

No. 10 of 2011

**Tuesday, 13 September
2011**

On the

Domestic Animals Amendment
(Restricted Breeds) Act 2011

Drugs, Poisons and Controlled
Substances Amendment (Prohibition
of Display and Sale of Cannabis Water
Pipes) Bill 2011

Electronic Transactions (Victoria)
Amendment Bill 2011

Extractive Industries (Lysterfield)
Amendment Bill 2011

Gambling Regulation Amendment
(Licensing) Bill 2011

Table of Contents

	Page Nos.
Table of Contents	i
Useful information	ii
Alert Digest No. 10 of 2011	1
Domestic Animals Amendment (Restricted Breeds) Bill 2011	1
Drugs, Poisons and Controlled Substances Amendment (Prohibition of Display and Sale of Cannabis Water Pipes) Bill 2011	2
Electronic Transactions (Victoria) Amendment Bill 2011	3
Extractive Industries (Lysterfield) Amendment Bill 2011	4
Gambling Regulation Amendment (Licensing) Bill 2011	5
Appendix 1 Index of Acts and Bills in 2011	7
Appendix 2 Committee Comments classified by Terms of Reference	9
Appendix 3 Ministerial Correspondence 2011	11

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) presented to the Parliament. The Committee does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of non-partisan legislative scrutiny. These traditions have been developed since the first Australian scrutiny of Bills committee of the Australian Senate commenced scrutiny of Bills in 1982. They are precedents and traditions followed by all Australian scrutiny committees. Non-policy scrutiny within its terms of reference allows the Committee to alert the Parliament to the use of certain legislative practices and allows the Parliament to consider whether these practices are necessary, appropriate or desirable in all the circumstances.

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

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*;

'*child*' means a person under 18 years of age;

'*Council*' refers to the Legislative Council of the Victorian Parliament;

'*court*' refers to the Supreme Court, the County Court, the Magistrates' Court or the Children's Court as the circumstances require;

'*human rights*' refers to the rights set out in Part 2 of the Charter;

'*penalty units*' refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (currently one penalty unit equals \$119.45).

'*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.

Alert Digest No. 10 of 2011

Domestic Animals Amendment (Restricted Breeds) Act 2011

Introduced	30 August 2011
Second Reading Speech	30 August 2011
House	Legislative Assembly
Member introducing Bill	Hon. Peter Walsh MLA
Portfolio responsibility	Minister for Agriculture and Food Security
Royal Assent	31 August 2011

Note: *The Committee reports on this Act pursuant to section 17(c) of the Parliamentary Committees Act 2003.*

Background and Content

The Bill amends the *Domestic Animals Act 1994*.

The Bill will cut short the existing two year amnesty that commenced on 1 September 2010 on the keeping and registration of restricted breed dogs. The proposed ending of the amnesty is to be 30 September 2011. A council will only be able to register or renew registration of a restricted breed dog if it was registered before 30 September 2011 and only if the dog was in Victoria prior to 1 September 2010. After 30 September 2011 an unregistered restricted breed dog may be seized and destroyed by councils.

The Bill provides for the approval of a standard that will assist councils to identify whether a dog is a restricted breed dog.

Extracts from the Second Reading Speech:

The Bill provides for the approval of a standard that will assist councils to identify whether a dog is a restricted breed dog. ... The Bill will provide that a dog that falls within the 'approved standard' that relates to restricted breed dogs in Victoria is to be taken to be a restricted breed dog.

... The Bill will remove the existing two-year amnesty that was introduced on 1 September 2010 on the keeping and registration of restricted breed dogs. The current amnesty provisions allow registration of a restricted breed dog until September 2012, provided the dog was in Victoria before 30 September 2010. The amnesty also lifted the prohibition on keeping a restricted breed dog during the amnesty period and then following that period if the dog was registered during the amnesty period. ... The Bill will cut short the amnesty period. This means that from 30 September 2011 the possession and keeping of a restricted breed dog will be illegal unless the dog was in Victoria before the start of the amnesty period on 1 September 2010 and the dog is registered before 30 September 2011. A council will only be able to register or renew the registration of a restricted breed dog if it was registered before 30 September 2011. ... A registered restricted breed dog that can be kept is required to be desexed, microchipped and housed with specific containment requirements and only allowed to be walked off property while on a leash and only if it is wearing a muzzle.

The Committee may present a Charter Report on this Bill during the next Parliamentary sitting week in October.

The Committee makes no further comment.

Drugs, Poisons and Controlled Substances Amendment (Prohibition of Display and Sale of Cannabis Water Pipes) Bill 2011

Introduced	30 August 2011
Second Reading Speech	31 August 2011
House	Legislative Assembly
Member introducing Bill	Hon. Mary Wooldridge MLA
Portfolio responsibility	Minister for Mental Health

Background and Content

The Bill amends the *Drugs, Poisons and Controlled Substances Act 1981* to provide for the prohibition of the display, sale and supply of cannabis water pipes and components and the restriction of display for sale of hookahs.

Extract from the Statement of Compatibility:

The purpose of the Bill is to make amendments to the Drugs, Poisons and Controlled Substances Act 1981 (the act) to make it an offence to display in a retail outlet or sell or supply in the course of carrying out a commercial activity a cannabis water pipe or a bong component or a bong kit.

The Bill also restricts the number of hookahs on display for sale in a retail outlet.

The amendments make the sale of a cannabis water pipe, which is used for introducing into the body a drug of dependence, illegal. This is consistent with similar bans placed on implements used for administering other drugs of dependence, for example, ice pipes. Cannabis use causes health risks to users, particularly to their mental health, with users facing a greater likelihood of suffering from depression, psychosis or anxiety.

In the Bill, members of the police force are given enforcement powers to seize and retain a cannabis water pipe, a bong component or a bong kit that is displayed or is for sale or is supplied in contravention of the act. A cannabis water pipe, or a bong component or a bong kit may be forfeited to the Crown and destroyed in certain defined circumstances.

The Committee may present a Charter Report on this Bill during the next Parliamentary sitting week in October.

The Committee makes no further comment.

Electronic Transactions (Victoria) Amendment Bill 2011

Introduced	30 August 2011
Second Reading Speech	31 August 2011
House	Legislative Assembly
Member introducing Bill	Hon. Robert Clark MLA
Portfolio responsibility	Attorney-General

Background

The Bill –

- amends the *Electronic Transactions (Victoria) Act 2000* to update the electronic transactions regime to reflect internationally recognised legal standards on electronic commerce.
- align Victoria's Electronic Transactions Legislation with the United Nations Convention on the Use of Electronic Communications in International Contracts, adopted by the General Assembly in 2005; and
- modernise Victoria's laws on electronic commerce to reflect internationally recognised legal standards, enhance cross-border online commerce and increase certainty for international trade by electronic means and thereby encourage further growth of electronic contracting in Victoria.

Extracts from the Explanatory Memorandum –

The Electronic Transactions (Victoria) Act 2000 (the Principal Act) implements the United Nations Commission on International Trade Law (UNCITRAL) Model Law of Electronic Commerce 1996 (the Model Law). The Model Law provides a set of internationally accepted rules to remove legal obstacles to provide a more secure environment for electronic commerce. To achieve national uniformity, the Commonwealth and the other States and Territories of the Commonwealth have also passed electronic transactions legislation that is consistent with the Principal Act.

... The Electronic Transactions Amendment Bill 2011 (the Bill) was developed following consideration by the Standing Committee of Attorneys-General of the proposal to accede to the United Nations Convention on the Use of Electronic Communications in International Contracts 2005 (the Convention).

... The Bill amends the Principal Act to update the electronic transactions regime to align with the Convention, with a view to acceding to the Convention when the amendments are enacted in each jurisdiction.

Implementation of the Convention is intended to—

- *modernise Australia's law on e-commerce so that it reflects internationally recognised legal standards; and*
- *enhance cross-border online commerce; and*
- *increase certainty for international trade by electronic means and thereby encourage further growth of electronic contracting; and*
- *confirm Australia's commitment to facilitating electronic communications in international trade transactions as reflected in Free Trade Agreements.*

The Committee makes no further comment.

Extractive Industries (Lysterfield) Amendment Bill 2011

Introduced	30 August 2011
Second Reading Speech	31 August 2011
House	Legislative Assembly
Member introducing Bill	Hon. Michael O'Brien MLA
Portfolio responsibility	Minister for Energy and Resources

Background and Content

The Bill amends the *Extractive Industries (Lysterfield) Act 1986* (the 'Act') to ratify an agreement between the State and Boral Resources (Vic) Pty Ltd (the 'agreement'), in which the State grants an extractive industry lease and an extractive industry licence to Boral Resources (Vic) Pty Ltd on terms set out in the agreement.

The Bill gives legislative effect to amendments to special conditions attached to the extractive industry licence, which have been agreed to by Boral Resources (Vic) Pty Ltd and the Department of Primary Industries, the Department of Sustainability and Environment, Parks Victoria and Knox City Council.

The Committee makes no further comment.

Gambling Regulation Amendment (Licensing) Bill 2011

Introduced	30 August 2011
Second Reading Speech	31 August 2011
House	Legislative Assembly
Member introducing Bill	Hon. Michael O'Brien MLA
Portfolio responsibility	Minister for Gaming

Background

The Bill amends the *Gambling Regulation Act 2003* (the 'Act'), the *Gambling Regulation Further Amendment Act 2009*, the *Gambling Regulation Amendment (Licensing) Act 2009* and the *Liquor Control Reform Act 1998* to make further provision in respect of regulatory arrangements for gaming machine entitlements and the monitoring, wagering and betting and keno licences.

The Bill amends the *Gambling Regulation Act 2003* to:

- prohibit lobbying in respect of the award and amendment of certain gambling licences.
- make further provision for the implementation of the new monitoring arrangements by 16 August 2012 by (1) conferring certain powers on the Minister and persons authorised by the Minister to obtain information relating to the monitoring systems used by the gaming operators and their ownership; and (2) conferring on the Minister, and persons authorised by the Minister, powers to access monitoring systems used by gaming operators and information and documents relating to those monitoring systems.
- empower the Commission to suspend the registration of a bookmaker or a bookmaker's key employee if the Commission is satisfied that the bookmaker or key employee has been charged with certain offences, including offences against the *Racing Act 1958*, indictable offences and offences involving fraud or dishonesty. (*Refer to the Statement of Compatibility in respect to the question of suspension of registration in the context of a disciplinary proceedings and the presumption of innocence*).
- not require the conduct of public lotteries determined by a random number generator to be supervised by a person nominated by the Commission.

Committee comment

Delayed commencement

The Committee notes that a number of provisions may not commence until 1 November 2012. The Explanatory Memorandum notes that this is necessary as the new structure of the gaming industry under the Act will not commence until August 2012 and the amendments cannot come into operation until that time.

The Committee may present a Charter Report on this Bill during the next Parliamentary sitting week in October.

The Committee makes no further comment.

Committee Room
12 September 2011

Appendix 1

Index of Acts and Bills in 2011

	Alert Digest Nos.
Aboriginal Heritage Amendment Act 2011	8
Accident Towing Services Amendment Bill 2011	5
Appropriation (2011/2012) Bill 2011	5
Appropriation (Parliament 2011/2012) Bill 2011	5
Building Amendment Bill 2011	1, 2
Bushfires Royal Commission Implementation Monitor Bill 2011	1
Civil Procedure and Legal Profession Amendment Bill 2011	1
Civil Procedure Bill 2010	1
Commercial Arbitration Bill 2011	9
Consumer Acts Amendment Bill 2011	6
Country Fire Authority Amendment (Volunteer Charter) Bill 2011	2
Crimes Amendment (Bullying) Bill 2011	4
Dental Hospital Land Bill 2011	4
Domestic Animals Amendment (Restricted Breeds) Act 2011	10
Drugs, Poisons and Controlled Substances Amendment (Drugs of Dependence) Bill 2011	8
Drugs, Poisons and Controlled Substances Amendment (Prohibition of Display and Sale of Cannabis Water Pipes) Bill 2011	10
Education and Training Reform Amendment (School Safety) Bill 2010	1, 3
Electronic Transactions (Victoria) Amendment Bill 2011	10
Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011	7
Environment Protection Amendment (Landfill Levies) Bill 2011	5
Equal Opportunity Amendment Bill 2011	5
Extractive Industries (Lysterfield) Amendment Bill 2011	10
Family Violence Protection Amendment (Safety Notices) Bill 2011	4
Farm Debt Mediation Bill 2011	8
Fisheries Amendment Bill 2011	3
Gambling Regulation Amendment (Licensing) Bill 2011	10
Health Practitioner Regulation National Law (Victoria) Amendment Bill 2011	6
Health Services Amendment (Health Innovation and Reform Council) Bill 2011	3
Justice Legislation Amendment Bill 2011	2, 3
Justice Legislation Amendment (Infringement Offences) Bill 2011	5
Justice Legislation Amendment (Infringement Offences) Act 2011	7, 8
Justice Legislation Amendment (Protective Services Officers) Bill 2011	8
Liquor Control Reform Amendment Bill 2011	3, 4
Local Government Amendment (Electoral Matters) Bill 2011	8
Multicultural Victoria Bill 2011	3
Parliamentary Committees Amendment Bill 2011	2
Parliamentary Salaries and Superannuation Amendment Bill 2011	3
Parliamentary Salaries and Superannuation Further Amendment Bill 2011	9
Planning and Environment Amendment (Hoon Driving and Other Matters) Bill 2011	6
Police Regulation Amendment (Protective Services Officers) Bill 2010	1
Public Holidays Amendment Bill 2011	4
Regional Growth Fund Bill 2011	2

Residential Tenancies Amendment (Public Housing) Bill 2011	3
Resources Legislation Amendment Bill 2011	9
Road Safety Amendment (Hoon Driving and Other Matters) Bill 2011	6
Road Safety Camera Commissioner Bill 2011	6
Sentencing Amendment Act 2010	1, 4
Sentencing Further Amendment Bill 2010	1
Sentencing Legislation Amendment (Abolition of Home Detention) Bill 2011	7
Shop Trading Reform Amendment (Easter Sunday) Bill 2011	1
Shrine of Remembrance Bill 2011	1
State Taxation Acts Amendment Bill 2011	5
Statute Law Revision Bill 2011	1
Terrorism (Community Protection) Amendment Bill 2011	6
Transport Legislation Amendment (Port of Hastings Development Authority) Bill 2011	6
Transport Legislation Amendment (Public Transport Safety) Bill 2011	8
Transport Legislation Amendment (Taxi Services Reform and Other Matters) Bill 2011	6
Victoria Law Foundation Amendment Bill 2011	1
Victorian Urban Development Authority Amendment (Urban Renewal Authority Victoria) Bill 2011	6

Appendix 2

Committee Comments classified by Terms of Reference

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

Alert Digest Nos.

Section 17(a)

(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

Justice Legislation Amendment Bill 2011

2

(iv) unduly requires or authorise acts or practices that may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000*;

(v) unduly requires or authorise 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 Act 2006*

Building Amendment Bill 2011

1

Education and Training Reform Amendment (School Safety) Bill 2010

1

Justice Legislation Amendment Bill 2011

2

Justice Legislation Amendment (Infringement Offences) Act 2011

7

Liquor Control Reform Amendment Bill 2011

3

Sentencing Amendment Act 2010

1

Section 17(b)

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

Commercial Arbitration Bill 2011

9

Appendix 3

Ministerial Correspondence 2011

Table of correspondence between the Committee and Ministers during 2011

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Building Amendment Bill 2011	Minister for Planning	01.03.11 21.03.11	1 of 2011 2 of 2011
Education and Training Reform Amendment (School Safety) Bill 2010	Minister for Education	01.03.11 28.03.11	1 of 2011 3 of 2011
Justice Legislation Amendment Bill 2011	Minister for Consumer Affairs	22.03.11 04.04.11	2 of 2011 3 of 2011
Sentencing Amendment Act 2010	Attorney-General	01.03.11 05.04.11	1 of 2011 4 of 2011
Liquor Control Reform Amendment Bill 2011	Consumer Affairs	05.04.11 21.04.11	3 of 2011 4 of 2011
State Taxation Acts Amendment Bill 2011	Treasurer	25.05.11 09.06.11	5 of 2011 6 of 2011
Justice Legislation Amendment (Infringement Offences) Act 2011	Attorney-General	28.06.11 12.08.11	7 of 2011 8 of 2011

Table of Ministers responses still pending

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Resources Legislation Amendment Bill 2011	Minister for Energy and Resources	30-08-11	9 of 2011