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# Useful information

## Role of the Committee

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

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

## Interpretive use of Parliamentary Committee reports

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

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

## When may human rights be limited

Section 7 of the *Charter* provides –

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

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

## Glossary and Symbols

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

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

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

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

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

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

'penalty units' refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (as at 1 July 2016 one penalty unit equals \$155.46 )

'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. 15 of 2016

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## Crimes Legislation Further Amendment Bill 2016

<b>Introduced</b>	25 October 2016
<b>Second Reading Speech</b>	26 October 2016
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Martin Pakula MLA
<b>Minister responsible</b>	Hon. Martin Pakula MLA
<b>Portfolio responsibility</b>	Attorney-General

### Purpose

The Bill would amend the *Criminal Procedure Act 2009* to:

- enable expert evidence to be given concurrently or consecutively in a criminal trial
- enable the Supreme Court or the County Court to hear and determine a charge for a summary offence when the prosecution discontinues a proceeding for an indictable offence
- expand the orders available to the Court of Appeal on a successful appeal against conviction.

The Bill would amend the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* to enable expert evidence to be given concurrently or consecutively in:

- an investigation into the fitness of an accused to stand trial under Part 2 of that Act
- a special hearing under Part 3 of that Act.

The Bill would amend the *Crimes Act 1958* to clarify the fault element for an offence of attempt to commit certain sexual offences.

The Bill would also amend the *Jury Directions Act 2015* to ensure that Part 5 of that Act also applies to a charge for an offence of conspiracy, incitement or attempt to commit certain sexual offences.

### Charter report

The Crimes Legislation Further Amendment Bill 2016 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment.**

## Energy Legislation Amendment (Feed-in Tariffs and Improving Safety and Markets) Bill 2016

<b>Introduced</b>	25 October 2016
<b>Second Reading Speech</b>	26 October 2016
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Lily D'Ambrosio MLA
<b>Minister responsible</b>	Hon. Lily D'Ambrosio MLA
<b>Portfolio responsibility</b>	Minister for Energy, Environment and Climate Change

### Purpose

The Bill would amend the *Electricity Industry Act 2000* regarding:

- the minimum annual tariff for general renewable energy feed-in terms and conditions
- the registration of persons who are exempt from the obligation to hold a licence to generate, distribute, transmit, sell or supply electricity
- the fees that generators are required to pay local councils.

The Bill would also amend:

- the *Electricity Safety Act 1998* in relation to safety directions and the recall of electrical equipment
- the *Gas Safety Act 1997* in relation to the recall of gas installations, appliances and components
- the *National Electricity (Victoria) Act 2005* to apply certain provisions of the National Electricity Law in relation to the operation of wholesale electricity markets and electricity networks
- the *National Gas (Victoria) Act 2005* to apply certain provisions of the National Gas Law in relation to the operation of wholesale gas markets and gas pipelines
- the *Victorian Energy Efficiency Target Act 2007* in relation to Commonwealth agencies that the Essential Services Commission (ESC) may share information with, and to enable the Minister to fix fees for the purposes of regulations made under that Act.

### Content

#### ***Delegation of legislative power – Delayed commencement – Whether justified***

Clause 2 of the Bill provides that Division 2 of Part 2 and Parts 3, 4, 5, 6, and 7 will come into operation on a day or days to be proclaimed, with a default commencement date of 1 January 2018. Those provisions therefore have the potential to commence more than 12 months after the introduction of the Bill.

The Explanatory Memorandum provides the following explanation for the possible delayed commencement of Division 2 of Part 2 and Parts 3, 4, 5, 6, and 7:

The default commencement date of 1 January 2018 is necessary as it is anticipated that a period of up to 12 months will be required for the ESC to implement the new exemptions regime provided for in Division 2 of Part 2 of this Bill. The ESC will require this time to establish policies and procedures for management of the Register of Exempt Persons that it will administer following the commencement of Division 2 of Part 2 of this Bill.

**The Committee is satisfied that the possible delay in the commencement of Division 2 of Part 2 and Parts 3, 4, 5, 6, and 7 is justified.**

### **Charter report**

The Energy Legislation Amendment (Feed-in Tariffs and Improving Safety and Markets) Bill 2016 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment.**

## **Family Violence Reform Implementation Monitor Bill 2016**

<b>Introduced</b>	25 October 2016
<b>Second Reading Speech</b>	26 October 2016
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Daniel Andrews MLA
<b>Minister responsible</b>	Hon. Daniel Andrews MLA
<b>Portfolio responsibility</b>	The Premier

### **Purpose**

The Bill would establish the Family Violence Reform Implementation Monitor (Implementation Monitor) as a new statutory entity with responsibility for monitoring and reporting on the implementation of the recommendations in the final report of the Royal Commission into Family Violence and the recommended state-wide Family Violence Action Plan.

### **Charter report**

The Family Violence Reform Implementation Monitor Bill 2016 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment.**

## Housing Amendment (Victorian Housing Register and Other Matters) Bill 2016

<b>Introduced</b>	25 October 2016
<b>Second Reading Speech</b>	26 October 2016
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Martin Foley MLA
<b>Minister responsible</b>	Hon. Martin Foley MLA
<b>Portfolio responsibility</b>	Minister for Housing, Disability and Ageing

### Purpose

The Bill would amend the *Housing Act 1983* to:

- provide for the establishment and administration of the Victorian Housing Register for the registration of applicants for social housing tenancies and the allocation of social housing tenancies
- enable the Director of Housing to determine matters in relation to the Victorian Housing Register and the allocation of social housing tenancies
- enable information sharing between relevant persons:
  - for the purposes of the Victorian Housing Register
  - to support disadvantaged Victorians in accessing adequate and appropriate housing
  - to make further provision for the delegation of the Director of Housing's powers.

### Charter report

The Housing Amendment (Victorian Housing Register and Other Matters) Bill 2016 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment.**

## Road Legislation Further Amendment Bill 2016

<b>Introduced</b>	25 October 2016
<b>Second Reading Speech</b>	26 October 2016
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Luke Donnellan MLA
<b>Minister responsible</b>	Hon. Luke Donnellan MLA
<b>Portfolio responsibility</b>	Minister for Roads and Road Safety

### Purpose

The Bill would amend the *Road Management Act 2004* to clarify that the Roads Corporation may tow away any stationary vehicle left on a road in relation to which the Corporation is the coordinating road authority. It would also make other minor amendments to that Act.

The Bill would also amend the *Road Safety Act 1986* to:

- provide that the holder of any overseas licence, other than a motor cycle licence, may drive any vehicle that is authorised to be driven by a general 'car licence'
- extend the administrative scheme for imposing alcohol interlock conditions on Victorian driver licences and learner permits issued to persons whose licence or permit was cancelled because of a drink-driving offence committed in another jurisdiction
- create a new offence relating to the riding of a miniaturised motor cycle in a road or road related area and allow Victoria Police to dispose of a miniaturised motor cycle, without notice, that has been impounded in relation to that offence
- amend procedures relating to the taking and storage of blood samples in hospital
- increase the disqualification period that applies to a person who is convicted or found guilty of refusing to provide a sample of oral fluid (used to test for the presence of prescribed illicit drugs)
- extend the time by which Victoria Police are required to serve a notice requiring the surrender of a vehicle believed to have been used in an offence relating to the pursuit of the vehicle by the Victoria Police
- expressly permit notices under that Act to be served by means of electronic communication
- provide a general regulation making power to prescribe fees for services provided by the Corporation
- remove references to the former Department of Transport, Planning and Local Infrastructure and update references to the Department of Health.

The Bill would also amend the *Melbourne City Link Act 1995* to:

- provide for the interim operation of the City Link Tullamarine Widening Project
- repeal the provisions related to the use and disclosure of restricted tolling information under Division 3 of Part 4 and provide for the disclosure of certain information by the Roads Corporation
- specify that certain instruments made under that Act are not legislative instruments for the purposes of the *Subordinate Legislation Act 1994*
- further provide for consequential amendments as a result of the repeal of the definition of 'Authority' by the *Melbourne City Link (Miscellaneous Amendments) Act 2000*



- make minor and consequential amendments.

The Bill would also amend the *Independent Broad-based Anti-corruption Commission Act 2011* to repeal Part 8, which provides for the monitoring and review of compliance with Division 3 of Part 4 of the *Melbourne City Link Act 1995* and to make a consequential amendment.

The Bill would also make a minor correction to the *Heavy Vehicle National Law Application Act 2013*.

## Content

### ***Delegation of legislative power – Delayed commencement – Whether justified***

Clause 2 of the Bill provides that Parts 2, 3, 4 (with the exception of Division 3), and 5 will come into operation on a day or days to be proclaimed, with a default commencement date of 31 January 2018. Those provisions therefore have the potential to commence more than 12 months after the introduction of the Bill.

The Explanatory Memorandum provides the following explanation:

A commencement of more than 12 months after the date of introduction of the Bill is necessary to ensure that sufficient time is available for necessary supporting system and regulatory changes to be made, particularly in relation to the provisions allowing for the imposition of alcohol interlock conditions on Victorian driver licences or learner permits following a drink-driving offence committed in another State or Territory of Australia inserted by Division 2 of Part 3 of this Bill.

**The Committee is satisfied that the possible delay in the commencement of the above provisions is justified.**

---

### ***Retrospective application – Certain instruments not legislative instruments for the purposes of the Subordinate Legislation Act 1994***

Clause 2 of the Bill provides that Division 3 of Part 4 is taken to have come into operation on 1 July 2011 and will therefore apply retrospectively.

The Explanatory Memorandum provides the following explanation for the retrospective application of Division 3 of Part 4 of the Bill:

This ensures that new section 12D that specifies provisions under which variations of, and agreements to vary, agreements made under the *Melbourne City Link Act 1995* are not legislative instruments for the purposes of the *Subordinate Legislation Act 1994* operates as if it had commenced on 1 July 2011.

It is appropriate that provision is made for the agreements to vary and variations to the City Link Agreements to not be legislative instruments as these instruments affect the rights and obligations of the State and Transurban and do not regulate the conduct of third parties.

Agreements to vary or variations made to the City Link Agreements are undertaken in accordance with the procedure set out in Part 2 of the *Melbourne City Link Act 1995* to ensure transparency and proper scrutiny of the variation process.

The Committee also notes the following explanation in the Second Reading Speech:

Amendments to the *Melbourne City Link Act 1995* will clarify the uncertainty which has arisen as a result of amendments to the *Subordinate Legislation Act 1994* with effect from 1 July

2011. At that time amendments to the *Subordinate Legislation Act 1994* extended the requirements for the making and scrutiny of regulations and other statutory rules to a class of subordinate legislation known as 'legislative instruments'.

Variations to the CityLink agreements are not the type of instruments which were intended to be caught by the *Subordinate Legislation Act 1994* requirements for the making of subordinate legislation. The critical distinction between variations to the CityLink agreements and the types of instrument with which the *Subordinate Legislation Act 1994* is concerned is that variations to the CityLink agreements affect the rights and obligations of the state and Transurban and do not regulate the conduct of third parties.

Agreements to vary or variations made to the CityLink agreements will continue to be undertaken in accordance with the procedure set out in part 2 of the *Melbourne City Link Act 1995* to ensure transparency and proper scrutiny of the process.

**The Committee accepts that the retrospective amendment is necessary and does not appear to have an adverse impact on any person.**

### **Charter report**

The Road Legislation Further Amendment Bill 2016 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment.**

## Working with Children Amendment Bill 2016

<b>Introduced</b>	25 October 2016
<b>Second Reading Speech</b>	26 October 2016
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Martin Pakula MLA
<b>Minister responsible</b>	Hon. Martin Pakula MLA
<b>Portfolio responsibility</b>	Attorney-General

### Purpose

The Bill would amend the *Working with Children Act 2005* to:

- substitute the existing definition of ‘direct contact’ with a new and expanded definition<sup>1</sup> [4]
- amend the definition of ‘child-related work’ to include the class of out-of-home care known as kinship care [22]
- remove the element of ‘supervision’ for the purposes of the working with children check, such that whether or not a person’s contact with a child is supervised is irrelevant [6, 9]
- include charges for serious offences that have been finally dealt with other than by way of conviction or of a finding of guilt as charges that can be considered for the purposes of category C applications and re-assessments [28, 29]
- enable the Secretary to the Department of Justice and Regulation to require the production of certain information [18]
- clarify that the classification of certain offences is determined by the age of the person at the time the offence or alleged offence is committed [7, 8, 9, 10, 11, 12, 20]
- ensure the categorisation of certain interstate offences is in line with the equivalent Victorian offences [20]
- remove the offence of carnal knowledge, if committed as a child, from Schedule 3 [21]
- clarify the Secretary’s ability to cease a re-assessment following the revocation of a person’s assessment notice when that person fails to respond to a request for further information.

### Charter report

#### ***Freedom of expression – Child-related work – Written, oral or electronic communication with a child – Directly supervised contact***

Summary: *The combined effect of clauses 4(1) and 6(1) is to prohibit a person from engaging in work at or for a service, body or place that usually involves supervised written, oral or electronic communication ‘with a child’ unless that person has a current working with children assessment notice. The Committee will write to the Attorney-General seeking further information.*

The Committee notes that clause 4(1), amending existing s. 3, alters the definition of ‘direct contact’ as follows:

“direct contact” means any contact between a person and a child that involves—

<sup>1</sup> The new definition includes: face to face contact; contact by post or other written communication; contact by telephone or other oral communication; and contact by email or other electronic communication.

- (a) physical contact; or
- (b) face to face ~~oral communication~~ contact;
- (c) contact by post or other written communication; or
- (d) contact by telephone or other oral communication; or
- (e) contact by email or other electronic communication

Clause 6(1), amending existing s. 9, alters the definition of 'child-related work' as follows:

For the purposes of this Act, child-related work is work—

- (a) at or for a service, body or place, or that involves an activity, specified in subsection (3); and
- (b) that usually involves direct contact with a child ~~and that contact is not directly supervised by another person.~~

**The Committee observes that the combined effect of clauses 4(1) and 6(1) is to prohibit a person from engaging in work at or for a service, body or place that usually involves supervised (and non-physical or face-to-face) written, oral or electronic communication 'with a child' unless that person has a current working with children assessment notice.<sup>2</sup>**

The Committee considers that clauses 4(1) and 6(1) may engage the Charter's right to freedom of expression.<sup>3</sup> The Statement of Compatibility does not address the right to freedom of expression, but remarks that:

Together, these changes have the potential to expand the circumstances in which a person is required to apply for and obtain a working with children check, therefore requiring these individuals to provide personal information to the government....

In my opinion, any interference with a person's privacy or reputation which may arise from these provisions will neither be unlawful nor arbitrary. The act only applies to individuals who engage in child-related work, through which their contact with children is direct and at or for a service, body, place, or that involves an activity listed in section 9(3) of the act. The ability of the Secretary to require, disclose and request information in the circumstances outlined above will be specifically authorised by the act. This is necessary to enable the Secretary to assess the criminal history of these individuals to ensure they do not pose an unjustifiable risk to the safety of children. This, in turn, will ensure that people who engage in child-related work have had their criminal history information assessed, the outcome of which, where they are granted a working with children check, suggests that they do not pose an unjustifiable risk to the safety of children.

However, the Committee observes that the Royal Commission into Institutional Responses to Child Sexual Abuse, in recommending these changes to the definition of child-related work, remarked:<sup>4</sup>

We acknowledge the potential for confusion regarding whether certain interactions with children would fall within the recommended kinds of contact. We also recognise the potential for expansive interpretations. However, we believe the state and territory governments can address these concerns by agreeing on standard definitions for each of the recommended kinds of contact and amending their WWCC laws to incorporate those definitions.

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<sup>2</sup> See existing s. 33.

<sup>3</sup> Charter s. 15(2).

<sup>4</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks Report* (August, 2015), p. 66.

The Committee notes that the terms ‘written’, ‘oral’ and ‘electronic communications’ ‘with a child’ potentially include mass, public communications (e.g. newsletters, management of social media accounts, YouTube videos) whose recipients include people under 18.

**The Committee will write to the Attorney-General seeking further information as to whether or not the definitions of written, oral and electronic communications with a child extend to mass, public communications whose recipients include people under 18.**

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***Equal and effective protection against discrimination – Presumption of innocence – Working with children assessments – Charges finally dealt with other than by a conviction – Historical homosexual offences***

Summary: *The effect of clauses 28 and 29 may be that a person may be refused a working with children assessment based solely on a charge that is no longer being (or can no longer be) prosecuted, including ones that were wrongly brought against a person. The Committee will write to the Attorney-General seeking further information.*

The Committee notes that clause 28, amending existing s. 14, provides that an application for a working with children check is a ‘category C application’ if it is in respect of a person ‘who has at any time... been charged with an offence specified in clause 2 of Schedule 3 if the charge has been finally dealt with other than by way of a conviction or a finding of guilt.’ Clause 29, amending existing s. 21AD, provides similarly for re-assessments of working with children checks. Existing s. 14(3) provides that the Secretary of the Department of Justice and Regulation must give an assessment for such an application unless satisfied that doing so would pose an unjustifiable risk to the safety of children, or that a reasonable person would not allow his or her child to have contact with the applicant, or that the applicant’s engagement in any child-related work would pose an unjustifiable risk to the safety of children.

**The Committee observes that the effect of clauses 28 and 29 may be that a person may be refused a working with children assessment based solely on a charge that is no longer being (or can no longer be) prosecuted.** The Committee considers that clauses 28 and 29 may engage the right of a person charged with a criminal offence to be presumed innocent until proved guilty according to law.<sup>5</sup>

The Statement of Compatibility remarks:

For the purposes of a working with children check assessment, the bill provides that a non-conviction charge is taken to be a charge that has been finally dealt with other than by way of a conviction or finding of guilt. The bill limits the consideration of non-conviction charges to the most serious offences for the purposes of the working with children check, being offences listed in clause 2 of Schedule 3 to the act.

These provisions do not limit the rights set out in section 24 of the charter (fair hearing), section 25(1) (presumption of innocence) or section 26 (right not to be tried or punished more than once), as they do not necessitate criminal proceedings or impose penalties on offenders for a criminal offence. The purpose and effect of preventing a person from engaging in child-related work is to not penalise persons for a criminal offence, but to assist in protecting children from sexual or physical harm in situations where the criminal history of a person represents an unjustifiable risk to the safety of children.

Under a category C assessment, there is a legislative presumption in favour of the person, specifically, that the applicant or working with children check holder will be given, or retain, a

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<sup>5</sup> Charter s. 25(1).

working with children check. On a category C assessment, a working with children check must be given unless the Secretary is satisfied that giving an assessment notice would pose an unjustifiable risk to the safety of children, having regard to the risk assessment tests under the act. A person issued with a negative notice following a category C assessment for a non-conviction charge will maintain the right to appeal the decision to VCAT, therefore protecting their rights under section 24, 25(1) and 26 of the charter.

It is my opinion that the inclusion of non-conviction charges as relevant matters for the purposes of category C assessments enhance the protective purposes of the act, the consideration of which requires the Secretary or VCAT to ensure that the protection of children from harm is the paramount consideration. This amendment also brings Victoria into line with all other working with children regulators across Australia. The measures imposed by the act are clearly protective rather than punitive measures as there is no element of punishment involved.

However, the Committee notes that statutory notes added to the Bill by clauses 28 and 29 remark that existing s. 6(1) provides ‘examples of the ways a charge may be finally dealt with’ and that clause 5 alters existing s. 6(1) to provide that:

a charge against a person for an offence is pending until the charge is finally dealt with, including in any of the following ways—

- (a) the charge is withdrawn or the person dies without the charge having been determined;
- (b) the charge is dismissed by a court;
- (c) the person is discharged by a court following a committal hearing;
- (d) the person is acquitted or found guilty of the offence by a court;
- (e) the person is discharged by the Magistrates’ Court after completing a diversion program under section 59 of the *Criminal Procedure Act 2009*.

**The Committee observes that the combined effect of clauses 5, 28 and 29 may be to require the Secretary to consider charges of offences specified in clause 2 of schedule 3 that were wrongly brought against a person – for example, charges that have been held to be invalid, or were the subject of an executive pardon, or have been expunged by statute – when assessing that person’s working with children application.**

In particular, the Committee notes that existing Part 8 of the *Sentencing Act 1991* provides for the expungement of ‘historical homosexual offences’, potentially including sexual offences specified in clause 2 of schedule 3 that do not require proof of non-consent, such as the pre-1980 offence of ‘unlawfully and indecently assault[ing] any male person’.<sup>6</sup> It is unclear whether or not a charge for a historical homosexual offence that was not the subject of a finding of guilt or a conviction can be expunged under existing Part 8,<sup>7</sup> and also whether or not a conviction that has been expunged nevertheless falls within the terms of clauses 5, 28 and 29.<sup>8</sup> The Committee considers that clauses 5, 28 and 29 may therefore engage the Charter’s right to equal and effective protection against discrimination.<sup>9</sup>

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<sup>6</sup> See Schedule 3, Clause 2.1 and *Sentencing Act 1991*, Schedule 1, Clause 1(d)(xx) and compare the second example in the definition of ‘sexual offence’ in *Sentencing Act 1991*, s. 105, describing offences that are in identical terms to those listed in clause 1(d)(xx). See also clause 1(c)(xxiii).

<sup>7</sup> See *Sentencing Act 1991*, s. 105B, referring to an application by ‘a person who was convicted of a historical homosexual offence’.

<sup>8</sup> See *Sentencing Act 1991*, s. 105J(c)(i), referring to ‘a reference to a conviction’, compare clause 28, referring to a ‘charge has been finally dealt with other than by way of a conviction’.

<sup>9</sup> Charter s. 8(3).

The Committee will write to the Attorney-General seeking further information as to whether or not charges of historical homosexual offences that did not result in a finding of guilt or conviction can be expunged under Part 8 of the *Sentencing Act 1991* and whether or not clauses 5, 28 and 29 require the Secretary to consider expunged historical convictions when making working with children assessments.

The Committee makes no further comment.

**7 November 2016**  
**Committee Room**





# **Appendix 1**

## Ministerial responses to Committee correspondence

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The Committee received Ministerial responses in relation to its correspondence on the Bills listed below.

The responses are reproduced in this appendix – please refer to Appendix 4 for additional information.

- Sentencing (Community Correction Order) and Other Acts Amendment Bill 2016



## Attorney-General

7 NOV 2016

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Melbourne Victoria 3000  
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Our ref: CD/16/527872\*

Ms Lizzie Blandthorn MLA  
Chairperson  
Scrutiny of Acts and Regulations Committee  
Parliament House  
Spring Street  
EAST MELBOURNE VIC 3002

Dear Ms Blandthorn

*Lizzie*

Thank you for your letter of 25 October 2016 in relation to the Sentencing (Community Correction Order) and Other Acts Amendment Bill 2016 (the Bill). I understand that the Committee is seeking clarification as to whether any person will be adversely affected by the operation of transitional provisions on clauses 5 to 16 of the Bill.

The Bill has been drafted to commence by default on 2 October 2017, if not proclaimed earlier. Clause 17 sets out the transitional arrangements for amendments made by Part 2 of the Bill.

Clauses 5 to 16 of the bill will apply to the sentencing of an offender on or after the commencement of that Part, irrespective of when the offence was committed or the finding of guilt was made. In that sense, they are retrospective provisions as they apply to offences which were committed prior to the commencement of the offence. However, I do not consider that any person will be adversely affected by these changes.

Section 27(2) of the *Charter of Human Rights and Responsibilities Act 2006* provides that a 'penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed'.

The changes do not affect the maximum penalty that an offender will face, but will affect how a sentencing court can construct a sentence. These clauses predominantly make a range of changes to the way courts' use CCOs. Importantly the clauses reduce the term of imprisonment that may be combined with a CCO from two years to one year or less, provide that a court must not fix a non-parole period as part of a combined order, and limit the maximum length of a CCO that may be imposed by the higher courts to five years.

The changes do not affect the court's ability to impose a non-custodial sentence and merely limit the ways in which CCOs can be used by the courts. As these changes do not affect the maximum penalty that an accused will face, it is appropriate that they apply to all those who are sentenced on or after the date of commencement.

This is in contrast to clauses 3 and 4 of the Bill, which make significant changes to the way a court may sentence for certain serious offences. Clauses 3 and 4 create offence-specific limitations on the availability of community correction orders (CCOs) and other non-custodial orders.

Although clauses 3 and 4 do not change the maximum penalty to which an accused is subject, they do impose new restrictions on judicial sentencing discretion. This will be a significant change for those accused of the offences affected by these reforms. It is therefore appropriate that these amendments should be prospective and only apply to 'category 1 offences' and 'category 2 offences' committed after commencement of those clauses of the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Martin Pakula', with a large, stylized flourish at the end.

**THE HON MARTIN PAKULA MP**  
**Attorney-General**



## Appendix 2

### Index of Bills in 2016

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Building Legislation Amendment (Consumer Protection) Bill 2015	1
Children Legislation Amendment Bill 2016	2
Child Wellbeing and Safety Amendment (Oversight and Enforcement of Child Safe Standards) Bill 2016	13
Compensation Legislation Amendment Bill 2016	14
Confiscation and Other Matters Amendment Bill 2016	4, 5
Corrections Amendment (No body, no parole) Bill 2016	3, 4
Corrections Legislation Amendment Bill 2016	12
Crimes Amendment (Carjacking) Bill 2016	11
Crimes Amendment (Carjacking and Home Invasion) Bill 2016	12, 14
Crimes Amendment (Sexual Offences) Bill 2016	9, 10
Crimes Legislation Amendment Bill 2016	2
Crimes Legislation Further Amendment Bill 2016	15
Crown Land Legislation Amendment Bill 2015	8
Domestic Animals Amendment (Puppy Farms and Pet Shops) Bill 2016	14
Education and Training Reform Amendment (Miscellaneous) Bill 2016	5, 6
Energy Legislation Amendment (Feed-in Tariffs and Improving Safety and Markets) Bill 2016	15
Environment Protection Amendment (Banning Plastic Bags, Packaging and Microbeads) Bill 2016	10
Equal Opportunity Amendment (Equality for Students) Bill 2016	10, 11
Equal Opportunity Amendment (Religious Exceptions) Bill 2016	12, 13
Estate Agents Amendment (Underquoting) Bill 2016	12
Family Violence Reform Implementation Monitor Bill 2016	15
Fines Reform and Infringements Acts Amendment Bill 2016	3
Food Amendment (Kilojoule Labelling Scheme and Other Matters) Bill 2016	13, 14
Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016	10, 12
Gene Technology Amendment Bill 2015	1
Health Complaints Bill 2016	2, 3
House Contracts Guarantee Bill 2016	4
Housing Amendment (Victorian Housing Register and Other Matters) Bill 2016	15
Infant Viability Bill 2015	6, 7
Integrity and Accountability Legislation Amendment (A Stronger System) Bill 2015	1
Judicial Commission of Victoria Bill 2015	1, 2
Justice legislation (Evidence and Other Acts) Amendment Bill 2016	6, 7
Land (Revocation of Reservations - Metropolitan Land) Bill 2016	6
Land (Revocation of Reservations - Regional Victoria Land) Bill 2016	7

Legal Profession Uniform Law Application Amendment Bill 2016	9
Livestock Disease Control Amendment Bill 2016	5
Local Government Amendment Bill 2016	11
Local Government (Greater Geelong City Council) Act 2016	6, 7
Lord Mayor's Charitable Foundation Bill 2016	13, 14
Medical Treatment Planning and Decisions Bill 2016	13, 14
Melbourne and Olympic Parks Amendment Bill 2016	11
Melbourne College of Divinity Amendment Bill 2016	9, 10
National Domestic Violence Order Scheme Bill 2016	11, 12
National Electricity (Victoria) Further Amendment Bill 2015	1
National Parks and Victorian Environmental Assessment Council Acts Amendment Bill 2016	8
Owners Corporations Amendment (Short-stay Accommodation) Bill 2016	8, 10
Parliamentary Budget Officer Bill 2016	3
Police and Justice Legislation Amendment (Miscellaneous) Bill 2016	11, 12
Powers of Attorney Amendment Bill 2016	9
Primary Industries Legislation Amendment Bill 2016	7, 8, 12
Public Administration Amendment (Public Sector Communication Standards) Bill 2016	6
Racing and Other Acts Amendment (Greyhound Racing and Welfare Reform) Bill 2015	1, 2
Ridesharing Bill 2016	9
Road Legislation Amendment Bill 2015	3
Road Legislation Further Amendment Bill 2016	15
Road Management Amendment (Bus Stop Delivery Powers) Bill 2016	6
Rooming House Operators Bill 2015	1, 2
Rural Assistance Schemes Bill 2016	8
Sentencing (Community Correction Order) and Other Acts Amendment Bill 2016	14, 15
Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Bill 2016	5, 6
Sex Offenders Registration Amendment Bill 2016	3, 4
State Taxation Acts Further Amendment Bill 2016	14
State Taxation and Other Acts Amendment Bill 2016	7
Tobacco Amendment Bill 2016	8, 9
Traditional Owner Settlement Amendment Bill 2016	12, 13
Transparency in Government Bill 2015	1
Transport (Compliance and Miscellaneous) Amendment (Abolition of the Penalty Fares Scheme) Bill 2016	14
Transport (Compliance and Miscellaneous) Amendment (Public Safety) Bill 2016	9
Transport Integration Amendment (Head, Transport for Victoria and Other Governance Reforms) Bill 2016	14
Treasury and Finance Legislation Amendment Bill 2016	4
Victoria Police Amendment (Merit-based Transfer) Bill 2016	2
Victorian Fisheries Authority Bill 2016	13, 14
Victorian Funds Management Corporation Amendment Bill 2016	6, 8
Upholding Australian Values (Protecting Our Flags) Bill 2015	3
Witness Protection Amendment Bill 2016	5, 6
Working with Children Amendment Bill 2016	15

# Appendix 3

## Committee Comments classified by Terms of Reference

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

**Alert Digest Nos.**

### **Section 17(a)**

#### **(i) trespasses unduly upon rights or freedoms**

Crimes Amendment (Carjacking and Home Invasion) Bill 2016	12, 14
Sentencing (Community Correction Order) and Other Acts Amendment Bill 2016	14, 15

#### **(iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the Privacy and Data Protection Act 2014**

Judicial Commission of Victoria Bill 2015	1, 2
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#### **(v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the Health Records Act 2001**

Judicial Commission of Victoria Bill 2015	1, 2
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#### **(vi) inappropriately delegates legislative power**

Lord Mayor’s Charitable Foundation Bill 2016	13, 14
Medical Treatment Planning and Decisions Bill 2016	13, 14
Melbourne College of Divinity Amendment Bill 2016	9, 10
Owners Corporations Amendment (Short-stay Accommodation) Bill 2016	8, 10
Traditional Owner Settlement Amendment Bill 2016	12, 13
Transport Integration Amendment (Head, Transport for Victoria and Other Governance Reforms) Bill 2016	14
Victorian Funds Management Corporation Amendment Bill 2016	6, 8

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

Access to Medicinal Cannabis Bill 2015	1, 3
Assisted Reproductive Treatment Amendment Bill 2015	16 of 2015, 1
Bail Amendment Bill 2015	16 of 2015, 1
Births, Deaths and Marriages Registration Amendment Bill 2016	12, 13
Confiscation and Other Matters Amendment Bill 2016	4, 5
Crimes Amendment (Carjacking and Home Invasion) Bill 2016	12, 14
Crimes Amendment (Carjacking) Bill 2016	11
Crimes Amendment (Sexual Offences) Bill 2016	9, 10
Education and Training Reform Amendment (Miscellaneous) Bill 2016	5, 6
Equal Opportunity Amendment (Equality for Students) Bill 2016	10, 11
Food Amendment (Kilojoule Labelling Scheme and Other Matters) Bill 2016	13, 14

Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016	10, 12
Health Complaints Bill 2016	2, 3
Infant Viability Bill 2015	6, 7
Justice legislation (Evidence and Other Acts) Amendment Bill 2016	6, 7
Local Government (Greater Geelong City Council) Act 2016	6, 7
Medical Treatment Planning and Decisions Bill 2016	13, 14
National Domestic Violence Order Scheme Bill 2016	11, 12
Police and Justice Legislation Amendment (Miscellaneous) Bill 2016	11, 12
Primary Industries Legislation Amendment Bill 2016	7, 8
Primary Industries Legislation Amendment Bill 2016 ( <i>House Amendments</i> )	12
Racing and Other Acts Amendment (Greyhound Racing and Welfare Reform) Bill 2015	1, 2
Road Legislation Amendment Bill 2015	14 of 2015, 3
Rooming House Operators Bill 2015	1, 2
Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Bill 2016	5, 6
Tobacco Amendment Bill 2016	8, 9
Transport Integration Amendment (Head, Transport for Victoria and Other Governance Reforms) Bill 2016	14
Upholding Australian Values (Protecting Our Flags) Bill 2016	3
Victorian Fisheries Authority Bill 2016	13, 14
Witness Protection Amendment Bill 2016	5, 6
Working with Children Amendment Bill 2016	15



## Appendix 4

### Ministerial Correspondence 2016

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#### Table of correspondence between the Committee and Ministers or Members during 2016

This Appendix lists the Bills where the Committee has written to the Minister or Member seeking further advice, and the receipt of the response to that request.

<b>Bill Title</b>	<b>Minister/ Member</b>	<b>Date of Committee Letter / Minister's Response</b>	<b>Alert Digest No. Issue raised / Response Published</b>
Road Legislation Amendment Bill 2015	Roads and Road Safety	10.11.15 23.02.16	14 of 2015 3 of 2016
Assisted Reproductive Treatment Amendment Bill 2015	Health	08.12.15 05.02.16	16 of 2015 1 of 2016
Bail Amendment Bill 2015	Attorney-General	08.12.15 24.12.15	16 of 2015 1 of 2016
Access to Medicinal Cannabis Bill 2015	Health	09.02.16 25.02.16	1 of 2016 3 of 2016
Judicial Commission of Victoria Bill 2015	Attorney-General	09.02.16 22.02.16	1 of 2016 2 of 2016
Racing and Other Acts Amendment (Greyhound Racing and Welfare Reform) Bill 2015	Racing	09.02.16 22.02.16	1 of 2016 2 of 2016
Rooming House Operators Bill 2015	Consumer Affairs, Gaming and Liquor Regulation	09.02.16 22.02.16	1 of 2016 2 of 2016
Health Complaints Bill 2016	Health	23.02.16 25.02.16	2 of 2016 3 of 2016
Corrections Amendment (No body, no parole) Bill 2016	Hon Edward O'Donohue MP	08.03.16 16.03.16	3 of 2016 4 of 2016
Sex Offenders Registration Amendment Bill 2016	Police	08.03.16 18.03.16	3 of 2016 4 of 2016
Upholding Australian Values (Protecting Our Flags) Bill 2015	Mr Daniel Young MP	08.03.16	3 of 2016
Confiscation and Other Matters Amendment Bill 2016	Attorney-General	22.03.16 06.04.16	4 of 2016 5 of 2016
Education and Training Reform Amendment (Miscellaneous) Bill 2016	Education	12.04.16 02.05.16	5 of 2016 6 of 2016
Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Bill 2016	Corrections	12.04.16 29.04.16	5 of 2016 6 of 2016
Witness Protection Amendment Bill 2016	Police	12.04.16 29.04.16	5 of 2016 6 of 2016

**Scrutiny of Acts and Regulations Committee**

<b>Bill Title</b>	<b>Minister/ Member</b>	<b>Date of Committee Letter / Minister's Response</b>	<b>Alert Digest No. Issue raised / Response Published</b>
Infant Viability Bill 2015	Dr Rachel Carling-Jenkins MP	03.05.16 23.05.16	6 of 2016 7 of 2016
Justice legislation (Evidence and Other Acts) Amendment Bill 2016	Attorney-General	03.05.16 20.05.16	6 of 2016 7 of 2016
Local Government (Greater Geelong City Council) Act 2016	Attorney-General	03.05.16 23.05.16	6 of 2016 7 of 2016
Victorian Funds Management Corporation Amendment Bill 2016	Treasurer	03.05.16 31.05.16	6 of 2016 8 of 2016
Primary Industries Legislation Amendment Bill 2016	Agriculture	24.05.16 06.06.16	7 of 2016 8 of 2016
Owners Corporations Amendment (Short-stay Accommodation) Bill 2016	Consumer Affairs, Gaming and Liquor Regulation	07.06.16 18.07.16	8 of 2016 10 of 2016
Tobacco Amendment Bill 2016	Health	07.06.16 16.06.16	8 of 2016 9 of 2016
Crimes Amendment (Sexual Offences) Bill 2016	Attorney-General	21.06.16 03.08.16	9 of 2016 10 of 2016
Melbourne College of Divinity Amendment Bill 2016	Education	21.06.16 21.07.16	9 of 2016 10 of 2016
Equal Opportunity Amendment (Equality for Students) Bill 2016	Ms Sue Pennicuik MLC	16.08.16 29.08.16	10 of 2016 11 of 2016
Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016	Attorney-General	16.08.16 31.08.16	10 of 2016 12 of 2016
Crimes Amendment (Carjacking) Bill 2016	Hon Edward O'Donohue MP	30.08.16	11 of 2016
National Domestic Violence Order Scheme Bill 2016	Attorney-General	30.08.16 05.09.16	11 of 2016 12 of 2016
Police and Justice Legislation Amendment (Miscellaneous) Bill 2016	Police	30.08.16 09.09.16	11 of 2016 12 of 2016
Births, Deaths and Marriages Registration Amendment Bill 2016	Attorney-General	13.09.16 07.10.16	12 of 2016 13 of 2016
Crimes Amendment (Carjacking and Home Invasion) Bill 2016	Attorney-General	13.09.16 10.10.16	12 of 2016 14 of 2016
Primary Industries Legislation Amendment Bill 2016 (House Amendments)	Agriculture	13.09.16	12 of 2016
Traditional Owner Settlement Amendment Bill 2016	Attorney-General	13.09.16 07.10.16	12 of 2016 13 of 2016

<b>Bill Title</b>	<b>Minister/ Member</b>	<b>Date of Committee Letter / Minister's Response</b>	<b>Alert Digest No. Issue raised / Response Published</b>
Food Amendment (Kilojoule Labelling Scheme and Other Matters) Bill 2016	Health	11.10.16 21.10.16	13 of 2016 14 of 2016
Lord Mayor's Charitable Foundation Bill 2016	Health	11.10.16 21.10.16	13 of 2016 14 of 2016
Medical Treatment Planning and Decisions Bill 2016	Health	11.10.16 21.10.16	13 of 2016 14 of 2016
Victorian Fisheries Authority Bill 2016	Agriculture	11.10.16 21.10.16	13 of 2016 14 of 2016
Sentencing (Community Correction Order) and Other Acts Amendment Bill 2016	Attorney-General	25.10.16 07.11.16	14 of 2016 15 of 2016
Transport Integration Amendment (Head, Transport for Victoria and Other Governance Reforms) Bill 2016	Public Transport	25.10.16	14 of 2016
Working with Children Amendment Bill 2016	Attorney-General	07.11.16	15 of 2016



# Appendix 5

## Statutory Rules and Legislative Instruments considered

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The following Statutory Rules and legislative instruments were considered by the Regulation Review Subcommittee on Monday, 7 November 2016.

### Statutory Rules Series 2016

- SR No. 61 – Surveillance Devices Regulations 2016
- SR No. 67 – Transport (Buses, Taxi-Cabs and Other Commercial Passenger Vehicles) Regulations 2016
- SR No. 71 – Fisheries and Fisheries (Fees, Royalties and Levies) Amendment (Recreational Fishery Licences) Regulations 2016
- SR No. 91 – Local Government (Electoral) Regulations 2016
- SR No. 92 – Road Safety (Drivers) Amendment (Interstate Disqualification and Other Matters) Regulations 2016
- SR No. 95 – Fisheries Amendment Regulations 2016
- SR No. 96 – Residential Tenancies Amendment Regulations 2016
- SR No. 97 – City of Melbourne (Electoral) Amendment Regulations 2016
- SR No. 98 – Road Safety Road Rules (Electric Personal Transporters Trial) Amendment Rules 2016
- SR No. 99 – Road Safety (General) Amendment (Electric Personal Transporters Trial) Regulations 2016
- SR No. 100 – Road Safety (General) Amendment (Portable Weighing Devices) Regulations 2016
- SR No. 101 – Infringements Amendment Regulations 2016
- SR No. 102 – Land Regulations 2016
- SR No. 103 – Building Amendment (Consumer Protection) Regulations 2016
- SR No. 104 – Building Amendment (Construction of Swimming Pools and Spas) Regulations 2016

### Legislative Instruments

- Determination of Specifications for Wheelchair Accessible Taxi-Cabs
- Fees and Charges Guidelines for Class A Cemetery Trust Fee Setting
- Notice of Declared Area
- Order in Council Declaring Certain Motor Vehicles not to be Motor Vehicles – Electrical Personal Transporters Trial
- Proclamation of Extension of Victoria's Corporations Law References
- Variation to the Code of Practice for Onsite Wastewater Management