

No. 13 of 2012

**Tuesday, 11 September
2012**

On the

Drugs, Poisons and Controlled
Substances Amendment Bill 2012

Fire Services Property Levy Bill 2012

Planning and Environment
Amendment (General) Bill 2012

Resources Legislation Amendment
(General) Bill 2012

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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

'AAT' refers to the Administrative Appeals Tribunal;

'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 (currently one penalty unit equals \$140.84).

'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. 13 of 2012

Drugs, Poisons and Controlled Substances Amendment Bill 2012

Introduced	29 August 2012
Second Reading Speech	30 August 2012
House	Legislative Assembly
Member introducing Bill	Hon. Peter Ryan MP
Portfolio responsibility	Minister for Police and Emergency Services

Purpose

The Bill amends the *Drugs, Poisons and Controlled Substances Act 1981*.

The Bill bans further substances of synthetic cannabinoids as illicit drugs in Victoria.

More specifically the Bill: -

- Adds eight synthetic cannabinoids and five other synthetic substances to the list of prohibited drugs of dependence in Schedule 11. (The offences of trafficking etc in relation to illicit drugs and drugs of dependence in Schedule 11 and related matters are set out in Part V of the Act).
- Section 52 is the provision relating to the setting of poison bates. The amendments remove an outdated reference to the *Pounds Act 1958* which was repealed by the *Impounding of Livestock Act 1994* [4]. (See Charter report below)

Charter report

Presumption of innocence – Reverse onus

Summary: Clause 4 amends a definition relevant to a defence on which the defendant bears the onus of proof. The Committee will write to the Minister seeking further information as to the compatibility of clause 4 with the Charter right of defendants to be presumed innocent until proved guilty according to law.

The Committee notes that clause 4 amends the definition of ‘domestic animal’ for the purposes of the offence of laying poison baits in existing s. 52. Section 52(2) sets out several defences to this offence, but most of them are subject to a proviso that the defendant must take ‘all reasonable precautions to prevent access to’ the poison bait ‘by any domestic animal’. The defendant bears the onus of proving that such precautions were taken.¹

The Committee observes that the present definition of ‘domestic animal’ in s. 52 is set out in s. 52(3) as follows:

In this section a reference to a domestic animal is a reference to any cattle within the meaning of the Pounds Act 1958 or any dog cat or fowl or any other animal of any other kind or species whatever (whether a quadruped or not) which is tame or which has been or is being sufficiently tamed to serve some purpose for the use of man.

¹ *Drugs, Poisons and Controlled Substances Act 1983*, s. 104.

Clause 4(1) removes the underlined words and clause 4(2) adds the following definition of 'cattle':

For the purposes of subsection (3), cattle includes any horse, mare, gelding, colt, filly, foal, bull, cow, ox, steer, heifer, calf, ram, ewe, sheep, lamb, ass, mule, goat or pig.

This newly inserted definition is in similar terms to the definition in the *Pounds Act 1958* prior to its repeal in 1994.²

However, the Committee notes that transitional provisions³ may mean that, since 1994, the reference to 'cattle within the meaning of the *Pounds Act 1958*' picks up the equivalent definition in the *Impoundment of Livestock Act 1994*:⁴

livestock means an animal (including a bird) of any species used in connection with primary production or kept or used for recreational purposes or for the purposes of recreational sport, other than a dog or cat

The Committee observes that this modern language may differ in effect or clarity from the archaic language inserted by clause 4.⁵

The Committee will write to the Minister seeking further information as to the compatibility of clause 4 with the Charter right of defendants to be presumed innocent until proved guilty according to law.⁶ Pending the Minister's response, the Committee draws attention to clause 4.

The Committee makes no further comment.

² Section 3 of the *Pounds Act 1958* provided: "cattle" includes any horse mare gelding colt filly or foal and any full cow ox steer heifer or calf, and any ram ewe sheep or lamb, and any ass mule goat or pig.'

³ Section 43(3) of the *Impoundment of Livestock Act 1994* provided: 'On and after the commencement of this section, a reference to the *Pounds Act 1958* in any Act..., unless inconsistent with the context or subject-matter, is deemed to be a reference to the *Impounding of Livestock Act 1994*.' Although s. 43 was repealed by the *Statute Law Revision Act 2007*, its continuing effect is ensured by s. 14(2A) of the *Interpretation of Legislation Act 1984*. See also s. 16(a) of the *Interpretation of Legislation Act 1984*.

⁴ *Impoundment of Livestock Act 1994*, s. 3. (The words 'or for the purposes of recreational sport' were added in 2007.)

⁵ The Committee notes that the original definition of 'cattle' in the *Pounds Act 1958* is an 'includes' definition that extended the term's natural meaning (see *Mackay v Davies* [1904] 1 CLR 483.) It may also be unclear whether or not the definition in new sub-section 52(4) is qualified either by the express limitation concerning 'sufficiently tamed' animals in s. 52(3) or an implicit limitation to animals used for primary production (derived from 'cattle') or recreational purposes (derived from 'domestic animals'). For example, clause 4 may affect whether or not a person who sets poisons baits must prove that he or she took reasonable precautions to prevent access by feral livestock (e.g. wild pigs or goats, or brumbies.)

⁶ Charter s. 25(1).

Fire Services Property Levy Bill 2012

Introduced	28 August 2012
Second Reading Speech	29 August 2012
House	Legislative Assembly
Member introducing Bill	Hon. Kim Wells MP
Portfolio responsibility	Treasurer

Purpose

The general purpose of the Bill is to impose a fire services levy (the levy) on all land in Victoria, (unless specifically exempted,) to fund the Metropolitan Fire and Emergency Services Board (MFESB) and the Country Fire Authority (CFA). It also: -

Part 2 of the Bill –

- Establishes a fire services levy which applies to all land in Victoria [7]. It is based on land classification (eg: residential, commercial, industrial, primary production, public benefit and vacant) and adjusted annually. The levy is comprised of a fixed charge and an ad valorem charge (calculated on the capital improved value of the property) [11] [17]. (The fixed charges payable in respect of residential land and commercial land are \$100 and \$200 respectively.) The Minister determines the maximum levy which is published annually in the Government Gazette [12]. Clause [15] sets out the levy rates based on land use classification. (Clause [5] provides that determinations or decisions may be non-reviewable. The Minister's determination is non-reviewable as per clauses 5, 12, 15 and 84. See Section 85 discussion below).

Part 3 of the Bill – collection of levy by collection agency

- Appoints Councils as collection agencies in respect of the levy. The role includes assessing the levy, collecting the levy and keeping records [21]. Interest can be charged on unpaid levy amounts and is calculated according to the *Penalty Interest Rates Act* 1983 [30]. Unpaid levies may be recovered as debts in the Magistrates' Court [35]. (This mirrors councils' current role under the *Local Government Act* 1989.) Councils must pay all levy amounts and interest to the Commissioner of State Revenue. Levy amounts and interest are to be collected by a collection agency and kept in a dedicated account on trust for the Commissioner. The Commissioner may require interest on levy amounts to be paid to the Commissioner if he or she determines that a collection agency has failed to perform its duties or is in breach of its obligations [37]. The Commissioner's decision is non-reviewable. (See clause 84 and section 85 discussion below.)

Part 4 – Commissioner of State Revenue – oversight

- The Commissioner has general oversight of Councils as collection agencies. The Commissioner receives levies, keeps accounts and pays them into the Consolidated Fund. The Commissioner also monitors Councils [42-49]. Authorised officers of the Commissioner may enter and inspect premises either with the consent of the occupier or with a search warrant from the Magistrates' Court [55, 56]. Councils can be paid fees for the collection of levies [70]. Clause [84] declares the intention of certain provisions to limit the jurisdiction of the Supreme Court. (See section 85 discussion below.)
- A standard regulation making provision is set out [83]. The *Valuation of Land Act* 1960 is amended by [124] which contains administrative provisions which facilitate the valuation

and collection of the levy. The Valuer-General is the valuation authority in respect of non-rateable leviable land. Each separately valued property must be allocated an Australian Valuation Property Classification code (AVPCC) based on the Valuation Best Practice Specifications Guidelines. (Objections rights are already contained in section 16 of the *Valuation of Land Act 1960*.)

Section 17(b) – Repeal, alteration or variation of section 85 of the Constitution Act 1975 (unlimited jurisdiction of the Supreme Court)

Clause [84] declares the intention of clauses 5, 12, 15 and 37 to alter or vary section 85 of the Constitution Act 1975.⁷ Clause [5] provides for non-reviewable decisions. Clause [12] provides for the Minister's determination of levy rates by annual publication in the Government Gazette. Clause [15] sets out the Minister's determination of levy rates based on land use and classification (eg: residential, commercial etc). Clause [37] provides for the levy amounts to be collected by Councils and kept in a dedicated account and held on trust by the Commissioner. This includes interest on levy amounts if the Commissioner determines that a collection agency has failed to perform its duties or is in breach of its obligations under the Act. Extract from the Second Reading Speech: -

'Statement under section 85(5) of the Constitution Act 1975

I wish to make a statement under section 85(5) of the Constitution Act 1975 of the reasons for altering or varying that section by this bill.

Clause 84 of the bill provides that it is the intention of sections 5, 12, 15 and 37 of the Fire Services Property Levy Bill 2012, as those sections apply after the commencement of clause 84, to alter or vary section 85 of the Constitution Act 1975. These provisions preclude the Supreme Court from entertaining proceedings of a kind, to which these sections apply, except as provided by those sections.

Section 5 of the Fire Services Property Levy Bill 2012 defines the meaning of non-reviewable in relation to the Fire Services Property Levy Bill 2012. 'Non-reviewable' is referred to in sections 12, 15 and 37 of the Fire Services Property Levy Bill 2012.

The reason for limiting the jurisdiction of the Supreme Court in relation to the determination of the levy rates under section 12 of the bill is that the levy rates will be determined by the minister each year having regard to the funding requirements of the MFB and CFA, the administrative costs of local councils as collection agencies and other relevant matters. This clause limits the jurisdiction of the court in order to provide for the efficient determination and collection of government revenue to fund Victoria's fire services which would not be achieved if the minister's decision was reviewable

The reason for limiting the jurisdiction of the Supreme Court in relation to the determination of the land-use classification under section 15 of the bill is that the determination is based on the allocation of the Australian valuation property classification codes or AVPCC to all parcels of land by the valuation authority under the Valuation of Land Act 1960. Part III of the Valuation of Land Act 1960 permits a person aggrieved by the allocation of an AVPCC to make an objection. This clause limits the jurisdiction of the court to review the land-use classification determination to prevent unnecessary

⁷ Section 85(1) provides that the Supreme Court is created the superior court of Victoria with unlimited jurisdiction. Section 85(2) further provides that where a provision of an Act seeks to repeal, alter or vary the Court's unlimited jurisdiction, the provision (s) will not be effective unless certain procedures are followed. It requires the relevant provisions that intend to limit the Court's jurisdiction to be specifically identified by the Bill (the declaratory provision). It also requires the member of Parliament introducing the Bill to make a statement of the reasons for seeking to limit the Court's jurisdiction. Section 18(2A) of the *Constitution Act 1975* provides that a limitation amendment fails if it not passed by an absolute majority of the members of both Houses of Parliament.

proceedings and overlap with the review procedures under the Valuation of Land Act 1960 in respect to the allocation of the AVPCC.

The reason for limiting the jurisdiction of the Supreme Court in relation to levy amounts and levy interest collected by the collection agency to be kept in a dedicated account (under section 37 of the Fire Services Property Levy Bill 2012) is that the commissioner may require interest earned by a collection agency on levy amounts and levy interest to be paid to the commissioner if he or she determines that a collection agency has failed to perform its duties or is in breach of its obligations under the act. This clause is intended to encourage compliance and penalise collection agencies that fail to perform their duties under the act. This is important, because breach of a collection agencies obligation may compromise the funding of Victoria's fire services. This clause limits the jurisdiction of the court in order to ensure the effectiveness of this provision as a penalty and deterrent in order to preserve the integrity of Victoria's new fire services funding model.'

The Committee observes the section 85 provision in this instance prevents a review of the Commissioner's decision in respect of penalties which may be imposed on collection agencies for a failure to perform duties or a breach of obligations. The Committee further observes the non-reviewable decision relates to collection agencies not individuals.

Having reviewed the declaratory provisions in clauses 84, 5, 12, 15 and 37 and the section 85 statement of the member introducing the Bill in the Second Reading Speech, the Committee is satisfied that the limitation provisions are appropriate and desirable in all the circumstances.

The Committee makes no further comment.

Planning and Environment Amendment (General) Bill 2012

Introduced	29 August 2012
Second Reading Speech	30 August 2012
House	Legislative Assembly
Member introducing Bill	Hon. Robert Clark MP
Portfolio responsibility	Minister for Finance

Purpose

The Bill amends the *Planning and Environment Act 1987*. The main purposes of the Bill are: -

- To abolish Development Assessment Committees ;
- Establish the Planning Application Committee;
- Make amendments in relation to referral authorities.

Part 2 – Development Assessment Committees – Part 3 – Planning Application Committee

- Development Assessment Committees (DACs) are abolished by repealing Part 4AA [3-6]. (Note section 97MP, a member holds office on the terms and conditions determined by the Minister.)
- The Bill inserts a new Part 4AA into the Act which provides for the establishment of a Planning Application Committee (PAC) [10]. A responsible authority with the consent of the Minister may ask the PAC for advice in relation to a permit [9]. New section 97MF is a delegation provision [10]. The PAC may delegate to the members of the subcommittee any of its function. The responsible authority, with the consent of the Minister may delegate to the PAC any functions or powers under sections, 58, 59, 60, 61 and 62 [11]. (These sections relate to the matters which must be considered before deciding on a planning application.) The Minister can also delegate to the PAC any functions or powers under those sections [12].

Part 4 –referral authorities

New definitions of referral authorities are inserted. This includes ‘*determining referral authority*’ and ‘*recommending referral authority*’. (The Explanatory Memorandum states that a ‘referral authority’ means a body or person specified in a planning scheme as a determining referral authority or a recommending referral authority.) [14]. A responsible authority must refuse an application if a determining referral authority objects but may choose to either grant a permit or refuse to grant a permit if a recommending referral authority objects [21]. Extract from the Second Reading Speech: -

‘Referral authorities include government departments such as the Department of Sustainability and Environment, Department of Primary Industries and Department of Transport, and a number of statutory authorities such as VicRoads and the Country Fire Authority.

Referral authorities have the power to require a permit application to be refused or for certain conditions to be included in a permit.....

A determining referral authority will retain the existing power to require a planning application to be refused or for certain conditions to be included in a permit.

A recommending referral authority is a new type of referral authority that will not have a veto power, but rather may comment on an application and the responsible authority must consider those

comments. *The responsible authority is not obliged to refuse an application or include conditions required by this type of referral authority. A recommending referral authority will have the right to apply to VCAT for a review of the responsible authority's decision.'*

- The amendments enable a recommending referral authority to apply to VCAT for a review of a decision of a responsible authority to grant a permit, if the recommending referral authority objected to the grant of a permit or condition recommended by the recommending referral authority was not included on the permit [32-3]. Referral authorities are required to act as promptly as is reasonably practicable [41].

Part 5 – Authorisation of planning authorities – Part 6 – Streamlined process for amendments

- Currently a municipal council cannot prepare an amendment to a planning scheme in force in its municipal district unless it has applied to the Minister and the Minister has authorised it to do so. The amendments provide that a council may prepare the amendment specified in the application without the Minister's authorisation if the Minister has not responded in ten days [42]. A Minister may authorise a council to prepare an amendment to a planning scheme if it applies to an area adjoining its municipal district [42].
- Under the existing legislation, section 20 sets out exemptions from giving notice in respect of amendments to planning schemes. Existing section 20(4)⁸ provides that the '*Minister may exempt himself from any of the requirements of sections 17, 18 and 19 and the regulations in respect of an amendment which the Minister prepares, if the Minister considers that compliance with any of those requirements is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate.*' (Sections 17, 18 and 19 respectively provide for copies, inspection of a planning amendment and notice which must be given to owners, public authorities etc.)
- New section 20A inserts a regulation making provision. It provides '*(1) The Regulations may prescribe a class or classes of amendment to a planning scheme for the purposes of this section. (2) The Minister may determine to prepare an amendment in a prescribed class or classes in accordance with this section.*' The effect of new section 20A(2) is that if the Minister determines to prepare an amendment in a prescribed class or classes (by way of regulation), sections 17,18 and 19 do not apply [44]. Notice must be laid before Parliament under section 38(1) to specify whether the amendment was prepared under new section 20A [45]. Such an amendment may be revoked by Parliament under section 38. Extract from the Second Reading Speech:-

'Clause 44 of the bill introduces a new section 20A into the act. This section will introduce a streamlined process to enable straightforward changes to planning schemes to be processed quickly, simply and inexpensively. Approximately one-third of amendments are for straightforward changes, such as removing redundant provisions and making corrections. These changes are important to keep planning schemes in good working order, but do not warrant the same consultation steps that strategically significant amendments require.

The criteria for determining what amendments may be prepared under the new streamlined process will be prescribed in regulations, which will be developed in consultation with local councils and other planning stakeholders. The prescribed matters are likely to include updates, corrections and technical changes that have no significant policy impact.

Any person can ask the minister to prepare an amendment under this process, or the minister may initiate the amendment. The key is that the proposed change must meet the criteria prescribed in the regulations. The minister will decide if the proposal meets the criteria and whether to proceed with

⁸ Existing Section 20(4) was inserted into the *Planning and Environment Act 1987* in 1993 by No.128/1993.

the request. The minister will prepare the amendment and will consult with the relevant planning authority, which is usually the local council, unless the planning authority has requested the amendment.'

Part 7 – Agreements

- Section 173 of the Act provides that a responsible authority may enter into an agreement with an owner of land in the area covered by a planning scheme for which it is the responsible authority. (Note these are agreements to set out conditions or restrictions on the use or development of the land or to achieve other planning objectives in relation to the land.) An agreement may be ended by agreement between the responsible authority and all persons bound or otherwise in accordance with the new process set out in new section 178A-I [49].
- The new process provides for the giving of notice to parties including those persons it considers may suffer material detriment. If the responsible authority decides to amend or end an agreement, it must give notice of its decision to the applicant and each person who made an objection or submission.
- A responsible authority must not proceed to end or amend an agreement until at least 21 days after the giving of the required notice, or if an application for review is made, until the application is determined by VCAT or withdrawn [49]. If land subject to an agreement is subdivided, transferred or sold, each of the subsequent owners becomes an additional party to that agreement (new section 182A) [52]. An applicant may apply to VCAT for review of a refusal by the responsible authority or a decision by the responsible authority to amend or end the agreement in a manner different to the original proposal (new section 184A) [54].

Parts 8, 9 and 10 – general amendments

- Clause [56] clarifies section 6 that a planning scheme can designate the Minister, public authority or municipal council as an acquiring authority for land reserved for public purposes. New section 109(1A) provides that if a planning scheme designates a Minister, public authority or municipal council as acquiring authority for land reserved for a public purpose, then that authority is liable for the compensation payable which arises from that reservation [58].
- Clause [69] inserts a definition of 'permit' into the section 3 definitions in the Act. A 'permit' includes any plans, drawings or other documents approved under a permit. The Explanatory memorandum observes *'This amendment will apply the definition of permit found in section 72(3) of the Planning and Environment Act to the whole of the Act. This makes it clear that a planning permit issued under any part of the Planning and Environment Act 1987 includes any plans, drawings or other documents approved under a permit.'*
- An amendment to section 12(1) provides that for a planning authority to provide information and reports as required by the Minister. Amended section 12(c)(2) provides that in preparing an amendment to a planning scheme a planning authority may take into account its social effects and economic effects [71]. Amendments to existing section 60 make it mandatory for the responsible authority when considering an application for a permit to also consider the significant social effects and economics which the proposed use or development may have [76].
- Procedural requirements for the conduct of hearings which apply to a directions panel appointed under Part 8 also apply to advisory committees appointed under Part 7 of the Act [81-82]. The appointment and functions of directions panels are provided for under new

Division 1A and new sections 158A and 158B [82]. Standard personal immunity provisions for members apply [84].

Amendments to the Subdivision Act 1988

New section 18A is inserted into the *Subdivision Act* 1988 which sets out the requirements for achieving compliance with public open space requirements specified in in a planning scheme [87-8]. New section 182A (see [52] above) does not apply to those agreements entered into under section 21(1)(b)(ii) of the Subdivision Act. (Existing section 21A(1) of the *Subdivision Act* 1988 applies to agreements) [91].

The Committee makes no further comment.

Resources Legislation Amendment (General) Bill 2012

Introduced	28 August 2012
Second Reading Speech	29 August 2012
House	Legislative Assembly
Member introducing Bill	Hon. Michael O'Brien MP
Portfolio responsibility	Minister for Energy and Resources

Purpose

The Bill amends various pieces of earth resources legislation. They make technical amendments and further provision in relation to special access authorities, special drilling authorisations and exploration permits.

Amendments to the *Geothermal Energy Resources Act 2005*

- It provides for special access authorisation for the purpose of geothermal energy exploration and extraction. It inserts new Part 5A which provides that a person may apply to the Minister for the grant of special access authorisation. The Minister must be satisfied of specific technical criteria before determining a grant of special access authorisation [4]. Special access authorisation may be granted for a year with a maximum of one further year's extension (section 57H and I) [4].
- It provides for special drilling authorisations for the purpose of geothermal energy exploration and extraction for a year. It inserts new Part 5B which provides that a current authority holder may apply to the Minister for the grant of a special drilling authorisation adjacent to the area set out in the primary authorisation by the holder (section 57M and N) [4]. The Minister must be satisfied of specific technical criteria before granting special drilling authorisation (section 57O) [4].
- Holders of special access authorisation and special drilling authorisation are not required to obtain permits under a planning scheme. Exploration under such authorisation overrides planning schemes [5-7] [(new section 78E) 12]. (This mirrors current provisions in the *Petroleum Act 1998*.) For the purposes of common law of occupier's liability and the *Wrongs Act 1958*, the holder of the authority is the occupier [12].

Amendment of *Mineral Resources (Sustainable Development) Act 1990*

- It provides that the holder of a prospecting licence must pay royalties and royalties in respect of the disposal of tailings resulting from work under a licence over Crown land in accordance with the specified rate or method of assessment [13-14]. It is an offence for the holder of a prospecting licence to dispose of any tailings in a manner contrary to the consent of the Minister. The maximum penalty is 60 penalty units [18]. The Second Reading Speech observes:-

'The prospecting licence which was introduced in early 2012 effectively replaced the small (five hectares or less) mining licence which was subject to royalties. Gold, which is the primary interest of the vast majority of prospectors remains royalty free.'

- Where there are competing applications for a licence, applications will be ranked in accordance with merit determination in accordance with Part 2 of the Act [19] may apply to. Section 77 provides that the holder of a work authority may submit a work plan for statutory endorsement. The amendments extend provisions to also apply to a person who proposes

to apply for an extractive industry work authority. A person aggrieved may apply to VCAT for review [37-39].

Amendment of Greenhouse Gas Geological Sequestration Act 2008

- New Part 8A is inserted into the Act. It replicates the provisions relating to special drilling authorisations to ensure consistency between the *Geothermal Energy Resources Act 2005* and the *Petroleum Act 1998* [42].

Amendments to the Petroleum Act 1998

- The Bill provides that an exploration permit may be granted over non-continuous parcels of land [50]. The Second Reading Speech comments:-

'An exploration permit may be granted over a non-continuous parcel of land and over an area less than applied for. This approach is used for mineral titles and will allow some flexibility in dealing with native title obligations by allowing land, where native title has not been extinguished, to be excised from the exploration permit application area.'

- The holder of a production licence or an offshore petroleum production licence who also holds a special drilling authorisation does not require a planning permit to carry out petroleum production if an Environment Effects Statement has been prepared [60]. Where the Minister has authorised a Department of Primary Industries employee to enter private land to carry out petroleum exploration, compensations in Part 8 of the *Petroleum Act 1998* apply.

Amendment of Offshore Petroleum and Greenhouse Gas Storage Act 2010

- The amendments clarify that a petroleum access authority does not authorise the registered holder to make a well, other than a deviation well that enters an adjacent permit area, lease area or licence area held by the registered holder. This means that technological advances in drilling such as directional drilling, will enable drilling from onshore to an adjacent offshore area, where it necessary to provide for the shortest drilling path to the petroleum source [62-67].

Amendment of Pipelines Act 2005

- A proponent for a pipeline must seek the consent of the public authority rather than the Crown Land Minister for entry onto the land to conduct a survey for a proposed pipeline [71]. It clarifies that the Minister does not have to make a referral determination in relation to a submission for a proposed pipeline, if the matters have been raised in an Environment Effects Statement under the *Environment Effects Act 1978*.

The Committee makes no further comment.

**Committee Room
10 September 2012**

Appendix 1

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Resources Legislation Amendment (General) Bill 2012	13
Road Safety Amendment Bill 2012	8
Road Safety Amendment (Car Doors) Bill 2102	2
Road Safety Amendment (Drinking While Driving) Act 2011	1
Road Safety and Sentencing Acts Amendment Act 2012	12
Royal Women's Hospital Land Bill 2012	6
State Taxation Acts Amendment Bill 2012	8
Statute Law Repeals Bill 2012	4
Statute Law Revision Bill 2012	4
Transport (Compliance and Miscellaneous) Amendment (Fares) Bill 2012	6
Victorian Inspectorate Amendment Bill 2012	5, 6
Water Legislation Amendment (Water Infrastructure Charges) Bill 2011	5
Water Amendment (Governance and Other Reforms) Bill 2012	4, 5
Working with Children Amendment Bill 2012	9, 10

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) Rights or freedoms

Road Safety and Sentencing Acts Amendment Act 2012 12

(vi) inappropriately delegates legislative power

Health (Commonwealth State Funding Arrangements) Bill 2012 9

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

Associations Incorporation Reform Bill 2011 1

Australian Consumer Law and Fair Trading Bill 2011 1

Control of Weapons and Firearms Acts Amendment Bill 2011 1

Criminal Procedure Amendment Bill 2012 11

Drugs, Poisons and Controlled Substances Amendment Bill 2012 13

Independent Broad-based Anti-corruption Commission Amendment (Examinations) Bill 2012 7

Local Government Legislation Amendment (Miscellaneous) Bill 2012 11

Marriage Equality Bill 2012 10

National Energy Retail Law (Victoria) Bill 2012 6

Primary Industry and Food Legislation Amendment Bill 12

Victorian Inspectorate Amendment Bill 2012 5

Water Amendment (Governance and Other Reforms) Bill 2012 4

Working with Children Amendment Bill 2012 9

Section 17(b)

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

Australian Consumer Law and Fair Trading Bill 2011 1

Appendix 3

Ministerial Correspondence 2012

Table of correspondence between the Committee and Ministers during 2012

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Associations Incorporation Reform Bill 2011	Minister for Consumer Affairs	07-02-12 24-02-12	1 of 2012 4 of 2012
Australian Consumer Law and Fair Trading Bill 2011	Minister for Consumer Affairs	07-02-12 24-02-12	1 of 2012 4 of 2012
Control of Weapons and Firearms Acts Amendment Bill 2011	Minister for Police and Emergency Services	07-02-12 29-02-12	1 of 2012 4 of 2012
Water Legislation Amendment (Water Infrastructure Charges) Bill 2011	Minister for Water	28-02-12 14-03-12	12 of 2011 5 of 2012
Disability Amendment Bill 2012	Minister for Community Services	13-03-12 26-03-12	4 of 2012 5 of 2012
Water Amendment (Governance and Other Reforms) Bill 2012	Minister for Water	13-03-12 27-03-12	4 of 2012 5 of 2012
Victorian Inspectorate Amendment Bill 2012	Minister responsible for the establishment of an anti-corruption commission	27-03-12 16-04-12	5 of 2012 6 of 2012
Independent Broad-based Anti-corruption Commission Amendment (Examinations) Bill 2012	Minister responsible for the establishment of an anti-corruption commission	01-05-12 21-05-12	7 of 2012 8 of 2012
National Energy Retail Law (Victoria) Bill 2012	Minister for Energy and Resources	17-04-12 01-05-12	6 of 2012 8 of 2012
Working with Children Amendment Bill 2012	Attorney-General	05-06-12 16-06-12	9 of 2012 10 of 2012
Health (Commonwealth State Funding Arrangements) Bill 2012	Minister for Health	05-06-12 19-06-12	9 of 2012 11 of 2012
Marriage Equality Bill 2012	Ms Sue Pennicuik MLC	19-06-12 10-08-12	10 of 2012 11 of 2012
Criminal Procedure Amendment Bill 2012	Attorney-General	14.08.12 23.08.12	11 of 2012 12 of 2012

Table of Ministers responses still pending

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Local Government Legislation Amendment (Miscellaneous) Bill 2012	Minister for Local Government	14.08.12	11 of 2012
Primary Industries and Food Legislation Amendment Bill 2012	Minister for Agriculture and Food Security	28.08.12	12 of 2012
Road Safety and Sentencing Acts Amendment Act 2012	Attorney-General	28.08.12	12 of 2012
Drugs, Poisons and Controlled Substances Amendment Bill 2012	Police and Emergency Services	11.09.12	13 of 2012