58th Parliament
Alert Digest

No. 8 of 2015

Tuesday, 4 August 2015
on the following Bills

Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2015
Corrections Legislation Amendment Bill 2015
Infrastructure Victoria Bill 2015
Local Government Legislation Amendment (Environmental Upgrade Agreements) Bill 2015
Road Safety Amendment Bill 2015
The Committee

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Member for Pascoe Vale

Hon. Richard Dalla-Riva MLC
Deputy Chairperson
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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;
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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

‘Charter’ refers to the Victorian **Charter of Human Rights and Responsibilities Act 2006**

‘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
Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2015

Introduced: 23 June 2015
Second Reading Speech: 24 June 2015
House: Legislative Assembly
Member introducing Bill: Hon. Martin Pakula MLA
Portfolio responsibility: Attorney-General

Purpose


The Bill is intended to complement amendments made in 2014 to the Classification (Publications, Films and Computer Games) Act 1995 (Cth) to improve the operation of the National Classification Scheme.

Extract from the explanatory memorandum:

The Commonwealth amendments to which the consequential amendments made in the Bill relate—

- streamline exemption arrangements for festivals and other events and for cultural institutions
- enable certain content to be classified using classification tools (such as online questionnaires that deliver automated decisions)
- expand the exceptions to the modification rule so that films and computer games which are subject to certain types of modifications do not require classification again.

Charter report

The Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2015 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment
Corrections Legislation Amendment Bill 2015

Introduced 23 June 2015
Second Reading Speech 24 June 2015
House Legislative Assembly
Member introducing Bill Hon. Wade Noonan MLA
Portfolio responsibility Minister for Corrections

Purpose

The Bill amends the Corrections Act 1986 (the Act) to:

- clarify the circumstances under which the parole of a person is taken to be cancelled [3, 4]
  
  Note: Division 1 of Part 2 of the Bill amends section 77 of the Act to make clear that any prison term imposed by an Australian court requiring a Victorian prisoner on parole to be returned to prison automatically cancels their Victorian parole. Parole is automatically cancelled if a court in or outside Victoria imposes a term of imprisonment for offences committed either before or during the parole period.

- provide for the powers for taking evidence by the Adult Parole Board, including at a hearing of the Board. The amendments substantially re-enact, codify, consolidate or update existing practices of the Board [5, 6]

- clarify the circumstances under the Act where a relevant person may use or disclose personal or confidential information [7, 8]

- provide a Governor of a prison with an express power to require a prisoner to be electronically monitored for the security or good order of the prison or the safety or welfare of the prisoner or other persons [9]

- provide for the employment of parole officers and to permit the Secretary to the Department of Justice and Regulation to authorise an employee of the Department to exercise the powers and functions of a community corrections officer or Regional Manager [11 to 13]

- update the list of additional persons and bodies, whose correspondence may not be read or censored by prison staff (subject to inspection or disposal on safety grounds by a prison Governor), and to make provision for the prescribing by regulation of other persons and bodies, whose letters to and from a prisoner must not be opened by prison staff [14 to 16]

- permit the Secretary to the Department of Justice and Regulation (the Department) to authorise an employee of the Department to perform the functions of secretary of the Adult Parole Board [17 to 19]

- standardise and clarify the minimum requirements for a quorum for meetings of the Adult Parole Board held to decide questions [20]

- clarify the procedures for prosecuting offences against the Act and the regulations made under the Act to provide that a charge may be filed within 24 months of the alleged offence (currently 12 months) [21, 22]

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1 The amendments add independent oversight bodies: the Independent Broad-based Anti-corruption Commission (IBAC) and Victorian Inspectorate, the Freedom of Information Commissioner, the legal services commissioner, mental health complaints commissioner, commissioner for privacy and data protection, and Victorian Equal Opportunity and Human Rights Commission (VEOHRC) and persons acting on their behalf. Proposed regulations will add other persons or bodies such as some royal commissions from time to time and some equivalent interstate bodies to IBAC.
• remove references to the repealed Serious Sex Offenders Monitoring Act 2005 and extended supervision orders made under that Act [23 to 34]
• update references to the Department of Justice and Regulation [35, 36]
• make a number of minor statute law revision amendments. [37 to 42]

The Bill makes consequential amendments to the Surveillance Devices Act 1999 to exempt authorised staff from liability for installing a tracking device for electronic monitoring. [10]

The Bill amends the Parole Orders (Transfer) Act 1983 to validate certain past parole order transfers made under the national parole order transfer scheme. (see Content below) [43, 44]

Content

Retrospective validation of parole transfer orders made under national scheme – Parole Orders (Transfer) Act 1983

The Bill proposes to validate parole transfer orders made in the period 1 May 1984 to 21 October 2014. [44] The circumstances necessitating the validation provisions are described in the second reading speech:

The Bill also amends the Parole Orders (Transfer) Act to validate certain past parole order transfers made under the national scheme. Part 3 of the Bill retrospectively validates, from 1 May 1984 to 21 October 2014, parole transfer orders made by Victoria to another state or territory that was inadvertently not declared by Victoria, such as the Australian Capital Territory and Western Australia.

A national audit (instigated by Victoria) identified a failure by some participating jurisdictions to do so. Last year, NSW Parliament also passed validating legislation. It is not possible to determine the number of parole transfers that may (potentially) be validated by Part 3 of the Bill. Records dating back to the 1980’s are either no longer available or the records were not or are not kept in a manner that enables such numbers to be determined. The period of the validation is therefore from the commencement of the Parole Orders (Transfer) Act in Victoria to until the date last year that the then Minister for Corrections declared all corresponding laws under the scheme.

Part 3 of the Bill validation gives continued effect to the transfer of parole that was made including any consequences arising from that transfer (such as re-imprisonment due to a cancellation of parole in the receiving jurisdiction). It also validates anything done or omitted to be done despite the failure to declare the other jurisdiction as a corresponding law. The Bill also inserts a definition of 'corresponding law' to mean not only a law declared by the minister but also a law of another state or territory that corresponds or substantially corresponds with the Victorian parole transfer legislation, even if the corresponding law is not declared.

The Committee considers the retrospective validation provisions are necessary and appropriate in the circumstances.
Charter report

Arbitrary detention – Parole automatically cancelled if parolee sentenced to imprisonment – Non-Victorian sentences

Summary: Clause 3 provides for the automatic cancellation of a prisoner’s parole if the parolee is sentenced ‘whether in Victoria or elsewhere, to another term of imprisonment’, but does not define ‘elsewhere’ or ‘imprisonment’. The Committee will write to the Minister seeking further information.

The Committee notes that clause 3, amending existing s. 77 of the Corrections Act 1986, provides that a prisoner’s parole ‘is to taken to have been cancelled’ if the parolee is sentenced ‘whether in Victoria or elsewhere, to another term of imprisonment’.

The Committee observes that clause 3 differs from the existing provision for automatic parole cancellation if the prisoner receives certain sentences while on parole in two ways. First, it expressly covers sentences handed down ‘elsewhere’ than in Victoria (using the same terminology as the existing provision for discretionary parole cancellation for offences committed while on parole). Second, it replaces the term ‘sentence prison’ used in the existing provisions for automatic and discretionary parole cancellation with ‘term of imprisonment’. New sub-section 77(7C) provides that a ‘term of imprisonment includes a sentence of imprisonment imposed by a court, whether in Victoria or elsewhere’, other than one that is ‘wholly suspended.’

The Explanatory Memorandum remarks:

Clause 3 makes clear that any prison term imposed by an Australian court at sentencing requiring a Victorian offender to be returned to prison automatically cancels their Victorian parole.

However, the Committee notes that clause 3 does not define ‘elsewhere’ or ‘imprisonment’.

The Statement of Compatibility remarks:

The provision for the cancellation of parole where a person is sentenced to a term of imprisonment for a further offence is compatible with the right to liberty (section 21). Decisions concerning the cancellation of parole may be regarded as decisions resulting in detention or deprivation of liberty...

In my view, these provisions are compatible with the right to liberty. The grounds for cancelling parole are clearly set out in the legislation. They are for the purpose of protecting the integrity of the parole regime and ensuring community safety, and cannot be regarded as arbitrary.

The Committee observes that the word ‘elsewhere’ may cover non-Australian jurisdictions, including ones that have quite different sentencing processes to Australia. In ruling that the current provision for automatic parole cancellation is limited to sentences by Victorian courts, Weinberg JA remarked:

Assume, hypothetically, that a person on parole in Victoria is sentenced, in absentia, to a term of imprisonment by an overseas regime, for offences committed years earlier. Can it be that this would have the automatic effect of cancelling that person’s parole, possibly rendering him or her liable to years of additional incarceration? Would a sentence of

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2 The phrase ‘Victoria or elsewhere’ overcomes the usual rule that Victorian statutes are limited to Victoria: see Interpretation of Legislation Act 1984, s. 48(2).

3 Mercorella v The Secretary to the Department of Justice [2015] VSC 18, [30]. Compare Criminal Procedure Act 2009, s. 87(1), which forbids the Magistrates’ Court of Victoria from issuing a custodial sentence in offender’s absence.
imprisonment of perhaps several days, in a foreign jurisdiction, lead automatically to cancellation of Victorian parole?

The Committee also observes that, while Victorian legislation uses the word ‘imprisonment’ to refer exclusively to custody in a prison, some non-Victorian jurisdictions use that word to cover other quite different custodial settings. For example, under New South Wales legislation, the term ‘sentence of imprisonment’ includes sentences served at drug treatment centres, at home or (under intensive correction) in the community.4

The Committee considers that, to the extent that clause 3 requires the automatic cancellation of parole for a prisoner who is sentenced elsewhere under processes that are significantly less protective than Victorian ones or to ‘imprisonment’ in settings that significantly differ from prisons, it may limit the Charter right of Victorian parolees against ‘arbitrary… detention’.5

The Committee will write to the Minister seeking further information as to whether or not clause 3’s provision for automatic cancellation of parole applies if a parolee is sentenced by a non-Australian court or to ‘imprisonment’ other than in a prison.

The Committee makes no further comment

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4 Crimes (Sentencing Procedure) Act 1999 (NSW), ss. 5-7. See also Sentencing Act 1995 (NT), s. 48B.

5 Charter s. 21(2).
Infrastructure Victoria Bill 2015

Introduced 23 June 2015
Second Reading Speech 24 June 2015
House Legislative Assembly
Member introducing Bill Hon. Jacinta Allan MLA
Portfolio responsibility Minister for Public Transport

Purpose

The Bill is for an Act to:

- establish Infrastructure Victoria as a statutory authority with an independent board to provide independent and expert advice to the Government about Victoria’s infrastructure needs and priorities
- establish a new infrastructure planning process in Victoria, which will include:
  - the preparation and publication of a 30-year infrastructure strategy by Infrastructure Victoria (to be reviewed and updated every 3 to 5 years)
  - a requirement that the Government formally respond to the strategy
  - a requirement that the Government prepare and publish a 5-year infrastructure plan, which identifies specific major infrastructure projects for the next 5 years, the rationale for their selection, the estimated cost, the proposed funding and delivery arrangements and estimated delivery times
  - an annual progress report on the 5-year infrastructure plan by Infrastructure Victoria
  - the provision of written advice from Infrastructure Victoria at the request of the Minister
  - the publication of independent research and information by Infrastructure Victoria.

Charter report

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

The Committee makes no further comment
Local Government Legislation Amendment (Environmental Upgrade Agreements) Bill 2015

Introduced 23 June 2015
Second Reading Speech 24 June 2015
House Legislative Assembly
Member introducing Bill Hon. Lily D’Ambrosio MLA
Portfolio responsibility Minister for Local Government

Purpose

The Bill amends the Local Government Act 1989 to enable all Councils, including the City of Melbourne, to enter into environmental upgrade agreements.

The Bill makes consequential amendments to the City of Melbourne Act 2001 to repeal Part 4B of that Act which relates to environmental upgrade agreements.

Extract from the explanatory memorandum:

An environmental upgrade agreement is a tripartite agreement between a Council, the owner of a non-residential building in the municipal district of the Council and a lending body. Under such an agreement, the lending body advances funds to the building owner to finance approved environmental upgrades and the Council levies an environmental upgrade charge to recover the funds and repay the lending body.

Charter report

The Local Government Legislation Amendment (Environmental Upgrade Agreements) 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 Bill 2015

Introduced 23 June 2015
Second Reading Speech 24 June 2015
House Legislative Assembly
Member introducing Bill Hon. Wade Noonan MLA
Portfolio responsibility Minister for Police

Purpose

The Bill amends the Road Safety Act 1986 to:

- establish a regime where a police officer may require a driver of a motor vehicle that is involved in an accident resulting in serious injury or death to allow a blood sample to be taken for analysis
- include administrative costs and corporate support costs in the definition of ‘designated costs’, to enable Victoria Police to recoup those costs associated with immobilisation and impoundment of vehicles
- include all operator onus offences in the 42 day time limit for serving a notice for the surrender of a motor vehicle
- clarify the circumstances where a court must not decline to make an impoundment, immobilisation or forfeiture order on the grounds of exceptional hardship.

Charter report

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

The Committee makes no further comment

Committee Room
3 August 2015
## Appendix 1

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Scrutiny of Acts and Regulations Committee

Alert Digest Nos.

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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 3 August 2015.

Statutory Rules Series 2015
SR No. 42 – Meat Industry Regulations 2015
SR No. 46 – Associations Incorporation Reform Amendment (Privacy) Regulations 2015
SR No. 47 – Local Government (Planning and Reporting) Amendment Regulations 2015
SR No. 49 – Transport (Taxi-Cabs)(Passenger Vehicles) and (Infringements) Amendment Regulations 2015
SR No. 50 – Subordinate Legislation (Road Management (General) Regulations 2005) Extension Regulations 2015
SR No. 51 – Legal Profession Revocation Regulations 2015
SR No. 52 – Legal Profession Uniform Law Application Regulations 2015
SR No. 53 – Legal Profession Uniform Law Application (Savings and Transitional) Regulations 2015
SR No. 54 – Estate Agents (Exemption) Amendment Regulations 2015
SR No. 56 – Liquor Control Reform Amendment Regulations 2015
SR No. 57 – Liquor Control Reform (Prohibition of Supply of Powdered Alcohol) Regulations 2015
SR No. 58 – Liquor Control Reform (Wholesale Liquor Supply Information) Regulations 2015
SR No. 59 – Cemeteries and Crematoria Regulations 2015
SR No. 62 – Road Safety (General) Amendment (Application of Fees) Regulations 2015
SR No. 63 – Audit (Public Bodies) Regulations 2015
SR No. 64 – Domestic Animals Regulations 2015
SR No. 68 – Electricity Safety (Bushfire Mitigation) Amendment Regulations 2015
SR No. 70 – Building Amendment (Additional Siting Requirements) Regulations 2015

Legislative Instruments
Declaration of Approved Seatbelts under Rule 407(h) of the Road Safety Road Rules 2009 and Notice of Incorporated Documents under Rule 407(h) of the Road Safety Road Rules 2009 (the Notice)
Ministerial Order under Section 66AC(1) of the Liquor Control Reform Act 1998
Ministerial Order No 843 – Victorian Institute of Teaching Registration Fees 2015-16
Prevention of Cruelty to Animals Act 1986 – Declaration - Section 128 Order
Southern Metropolitan Cemetery Trust Scale of Fees and Charges (03-04-15)
Southern Metropolitan Cemetery Trust Scale of Fees and Charges (05-05-15)