIN PAKULA MP
Attorney-General

Received 19 June 2015

The Committee thanks the Attorney-General for this response.
### 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 on rights and freedoms

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(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities Act 2006

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*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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Statutory Rules and Legislative Instruments considered

The following Statutory Rules and legislative instruments were considered by the Regulation Review Subcommittee on 22 June 2015

Statutory Rules Series 2015
SR No. 23 – Plant Biosecurity Amendment Regulations 2015
SR No. 25 – Environment Protection (Scheduled Premises and Exemptions)(Industrial Waste Resource) and (Fees) Amendment Regulations 2015
SR No. 26 – Tobacco Amendment Regulations 2015
SR No. 29 – Supreme Court (Chapter I Summary Judgement Amendment) Rules 2015
SR No. 30 – Supreme Court (Judicial Registrars Further Amendment) Rules 2015
SR No. 31 – Wrongs (Part VBA Claims) Regulations 2015
SR No. 32 – Magistrates’ Court (Judicial Registrars) Amendment Rules 2015
SR No. 33 – Planning and Environment Regulations 2015
SR No. 34 – County Court (Chapter I Amendment No.9) Rules 2015
SR No. 35 – County Court (Chapter II Arbitration and Other Amendments) Rules 2015
SR No. 36 – Transfer of Land (Fees) Amendment Regulations 2015
SR No. 37 – Victorian Civil and Administrative Tribunal (Amendment No.12) Rules 2015
SR No. 38 – Supreme Court (Chapter I Judicial Review Amendment) Rules 2015
SR No. 39 – Supreme Court (Chapter VI Judicial Registrars Amendment) Rules 2015
SR No. 40 – Supreme Court (Associate Judges Amendment) Rules 2015
SR No. 41 – Magistrates’ Court (Occupational Health and Safety) Rules 2015
SR No. 43 – Surveying (Cadastral Surveys) Regulations 2015
SR No. 44 – Survey Co-Ordination Amendment Regulations 2015

Legislative Instruments
Order under Section 56 Surrendering Interests in Unreserved Crown Land
Order under Section 62 for the Revocation of Part of the Temporary Reservation of Crown Land
New Taxi-Cab Licences: Notification of Annual Licence Fees to Apply from 1 July 2015