

No. 13 of 2014

Tuesday, 14 October 2014
on the following Bills

Cemeteries and Crematoria
Amendment Bill 2014
(Council initiated)

Courts Legislation Amendment
(Funds in Court) Bill 2014

Drugs, Poisons and Controlled Substances
Amendment (Clinical Trials) Bill 2014

Integrity Legislation Amendment
Bill 2014

Justice Legislation Amendment
(Confiscation and Other Matters) Bill 2014
(House Amendments)

Prevention of Cruelty to Animals
Amendment (Domestic Fowl and Pigs)
and Food Amendment (Free-range Eggs)
Bill 2014

Sentencing Amendment
(Historical Homosexual
Convictions Expungement) Bill 2014
(Assembly initiated)

Sentencing Amendment
(Historical Homosexual
Convictions Expungement) Bill 2014
(Council initiated)

Table of Contents

	Page Nos.
Table of Contents	i
Useful information	ii
Alert Digest No. 13 of 2014	3
Cemeteries and Crematoria Amendment Bill 2014 (Council initiated)	3
Courts Legislation Amendment (Funds in Court) Bill 2014	4
Drugs, Poisons and Controlled Substances Amendment (Clinical Trials) Bill 2014	5
Integrity Legislation Amendment Bill 2014	6
Prevention of Cruelty to Animals Amendment (Domestic Fowl and Pigs) and Food Amendment (Free-range Eggs) Bill 2014	8
Sentencing Amendment (Historical Homosexual Convictions Expungement) Bill 2014 (Assembly initiated)	9
Sentencing Amendment (Historical Homosexual Convictions Expungement) Bill 2014 (Council initiated)	11
House Amendments	13
Justice Legislation Amendment (Confiscation and Other Matters) Bill 2014	13
Appendix 1 Index of Bills in 2014	17
Appendix 2 Committee Comments classified by Terms of Reference	21
Appendix 3 Ministerial Correspondence 2014	23
Appendix 4 Statutory Rules and Legislative Instruments considered	25
Appendix 5 Committee impact on legislation 2007-2014	27

Useful information

Role of the Committee

The Scrutiny of Acts and Regulations Committee is an all-party Joint House Committee, which examines all Bills and subordinate legislation (regulations) introduced or tabled in the Parliament. The Committee does not make any comments on the policy merits of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of non-partisan legislative scrutiny. These traditions have been developed since the first Australian scrutiny of Bills committee of the Australian Senate commenced scrutiny of Bills in 1982. They are precedents and traditions followed by all Australian scrutiny committees. Non-policy scrutiny within its terms of reference allows the Committee to alert the Parliament to the use of certain legislative practices and allows the Parliament to consider whether these practices are necessary, appropriate or desirable in all the circumstances.

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

Interpretive use of Parliamentary Committee reports

Section 35 (b)(iv) of the *Interpretation of Legislation Act 1984* provides –

In the interpretation of a provision of an Act or subordinate instrument consideration may be given to any matter or document that is relevant including, but not limited to, reports of Parliamentary Committees.

When may human rights be limited

Section 7 of the *Charter* provides –

Human rights – what they are and when they may be limited –

- (2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—
 - (a) the nature of the right; and
 - (b) the importance of the purpose of the limitation; and
 - (c) the nature and extent of the limitation; and
 - (d) the relationship between the limitation and its purpose; and
 - (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

Glossary and Symbols

'Assembly' refers to the Legislative Assembly of the Victorian Parliament

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

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

'DPP' refers to the Director of Public Prosecutions for the State of Victoria

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

'IBAC' refers to the Independent Broad-based Anti-corruption Commission

'penalty units' refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (as at 1 July 2014 one penalty unit equals \$147.61)

'Statement of Compatibility' refers to a statement made by a member introducing a Bill in either the Council or the Assembly as to whether the provisions in a Bill are compatible with Charter rights

'VCAT' refers to the Victorian Civil and Administrative Tribunal

[] denotes clause numbers in a Bill

Alert Digest No. 13 of 2014

Cemeteries and Crematoria Amendment Bill 2014 (Council initiated)

Introduced	16 September 2014
Second Reading Speech	16 September 2014
House	Legislative Council
Member introducing Bill	Hon David Davis MLC
Portfolio responsibility	Minister for Health

Note: The Committee reported on the identical Legislative Assembly initiated Bill in *Alert Digest No.12 of 2014* tabled on 16 September 2014

Purpose

The Bill amends the *Cemeteries and Crematoria Act 2003* to provide for the conversion of a right of interment for interring cremated human remains of deceased identified veterans for 25 years to a perpetual right of interment, and to provide for the re-interment of cremated human remains of deceased identified veterans and their family members in specified circumstances.

Extract from the second reading speech:

The proposed changes to the *Cemeteries and Crematoria Act 2003* are relatively small; however they represent a significant change in the way we as a community recognise, honour and manage the limited tenure cremated remains of our deceased veterans and their families.

These changes will provide cemetery trusts with the power to convert these limited tenure rights of interment to permanent tenure where no one can be found to take responsibility for their ongoing care. It will also give cemetery trusts the power to put in place a memorial for the veteran.

Charter report

The *Cemeteries and Crematoria Amendment Bill 2014 (Council initiated)* is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Courts Legislation Amendment (Funds in Court) Bill 2014

Introduced	16 September 2014
Second Reading Speech	17 September 2014
House	Legislative Assembly
Member introducing Bill	Hon Robert Clark MP
Portfolio responsibility	Attorney-General

Purpose

The Bill amends the *Supreme Court Act 1986*, the *Guardianship and Administration Act 1986*, the *County Court Act 1958*, and the *Magistrates' Court Act 1989* to improve the operation of Funds in Court by bringing provisions more in line with current industry practice.

The Bill will:

- enable the separate management or custodianship of some or all funds held by the Senior Master in Funds in Court to be transferred from the Senior Master to one or more external fund managers or custodians at the discretion of the Supreme Court
- clarify there is no presumption that funds be administered by the Senior Master when an order is made by a court in relation to funds administration for a person under a legal disability
- clarify beneficiaries' ability to apply to the Supreme Court at any time to transfer funds to an external funds administrator
- provide for new objectives of the Senior Master, annual reporting requirements, a legislative audit requirement and annual statements to beneficiaries
- provide for complaints handling procedures.

Charter report

The Courts Legislation Amendment (Funds in Court) Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Drugs, Poisons and Controlled Substances Amendment (Clinical Trials) Bill 2014

Introduced	17 September 2014
Second Reading Speech	17 September 2014
House	Legislative Council
Member introducing Bill	Hon David Davis MLC
Portfolio responsibility	Minister for Health

Purpose

The Bill amends the *Drugs, Poisons and Controlled Substances Act 1981* to provide for clinical trial permits for Schedule 8¹ poisons or Schedule 9² poisons (such as cannabis)³ for approved clinical trials and, make other minor and consequential amendments.

Note: An approved clinical trial means a clinical trial conducted pursuant to the *Therapeutic Goods Act 1989 (Cth)*

Extracts from the second reading speech:

This Bill amends the Drugs, Poisons and Controlled Substances Act 1981 (the Act) to make it easier for registered practitioners to conduct clinical trials involving cannabis or other highly regulated substances. The change will enable registered practitioners to apply for a single authorisation enabling treatment of multiple patients with schedule 8 or schedule 9 poisons such as cannabis, as part of a clinical trial. ... This Bill ensures that only bona fide cannabis-based products of known and standardised quality from recognised pharmaceutical companies that are already approved for medical use overseas or in Australia, or that are currently undergoing that process, can be considered for clinical trials. Products from suppliers that do not meet those standards would not be considered for these Victorian clinical trials.

Extract from the statement of compatibility:

If a registered medical practitioner or a nurse practitioner has not been issued with a clinical trial permit, or other authorisation under the Act (for example, individual treatment permits for each clinical trial participant), the practitioner commits an offence if the practitioner administers, supplies or prescribes a schedule 8 or schedule 9 poison to a clinical trial participant.

Charter report

The Drugs, Poisons and Controlled Substances Amendment (Clinical Trials) Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

¹ Means a substance in Schedule 8 of the Commonwealth standard - Schedule 8 poisons are substances that are controlled drugs available for therapeutic use in certain circumstances which have a high potential for abuse, misuse and dependence (for example, morphine and fentanyl).

² Means a substance in Schedule 9 of the Commonwealth standard - Schedule 9 poisons are substances that are prohibited substances which may be abused or misused (for example, cannabis, heroin, ecstasy).

³ All scheduled poisons are listed in the Standard for the Uniform Scheduling of Medicines and Poisons (the Commonwealth standard), which is produced by the Australian Committee for Chemicals Scheduling, a committee of the Therapeutic Goods Administration.

Integrity Legislation Amendment Bill 2014

Introduced	16 September 2014
Second Reading Speech	17 September 2014
House	Legislative Assembly
Member introducing Bill	Hon Robert Clark MP
Portfolio responsibility	Attorney-General

Purpose

The Bill amends the *Independent Broad-based Anti-corruption Commission Act 2011*, the *Ombudsman Act 1973*, the *Audit Act 1994*, the *Public Interest Monitor Act 2011*, and makes related amendments to other Acts.

The Bill:

- amends section 60 (Conducting investigations about corrupt conduct) to modify the threshold that must be met before the Independent Broad-based Anti-corruption Commission (the IBAC) may commence an investigation into serious corrupt conduct.

The amendments substitute subsection (2) to clarify that IBAC can investigate a matter if it is satisfied that the matter, if established, would constitute serious corrupt conduct, and IBAC suspects on reasonable grounds that the conduct involved has in fact occurred or is occurring.

Further, new subsection (2A) provides that in determining whether to conduct an inquiry the IBAC may have regard to, (a) the conduct as alleged in the complaint or notification, (b) any information obtained by IBAC as a consequence of a preliminary investigation (new Division 3A) and, (c) any inferences that may be drawn from the matters in (a) and (b). **[15]**

Note: Section 60(2) currently provides:

(2) The IBAC must not conduct an investigation under subsection (1) unless it is reasonably satisfied that the conduct is serious corrupt conduct.

- includes in the definition of relevant offence in the IBAC Act the offence of 'misconduct in public office', to add this offence to IBAC's existing corrupt conduct jurisdiction **[3]**
- enables IBAC power to conduct preliminary investigations, without the use of coercive powers, before deciding whether to dismiss, refer or investigate a complaint or notification **[14]**
- harmonises requirements for notification of possible corrupt conduct to IBAC by other bodies in the integrity framework (including the Ombudsman and Auditor-General) and by principal officers of government bodies
- requires the IBAC and the Ombudsman to provide a Parliamentary Committee, on request, with primary evidence they have collected during the preparation of a report which is the subject of a subsequent investigation by the Parliamentary Committee in relation to a possible breach of privilege or contempt of Parliament **[9]**
- makes a range of technical amendments to the IBAC Act, including clarifying powers of delegation, allowing IBAC to appoint suitably qualified persons to preside at an examination, and allowing IBAC to apply to the Magistrates' Court for a search warrant.

The Bill amends the Ombudsman Act to:

- allow the Ombudsman to continue to deal with or investigate matters that the Ombudsman refers to IBAC or the Victorian Inspectorate for consideration of possible corrupt conduct, in certain circumstances

- provide the Ombudsman greater flexibility in handling protected disclosure complaints referred to it by the IBAC
- make various technical amendments.

The Bill also amends the *Public Interest Monitor Act 2011* to clarify confidentiality requirements within the PIM office and to insert a statutory immunity.

Extracts from the second reading speech:

The Bill will modify the threshold that must be met before IBAC can commence an investigation into public sector corruption.

This threshold is intended to reflect the division of roles within Victoria's integrity framework, under which IBAC's investigatory and coercive powers are focused on serious corruption.

... The Bill resolves this concern by making clear that IBAC can investigate a matter whenever IBAC is satisfied that the matter, if established, would constitute serious corrupt conduct and IBAC suspects on reasonable grounds that the conduct involved has in fact occurred or is occurring.

In addition, the Bill will amend the IBAC act to grant explicit power to IBAC to undertake preliminary investigations before determining whether to dismiss, investigate, or refer a complaint or notification. ...

the Bill will amend the definition of 'relevant offence' in the IBAC act to include the offence of misconduct in public office. ...

The Bill will require all public sector body heads to notify IBAC of any matter where they suspect on reasonable grounds that corrupt conduct has occurred or is occurring. ...

The Bill will give express power to the Ombudsman to undertake preliminary enquiries into protected disclosure complaints. It will also clarify that the Ombudsman can discontinue investigating complaints, including protected disclosure complaints, on prescribed grounds or if the matter has been investigated sufficiently and further investigation is not warranted.

... Further, in response to a recommendation in a recent report of the Legislative Assembly Privileges Committee, the Bill will make amendments to provide that, in circumstances where a House of Parliament refers an Ombudsman or IBAC report to a Parliamentary committee to determine if there has been a breach of privilege or contempt of Parliament, the Ombudsman or IBAC will be required, on request by the committee, to provide to the committee information or evidence collected during the preparation of the report. However, in providing such information or evidence, the Ombudsman and IBAC will not be required or permitted to disclose any information that could lead to the identification of a person who has made an assessable disclosure.

Charter report

The Integrity Legislation Amendment Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Prevention of Cruelty to Animals Amendment (Domestic Fowl and Pigs) and Food Amendment (Free-range Eggs) Bill 2014

Introduced	17 September 2014
Second Reading Speech	17 September 2014
House	Legislative Council
Member introducing Bill	Ms Sue Pennicuik MLC
Private Member's Bill	

Purpose

The Bill amends the *Prevention of Cruelty to Animals Act 1986* to:

- prohibit the keeping in battery cages of domestic fowl for the purposes of the production of eggs or meat for sale
- prohibit the keeping in inappropriate accommodation of pigs for the purposes of the production of meat for sale
- prohibit the removal or trimming of the beaks of domestic fowl

The Bill amends the *Food Act 1984* to require that eggs for sale can only be labelled as free-range if produced by domestic fowl that are kept in accordance with certain requirements.

Content

Delegation of legislative power – Delayed commencement

The provisions in the Bill, other than section 5, come into operation on the day after the day on which the Bill receives the Royal Assent. Section 5 comes into operation on 1 January 2017.

The explanatory memorandum provides:

This date has been inserted to allow enough time for farmers who keep domestic fowl and pigs for the purposes of the commercial production of meat or eggs to make the transition from the current requirements for the keeping of domestic fowl and pigs to the requirements imposed by the Bill.

Charter report

The Prevention of Cruelty to Animals Amendment (Domestic Fowl and Pigs) and Food Amendment (Free-range Eggs) Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Sentencing Amendment (Historical Homosexual Convictions Expungement) Bill 2014 (Assembly initiated)

Introduced	16 September 2014
Second Reading Speech	17 September 2014
House	Legislative Assembly
Member introducing Bill	Hon Robert Clark MP
Portfolio responsibility	Attorney-General

Purpose

The Bill amends the *Sentencing Act 1991* to establish a scheme under which convictions for certain offences related to conduct carried out for the purposes of, or in connection with, sexual activity of a homosexual nature may be expunged.

Extracts from the second reading speech:

This Bill establishes a process that will allow people to apply to have historical homosexual convictions expunged. Once expunged, a conviction will be treated at law as if it were never imposed. It will not be released as part of a criminal history check and a person will be protected from ever having to reveal that conviction.

...

the historical convictions expungement scheme is built around two tests. Was the applicant charged with the offence because of the homosexual nature of the conduct and; if so; would that conduct be legal today? Where both these tests are satisfied, the conviction will be expunged.

...

The first test is to ensure that the scheme only expunges convictions that were the result of a person's homosexual conduct, and not convictions in circumstances where charges would have been laid and a conviction would have resulted regardless of whether the conduct was homosexual or heterosexual.

...

If the Secretary is not satisfied of either of the two tests, the application will be refused and the conviction will stand. However, there will be a right of review to VCAT if the application is refused. If the secretary is satisfied that the applicant was only charged because of the homosexual nature of the conduct and that the applicant's conduct would be legal today, then the offence will be expunged at a set time after the secretary's determination.

If an offence is expunged, then an applicant will in future be treated for all purposes in law as if they had never committed the offence.

The fact of the conviction can never be brought up in any legal proceedings, unless the applicant themselves chooses to bring it up. The applicant is not required to answer any question in a legal proceeding that requires them to refer to the conviction, and may state, under oath, that they have never been convicted of this offence. These convictions can no longer be a bar to a person receiving any kind of licence or permission.

The applicant will be further protected by obligations that are placed on those within the police, the courts and the Office of Public Prosecutions who hold the official records of the conviction. These organisations may not disclose the fact that the applicant was charged with or convicted of the expunged conviction.

In addition to creating these legal rights, the bill ensures that the records themselves will be altered.

...

The Bill requires that, once an application is approved, the secretary will inform those who control the relevant records and they will then be required by the legislation to expunge the entry relating to the conviction. The records will be annotated with a statement to the effect that they relate to an expunged conviction.

...

An applicant can be assured that, as far as possible, their conviction will no longer have any legal effect. It is intended that this scheme will be established and ready to accept applications by mid-2015.

Charter report

The Sentencing Amendment (Historical Homosexual Convictions Expungement) Bill 2014 (Assembly initiated) is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Sentencing Amendment (Historical Homosexual Convictions Expungement) Bill 2014 (Council initiated)

Introduced	17 September 2014
Second Reading Speech	17 September 2014
House	Legislative Council
Member introducing Bill	Hon David Davis MLC
Portfolio responsibility	Attorney-General

Purpose

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Charter report

The Sentencing Amendment (Historical Homosexual Convictions Expungement) Bill 2014 (Council initiated) is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

House Amendments

Justice Legislation Amendment (Confiscation and Other Matters) Bill 2014

Bill Introduced	19 August 2014
Second Reading Speech	20 August 2014
House	Legislative Assembly
Member introducing Bill	Hon Robert Clark MP
Portfolio responsibility	Attorney-General
Amendments moved and passed	16 September 2014
Moved by	Hon Robert Clark MP
House	Legislative Assembly

Note:The Committee reported on this Bill as originally introduced in *Alert Digest No. 11 of 2014* tabled on 2 September 2014. The Committee now provides a further report on the House amendments. The amendments were moved and passed in the Legislative Assembly on 16 September 2014.

Purpose

The purpose of the House amendment (new clause 69) is to insert a new section 465AA in the *Crimes Act 1958*. The heading to the proposed section provides 'Power to require assistance from person with knowledge of a computer or computer network'.

Extract from Hansard of 16 September 2014:

Mr Clark (Attorney-General) ... This series of amendments propose to insert provisions to amend the Crimes Act 1958 to provide that a magistrate may make an order directing a person with knowledge of a computer or computer system to assist police in gaining access to a computer or other data storage device. These amendments are based on similar powers that exist in the Crimes Act 1914 of the commonwealth.

The amendments will provide that a court may make an order directing a person with knowledge of a computer or computer system to assist an officer executing a search warrant to access a computer or other data storage device. This will assist police in circumstances where a person refuses to supply passwords or grant access to encrypted material on computers and other devices. It will also allow access to offsite data that is not on the warrant premises but is accessible from a computer or other data storage device that is on the warrant premise; for example, a server in another location.

This access is particularly important for police efforts to address child exploitation. The amendments expressly provide that the person must comply with the court order even though it might produce evidence which could incriminate the person. The offence is intended to be an indictable offence punishable by a maximum of five years imprisonment. The commonwealth offence is punishable by a maximum of two years imprisonment. The higher penalty is required to avoid people refusing to comply with the court order because of the risk of facing a higher penalty once the information on the computer system is disclosed. It would also assist police to have a state-based offence linked to other state-based offences in respect of which police may be acting. The new power to require assistance from a person

with a knowledge of a computer or a computer network is being included in the bill so that the powers can be used by police as soon as possible.

Content

Rights or freedoms – Privilege against self-incrimination – Magistrate may make an order directing a person with knowledge of a computer or computer system to assist police in gaining access to a computer or other data storage device – Person compelled to provide information to officials that may tend to incriminate – Penalty of imprisonment for failure to comply without a reasonable excuse – Whether abrogation of privilege against self-incrimination justifiable

The House amendment intends to substitute a new clause 69 in the Bill to insert a new section 465AA in the *Crimes Act 1958*. The heading to the proposed new section provides ‘Power to require assistance from person with knowledge of a computer or computer network’.

The new provision would empower the Magistrates’ Court to require a person to provide police officers with passwords for certain computers, devices or accessible remote data where either the provision of the password or the data obtained may be evidence of that person’s offending. The new section applies if a magistrate has issued a warrant under section 465 in relation to a building, receptacle, place or vehicle.

Of special relevance are subsections (6), (9) and (10) of the proposed section 465AA which provide:

- (6) A person is not excused from complying with an order on the ground that complying with it may result in information being provided that might incriminate the person.
- (9) A person commits an offence if—
 - (a) the person has relevant knowledge of—
 - (i) the computer or data storage device or a computer network of which the computer or data storage device forms or formed a part; or
 - (ii) measures applied to protect data held in, or accessible from, the computer or data storage device; and
 - (b) the person is informed by a police officer—
 - (i) of the order made under this section and of its terms; and
 - (ii) that it is an indictable offence punishable by imprisonment to fail to comply with the order; and
 - (c) the person fails to comply with the order without reasonable excuse.
- (10) A person who commits an offence against subsection (9) is liable to level 6 imprisonment (5 years maximum).

The Committee further reports on these provisions in the Charter report below.

Charter report

Compelled self-incrimination – Court may order person to provide access to data – Person must comply even where compliance may result in the provision of incriminating information

Summary: The Committee refers to Parliament for its consideration the question of whether or not clause 69, by permitting a court to require a suspect to provide police officers with passwords for certain computers, devices or accessible remote data where either the provision of the password or

the data obtained may be evidence of that person's offending, is a reasonable limit on the Charter's rights against compelled self-incrimination.

The Committee notes that clause 69 (as amended in the Legislative Assembly and introduced in the Legislative Council), inserting a new section 465AA into the *Crimes Act 1958*, provides that the Magistrates' Court may order a specified person to provide information or assistance that is reasonable and necessary to allow a police officer to access, copy or convert into an intelligible form data in or accessible from a computer or data storage device. To make an order, the Court must have issued a search warrant for the premises where the computer or device is located and must be satisfied that data in or accessible from the computer or device will afford evidence of an indictable offence, that the specified person is reasonably suspected of an offence in relation to which the warrant was issued (or be an owner, contractor, user or administrator of the computer, device or network) and that he or she has relevant knowledge of the computer, device, network or data protection measures. Non-compliance with the order without a reasonable excuse is an offence punishable by up to five years imprisonment.

The Committee also notes that, unlike a similar federal provision,⁴ new sub-section 465AA(6) provides that such a person is not excused from complying on the ground that compliance may result in the provision of information about that person's crimes. The Committee observes that the effect of clause 69 is that a court may require a suspect to provide police officers with passwords for certain computers, devices or accessible remote data where either the provision of the password or the data obtained may be evidence of that person's offending. The Committee considers that clause 69 may engage the Charter's rights against compelled self-incrimination.⁵

The Statement of Compatibility (for the Bill as introduced into the Legislative Council) remarks:

The bill's provision for a court order directing a person with knowledge of a computer or computer system to assist police in gaining access to a computer or other data storage device... arguably limits this right insofar as such assistance could in some cases lead police to evidence that incriminates the person assisting police.

This limitation is necessary and reasonable to respect the rights and reputation of other persons and to protect public order. This limitation is justified under section 7(2) of the charter act because of the serious nature of the crimes being investigated (such as child exploitation material). The changes are subject to appropriate safeguards (such as applications for an order having to be made by a police officer of or above the rank of senior sergeant, and the court having to be satisfied of a number of matters, including that the person has relevant knowledge of a computer or device.) The oversight of the court will ensure the orders are issued appropriately.

However, the Committee notes that the Supreme Court of Victoria has held that coercive powers requiring suspects to supply incriminating computer encryption keys (in that case, ones applied for by the Chief Examiner, supervised by the Supreme Court and used to investigate organised crime offences) are not reasonable limits on the Charter's rights against self-incrimination unless any evidence discovered as a result (and not otherwise discoverable) is inadmissible in any future prosecution of the person.⁶ The Committee observes that new section 465AA applies to the investigation of any indictable offence and does not specify whether or not the information provided

⁴ *Crimes Act 1914* (Cth), s. 3LA.

⁵ Charter ss. 24(1), 25(2)(k).

⁶ *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381, [91]-[92], [155]-[156].

or only discoverable as a result of an order is admissible in any future prosecution of the specified person.⁷

The Committee notes that England's Court of Appeal has held that both the making of an order requiring a suspect to divulge a password and the prosecution of a suspect for failing to do so are compatible with European fair hearing rights.⁸ By contrast, North American courts have held that such powers are incompatible with rights against compelled self-incrimination where the supply of passwords may be evidence of the person's access to, or the existence of, incriminatory data,⁹ unless the person's access to, and the existence and nature of, the incriminatory data is already known to investigators.¹⁰

The Committee refers to Parliament for its consideration the question of whether or not clause 69, by permitting a court to require a suspect to provide police officers with passwords for computers, devices or accessible remote data where either the provision of the password or the data obtained may be evidence of that person's offending, without specifying whether or not the information provided or only discoverable as a result of the order is admissible in a future prosecution of the suspect, is a reasonable limit on the Charter's rights against compelled self-incrimination.

The Committee makes no further comment

**Committee Room
13 October 2014**

⁷ Compare *Confiscation of Criminal Assets Act 2003* (ACT), ss. 220, 255(3)(a); *Search and Surveillance Act 2012* (NZ), ss. 130(4), 138.

⁸ *R v S & A* [2008] EWCA Crim 2177; *Greater Manchester Police v Andrews* [2011] EWHC 1966 (Admin), discussing s. 49 of the *Regulation of Investigatory Powers Act 2000* (UK).

⁹ E.g. *R. c. Boudreau-Fontaine* 2010 QCCA 1108, [46] [Quebec Court of Appeal]; *In Re: Grand Jury Subpoena Duces Tecum dated March 25, 2011*; *USA v Doe*, 670 F. 3d 1355 (2012) [United States Court of Appeals for the 11th Circuit].

¹⁰ E.g. *Commonwealth v Gelfgatt* (unreported, Massachusetts Supreme Judicial Court, 25th June 2014).

Appendix 1

Index of Bills in 2014

Alert Digest Nos.

Bills

Appropriation (2014-2015) Bill 2014	6
Appropriation (Parliament 2014-2015) Bill 2014	6
Assisted Reproductive Treatment Further Amendment Bill 2013	1
Building a Better Victoria (State Tax and Other Legislation Amendment) Bill 2014	6
Building Legislation Amendment Bill 2014	6, 7
Casino and Gambling Legislation Amendment Bill 2014	12
Cemeteries and Crematoria Amendment Bill 2014 (Council initiated)	13
Cemeteries and Crematoria Amendment Bill 2014	12
Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014	10
Children, Youth and Families Amendment (Security Measures) Bill 2013	1
Children, Youth and Families Amendment Bill 2014	6
Consumer Affairs Legislation Amendment Bill 2014	5
Consumer Affairs Legislation Further Amendment Bill 2014	11
Corrections Amendment (Further Parole Reform) Bill 2014	4
Corrections Amendment (Parole) Bill 2014	3
Corrections Amendment (Smoke-Free Prisons) Bill 2014 (Assembly initiated)	6
Corrections Amendment (Smoke-Free Prisons) Bill 2014	5
Corrections Legislation Amendment Bill 2013	1
Courts Legislation Amendment (Funds in Court) Bill 2014	13
Courts Legislation Miscellaneous Amendments Bill 2014	9
Crime Statistics Bill 2014	5
Crimes Amendment (Abolition of Defensive Homicide) Bill 2014	9, 10
Crimes Amendment (Grooming) Bill 2013	1
Crimes Amendment (Protection of Children) Bill 2014	5
Crimes Amendment (Sexual Offences and Other Matters) Bill 2014	11, 12
Criminal Organisations Control and Other Acts Amendment Bill 2014	9, 10
Disability Amendment Bill 2014	9
Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Bill 2013	1
Drugs, Poisons and Controlled Substances Amendment (Clinical Trials) Bill 2014	13
Drugs, Poisons and Controlled Substances Further Amendment Bill 2014	11
Education and Training Reform Amendment (Miscellaneous) Bill 2014	11
Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Bill 2014	2, 3
Electoral Amendment Bill 2014	10
Emergency Management Amendment (Critical Infrastructure Resilience) Bill 2014	10
Energy Legislation Amendment (Customer Metering Protections and Other Matters) Bill 2014	5
Environment Protection and Sustainability Victoria Amendment Bill 2014	2
Family Violence Protection Amendment Bill 2014	11, 12
Fences Amendment Bill 2013	1
Fences Amendment Bill 2014	3
Film Approval Bill 2014	5
Fines Reform Bill 2014	6

Scrutiny of Acts and Regulations Committee

Freedom of Information and Victorian Inspectorate Acts Amendment Bill 2014	8
Gambling and Liquor Legislation Amendment (Modernisation) Bill 2014	5, 6
Gambling and Liquor Legislation Amendment (Reduction of Red Tape) Bill 2014	3
Gambling and Liquor Legislation Further Amendment Bill 2014	10
Gambling Regulation and Casino Control Amendment Bill 2014	9
Game Management Authority Bill 2013	1
Guardianship and Administration Bill 2014	11
Health Services Amendment Bill 2014	2
Healthcare Quality Commissioner Bill 2014	12
Honorary Justices Bill 2014	3
Improving Cancer Outcomes Bill 2014	11
Inquiries Bill 2014	11, 12
Integrity Legislation Amendment Bill 2014	13
Invasive Species Control Bill 2014	11
Judicial Commission Bill 2014	9
Judicial Entitlements Bill 2014	9
Jury Directions Amendment Bill 2013	1
Jury Directions Amendment Bill 2014 (Council initiated)	5
Justice Legislation Amendment (Confiscation and Other Matters) Bill 2014	11
Justice Legislation Amendment (Confiscation and Other Matters) Bill 2014 (House Amendments)	13
Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Bill 2014	2
Justice Legislation Amendment (Firearms and Other Matters) Bill 2014	9, 12
Justice Legislation Amendment (Succession and Surrogacy) Bill 2014	11
Justice Legislation Amendment Bill 2014	5
Legal Profession Uniform Law Application Bill 2013	1, 2
Local Government (Brimbank City Council) Amendment Bill 2014	6
Local Government Amendment (Governance and Conduct) Bill 2014	5
Local Government Legislation Amendment (Environmental Upgrade Agreements) Bill 2014	10
Melbourne Market Authority Amendment Bill 2014	8, 9
Mental Health Bill 2014	3, 4
Native Vegetation Credit Market Bill 2014	7
Parks and Crown Land Legislation Amendment Bill 2014	12
Parliamentary Budget Officer Bill 2013	1
Planning and Environment Amendment (Infrastructure Contributions and Other Matters) Bill 2014	11
Powers of Attorney Bill 2014	9
Prevention of Cruelty to Animals Amendment (Domestic Fowl and Pigs) and Food Amendment (Free-range Eggs) Bill 2014	13
Primary Industries Legislation Amendment Bill 2014	11
Privacy and Data Protection Bill 2014	8
Private Health Care Facilities Bill 2014	7
Public Health and Wellbeing Amendment (Hairdressing Red Tape Reduction) Bill 2014	9
Public Records Amendment Bill 2014	8
Resources Legislation Amendment (BTEX Prohibition and Other Matters) Bill 2014	10
Road Safety Amendment Bill 2014	7
Road Safety Road Rules 2009 (Overtaking Bicycles) Bill 2014	8
Sale of Land Amendment Bill 2014	2
Sentencing Amendment (Baseline Sentences) Bill 2014	5
Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Bill 2014	11
Sentencing Amendment (Emergency Workers) Bill 2014	9, 10
Sentencing Amendment (Historical Homosexual Convictions Expungement) Bill 2014 (Assembly initiated)	13
Sentencing Amendment (Historical Homosexual Convictions Expungement) Bill 2014 (Council initiated)	13

Sex Offenders Registration Amendment Bill 2014	11
Small Business Commissioner Amendment Bill 2013	1
State Taxation Legislation Amendment Bill 2014	2
Statute Law Amendment (Red Tape Reduction) Bill 2014	9
Summary Offences and Sentencing Amendment Bill 2013	1
Tobacco Amendment Bill 2014	10
Transfer of Land Amendment Bill 2014	10
Transport (Safety Schemes Compliance and Enforcement) Bill 2014	3
Transport Legislation Amendment (Further Taxi Reform and Other Matters) Bill 2014	4
Treasury Legislation and Other Acts Amendment Bill 2014	6
Vexatious Proceedings Bill 2014 (Council initiated)	5
Vexatious Proceedings Bill 2014	3, 4
Victoria Police Amendment (Consequential and Other Matters) Bill 2014	4
Victorian Civil and Administrative Tribunal Amendment Bill 2014	2
Water Amendment (Flood Mitigation) Bill 2014	6
Water Amendment (Water Trading) Bill 2014	2
Water Bill 2014	9, 11
Witness Protection Amendment Bill 2014	4
Working with Children Amendment (Ministers of Religion and Other Matters) Bill 2014	9
 Regulations	
Planning and Environment (Fees) Further Interim Regulations 2013 (SR No. 127 / 13)	2
Subdivision (Fees) Further Interim Regulations 2013 (SR No. 128 / 13)	2

Appendix 2

Committee Comments classified by Terms of Reference

This Appendix lists Bills and Regulations 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)

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

Building Legislation Amendment Bill 2014	6
Crimes Amendment (Abolition of Defensive Homicide) Bill 2014	9
Crimes Amendment (Sexual Offences and Other Matters) Bill 2014	11
Criminal Organisations Control and Other Acts Amendment Bill 2014	9
Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Bill 2014	2
Family Violence Protection Amendment Bill 2014	11
Gambling and Liquor Legislation Amendment (Modernisation) Bill 2014	5
Inquiries Bill 2014	11
Justice Legislation Amendment (Confiscation and Other Matters) Bill 2014 (House Amendments)	13
Justice Legislation Amendment (Firearms and Other Matters) Bill 2014	9
Legal Profession Uniform Law Application Bill 2013	1
Melbourne Market Authority Amendment Bill 2014	8
Mental Health Bill 2014	3
Sentencing Amendment (Emergency Workers) Bill 2014	9
Vexatious Proceedings Bill 2014	3
Water Bill 2014	9

Appendix 3

Ministerial Correspondence 2014

Table of correspondence between the Committee and Ministers and members during 2013-14

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Legal Profession Uniform Law Application Bill 2013	Attorney-General	04-02-14 14-02-14	1 of 2014 2 of 2014
Planning and Environment (Fees) Further Interim Regulations 2013 (SR No. 127 / 13)	Planning	09-12-13 17-02-14	17 of 2013 2 of 2014
Subdivision (Fees) Further Interim Regulations 2013 (SR No. 128 / 13)	Planning	09-12-13 17-02-14	17 of 2013 2 of 2014
Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Bill 2014	Education	18-02-14 26-02-14	2 of 2014 3 of 2014
Mental Health Bill 2014	Mental Health	06-03-14 24-03-14	3 of 2014 4 of 2014
Vexatious Proceedings Bill 2014	Attorney-General	06-03-14 22-03-14	3 of 2014 4 of 2014
Gambling and Liquor Legislation Amendment (Modernisation) Bill 2014	Liquor and Gaming	06-05-14 23-05-14	5 of 2014 6 of 2014
Building Legislation Amendment Bill 2014	Planning	27-05-14 06-06-14	6 of 2014 7 of 2014
Melbourne Market Authority Amendment Bill 2014	Major Projects	24-06-14 30-07-14	8 of 2014 9 of 2014
Crimes Amendment (Abolition of Defensive Homicide) Bill 2014	Attorney-General	05-08-14 15-08-14	9 of 2014 10 of 2014
Criminal Organisations Control and Other Acts Amendment Bill 2014	Attorney-General	05-08-14 15-08-14	9 of 2014 10 of 2014
Justice Legislation Amendment (Firearms and other Matters) Bill 2014	Police and Emergency Services	05-08-14 03-09-14	9 of 2014 12 of 2014
Sentencing Amendment (Emergency Workers) Bill 2014	Attorney-General	05-08-14 18-08-14	9 of 2014 10 of 2014
Water Bill 2014	Water	05-08-14 19-08-14	9 of 2014 10 of 2014

Scrutiny of Acts and Regulations Committee

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Crimes Amendment (Sexual Offences and Other Matters) Bill 2014	Attorney-General	02-09-14 <i>12-09-14</i>	11 of 2014 <i>12 of 2014</i>
Family Violence Protection Amendment Bill 2014	Attorney-General	02-09-14 <i>10-09-14</i>	11 of 2014 <i>12 of 2014</i>
Inquiries Bill 2014	Premier	02-09-14 <i>14-09-14</i>	11 of 2014 <i>12 of 2014</i>

Appendix 4

Statutory Rules and Legislative Instruments considered

The following Statutory Rules and legislative instruments were considered by the Regulation Review Subcommittee on 13 October 2014

Statutory Rules Series 2014

- SR No. 72 – Sex Work (Fees) Regulations 2014
- SR No. 79 – Victoria Police Regulations 2014
- SR No. 84 – Road Safety (Drivers) Amendment (Renewal Fees) Interim Regulations 2014
- SR No. 87 – Water (Estimation Supply and Sewerage) Regulations 2014
- SR No. 91 – Children, Youth and Families Amendment Regulations 2014
- SR No. 92 – Environment Protection (Distribution of Landfill Levy) Amendment Regulations 2014
- SR No. 101 – Treasury Corporation of Victoria (Prescribed Agencies) Regulations 2014
- SR No. 102 – Magistrates’ Court (Arbitration) Amendment Regulations 2014
- SR No. 103 – Infringements (General) Amendment Regulations
- SR No. 104 – Building Amendment (Fees and Other Matters) Regulations 2014
- SR No. 105 – Magistrates’ Court General Civil Procedure (Offers of Compromise Amendments) Rules 2014
- SR No. 106 – Magistrates’ Court (Miscellaneous Civil Proceedings)(Arbitration Costs Amendment) Rules 2014
- SR No. 107 – Guardianship and Administration (Fees) Amendment Regulations 2014
- SR No. 113 – Estate Agents (Contracts) Amendment Regulations 2014

Legislative Instruments

- Amendment of Racing Victoria Bookmakers’ Licence Levy Rules 2012
- Corangamite Catchment Management Authority By-Law No 4 Waterways Protection 2014
- Declaration under Section 96A of the Road Safety Act 1986
- Determination of Fees
- Driver Accreditation Application, Test, Course and Renewal Requirements Instrument
- Electronic Conveyancing Operating Requirements
- Electronic Conveyancing Participation Rules
- Energy Retail Code Version 11
- Goulburn Broken Catchment Management Authority By-Law No.3 Waterways Protection 2014
- Greyhound Racing Victoria – Rule Amendments
- Mallee Catchment Management Authority By-Law No 1 Waterways Protection 2014
- Ministerial Order - Mandatory Code of Practice for the Employment of Children in Entertainment 2014
- North East Catchment Management Authority By-Law No 2014/01 Waterways Protection
- Notice under Section 162L(1) of the Transport (Compliance and Miscellaneous) Act 1983 (VIC)
- West Gippsland Catchment Management Authority By-Law No. 3 Waterways Protection
- Wimmera Catchment Management Authority By-Laws No 2/2014 Waterways Protection

Appendix 5

Committee impact on legislation 2007-2014

SARC Comment	Scrutiny issue	Amendment	Ministerial/member remark
No 12 of 2007 (reporting on the Crimes Amendment (Rape) Bill 2007), p. 3 (18 th September 2007)	Section 44(6A)(4)(b), a limit on a defence to incest, may limit the Charter's protection of families.	House amendment removes s. 44(6A)(4)(b). (1 st November 2007).	LC Committee: Basically I understand that in Alert Digest No. 12 the Scrutiny of Acts and Regulations Committee raised concerns about amendments to the incest provision in the Crimes (Sexual Offences) Act. Basically, these amendments seek to remedy technical wording so that there is clarity around those issues in relation to those matters.
No 12 of 2007 (reporting on the Working With Children Amendment Bill 2007), p. 26 (18 th September 2007)	Amended ss 17 & 23, providing powers to refuse or revoke an assessment notice based on a dismissed or dropped charge, may limit the Charter's presumption of innocence.	<i>Working With Children Amendment Act 2010</i> amends ss 17 & 23 to remove the power to refuse or revoke on the basis of dismissed or dropped charges. (24 th August 2010)	2R: As identified by the Scrutiny of Acts and Regulations Committee, the interaction between the exceptional circumstances provisions of the act and when a charge is pending could possibly allow the secretary to issue a negative notice based on charges that had been withdrawn or dismissed. The bill now amends the act to clarify that charges that have been finally dealt with, such as by way of being withdrawn or dismissed, cannot be considered by the secretary in assessing an application or in deciding whether to revoke an assessment notice.
No 1 of 2008 (reporting on the Constitution Amendment (Judicial Pensions) Bill 2007), pp. 3-4 (5 th February 2008)	New ss. 5A of the <i>Constitution Act 1975</i> and 3AA of the <i>County Court Act 1958</i> , by limiting reversionary pensions of already retired judges to opposite sex partners, may engage the Charter's equality rights.	<i>Superannuation Legislation Amendment Act 2010</i> amends ss 5A and 3AA to cover same-sex partners of retired (but currently living) judges (6 th June 2010)	2R: In July 2006, Victoria became the first Australian state to introduce a legislative charter of human rights. Since that time, this government has conducted a comprehensive review of Victoria's existing superannuation legislation to survey which areas may be incompatible with the Victorian Charter of Human Rights and Responsibilities Act 2006. This bill will amend all of Victoria's superannuation acts to address any provisions that were found to be potentially incompatible with the charter.
No 6 of 2009 (reporting on the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme Bill 2009), pp. 8-9 (2 nd June 2009)	Clause 4, making it an offence to import a container into Victoria without paying a levy, may limit the Charter's right to freedom of movement.	House amendment to clause 4 limits the offence to importations for the purpose of sale. (24 th June 2009) Amended Bill passed LC <u>but LA refused to consider it because it imposes a levy.</u>	LC Committee: Amendments 2 and 3 fix a drafting error that was pointed out by the Scrutiny of Acts and Regulations Committee.

Letter (on <i>Police Integrity Regulations 2009</i>) (27 th July 2009)	Reg 7(c), requiring member being tested to disclose any prescription medication taken by the member, may limit Charter's right to privacy.	<i>Police Integrity (Amendment) Regulations 2009</i> amend reg 7(c) to limit disclosure requirement to medications taken within the last 7 days.	Ministerial correspondence to SARC: I am pleased to advise that I will shortly move to have the Regulations amended to limit the application of regulation 7(c) to the seven days preceding the date on which the direction under the Act is given. I believe that this amendment addresses the concerns raised in your letter.
No 3 of 2009 (on Major Sporting Events Bill 2009) p. 5 (10 th March 2009)	Clause 62's ban on possession of large flags may limit Charter's freedom of expression.	<i>Major Sporting Events Amendment Act 2013</i> : removes large flags from definition of 'prohibited item' (20th February 2013)	2R speech: Clause 4 also amends the definition of 'prohibited item' to remove flags and banners over a certain size from the definition. Flags and banners are an integral part of many major sporting events and there are different practices at particular events and venues. Venue managers can control the entry of flags and banners through their conditions of entry, however their prescriptions mostly differ from the one in the act. The current prohibition in the act is therefore an unnecessary layer of regulation.
No 8 of 2010 (on Control of Weapons Amendment Bill 2010), pp. 9-10 (8 th June 2010)	Ban on sales of knives to children may be an unreasonable limit on Charter's equality rights given its coverage of plastic knives.	Justice Legislation Amendment (Firearms and Other Matters) Bill 2014 contains an exemption for disposable plastic knives for eating purposes (23rd June 2014) <u>Bill has not yet passed.</u>	2R speech: The bill introduces an important red tape reform, which was announced by the Acting Premier and Treasurer on 8 January 2014, following consultations with businesses by the red tape commissioner. The bill amends the Control of Weapons Act to provide that disposable plastic knives designed for eating purposes are not controlled weapons for the purposes of offences in the Control of Weapons Act, and may be sold to, or purchased by, persons under the age of 18. Retailers have had to ensure that customers are over 18 when they purchase plastic knives, causing staff to suspend transactions to check identification of customers. Woolworths have provided evidence to the Productivity Commission that the cost of enforcing this regulation is \$128 000 per year. The amendment will provide savings to all retailers of plastic knives.
No 10 of 2010 (on Equal Opportunity Bill 2010), pp. 14-16 (27 th July 2010)	Clause 66's bar on discrimination on the ground of political belief by political clubs may limit Charter's freedom of expression	<i>Equal Opportunity Amendment Act 2011</i> : New s. 66A allowing political clubs to discriminate on political belief grounds (5th May 2011)	2R speech: The definition of 'club' in the 2010 act was derived from the commonwealth's Sex Discrimination Act 1984 and as a result broadened the types of club covered by Victoria's equal opportunity laws to include political clubs. As the 2010 act is a general act that covers other forms of discrimination, including political discrimination, the amendment is necessary to ensure that political clubs are able to operate effectively.
No 10 of 2010 (on Equal Opportunity Bill 2010), pp. 21-22 (27 th July 2010)	Clause 176's bar on disclosing information received under Act may limit Charter's fair hearing rights.	<i>Equal Opportunity Amendment Act 2011</i> : New s. 176A creates exception on disclosure ban for court-ordered disclosure (5th May 2011)	2R speech: The Scrutiny of Acts and Regulations Committee in its consideration of the 2010 act noted concerns about the broad scope of the secrecy provisions imposed on the commission and its staff, particularly in that the 2010 act made no provision for a court to compel an employee of the commission to provide evidence in the interests of justice. The bill permits the commission to disclose certain information in limited circumstances -- that is, pursuant to a court order in criminal proceedings or upon consent of the relevant parties.

No 14 of 2011 (on Criminal Procedure (Double Jeopardy and Other Matters Bill 2011), pp. 7-8 (22nd November 2011))	New section 327M(2) provides that double jeopardy repeal covers manslaughter, but not child homicide, so may limit Charter's right against age discrimination and to protection of children.	House amendment to Bill to add child homicide to 327M(2) (24th November 2011)	Ministerial correspondence to SARC: I thank the Committee for identifying this issue. The offence of child homicide contained in section 5A of the Crimes Act 1958 has been added to the list of exceptions to which the fresh and compelling evidence exception applies in new section 327M(2) as a House amendment. The Bill, including this amendment, was passed by the Legislative Assembly on 24 November 2011
Letter (on <i>Offshore Petroleum and Greenhouse Gas Storage Regulations 2011</i>) (5th March 2012)	Para (b) of reg 6's definition of 'reportable incident' is extended to non-environmental breaches of the Act, so may limit Charter's rights against self-incrimination.	<i>Offshore Petroleum and Greenhouse Gas Storage Amendment Regulations 2012</i> narrowed definition of reportable incident by replacing 'or' with 'and' for para (b). (1st December 2012)	Ministerial correspondence to SARC: It is intended that only environmentally significant breaches must be reported. The Regulations will therefore be amended to remove the 'or' between paragraphs (a) and (b) of the definition of reportable incident in regulation 6 to clarify this at the next available opportunity
No 4 of 2012 (on Water Amendment (Governance and Other Reforms) Bill 2012), pp. 14-15 (13th March 2012)	New sections 303A(1) & (3) contain reverse onuses that may limit Charter's presumption of innocence.	<i>Water Legislation Amendment Act 2012</i> replaces reverse legal onus with reverse evidential onus in 303A(1) & (3) (27th November 2012)	Ministerial correspondence to SARC: "I take on notice the concerns expressed regarding subsections 303A(1) and (3) and will request the Department of Sustainability and Environment to review these provisions in consultation with the water businesses. The review will assess the viability of alternative options that will meet policy objectives and I anticipate that it will take some time to complete. Once the analysis has been completed, any amendments would be dealt with at the next available opportunity. Thank you for raising this matter with me."
Letter (on <i>Local Government (Long Service Leave) Regulations 2012</i>) (3rd May 2012)	Reg 11(c)(1)(i) limits Charter equality rights with respect to marital status and caring responsibilities by limiting pro rata long service leave to employees who resign to get married or pregnant.	<i>Local Government Legislation Amendment (Miscellaneous) Act 2012</i> removed statutory requirement for this leave entitlement (s101) (30th October 2012) . <u>However, reg 11(c)(1)(i) remains in the regulations.</u>	Ministerial correspondence to SARC: The Minister acknowledges the issue you have raised regarding regulation 11(1)(c) of the Local Government (Long Service Leave) Regulations 2012, and notes that its potentially discriminatory character was expressly recognised in the Human Rights Certificate for the Regulations. Local Government Victoria have advised that as indicated in the Certificate, s101 of the Local Government Act 1989 currently prevents the repeal of the Regulation... It is the Minister's intention to introduce a Bill during 2012 which includes an amendment to s101 to enable the repeal of Regulation 11(1)(c).
No 17 of 2012 (on Fire Services Levy Monitor Bill 2012), pp. 13-14 (27th November 2012)	Clause 31's bar on false representations on fire services levy may limit Charter's freedom of expression.	House amendment to Bill to limit clause 31 to representations in trade or commerce. (28th November 2012)	2R debate in LA: The Scrutiny of Acts and Regulations Committee picked up this omission in the bill, but coincidentally or fortuitously this matter seems to have been resolved through the presentation of the house amendment.
No 10 of 2013 (on Corrections (Breach of Parole) Amendment Bill 2013), pp. 8-10) (20th August 2013)	New section 78D(1)(a), providing that existing provisions requiring arrestees to be brought before a court do not apply to parole breach arrestees, may limit Charter rights of detainees.	<i>Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Act 2014</i> replaces 78D with a new section providing that existing protections for detainees apply to parole breach detainees (6th February 2014)	2R: The bill applies section 464A of the <i>Crimes Act 1958</i> to clarify that police officers have power to question and investigate a suspect who is in custody for both a breach of parole offence and any other offence at the same time, including if the suspect is arrested using powers under the <i>Crimes Act 1958</i> .

Scrutiny of Acts and Regulations Committee

Letter (on <i>Police Regulations 2013</i>) (18 th September 2013)	Reg 38(2)(e), requiring member being tested to disclose any prescription medication taken by the member, may limit Charter's right to privacy.	The equivalent provision in the <i>Victoria Police Regulations 2014</i> is limited to prescription medications taken in the 7 days preceding the testing direction. (1 st July 2014)	Ministerial correspondence to SARC: Following receipt of your letter... I can advise that I will shortly move to have the Regulations amended to limit regulations 38(2)(e) to the seven days preceding the date on which the testing directions is given...
No 2 of 2014 (on Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Bill 2014), pp. 2-3 (18 th February 2014)	Clause 79's amendments to ban on representations may limit Charter's freedom of expression by barring true representations about past teaching.	Education and Training Reform Amendment (Miscellaneous) Bill 2014 will amend s. 79 so that ban only covers false representations. (21 st August 2014) <u>Amending Bill has not yet passed.</u>	EM: Proposed section 2.6.58 makes it an offence for a person to make false representations as to their registration status. However, the Scrutiny of Acts and Regulations Committee raised interpretation issues with the wording of the proposed changes to section 2.6.58 of the Principal Act made by the amending Act.
No 9 of 2014 (on Sentencing Amendment (Emergency Workers) Bill 2014), p. 28 (5 th August 2014)	Clause 15(3) (on compensation for besetting) insufficiently explained	House amendment omits clause 15(3) (21 st August 2014)	Ministerial correspondence to SARC: In relation to the Committee's observations with regard to sub-section 52(2) of the Summary Offences Act 1966, I am considering these matters further and will provide a response shortly.
No 9 of 2014 (on Water Bill 2014), pp. 36-37 (5 th August 2014)	Clause 777 creates presumptions that do not provide for evidence to the contrary, so may limit Charter's presumption of innocence.	<u>Amendment planned but not yet introduced.</u> (2 nd September 2014)	Ministerial correspondence to SARC: I accept that the inclusion of the phrase "(in the absence of evidence to the contrary)" in clauses 777(2), (3) and (4), or words to that effect, would make the intended operation of the clause clearer on the face of the statute. As such, I will ask the Department of Environment and Primary Industries to prepare an appropriate amendment at the first available opportunity.
No 11 of 2014 (on Crimes Amendment (Sexual Offences and Other Matters) Bill 2014), pp. 8-10 (2 nd September 2014)	New section 7A's abolition of prosecution immunity for currently lawful sexual behaviour may limit Charter's equality and retrospectivity rights.	House amendment amends new section 7A to preserve immunity for lawful behaviour and provide for current defences. (17 th September 2014)	2R debate in LA: I just wish to put on the record very briefly that SARC, in its Alert Digest No. 12, made reference to the provisions that removed limitation periods in relation to a range of offences that previously were subject to limitation periods. ... I responded to the committee, referring to what it drew attention to, and thanked it for raising this issue and the approach adopted in the Australian Capital Territory to this issue. At that stage I said that I was giving consideration to introducing a house amendment to address this issue. That is the house amendment that is currently before the house.
No 11 of 2014 (on Family Violence Protection Amendment Bill 2014), pp. 19-21 (2 nd September 2014)	New definition of 'working day' may delay court scrutiny of police safety notices in regional Victoria, so may limit Charter's fair hearing rights.	House amendment defines 'working day' to mean non-holiday weekdays. (16 th September 2014)	Ministerial correspondence to SARC: I can see that there could be some confusion as to how the definition operates in the context of some of our smaller Magistrates' Courts which may operate only one day each week. To avoid this confusion I am considering a possible house amendment to alter the definition of 'working day' to ensure that it is read as intended.