

No. 11 of 2011

Tuesday, 11 October 2011

On the

Children, Youth and Families
Amendment (Security of Youth Justice
Facilities) Bill 2011

Crimes and Domestic Animals Acts
Amendment (Offences and Penalties)
Bill 2011

Emergency Management Legislation
Amendment Bill 2011

Energy Legislation Amendment
(Bushfire Mitigation and Other
Matters) Bill 2011

Gambling Regulation Amendment
(Licensing) Bill 2011

Sentencing Amendment (Community
Correction Reform) Bill 2011

Transport Legislation Amendment
(Public Transport Development
Authority) Bill 2011

Victorian Commission for Gambling
and Liquor Regulation Bill 2011

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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) 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

'*Charter*' refers to the Victorian *Charter of Human Rights and Responsibilities Act 2006*;

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

'*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 \$122.14);

'*SARC*' refers to the Scrutiny of Acts and Regulations Committee of the Parliament of Victoria;

'*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. 11 of 2011

Children, Youth and Families Amendment (Security of Youth Justice Facilities) Bill 2011

Introduced	13 September 2011
Second Reading Speech	14 September 2011
House	Legislative Assembly
Member introducing Bill	Hon. Mary Wooldridge MLA
Portfolio responsibility	Minister for Community Services

Background and Content

The Bill amends the *Children, Youth and Families Act 2005* (the 'Act') to change the security arrangements for youth justice facilities (a 'facility').¹ The Bill substitutes section 488A of the Act with new sections 488A, 488AB, 488AC, 488AD, 488AE and 488AF.

Search on entry or leaving a youth justice facility

New section 488A provides that any person who wishes to enter or leave a facility (other than a judge of the Supreme Court or County Court or a magistrate) must submit to a formal search and frisk search if asked. The Bill inserts definitions for 'formal search', 'frisk search' and 'strip search'. This section does not allow for a strip search or body cavity search. **[4 and 7]**

New section 488AB provides that the officer in charge of a facility may order at any time that an officer search any part of the facility, search and examine any person in the facility (other than a judge of the Supreme Court or County Court or a magistrate), or search and examine any thing in the facility. This section does not allow for a strip search or body cavity search. **[7]**

Strip search of detainee in a youth justice facility

New section 488AC allows the officer in charge to strip search a detainee (but not a body cavity search) where it is necessary to do so in the interests of the security or good order of the facility, or in the interests of the safety or security of the detainee or any other person in the facility. If necessary, reasonable force may be used. **[7]**

Manner of conducting searches

New section 488AD sets out the manner of conducting a search. A strip search must be conducted in the presence of another officer, positioned in such a way that the detainee being searched is not in view of that officer. The other officer must be of the same sex as the detainee, unless the search is urgently required and an officer of the same sex is not available (Refer to Charter Report below). **[7]**

Consequences of refusal to submit to a search

New section 488AE provides that a person who fails to submit to a search may be denied entry or compelled to leave the facility immediately. **[7]**

¹ A youth justice facility means a remand centre, a youth residential centre, a youth justice centre or a youth justice unit.

Seizure use and disposal of prescribed items

New Division 3A deals with the seizure of prescribed items found during a search, and how such items are to be handled, used, returned or disposed of. [8]

Secrecy of security arrangements at a youth justice facility

The Bill inserts amendments about unauthorised communication of certain confidential information concerning the security of a facility. Information includes photographs. [9]

Offence to communicate with a detainee on escorted temporary leave

The Bill amends section 501 of the Act to make it an offence to communicate with a detainee of a youth justice facility on accompanied temporary leave if the communication threatens the security of the facility. A person may not be charged with this offence unless the accompanying officer has first warned the person that it is an offence under the Act to communicate with the detainee. (See discussion in the Statement of Compatibility – Charter s.15(3)) [10]

Charter report

Privacy – Humane treatment – Rights of children – Strip searches of detainees in youth justice facilities

Summary: The Bill's provisions for strip searches of detainees in youth justice facilities lack some of the express protections presently applicable to strip searches of adult prisoners. The Committee will write to the Minister seeking further information.

The Committee notes that clause 7, inserting a new section 488AC into the *Children, Youth and Families Act 2005*, permits the officer in charge of Victorian Youth Justice Custodial Services to authorise (or, under new section 482B, to authorise others employed by the Department to authorise) a strip search of a detainee in a youth justice facility where the officer is of the opinion that the search is necessary in the interests of the security or good order of the facility or the safety or security of any person in the facility.

The Statement of Compatibility remarks:

Search powers, particularly searches of persons, engage the right to privacy. Further, depending upon the circumstances and manner in which they are carried out, searches of young people detained in youth justice facilities have the potential to engage a number of other rights including the right to human treatment when deprived of liberty (section 22), the rights of children (section 17) and the rights of children in the criminal process (section 23). This is particularly so in respect of strip searches. However, I consider that the powers in the bill are compatible with these rights having regard to: the circumstances in which searches may be conducted; the safeguards imposed; and the fact that they will be conducted by persons who are public authorities and therefore bound to act compatibly with those rights having regard to the individual circumstances.

The Committee notes that new section 488AD(6) provides that all searches in youth justice facilities must be carried out 'expeditiously' and 'with regard to the decency and self-respect of the person searched' and sets out some specific protections relating to strip searches.²

² New section 488AD(1) requires that a strip search be conducted by an officer of the same sex as the detainee. New section 488C(2) excludes searches of the detainee's body cavities. New section 488AD(4)-(5) requires the presence of another officer (generally of the same sex as the detainee) who cannot view the search.

However, the Committee observes that the Bill's provisions for strip searches of detainees in youth detention facilities lack a number of the express protections presently applicable (under the *Corrections Regulations 2009*) for strip searches of adult prisoners.³

The Committee notes that new section 488AD(6)(c) obliges officers carrying out any search of a juvenile to comply with 'any other prescribed requirement'. The Statement of Compatibility remarks that 'additional safeguards... may be incorporated in the regulations and operations manual, which are currently under review'.

The Committee will write to the Minister seeking further information as to when further safeguards for strip searches of detainees will be incorporated into the *Children, Youth and Families Regulations 2007* and whether or not they will include express safeguards equivalent to those in the *Corrections Regulations 2009*. Pending the Minister's response, the Committee draws attention to new section 488AC.

The Committee makes no further comment.

³ Strip searches for adult detainees are presently governed by the *Corrections Regulations 2009*, while strip searches for juvenile detainees are presently governed by the *Children, Youth and Families Regulations 2007*. Section 3 of the *Corrections Regulations 2009* defines 'strip search' to expressly exclude any requirement that 'the person to be touched by the person or persons conducting the search'. Section 69(1)(b) provides that 'the search must not be conducted by more officers than is reasonably necessary to ensure the safety of the officers and the prisoner'. Section 69(3) requires that any opinion that a strip search is necessary be believed on reasonable grounds. Section 69(6)(a) requires that the officer 'ensure that... the strip search is conducted as expeditiously as possible to minimise the impact on the prisoner's dignity and self-respect, avoiding any unnecessary force'. Section 69(6)(b) that the search be conducted in a private place or in an area that provides reasonable privacy and only in the presence and sight of persons needed to ensure safety. Section 69(6)(c) expressly bars anyone from touching the prisoner's body unless reasonable force is necessary to compel obedience. Section 69(6)(d)-(e) requires that the prisoner be allowed to dress in private and that alternative clothes be supplied if the prisoner's clothes are seized. Section 69(7) requires a register to be kept setting out details of every strip search.

Crimes and Domestic Animals Acts Amendment (Offences and Penalties) Bill 2011

Introduced	13 September 2011
Second Reading Speech	14 September 2011
House	Legislative Assembly
Member introducing Bill	Hon. Peter Walsh MLA
Portfolio responsibility	Minister for Agriculture and Food Security

Background and Content

The Bill amends the *Crimes Act 1958* to create new offences relating to the death or endangerment of a person caused by a person failing to control a dangerous, menacing or restricted breed dog. The offences apply to owners of such dogs, and in certain circumstances to persons other than owners. (new section 319B). A lesser offence is created of engaging in reckless conduct placing a person in danger.

Extracts from the Second Reading Speech:

The first offence is that of failing to control a dog resulting in death. This offence will apply where an owner, or person in charge, of a dangerous, restricted breed or menacing dog fails to keep the dog under control, and the dog kills a person. The owner or person in charge of the dog will be criminally liable if a reasonable person would have realised that the failure to keep the dog under control would expose either the person who was killed or another person to an appreciable risk of death. The maximum penalty for the offence will be 10 years imprisonment. **[3 (new section 319B)]**

The second offence is that of failing to control a dog endangering life. Under this offence, an owner or person in charge of a dog will be criminally liable if, without lawful excuse, they were reckless as to whether the dog was under control. This will cover cases where a dangerous, restricted breed or menacing dog places a person's life in danger, whether or not a death actually results. The maximum penalty for this offence will be five years imprisonment. **[3 (new section 319C)]**

The Bill also amends the *Domestic Animals Act 1994* to increase penalties for offences under that Act and create a new offence relating to the transfer of ownership of restricted breed dogs.

Note: The Statement of Compatibility deals with the issue of property rights (Charter s. 20).

Extracts from the Second Reading Speech:

... In an aim to further limit the ownership of existing restricted breed dogs that may be kept after 30 September 2011 the Bill will prohibit the transfer of ownership of such dogs upon death of the owner to any person other than immediate family. Otherwise they must be surrendered to the council for destruction. **[18]**

The Committee makes no further comment.

Emergency Management Legislation Amendment Bill 2011

Introduced	13 September 2011
Second Reading Speech	14 September 2011
House	Legislative Assembly
Member introducing Bill	Hon. Peter Ryan MLA
Portfolio responsibility	Minister for Police and Emergency Services

Background

The Bill amends the:

1. *Emergency Management Act 1986* to clarify the functions and powers of the Minister for Police and Emergency Services and the Chief Commissioner of Police in respect to emergency management. Further the amendments modernise certain terminology, broaden the definition of 'emergency' and allow the transfer of control functions in emergencies, other than a fire or major fire. **[5 to 16]**
2. *Country Fire Authority Act 1958* to enable the Chief Officer of the Country Fire Authority to delegate the power to issue fire prevention notices. **[3 to 4]**
3. *Fire Services Commissioners Act 2010* to clarify that the Fire Services Commissioner's responsibility for managing the State Control Centre extends to all agencies that use the Centre in response to emergencies. **[17 to 19]**
4. *Victoria State Emergency Service Act 2005* (the 'Act') to address some technical difficulties that the Victoria State Emergency Service (VICSES) has encountered since the introduction of the Act. **[20 to 28]**

The Bill will amend the Act to:

- a. Broaden the powers available to the VICSES Director of Operations and the VICSES Authority to enable the Director or the Authority to issue directions to individual VICSES members and any other persons who voluntarily place their services at his or her disposal or to persons from other emergency services organisations. **[21 and 23]**
- b. Clarify the power available to the authority to issue standing orders. **[25]**
- c. Provide the authority, rather than the director of operations, with the relevant powers to deal with the registration of VICSES units and, of its own motion, to register a group of persons as a unit, as well as to remove the need to consult with a DISPLAN coordinator before establishing a unit.
- d. Replace all references to the position 'Director of Operations' with 'Chief Officer, Operations'.

Committee comment

Wide delegation provision – Insufficient explanatory material to justify provision – Makes rights, freedoms or obligations dependent on insufficiently defined administrative powers – Parliamentary Committees Act 2003, section 17(a)(ii)

The Bill substitutes a new section 7 in the *Emergency Management Act 1986* to provide that the Minister may by instrument delegate to the State Emergency Response Coordinator or any other person any power or function of the Minister under the Act or the regulations other than the power of delegation. **[6]**

The Committee refers to item 1.2 of its Practice Note No. 1 of October 2005. The Committee there stated that where a wide or undefined delegation of powers or functions is provided in an Act the Committee will seek further information from the Minister to justify such a provision.

The Committee will seek further advice from the Minister.

The Committee makes no further comment.

Energy Legislation Amendment (Bushfire Mitigation and Other Matters) Bill 2011

Introduced	13 September 2011
Second Reading Speech	14 September 2011
House	Legislative Assembly
Member introducing Bill	Hon. Michael O'Brien MLA
Portfolio responsibility	Minister for Energy and Resources

Background

The Bill amends the —

Electricity Safety Act 1998 to:

- extend application of bushfire mitigation plans prepared by major electricity companies from the at-risk supply network to the supply network
- create an offence for carrying out building work that will make a building electrically unsafe
- to extend the powers of Energy Safe Victoria to require audits of compliance with electric plans and responsibilities
- enable seizure of items under powers of entry (refer to Statement of Compatibility)
- set out procedures for obtaining an occupier's consent to entry to, search of and seizure from a residence
- provide for prosecutions to commence within 3 years after the Commission of an offence
- make other technical amendments to improve the operation of the Act.

Victorian Energy Efficiency Target Act 2007 to:

- create an offence of knowingly creating an incorrect certificate or a certificate that does not comply with the requirements of the Act
- clarify the circumstances in which the Essential Services Commission may refuse to register a certificate
- expand the grounds for suspension of accreditation, and enable the Essential Services Commission to revoke accreditation of an accredited person
- give the Essential Services Commission a new power to require accredited persons to obtain independent audits of their compliance with the Act
- make necessary minor technical and consequential amendments.

Electricity Industry Act 2000 to cap wrongful disconnection payments in certain circumstances.

Gas Safety Act 1997 to:

- enable seizure of items under powers of entry (refer to Statement of Compatibility)
- set out procedures for obtaining an occupier's consent to entry to, search of and seizure from a residence
- clarify the operation of the offence of supplying or selling unaccepted or unlabelled appliances
- make other minor amendments to improve the operation of the Act

Gas Industry Act 2001 to cap wrongful disconnection payments by a retailer in certain circumstances, and to make a statute law revision amendment to remove reference to repealed sections of the Act.

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 Committee reported on this Bill in *Alert Digest No. 10 of 2011* tabled on 13 September 2011.

Charter report

Presumption of innocence – Defence of inability to comply with order

Summary: The Committee will write to the Minister seeking further information as to whether or not new section 3.8.10(5), which provides a defence for defendants who do not know how to or unable to comply with an order made by the Minister or an authorised person, places a legal onus of proof on the defendant.

The Committee notes that clause 32, inserting a new section 3.8.10 into the *Gambling Regulation Act 2003*:

- permits the Minister or an authorised person to make reasonable directions to officers or employees of gaming operators to obtain information about monitoring systems (sub-s (1))
- creates an offence of refusing or failing to comply with such a direction (sub-s (4))
- provides that 'it is a defence if the defendant does not know how to, or is not able to, provide the assistance required under the direction.' (sub-s (5))

The Committee observes that the prosecution is generally required to prove the voluntariness of any alleged criminal acts or omissions.

The Statement of Compatibility remarks:

New section 3.8.10 limits the presumption of innocence because it places the onus of proving certain matters on the defendant...

The limitation requires the defendant to prove that he or she does not know how to, or is not able to, provide the assistance required.

The Committee observes that new section 3.8.10(5) makes no reference to questions of proof. Under s. 72 of the *Criminal Procedure Act 2009*, defendants who wish to rely on a defence are only required to 'present or point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish' the defence.

The Committee will write to the Minister seeking further information as to whether or not new section 3.8.10(5), which provides a defence for defendants who do not know how to or unable to comply with an order made by the Minister or an authorised person, places a legal onus of proof on the defendant. Pending the Minister's response, the Committee draws attention to new section 3.8.10(5).

Freedom of expression – Offence to insult Minister or authorised person exercising due diligence powers relating to legacy monitoring systems

Summary: The Committee refers to Parliament for its consideration the question of whether or not new section 3.8.11, which creates an offence of insulting the Minister for Gaming or an authorised person while they exercise due diligence powers relating to legacy monitoring systems, is reasonably necessary to respect those people's rights and reputation.

The Committee notes that clause 32, inserting a new section 3.8.11 into the *Gambling Regulation Act 2003*, makes it an offence to 'assault, obstruct, hinder, threaten, abuse, insult or intimidate' the Minister for Gaming or authorised persons exercising due diligence powers relating to legacy monitoring systems.

Charter s. 15(3) provides:

Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary-

- (a) to respect the rights and reputation of other persons; or
- (b) for the protection of national security, public order, public health or public morality.

The Statement of Compatibility remarks:

New section 3.8.11 is a lawful restriction that is reasonably necessary to respect the rights and reputation of the minister and authorised persons and complies with section 15(3)(a) of the charter act. The limitation is authorised by law and is reasonably necessary to ensure that the minister or authorised person is able to exercise their powers under the act without hindrance. The assault, obstructions, hindrances, threats, abuse, insults or intimidation that is prohibited under this new section would offend the minister's or authorised persons' right to liberty and security under section 21 of the charter act, as well as the right to privacy and reputation under section 13 of the charter act. It follows that new section 3.8.11 is compatible with the freedom of expression under section 15 of the Charter Act.

While the Committee agrees that the criminalisation of assaults, obstructions, hindrances, threats, abuse and intimidation are compatible with the Charter's right to freedom of expression, it notes that the criminalisation of insults may capture behaviour that is unlikely to hinder the exercise of powers under the Act or impinge on anyone's rights or reputation. In 2004, a majority of the High Court held that the allegations of corruption can amount to insulting behaviour (subject to the constitution's implied freedom of political communication.)⁴

⁴ *Coleman v Power* [2004] HCA 39, 220 CLR 1, [16] (Gleeson CJ), [72] (McHugh J), [286] (Callinan J), [314] (Heydon J).

The Committee observes that, since the Charter was enacted, at least two Bills and one regulation have removed or refrained from introducing offences of insulting behaviour.⁵ Two further Bills that criminalised insulting such officers did so to preserve order in public proceedings and imposed a fine of only 10 penalty units.⁶ By contrast, new section 3.8.11 applies to all public and private exchanges and carries a fine of 100 penalty units.⁷

The Committee refers to Parliament for its consideration the question of whether or not new section 3.8.11, by creating an offence of insulting the Minister for Gaming or an authorised person when they exercise due diligence powers relating to legacy monitoring systems, is reasonably necessary to respect those people's rights or reputation.

The Committee makes no further comment.

⁵ See *Equal Opportunity Amendment (Governance) Act 2009*, s. 12 (removing the offence of using 'insulting language' to a member or member of staff of VEOHRC when exercising functions under the *Equal Opportunity Act*, punishable by a fine of 20 penalty units c.f. the explanatory memorandum to that Bill), *Road Legislation Amendment Act 2009*, s. 23 (inserting an offence of obstructing the operator of a speed camera punishable by a fine of 60 penalty units c.f. SARC, *Alert Digest No. 13 of 2009*, pp. 29-30 & 31) and *Alpine Resorts (Management) Regulations 2009*, reg 40 (an offence of riotous, threatening or dangerous behaviour towards another person in an alpine resort punishable by a fine of 10 penalty units c.f. SARC, *Annual Review 2009 – Regulations 2009*, p. 66.)

⁶ *Racing Legislation Amendment (Racing Integrity Assurance) Act 2009*, ss. 7 & 8 (creating offences of insulting a member of the HRV or GRV Racing Appeals and Disciplinary Boards at proceedings of those Boards, punishable by a fine of 10 penalty units); *Major Transport Projects Facilitation Act 2009*, s. 252 (creating offences of insulting members of assessment committees or people attending a hearing before an assessment committee, punishable by a fine of 10 penalty units.)

⁷ A penalty unit is currently \$122.14.

Sentencing Amendment (Community Correction Reform) Bill 2011

Introduced	14 September 2011
Second Reading Speech	15 September 2011
House	Legislative Assembly
Member introducing Bill	Hon. Robert Clark MLA
Portfolio responsibility	Attorney-General

Background

The Bill amends the *Sentencing Act 1991* (the 'Act') to:

- simplify the sentencing hierarchy by abolishing the community-based order (CBO), the intensive correction order (ICO), combined custody and treatment order (CCTO) and the intensive correction management order (ICMO) (yet to commence)
- create a single community correction order (CCO) to sit in the sentencing hierarchy between imprisonment and a fine, with a broad range of optional conditions
- create new offences to deal with contravention of CCOs and existing orders.

Extracts from the Second Reading Speech:

... The CCO will allow Courts to impose core conditions and optional conditions including curfews and no-go zones. There will be new sanctions for non-compliance. In addition, Courts will be given an expanded power to suspend or cancel the driver licence or disqualify an offender found guilty of any offence.

... Specifically, the CCO will replace the Combined Custody Treatment Order, Intensive Correction Order (ICO), the Intensive Correction Management Order (which has not come into effect) and the Community-Based Order (CBO). From the commencement of this Bill, these orders will no longer be available to Courts in sentencing offenders. Existing orders will continue until their end date. After that time, if an offender is convicted of breaching one of the abolished orders, the court will re-sentence the offender under the new sentencing framework.

... A key feature of the new order is that it will allow the Courts to tailor the length of an order rather than limiting the order to a fixed time period. A CCO can last for up to two years in the Magistrates' Court. In the higher Courts, the Bill does not set a uniform maximum duration. Instead, the maximum duration will be determined by the maximum term of imprisonment for the relevant offence. Importantly, a CCO may be combined with a fine and/or jail for up to three months.

All offenders placed on a CCO will be required to comply with basic requirements such as not re-offending, not leaving Victoria without permission, and reporting to and complying with directions given by community corrections officers.

Optional conditions

... Using new powers under the CCO, Courts may require offenders to pay a bond that will be forfeited if the offender fails to comply with their order. Courts may also impose up to 600 hours of community work, curfews and no-go zones, conditions on where an offender may live, prohibitions on contact with specified persons such as associates of the offender, victims, witnesses or their families, and exclusions from licensed premises.

... Courts will be able to use the new CCO to ensure that those who have committed serious crimes will no longer walk out of court free to continue their criminal behaviour with no restrictions or penalties. Courts may use the place or area exclusion to prevent offenders from going to a particular site or an area such as the CBD. Courts may also use the curfew condition to require that an offender stay at home for up to 12 hours a day to stop them going out at night or other times and engaging in further criminal behaviour.

Under the alcohol exclusion condition, Courts will have the power to ban offenders from entering or consuming alcohol in licensed premises. Offenders will be completely banned from going to nightclubs, pubs, bars, restaurants, cafes and function centres. Offenders will be able to access other types of licensed premises. However, they will not be allowed to enter the bar area and will not be allowed to drink alcohol anywhere in the premises. If they do, they will be in contravention of their order.

... Courts will be given the power to impose electronic monitoring conditions on offenders who are subject to a curfew, place or area exclusion or non-association condition.

Compliance and enforcement

Offenders who fail to comply with the terms of their order will face tougher responses including a new contravention offence that will carry a maximum penalty of 30 penalty units or three months imprisonment. The new offence will not just apply to contraventions of the CCO, it will also apply to contraventions of existing suspended sentences, home detention orders and other sentencing orders abolished by the Bill.

... The Bill will enable Corrections Victoria to impose sanctions including an additional 16 hours of unpaid community work and extend curfews for up to two hours a day, within the maximum levels set out in the legislation. Offenders can either accept the punishment for their wrongful behaviour or contest the sanction in court. The court may confirm, vary or revoke the sanction depending on the circumstances.

The Bill will also provide Corrections Victoria with the power to impose on-the-spot fines that target conduct that warrants a response above a warning, but does not itself warrant returning the offender to court.

New expanded driver licence penalties

... Courts will be given a broader discretion to impose driver licence penalties on any offender for any offence where the court considers it appropriate to the circumstances.

Committee comment

Delayed commencement – Delegation of legislative power – One year rule

The Bill provides that some of the provisions of Bill may not commence until 30 June 2013. The Committee once again draws attention to Practice Note No.1 of 2005 concerning delayed commencement of legislation of more than one year from introduction. Where delayed commencement is considered necessary or desirable SARC would prefer some explanation to be provided in either the explanatory memorandum or the second reading speech. [2]

The Committee will seek further advice from the Minister.

The Committee makes no further comment.

Transport Legislation Amendment (Public Transport Development Authority) Bill 2011

Introduced	13 September 2011
Second Reading Speech	14 September 2011
House	Legislative Assembly
Member introducing Bill	Hon. Terry Mulder MLA
Portfolio responsibility	Minister for Public Transport

Background

The Bill amends the *Transport Integration Act 2010* to establish the Public Transport Development Authority (the 'Authority') to—

- deliver more customer focused public transport services by planning, coordinating and managing the public transport system.
- administer the arrangements for the provision of metropolitan trams, trains and buses and regional trains and buses.
- operate as the face of public transport.
- improve the public transport service experience and create a public transport shopfront for passengers and stakeholders.

The Bill further makes related and consequential amendments to the *Transport Integration Act 2010*, the *Transport (Compliance and Miscellaneous) Act 1983* and certain other Acts.

The Authority will replace and subsume the roles and responsibilities of the Director of Public Transport, Metlink Victoria Pty Ltd and the Transport Ticketing Authority.

Committee observations

Compulsory acquisition of land – Property rights

The Bill inserts a new section 79C into the *Transport Integration Act 2010* to provide the Authority a power to compulsorily acquire any land. However, this power is subject to the compensation processes provided in the *Land Acquisition and Compensation Act 1986*. [3]

Compulsory felling and removal of trees – Cultural and property rights

The Bill inserts a new section 67A in the *Rail Management Act 1996* which may require land owners of occupiers to fell and remove trees or wood. The Statement of Compatibility points out that this provision may under Charter 19(2) (cultural rights) potentially affect Aboriginal traditional owners who have a close cultural connection with the land and natural resources they have traditionally owner, occupied or used.

Further SARC observes that the cost of complying with a notice to fell and remove a tree is the responsibility of the land owner or occupier. [21]

Committee comment

Delayed commencement – Delegation of legislative power – One year rule

The Bill provides that the provisions of Part 5 (Abolition or dissolution of Transport Bodies) may not come into force until 30 June 2013. The Committee once again draws attention to Practice Note No. 1 of 2005 concerning delayed commencement of legislation of more than one year from introduction. Where delayed commencement is considered necessary or desirable SARC would prefer some explanation to be provided in either the explanatory memorandum or the second reading speech. [2]

The Committee will seek further advice from the Minister.

The Committee makes no further comment.

Victorian Commission for Gambling and Liquor Regulation Bill 2011

Introduced	13 September 2011
Second Reading Speech	15 September 2011
House	Legislative Assembly
Member introducing Bill	Hon. Michael O'Brien MLA
Portfolio responsibility	Minister for Consumer Affairs

Background

The Bill establishes the Victorian Commission for Gambling and Liquor Regulation (the Commission), which will assume responsibility for functions under Victoria's gambling and liquor licensing legislation. The Commission will replace the existing Victorian Commission for Gambling Regulation, the Director of Liquor Licensing and the Liquor Licensing Panel.

The Bill amends the *Gambling Regulation Act 2003* and the *Liquor Control Reform Act 1998* to enable the Commission to exercise regulatory functions under those Acts and makes consequential amendments to the *Casino Control Act 1991* and the *Racing Act 1958*.

Extracts from the Second Reading Speech:

... The Bill will create the Victorian Commission for Gambling and Liquor Regulation, and the new Commission will assume all regulatory functions, duties and powers of the Victorian Commission for Gambling Regulation, the director of liquor licensing and the liquor licensing panel.

... The Victorian Commission for Gambling and Liquor Regulation will be an independent statutory authority. The Commission will undertake licensing activities, promote compliance with and detect breaches of the relevant gambling and liquor legislation. The Commission will also inform and educate industry and the public about the Commission's regulatory practices and requirements.

... Part 1 also empowers the Minister to issue decision-making guidelines to the Commission which may provide guidance to the Commission about the government's policies and objectives relating to liquor and gambling.

Part 2 of the Bill provides for the establishment of the new regulator as a statutory body corporate, with powers, functions and duties as provided in the *Liquor Control Reform Act 1998*, the *Gambling Regulation Act 2003* and the *Casino Control Act 1991* and other relevant Acts.

... Part 3 of the Bill gives the Commission the general authority to investigate matters or to conduct an inquiry relevant to the powers, duties and functions of the Commission in the regulation of gambling and liquor laws. The Minister may also refer a matter for inquiry to the Commission relating to gambling or liquor regulation.

Part 4 of the Bill will create an integrated role of 'gambling and liquor inspector' and empower the Chairperson of the Commission to appoint suitable persons to the role.

... Part 5 of the Bill provides for powers to make regulations. Part 6 of the Bill provides for savings and transitional provisions.

... The new Commission will be empowered to take appropriate enforcement action as the Bill will vest the existing disciplinary powers under the *Liquor Control Reform Act 1998* in the new Commission rather than in the Victorian Civil and Administrative Tribunal.

... The Bill will introduce provisions enabling the Commission to seek injunctive relief from the Courts for contraventions of the *Liquor Control Reform Act 1998*. Having the capacity to seek injunctive relief will be an additional enforcement tool that can be used by the Commission.

The Committee makes no further comment.

**Committee Room
10 October 2011**

Appendix 1

Index of Acts and Bills in 2011

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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
Children, Youth and Families Amendment (Security of Youth Justice Facilities) Bill 2011	11
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
Crimes and Domestic Animals Acts Amendment (Offences and Penalties) Bill 2011	11
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
Emergency Management Legislation Amendment Bill 2011	11
Energy Legislation Amendment (Bushfire Mitigation and Other Matters) Bill 2011	11
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
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Planning and Environment Amendment (Hoon Driving and Other Matters) Bill 2011	6
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State Taxation Acts Amendment Bill 2011	5
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Transport Legislation Amendment (Public Transport Development Authority) Bill 2011	11
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Victorian Commission for Gambling and Liquor Regulation Bill 2011	11
Victoria Law Foundation Amendment Bill 2011	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 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

Emergency Management Legislation Amendment Bill 2011 11

(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

Sentencing Amendment (Community Correction Reform) Bill 2011 11

Transport Legislation Amendment (Public Transport Development Authority) Bill 2011 11

(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

Children, Youth and Families Amendment (Security of Youth Justice Facilities) Bill 2011 11

Education and Training Reform Amendment (School Safety) Bill 2010 1

Gambling Regulation Amendment (Licensing) Bill 2011 11

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
Children, Youth and Families Amendment (Security of Youth Justice Facilities) Bill 2011	Minister for Community Services	11-10-11	11 of 2011
Emergency Management Legislation Amendment Bill 2011	Minister for Police and Emergency Services	11-10-11	11 of 2011
Gambling Regulation Amendment (Licensing) Bill 2011	Minister for Gaming	11-10-11	11 of 2011
Sentencing Amendment (Community Correction Reform) Bill 2011	Attorney-General	11-10-11	11 of 2011
Transport Legislation Amendment (Public Transport Development Authority) Bill 2011	Minister for Public Transport	11-10-11	11 of 2011

