58th Parliament
Alert Digest

No. 15 of 2017

Tuesday, 31 October 2017
on the following Bills

Commercial Passenger Vehicle Industry Amendment (Further Reforms) Bill 2017
Compensation Legislation Amendment Bill 2017
Fines Reform Amendment Bill 2017
Firearms Amendment Bill 2017
Firearms Amendment (Advertising) Bill 2017
Gambling Legislation Amendment Bill 2017
Gambling Regulation Amendment (Gaming Machine Arrangements) Bill 2017
Offshore Petroleum and Greenhouse Gas Storage Amendment Bill 2017
Victorian Data Sharing Bill 2017
Voluntary Assisted Dying Bill 2017

and Subordinate Legislation
SR No. 41 – Road Safety Road Rules 2017
The functions of the Scrutiny of Acts and Regulations Committee are –

(a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly –
   (i) trespasses unduly upon rights or freedoms;
   (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;
   (iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions;
   (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;
   (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;
   (vi) inappropriately delegates legislative power;
   (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
   (viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;

(b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament –
   (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the Constitution Act 1975, or raises an issue as to the jurisdiction of the Supreme Court;
   (ii) if a Bill repeals, alters or varies section 85 of the Constitution Act 1975, whether this is in all the circumstances appropriate and desirable;
   (iii) if a Bill does not repeal, alter or vary section 85 of the Constitution Act 1975, but an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;
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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
‘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
Commercial Passenger Vehicle Industry Amendment (Further Reforms) Bill 2017

**Bill Information**

<table>
<thead>
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<th>Minister</th>
<th>Hon Jacinta Allan MP</th>
<th>Introduction Date</th>
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<td>Portfolio</td>
<td>Public Transport</td>
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**Bill Summary**

The Bill would implement the second stage of reforms to the commercial passenger vehicle industry announced by the Government on 23 August 2016.

The Bill would establish a new regulatory regime for commercial passenger vehicles — by effectively replacing the existing regulatory scheme for taxi-cabs and hire cars currently specified in Part VI of the *Transport (Compliance and Miscellaneous) Act 1983* — by inserting new parts in the *Commercial Passenger Vehicle Industry Act 2017* (the Principal Act), which would:

- abolish all taxi and hire car licences and deem all holders of taxi and hire car licences to have registered the motor vehicle, to which the licence relates, under the Principal Act
- abolish taxi zones established under the *Transport (Compliance and Miscellaneous) Act 1983* and permit providers of commercial passenger vehicle services to provide services anywhere in the State
- establish a new safety duties scheme for the commercial passenger vehicle industry
- enable regulations to be made to protect consumers of commercial passenger vehicle services following changes to enable service providers to set fares for their services
- establish a registration scheme for all commercial passenger vehicles
- re-enact provisions in the existing regulatory scheme for the future regulation of commercial passenger vehicle services, including:
  - the accreditation of all drivers of commercial passenger vehicles
  - the registration of booking service providers
  - establishing authorised officers and providing for compliance and investigation powers for the regulator and authorised officers
  - powers for the regulator (the Commercial Passenger Vehicle Commission) to take administrative actions and provide affected parties with review rights
  - the public register of permission holders
  - provisions relating to the general administration of the Principal Act including regulation making powers.

The Bill also makes a range of consequential amendments to other Acts.
### Type of Bill

- **Government Bill**
- Private Members Bill

### CONTENT ISSUES

- NONE
- Inappropriately delegates legislative power
- Trespasses unduly on Rights or Freedoms

### Details

1. **Power of entry, search and seizure without warrant**

   New sections 131 to 137 (contained in new Division 2 of Part 7 of the Principal Act) would provide authorised officers with the power to enter, search and inspect industry premises or commercial passenger vehicles without consent or a search warrant and with the use of reasonable force as necessary (new section 166).

   The Committee has reviewed the explanation contained in the Statement of Compatibility and is satisfied that the provisions are reasonable and justified in the circumstances.

2. **Self-incrimination – Production of information, documents and related items – Justification for limitation of privilege**

   The Bill contains provisions that would limit the right to protection against self-incrimination:
   - new section 160, which would empower the regulator or an authorised officer to direct a person to provide information, documents and related items for the purposes of compliance and investigation (and make it an offence not to comply with a direction to produce without reasonable excuse)
   - new section 169 would provide that a person is not excused from complying with a direction to provide information on the basis that it might incriminate them or make them liable to a penalty. (While the material could not subsequently be used in criminal or civil penalty proceedings, or any action to make a person liable to a penalty — other than in proceedings relating to the provision of false information — this protection would not cover information contained in any document or item that a person is required to keep under an industry law).

   The Committee has reviewed the explanation contained in the Statement of Compatibility and is satisfied that the provisions are reasonable and justified in the circumstances.

3. **Self-incrimination – Power to require assistance for use of electronic equipment – Justification for limitation of privilege**

   New section 150 would empower an authorised officer or assistant, while exercising search powers in relation to a vehicle or premises, to give certain directions to a driver or registered owner of a vehicle, or an occupier of a premises, who is present at the location being investigated. This would include directing that such persons:
   - access information by operating a non-cash payment processing device or other device for the storage of information
   - use equipment that is at the location being investigated
   - put information in documentary form for seizure by the officer or
● copy information to a disk, tape or storage device for seizure by the officer.

New section 169 (discussed above) would apply to the power in new section 150 such that a person would not be excused from complying with a direction to access information on the basis that it might incriminate them or make them liable to a penalty. Accordingly, the person may be required to access and provide some incriminating information, which may limit their right to protection against self-incrimination.

The Committee has reviewed the explanation contained in the Statement of Compatibility and is satisfied that the provisions are reasonable and justified in the circumstances.

4. Presumption of innocence – deemed criminal liability for officers of bodies corporate for failure to exercise due diligence – evidential burden on accused

New section 285 would provide that if a body corporate commits an offence against a specified provision, an officer of the body corporate also commits the offence, unless: they present or point to evidence that suggests a reasonable possibility that they exercised due diligence to prevent the commission of the offence; and the contrary is not proved (beyond reasonable doubt) by the prosecution.

Whilst the Statement of Compatibility purports to address the effect of new section 284 on the presumption of innocence, it appears that it is in fact referring to section 285. The Committee considers this to be a typographical error because it is section 285 that deals with non-cash payment surcharges and contains an express provision that the section imposes only an evidentiary burden (which are both discussed in the Statement of Compatibility in reference to section 284). Section 284 does not cover offences for non-cash payment surcharges and it does not contain express provision for an evidentiary burden. Rather, it is section 285 that does these things.

The Committee does not usually comment on provisions that impose an evidential burden (as opposed to a reverse legal onus) on an accused. However, section 285 has been noted here because of the misdescription of the provision (as section 284) in the Statement of Compatibility. For the sake of clarity, the Committee also notes here that section 284 does not impose an evidential (or legal) burden on an accused.

**Recommendation**

- Refer to Parliament for consideration
- Write to Minister for clarification
- ☒ No further action required

**CHARTER ISSUES**

- ☒ NONE
- ☐ Compatibility with Human Rights
- ☐ Operation of the Charter

**Details**

The Commercial Passenger Vehicle Industry Amendment (Further Reforms) Bill 2017 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

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1 The following provisions are specified in sub-section 285(2): 113(1) and 114(1).
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**Recommendation**
Compensation Legislation Amendment Bill 2017

Bill Information

<table>
<thead>
<tr>
<th>Minister</th>
<th>Hon Robin Scott MP</th>
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<tr>
<td>Portfolio</td>
<td>Finance</td>
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<tr>
<td>Introduction Date</td>
<td>17 October 2017</td>
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Bill Summary

This Bill would amend:

- the *Transport Accident Act 1986* by removing the requirement for persons to pay a set medical excess for medical services before the TAC is liable to pay for these services
- the *Workplace Injury Rehabilitation and Compensation Act 2013* to ensure consistent workers’ compensation arrangements for licensed jockeys and apprentice jockeys and to clarify the operation of the legislation in relation to the horse racing industry.

Type of Bill

- Government Bill
- Private Members Bill

CONTENT ISSUES

- NONE
- Inappropriately delegates legislative power
- Trespasses unduly on Rights or Freedoms
- Other:

Details

The Committee makes no comment on the Bill with respect to its non-Charter terms of reference under section 17 of the *Parliamentary Committees Act 2003*.

Recommendation

- Refer to Parliament for consideration
- Write to Minister for clarification
- ✗ No further action required

CHARTER ISSUES

- NONE
- Compatibility with Human Rights
- Operation of the Charter
- Other:

Details

The Compensation Legislation Amendment Bill 2017 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.
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<td>Refer to Parliament for</td>
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<td>Write to Minister for</td>
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<td>clarification</td>
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<td>No further action required</td>
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Firearms Amendment (Advertising) Bill 2017

Bill Information

Minister               Hon Jeff Bourman MP
Private Members Bill   
Introduction Date      19 September 2017
Second Reading Date    18 October 2017

Bill Summary

The Bill would amend the Firearms Act 1996 to allow persons other than licensed firearms dealers to advertise that a firearm is for sale (such an advertisement would be required to state that the sale is to be arranged by or through a licensed firearms dealer).

Type of Bill

☐ Government Bill  ☒ Private Members Bill

CONTENT ISSUES

☒ NONE  ☐ Inappropriately delegates legislative power
☐ Other:  ☐ Trespasses unduly on Rights or Freedoms

Details

The Committee makes no comment on the Bill with respect to its non-Charter terms of reference under section 17 of the Parliamentary Committees Act 2003.

Recommendation

☐ Refer to Parliament for consideration  ☐ Write to Minister for clarification  ☒ No further action required

CHARTER ISSUES

☒ NONE  ☐ Compatibility with Human Rights
☐ Other:  ☐ Operation of the Charter

Details

The Firearms Amendment (Advertising) Bill 2017 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

Recommendation

☐ Refer to Parliament for consideration  ☐ Write to Minister for clarification  ☒ No further action required
Gambling Legislation Amendment Bill 2017

Bill Information

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<td>Portfolio</td>
<td>Consumer Affairs, Gaming and Liquor Regulation</td>
<td>Second Reading Date</td>
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Bill Summary

The Bill would amend the *Gambling Regulation Act 2003* and the *Victorian Commission for Gambling and Liquor Regulation Act 2011* to:

- ban the display of static betting advertising by wagering service providers within 150 metres of a school, on public transport infrastructure and on roads and road infrastructure
- make changes to the operation of legislative provisions relating to the disclosure of protected information
- provide that certain unpaid gaming machine jackpot amounts must be paid into the Responsible Gambling Fund.

Type of Bill

- Government Bill
- Private Members Bill

CONTENT ISSUES

- NONE
- Inappropriately delegates legislative power
- Trespasses unduly on Rights or Freedoms

Details

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

Clause 23 of the Bill would amend Schedule 7 to the *Gambling Regulation Act 2003* by inserting new Part 33, item 33.2 of which would provide that:

> On and from the commencement day, sections 4.7.1 and 4.7.1A do not apply for a period of 2 years after 17 September 2017 to any gambling advertising published under a contract or agreement entered into before 17 September 2017.

The commencement of sections 4.7.1 and 4.7.1A would therefore be delayed by more than 12 months from the date of the Bill’s introduction.

The Second Reading Speech states:

> The bill includes transitional arrangements that apply to existing advertising contracts to provide certainty to wagering service providers and others about their existing commercial arrangements.

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1 The effect of new sections 4.7.1 and 4.7.1A would be to create the new offence relating to the display of static betting advertising and exemptions to the offence.
The delayed commencement of sections 4.7.1 and 4.7.1A appears justified in the circumstances.

Recommendation

☐ Refer to Parliament for consideration  ☐ Write to Minister for clarification  ☒ No further action required

CHARTER ISSUES

☒ NONE  ☐ Compatibility with Human Rights  ☐ Operation of the Charter

Other:

Details

The Gambling Legislation Amendment Bill 2017 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

Recommendation

☐ Refer to Parliament for consideration  ☐ Write to Minister for clarification  ☒ No further action required
Offshore Petroleum and Greenhouse Gas Storage Amendment Bill 2017

Bill Information

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<tr>
<th>Minister</th>
<th>Hon Wade Noonan MP</th>
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<td>Portfolio</td>
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<td>Second Reading Date</td>
<td>18 October 2017</td>
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Bill Summary

The Bill would amend the Offshore Petroleum and Greenhouse Gas Storage Act 2010 to protect the holders of petroleum titles affected by changes to the boundary between the ‘offshore area’ defined in the Act and the ‘offshore area’ defined in the Commonwealth Offshore Petroleum and Greenhouse Gas Storage Act 2006.

Type of Bill

☒ Government Bill
☐ Private Members Bill

CONTENT ISSUES

☒ NONE
☐ Inappropriately delegates legislative power
☐ Trespasses unduly on Rights or Freedoms

Details

The Committee makes no comment on the Bill with respect to its non-Charter terms of reference under section 17 of the Parliamentary Committees Act 2003.

Recommendation

☐ Refer to Parliament for consideration
☐ Write to Minister for clarification
☒ No further action required

CHARTER ISSUES

☒ NONE
☐ Compatibility with Human Rights
☐ Operation of the Charter

Details

The Offshore Petroleum and Greenhouse Gas Storage Amendment Bill 2017 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.
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Victorian Data Sharing Bill 2017

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<th>Hon Gavin Jennings MP</th>
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<td>Portfolio</td>
<td>Special Minister of State</td>
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Bill Summary

The Bill would:

- establish the office of Chief Data Officer
- allow the sharing of identifiable data by data sharing bodies and designated bodies with the Victorian Centre for Data Insights and data analytics bodies without the consent of the affected individual and in circumstances where the sharing may not be otherwise permitted under the Victorian privacy legislation (Part 4) [15-25]
- promote the sharing and use of data within the public sector to support government policy making, service planning and design
- provide protections in connection with data sharing under the Bill, by:
  - specifying the purposes of data sharing, and the circumstances in which sharing of identifiable data is permitted
  - ensuring that data handled under the Bill is protected from unauthorised access, use or disclosure.

The Bill would also make consequential and other amendments to other Acts.

Type of Bill

☒ Government Bill
☐ Private Members Bill

CONTENT ISSUES

☒ NONE
☐ Inappropriately delegates legislative power
☐ Trespasses unduly on Rights or Freedoms

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3 The functions of the Chief Data Officer, which are set out in clause 7 of the Bill, include ‘...to conduct data integration and data analytics work to inform government policy making, service planning and design, to build capability in data analytics across the public sector, to coordinate data sharing and integration on behalf of the state of Victoria, to make integrated data sets and the results of data analytics work available to data sharing bodies and designated bodies and to collaborate with these bodies, and any other functions incidental to these functions or conferred under this Bill or any other Act’. 
### Details

The Committee makes no comment on the Bill with respect to its non-Charter terms of reference under section 17 of the *Parliamentary Committees Act 2003*.

### Recommendation

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<tr>
<th>Refer to Parliament for consideration</th>
<th>Write to Minister for clarification</th>
<th>No further action required</th>
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</table>

### CHARTER ISSUES

- **NONE**
- **Other:**
  - Compatibility with Human Rights
  - Operation of the Charter

### Details

The Victorian Data Sharing Bill 2017 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

### Recommendation

<table>
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<tr>
<th>Refer to Parliament for consideration</th>
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<th>No further action required</th>
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Report on Subordinate Legislation

SR No. 41 – Road Safety Road Rules 2017

The Committee wrote to the Minster for Roads and Road Safety in relation to the above regulation.

The Committee thanks the Minister for the attached response.

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1 The Committee reports on this regulation pursuant to section 17(fa) of the Parliamentary Committees Act 2003 and section 21(1)(ha) of the Subordinate Legislation Act 1994.
10 August 2017

Hon Luke Donnellan MP  
Minister for Roads and Road Safety  
Level 22, 1 Spring Street  
Melbourne, VIC 3000

By email: luke.donnellan@parliament.vic.gov.au  
cc: daniel.hoare@minstaff.vic.gov.au

Dear Minister,

**SR No 41-2017 – Road Safety Road Rules 2017 (the Rules)**

The Regulation Review Subcommittee (the Subcommittee) considered the Rules at a meeting on 7 August 2017. The Subcommittee has not yet approved the Rules.

The Subcommittee would appreciate your response in respect of the following matters:

1. Whether the provision of a defence of honest and reasonable mistake of fact, accident and reasonable efforts should be included in the Rules, along the lines of Rule 10-1 of the Road Rules 2014 (NSW).

2. In relation to Rules 315(2) and 319(2) whether placing an evidential (rather than legal) burden on the defendant in relation to substantial compliance would be a less restrictive limitation on the right to be presumed innocent that is reasonably available.

The Subcommittee notes its predecessor raised similar queries in 2009 in relation to the then Road Safety Rules 2009 but that these two matters are not discussed in the human rights certificate for the Road Safety Road Rules 2017.

The Subcommittee also notes that in response to its earlier query about Rules 315(2) and 319(2), the then Minister for Roads responded that it would be impractical for enforcement officers to ‘take a photograph of the traffic devices relevant to every infringement notice’. In light of subsequent developments in technology, the Subcommittee is interested in whether the practicalities have changed. The Subcommittee is also interested in when people are accused of a traffic infringement are informed of their obligation to prove that a traffic device was not in substantial compliance with the Road Rules.

Yours sincerely,

Lizzie Blandthorn MLA  
Chair of the Regulation Review Subcommittee
Ref: CMIN177452R

Ms Lizzie Blandthorn MP
Chair of the Regulation Review Subcommittee
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Ms Blandthorn

SR No. 41/2017 – Road Safety Road Rules 2017

Thank you for your letter of 11 August 2017 about the Road Safety Road Rules 2017 (Road Rules). Your letter asks:

1. Whether the provision of a defence of honest and reasonable mistake of fact, accident and responsible efforts should be included in the Road Rules, along the lines of Rule 10-1 of the Road Rules 2014 of New South Wales.

2. In relation to rules 315(2) and 319(2), whether placing an evidential (rather than a legal) burden on the defendant in relation to substantial compliance would be a less restrictive limitation on the right to be presumed innocent that is reasonably available.

You also enquired about the process of when people receive traffic infringement notices and their rights and whether developments in technology over the last decade have changed any of the practicalities of challenging traffic infringements.

1. Honest and Reasonable Mistake of Fact, Accident and Responsible Efforts

It is established part of Victorian criminal law that a defence of honest and reasonable mistake of fact can be raised for offences of “strict liability” (that is, offences which do not require proof of intention) (Proudman v Dayman (1941) 67 CLR 536).

There are, however, a number of instances where Victorian courts have found that this defence does not apply in relation to road safety offences. These include Kearon v Grant ((1991) 1 VR 321) where the Supreme Court held that for the charge of exceeding the speed-limit under road rule 20, the offence is one of absolute liability where the honest
and reasonable mistake defence is not available. The Victorian Supreme Court also reached this conclusion in regard to the Road Safety Act 1986 offence of driving an unregistered motor vehicle (Tsolacis v McKinnon [2012] VSC 627). Importing an automatic defence of honest and reasonable mistake into all road safety offences would therefore make enforcement of speeding and unregistered motor vehicles (to use two examples) more difficult and lead to a reduction in public safety.

The effect of road rule 10-1 of the New South Wales Road Rules, by contrast, is to provide that all offences under the Road Rules in New South Wales, including road rule 20, are strict liability offences. Rule 10-1 explicitly applies provisions of the Criminal Code Act 1995 of the Commonwealth to its Road Rules. The relevant test for honest and reasonable mistake of fact in New South Wales is therefore established by the Criminal Code 1995 of the Commonwealth, not the common law. As Victoria is not a criminal code jurisdiction, it is appropriate to follow the established Victorian common law approach of requiring defendants to establish a Proudman v Dayman defence in court if they wish to challenge the validity of a charge under the Road Rules. It would then be for the court to consider, for the individual rule in question, whether the defence has been excluded either expressly or by implication.

In regard to your question about the defence of accident and responsible efforts, the Supreme Court of Victoria has held that these offences do not exist in Victorian criminal law (R v Fowler [1999] VSCA 135). In Victoria, the fact that an action may have been done accidentally or inadvertently is relevant to the question of whether the person intended to commit the relevant offence. However, in the case of the absolute liability and strict liability offences in the Road Rules whether a person intended to commit the offence is not relevant. Therefore, it would not be appropriate to introduce the defences of accident and responsible efforts into the Road Rules as blanket statutory defences. The approach taken in Victoria has traditionally been to leave these matters to the courts, which make a decision based on the elements of the individual rules alleged to have been breached.

I note that the position of not including defences of honest and reasonable mistake, accident and responsible efforts is also consistent with the nationally agreed model Australian Road Rules which do not have a provision similar to rule 10-1 of the New South Wales Road Rules. No other jurisdiction in Australia has a provision equivalent to rule 10-1 – even those who rely on the Criminal Code 1995 of the Commonwealth. I note also that the New South Wales approach is not consistent with Victorian Government legislative drafting practice.

2. **Rules 315(2) and 319(2) - the burden of proof that the defendant should bear**

Road rules 315(2) and 319(2) state that a traffic control device or a traffic-related item is taken to comply substantially with the Road Rules unless the contrary is proved. These

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¹ Note also that the defence of accident has been repealed in Queensland, which is governed by the Criminal Code 1995 of the Commonwealth.
rules are consistent with the nationally agreed model Australian Road Rules. As you point out, the effect of rules 315(2) and 319(2) is to shift the burden of proof onto a defendant who seeks to challenge a traffic infringement notice for a road rule offence that relates to non-compliance with a traffic control device on the sole grounds that the traffic control device did not comply with the Road Rules.

It is not explicit in the Road Rules as to what the nature of the burden of proof is to challenge the adequacy of a traffic control device. In accordance with standard practice in Victoria, that would be a matter for the courts to determine. There have been no court cases reported in Victoria on the adequacy of traffic control devices. However, there has been one in New South Wales and one in Western Australia on the same provision in the Road Rules. In the New South Wales case of *RTA v Birchfield* ((2010) 79 NSWLR 217) the Supreme Court held that a sign did not substantially comply with the sign in the Road Rules. In the West Australian case of *Cudby v Cockinos* ((2014) WASC 254) with a similar legislative context, the sign was held to be in compliance. Neither court focussed on the burden to be discharged, rather making a decision on whether the traffic sign in question in their view substantially complied with the one in the Road Rules. I see no reason to depart from the established position in Victoria that whether a person is guilty of an offence is better left to the courts to decide based on the facts of the case and the relevant provision in question.

As was stated in the Human Rights Certificate provided in accordance with section 12A of the *Subordinate Legislation Act 1994*, the Road Rules preserve the effectiveness of traffic control devices where they may have suffered some damage or wear and tear but are still substantially visible and clear. The purpose of the rules as drafted is to ensure compliance with those devices and items in the interests of public safety. The overall purpose of the Road Rules is to maximise road safety, reduce road trauma, and promote efficiency for all road users. The serious threat to public safety posed by disobedience of traffic signals is well-established. Courts in countries with similar human rights legislation have held that reverse onus provisions applying in the area of public regulatory offences, such as road safety, generally constitute a justified limitation on the presumption of innocence. The Road Rules allow road users the opportunity to establish a defence by showing that the traffic control device or traffic-related item was not substantially compliant with the Road Rules.

The legal burden of proof in relation to traffic control devices is also justifiable on the grounds that a) the courts and police should not have their time unnecessarily taken up with technical evidentiary challenges, b) road authorities are extremely unlikely to install non-compliant traffic control devices (for example all traffic signs manufacture are regulated by Australian Standard 1742) and c) if it became easier to challenge the adequacy of traffic control devices, police resources are likely to be diverted by the need to continually collect evidence as to their current state.
3. Information provided about rights in regard to infringement notices

Details as to the information provided to offenders when they are given a traffic infringement notice are contained in the Infringements Act 2006. Traffic infringement notices are required to inform recipients that they can apply for an internal review or elect to have the matter heard in court. In both cases, if the grounds for the person’s application/election is that the traffic control device was in some way non-compliant, one would expect that the enforcement agency would ask the person to provide supporting evidence if it was not included in the application or election correspondence, rather than making a decision on the application (or proceeding to a court hearing) without mentioning the requirement for proof.

As stated, developments in technology, in particular the widespread use of mobile phone cameras, mean that people who wish to challenge an infringement notice on the basis that the relevant traffic control device did not comply with the Road Rules would be readily able to include a photograph of the device in an application for review of the infringement or defence to the charge. It is relatively easy to challenge the validity of an infringement notice for failing to obey a traffic control device given that the prescribed characteristics of those devices are clear and the devices themselves are usually in fixed locations.

I trust that this information has assisted in answering your concerns.

If you require further information, please contact Damian Adams, Senior Lawyer – Legislation in Transport for Victoria in the Department of Economic Development, Jobs, Transport and Resources on telephone 8392 5922.

Yours sincerely

[Signature]

Hon Luke Donnellan MP
Minister for Roads and Road Safety

[Date]
The Committee received Ministerial responses on the Bills listed below.

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

i. Fines Reform Amendment Bill 2017

ii. Firearms Amendment Bill 2017

iii. Gambling Regulation Amendment (Gaming Machine Arrangements) Bill 2017

iv. Voluntary Assisted Dying Bill 2017
Ms Lizzie Blandthorn MLA
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

Dear Ms Blandthorn,

I refer to the Committee’s Alert Digest No. 14 of 2017, in which the Committee requested that an explicit explanation be provided regarding the default commencement date of 3 December 2018 in respect of Parts 2, 3 and 4, and sections 113, 125 and 126, of the Fines Reform Amendment Bill 2017 (Bill).

Part 2 of the Bill contains the amendments to the Fines Reform Act 2014 (Act) to implement recommendations 112 and 113 of the Royal Commission into Family Violence. The changes create a new scheme for victims of family violence affected by infringement notices.

Section 113 of the Bill makes a consequential amendment to the Infringements Act 2006 as a result of the changes to the Act to implement recommendations 112 and 113 of the Royal Commission into Family Violence.

Section 126 of the Bill makes a consequential amendment to the Road Safety Act 1986 as a result of the changes to the Act to implement recommendations 112 and 113 of the Royal Commission into Family Violence.

At the time of the Bill’s preparation, it was considered necessary to provide for the default commencement date of 3 December 2018 for Part 2, and sections 113 and 126 of the Bill, so as to provide adequate time for:

a. any necessary changes, arising as a result of the family violence scheme, to the new infringement processing system, called the Victorian Infringement, Enforcement and Warrant (VIEW) system; and

b. any necessary staffing and other resourcing requirements to support the new family violence scheme.

It is anticipated that the relevant provisions will be proclaimed earlier than the default commencement date of 3 December 2018, to commence at the same time as the Fines Reform Act. I can confirm that it remains the Government’s intention to commence the Act on 31 December 2017.
The default commencement date of 3 December 2018 for Part 3 of the Bill was considered necessary to allow for required changes to the VIEW system to accommodate new processes requested by the Magistrates’ Court. It is anticipated that this Part will be proclaimed prior to 3 December 2018.

Section 125 of the Bill repeals Part 6A of the Magistrates’ Court Act 1989 (Magistrates’ Court Act). Part 6A contains the provisions empowering Ministers to enter into administrative service agreements in support of the functions of a range of entities including the Infringements Court, the Sheriff, the Traffic Camera Office and the Fixed Penalties Payment Office. The Bill will enact a new Part 14A in the Act, with appropriate amendments to reflect the language and model of the Fines Reform Act, to replace Part 6A of the Magistrates’ Court Act.

A later default commencement date for section 125 of the Bill was included to ensure this section commenced on or after the commencement of the Fines Reform Act. It is anticipated that the commencement of section 125 will be proclaimed earlier than the default commencement date and will be aligned with the anticipated commencement date for the Act.

Part 4 of the Bill makes consequential amendments to the Act to support the amendment of the Bail Act 1977 by the Bail Amendment (Stage One) Act 2017. The default commencement date of 3 December 2018 for Part 4 of the Bill was considered necessary to allow sufficient flexibility to proclaim those provisions to commence at the same time as the relevant provisions of the Bail Amendment (Stage One) Act 2017. The provisions of that Act take effect on a day or days to be proclaimed or by default on 1 July 2018.

Yours sincerely

[Signature]

THE HON MARTIN PAKULA MP
Attorney-General

30 OCT 2017
Lizzie Blandthorn MLA  
Chairperson  
Scrubtny of Acts and Regulations Committee  
Parliament House, Spring Street  
EAST MELBOURNE VIC 3002  

by email: nathan.bunt@parliament.vic.gov.au

Dear Ms Blandthorn

Firearms Amendment Bill 2017

Thank you for your letter dated 17 October 2017 regarding the Scrutiny of Acts and Regulations Committee’s (the Committee) consideration of the Firearms Amendment Bill 2017 (the Bill).

The Committee’s report raised five issues, which I will address in turn.

Possible delayed commencement

The Committee requests further information as to the reasons for the possible delayed commencement date of Parts 2, 4 and 5.

As you may be aware, the scheduled commencement of an Act is linked with its introduction date into Parliament. There are instances where the intended introduction date is not definitively set at the time the commencement provisions need to be settled. I do note that while the Bill’s default commencement date exceeds the 12 month period it is by less than two weeks. Further, it is the Government’s intention that the provisions in the Bill that do not commence on Royal Assent will commence by proclamation much earlier than September 2018.

Freedom to choose where to live - person to whom a firearm prohibition order applies must not enter or remain on premises where firearms are stored

The Committee seeks further information as to whether or not new section 1120(1)(h) prohibits an individual to whom a firearm prohibition order (FPO) applies from living with a person who lawfully stores firearms at their home and, if so, whether or not this provision is compatible with the Charter’s freedom to choose where to live.

New section 1120(1)(h) makes it an offence for an individual, to whom a FPO applies, from entering or remaining on certain premises, including a premises where firearms are stored. I accept that if firearms are stored on a residential premises, the provision will prohibit an individual to whom a FPO applies from entering or remaining on such a premises, and by extension, from residing on such premises. In such circumstances, a person’s freedom to choose where to live...
under s 12 of the Charter will be limited. The following analysis is similar to that in my Statement of Compatibility on the right to freedom of movement with respect to the other premises listed in new section 112O(1).

In my view, any such limit will be reasonably justified under s 7(2) of the Charter. The limitation serves an important protective purpose of preventing a person from having access or being in proximity to firearms or related items, in circumstances where it is considered in the public interest for such restrictions to exist. The nature of the right refers to a freedom of choice regarding place of residence, including a person's right to establish themselves in a place of their choice. The provision interferes with this freedom by restricting a person's choice of residence to premises where firearms are not stored.

However, in my view, the extent and nature of the limitation is moderate. I note that there are a variety of available alternative firearm storage arrangements that may be utilised, including off-site self-storage, storing with a licensed firearms dealer or at another firearms licence holder's premises. The use of such would mean that firearms would no longer be stored at a residence, and that an individual subject to a FPO would consequently be no longer prohibited from residing at such a premises. The person, of course, remains free to choose an alternative residence, and the provision does not compel a person to reside at any particular premises against their will. In my view, there are no less restrictive means reasonably available, as to permit a person subject to an FPO freedom to reside on premises where firearms are stored would frustrate the scheme's clear intention to prevent such person's possession of, access to, and proximity to, firearms and related items.

**Self-incrimination - person on whom a firearm prohibition order is served must surrender any firearm possessed by that person**

The Committee seeks further information about new section 112P, specifically whether the fact that a person surrendered a firearm under this provision can be used in a subsequent prosecution as evidence that the person admitted to possessing that firearm.

The answer to the Committee's question will depend on the facts of a given case. I agree with the Committee's observation that new section 112P does not expressly abrogate the common law privilege against self-incrimination. Depending on the facts of a given case, it may be open in a subsequent criminal proceeding for the prosecution to seek to rely on the fact a person has surrendered a firearm as evidence of their possession of that firearm. However, the admissibility of this evidence will be subject to the ordinary discretions of a court to exclude such evidence, including the discretion to exclude on the grounds of unfairness. I note that in evaluating circumstances which may impact upon fairness, a court will consider the nature and extent of any limit on an accused's rights and privileges in admitting evidence, including the accused's privilege against self-incrimination.

**Privacy - search of individuals to whom a firearm prohibition does not apply**

The Committee seeks further information as to the compatibility of new sections 112Q and 112R with the rights to privacy of individuals to whom a firearm prohibition order does not apply, in particular individuals who share premises or vehicles with persons to whom a firearm prohibition does apply, and individuals who are subject to a search of their bodies or possessions under new section 112R.

I make clear to the Committee that new section 112R is intended only to permit police to search the body or possessions of a person to whom a firearm prohibition order applies. The body or possessions of a person not subject to a FPO may not be lawfully searched under this provision. I note that the heading of new section 112R specifies 'Search of individual to whom firearm prohibition order applies'. Headings to sections form part of the legislation for the purpose of interpretation, and a construction that would promote the purpose or object underlying the
legislation is to be preferred to a construction that would not promote that purpose. Accordingly, it is my view that the proper interpretation of new section 122R provides only for the searches of an individual subject to a FPO.

I accept however, that new section 112Q may allow police to search premises or vehicles that other people share with a person to whom a FPO applies. I note that this has the potential to indirectly interfere with the privacy of other persons not subject to a FPO and I acknowledge that, even though these search provisions do not target a third party residing in the same residence, a police residential visit and search, or a vehicle stop and search, may inevitably lead to an interference with a third party's privacy due to their proximity to a person subject to a FPO. As I have concluded that the operation of these powers are not compatible with a FPO subject's right to privacy, it follows that I must also conclude that these powers are also incompatible with a third party's right to privacy. I note that the Bill endeavours to provide a level of protection to third parties through new section 112S, which limits when a third party's person or possessions may be searched. I am of the view that there are no less restrictive means reasonably available to protect third party privacy rights without compromising the Bill's objective, including to provide police with sufficient tools to ensure that a FPO subject is not in contravention of the Firearms Act 1996 and to ensure that such searches are not frustrated by allowing a FPO subject to conceal firearms through third parties.

Property - forfeiture of firearm if no other person is lawfully entitled to possess it

The Committee seeks further information as to whether or not a person who lawfully possessed a firearm and then became subject to a firearm prohibition order can transfer or sell that firearm to another licensed person.

New section 112T permits a surrendered firearm to be forfeited to the Crown where, amongst other things, no other person is lawfully entitled to possess the firearm. The provision does not provide that person with an opportunity, before the firearm is forfeited, to transfer or sell the firearm to another person who can lawfully possess it.

The Committee is concerned that such an outcome may constitute an arbitrary deprivation of property contrary to s 20 of the Charter. Section 20 provides that a person must not be deprived of his or her property other than in accordance with law. This has been interpreted to require laws to be publicly accessible, clear and certain. Further, it has been interpreted that the right protects against the deprivation of property by means of broad discretionary powers that are capable of being exercised arbitrarily or selectively. In my view, new section 112T is not such a provision, and does not limit the right to property. A person is only made subject to a FPO on the basis of prescribed criteria relating to elements of the person's conduct or character that deem it in the public interest for them to be subject to such an order. As a consequence of being served with such an order, a person is required to surrender any firearms in their possession. Any firearms surrendered are then forfeited if no other person is lawfully entitled to possess them.

A firearm or related item is a regulated item and possession, acquisition and disposal of such items are subject to strict eligibility guidelines and regulatory approvals, as well as prescribed instances set out in legislation where a person will be deprived of their ownership of such items. This includes some instances where the deprivation will be without compensation or opportunity to transfer their proprietary interest. The provisions ensure that a third party does not suffer a deprivation in the event that a firearm or related item to which they are entitled is seized or surrendered by way of these provisions.

Should a contrary view be taken that the right is limited, it is my view that any such limit would be reasonable and justified, given the clear public interest in removing firearms and related items from persons made subject to FPOs, and in preventing the further proliferation of such items in the community, potentially to persons associated with the FPO subject. In my view, allowing for the transfer of firearms to another person after such items have been surrendered pursuant to a FPO.
will obstruct the aims of the scheme, including creating a risk that a FPO subject will retain access to such items.

Yours sincerely

[Signature]

Hon Lisa Neville MP
Minister for Police

28/10/2017
Ms Lizzie Blandthorn MLA
Chairperson, Scrutiny of Acts and Regulations Committee
Parliament of Victoria
Spring Street
EAST MELBOURNE VIC 3002

Dear Ms Blandthorn

Gambling Regulation Amendment (Gaming Machine Arrangements) Bill 2017

Thank you for your letter of 17 October 2017 seeking my advice in relation to the query raised by the Scrutiny of Acts and Regulations Committee (SARC) about clause 90 of the Gambling Regulation Amendment (Gaming Machine Arrangements) Bill 2017 (the Bill).

Clause 90 of the Bill will amend the Gambling Regulation Act 2003 (GRA) by substituting a new section 3.5.32.

New sub-sections 3.5.32(3) and 3.5.32(4) will provide:

(3) A person must not publish at an approved venue, or cause to be published at an approved venue, any advertising for a cheque cashing service.

Penalty: 60 penalty units

(4) A venue operator must not allow a person to publish at an approved venue, or cause to be published at an approved venue, any advertising for a cheque cashing service.

Penalty: 60 penalty units.

In Alert Digest No.14 of 2017, SARC notes that new sub-section 3.5.32(3) will prohibit natural persons from publishing, or causing to be published, any advertising for a cheque cashing service and that this prohibition could limit the right to freedom of expression contained in section 15(2) of the Charter of Human Rights and Responsibilities Act 2006 (the Charter).

Section 15(2) of the Charter provides that every person has the right to freedom of expression which includes the right to seek, receive and impart information and ideas of all kinds in writing or in print.

Section 15(3) of the Charter provides that the right to freedom of expression may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons; or for the protection of national security, public order, public health or public morality.
Research shows that limiting access to cash in gaming venues is an important harm minimisation measure. There is evidence that persons at risk of gambling related harm who have had a win and can access cash, will continue to gamble in a risky manner because they believe that the winning will continue.

Divisions 2 and 3 of Part 8 of the Bill amend the GRA to strengthen current restrictions on access to cash to enhance their effectiveness in minimising gambling related harm.

Clause 90 in Division 2 prohibits cheque cashing and the advertising of cheque cashing services in a gaming venue. This clause addresses concerns that cheque cashing services are targeting gaming machine players who have winnings paid out by cheque, taking advantage of those wishing to seek quick access to cash to continue to gamble. Prohibiting the advertising of cheque cashing services in gaming venues is an integral part of the proposed amendment as it ensures that the prohibition on the cashing of cheques is not undermined.

For this reason, I have formed the view that while section 15(2) of the Charter may be relevant, inserting new sub-section 3.5.32(3) in the GRA would be a lawful restriction that is reasonably necessary for the protection of public morality and public order in accordance with section 15(3) of the Charter. The restriction is limited to conduct in gaming venues and is proportionate to achieve the policy objective of protecting vulnerable people and minimising gambling related harm.

New sub-section (4), which will make it an offence for a venue operator to allow a person to publish at an approved venue, or cause to be published at an approved venue, any advertising for a cheque cashing service, is not subject to the Charter as venue operators are bodies corporate rather than natural persons.

I am of the view that clause 90 of the Bill is compatible with the right to freedom of expression for the reasons given above.

Yours sincerely

[Signature]

Hon Marlene Kairouz MP
Minister for Consumer Affairs, Gaming and Liquor Regulation
Minister for Local Government

cc: Mr Nathan Bunt
    Senior Legal Advisor
    Scrutiny of Acts and Regulations Committee
    By email: nathan.bunt@parliament.vic.gov.au
Lizzie Blandthorn MP
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
Spring Street
EAST MELBOURNE VIC 3002

Dear Ms Blandthorn

Voluntary Assisted Dying Bill 2017

I refer to the matters raised by the Scrutiny of Acts and Regulations Committee of the Parliament of Victoria (the Committee) in relation to the Voluntary Assisted Dying Bill 2017.

Below, I address each of the matters referred to me for clarification.

Independence of medical practitioners

The Committee has queried whether or not the Bill requires that the consulting medical practitioner be ‘independent’ from the co-ordinating medical practitioner.

Medical practitioners have existing professional obligations to provide accurate and independent clinical advice, based on their own assessment of the patient. A failure to conduct an accurate assessment may result in professional sanctions against a practitioner.

In effect, the Bill requires that the assessments of the co-ordinating medical practitioner and the consulting medical practitioner will be conducted independently. However, it would be problematic to require these medical practitioners to be ‘independent’ of one another, or to give that term a workable definition. While it is appropriate for medical practitioners to be informed by another practitioner’s opinion, they must still form their own opinion to reach a conclusion. This practice is reflected in clauses 18 and 27 of the Bill which contemplate that the referring practitioner may adopt the other practitioner’s determination. Further to the requirements of the Bill, medical practitioners are subject to a broad range of professional obligations that govern their practice.

Equality and eligibility for access to voluntary assisted dying

The Committee has sought further information as to the compatibility of clauses 9(1)(d)(ii) and 9(1)(d)(iii) of the Bill, to the extent that they limit access to voluntary assisted dying to people with conditions that will be fatal within 12 months, with the right to equal enjoyment of human rights without discrimination on the grounds of disability.
In raising this query, the Committee has observed that 'disability' within the meaning of the Charter (by reference to the Equal Opportunity Act 2010 (EO Act)) includes 'a disability that may exist in the future'. As such, the Committee considers that a disease, illness or medical condition that is incurable, advanced and progressive is a 'disability' (within the meaning of the EO Act and the Charter), regardless of the prognosis as to death. Whilst the Statement of Compatibility addressed the Bill's exclusion from access to voluntary assisted dying of persons with a disability (within the meaning of the Disability Act 2006) alone, it did not discuss the exclusion of persons who have an incurable, advanced and progressive disease, illness or medical condition that will not cause death as an issue under section 8 of the Charter.

In my view, clauses 9(1)(d)(ii) and 9(1)(d)(iii) are compatible with the section 8 of the Charter. First, as explained in the Statement of Compatibility, the Bill excludes persons who have a disability only (in the absence of other eligibility criteria) from accessing voluntary assisted dying. However, any individual - whether or not their illness, disease or condition amounts to a 'disability' - who meets all of the eligibility criteria in clause 9(1) of the Bill will have the same opportunity as other members of the community to access voluntary assisted dying under the Bill.

Further, the exclusion of persons with a disease, illness or condition that may amount to a 'disability', but will not cause their death within 12 months, from accessing voluntary assisted dying does not limit the rights to equality before the law and protection against discrimination in section 8 of the Charter. The Bill is only intended to provide for access to voluntary assisted dying in very limited circumstances, where people are suffering from a serious and incurable condition and are at the end of their life. The exclusion of persons with non-fatal conditions from accessing the scheme does not amount to unfavourable treatment on the basis of disability nor does it unreasonably create a disadvantageous effect on persons with non-fatal disabilities. Rather, it reflects the intention of the scheme to enable persons with incurable conditions that will inevitably cause their death in the immediate future to make a decision about the manner of their death, and not to enable any person with a disease, illness or condition to end their life prematurely.

The Committee has also raised a query regarding the compatibility of clause 49 of the Bill, to the extent that it permits the Secretary to the Department of Health and Human Services to refuse a permit for an otherwise eligible person to access voluntary assisted dying, with the Charter's right to equality before the law.

Clause 49 permits the Secretary to refuse to issue a voluntary assisted dying permit. As outlined in the Explanatory Memorandum, it is apparent that the purpose of clause 49 is to provide for the refusal of a permit in circumstances where the Secretary is not satisfied that the request and assessment process has been completed as required by the Bill, or that the statutory circumstances that must be present in order for a permit application to be granted are not otherwise met. This is an important additional safeguard within the framework. Clause 49 does not provide for nor permit the refusal of a permit on discriminatory grounds. The Explanatory Memorandum also notes that the Secretary must provide reasons for refusal and that the principles of administrative decision making will apply. In my opinion, clause 49 does not raise issues relevant to the right to equality before the law as protected by section 8 of the Charter.
Whether health practitioners (other than co-ordinating and consulting medical practitioners) such as pharmacists can refuse to participate in administration of voluntary assisted dying

In response to the Committee’s concern regarding how health practitioners (other than co-ordinating and consulting medical practitioners) will be given an opportunity not to participate in voluntary assisted dying, I note first that the Bill does not create an obligation for anyone to participate, including registered medical practitioners.

The Bill specifically provides for conscientious objection by registered health practitioners because the Bill sets out a role for them. Nevertheless, I do not consider this role amounts to a statutory obligation to participate.

The purpose of clauses 13 and 23 of the Bill, which respectively provide that assessing medical practitioners must accept or refuse a request or referral, is not to create a specific opportunity for assessing medical practitioners to conscientiously object. These clauses are not the source of that right. The purpose of clauses 13 and 23 to impose a duty on a registered health practitioner to inform a patient whether a request or referral is accepted or refused, and if refused, the reason. There may also be a duty to refuse a referral in the circumstances specified in clauses 13(2) and 23 (3) and (4), but this does not amount to a positive duty, enforceable at law, to accept a request or referral unless one of the stated exceptions apply.

Under the Bill, a patient has a right to be informed by their medical practitioner of the reason their request for voluntary assisted dying has been refused. Requiring a medical practitioner to inform the person of the reason they are refusing their request is good medical practice and ensures the person understands why the request is being refused.

For these reasons, and those outlined in the Statement of Compatibility, I am satisfied the Bill is compatible with the rights to freedom of thought, conscience, religion and belief in section 14 of the Charter.

Freedom of expression and the prohibition on initiating discussion about voluntary assisted dying

In relation to the Committee’s concern regarding the prohibition in clause 8 of the Bill on registered health practitioners initiating discussion with a person to whom they are providing professional care services that is, in substance, about voluntary assisted dying and compatibility with the Charter’s right to freedom of expression, protected by section 15, in my opinion, the right in section 15 is not limited by this feature of the Bill.

Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary to respect the rights of other persons. To the extent that clause 8(1) restricts a registered health practitioner’s right to impart information or ideas, in my view this falls within the internal limitation at section 15(3)(a) of the Charter. The restriction is an important safeguard that protects people from undue influence or coercion. Additionally, the right to impart information is restricted only to registered health practitioners initiating discussion about voluntary assisted dying.
Registered health practitioners are able to freely discuss voluntary assisted dying if patients have initiated the discussion. As such, I am of the view that this clause falls within the internal limitation in section 15(3)(a) of the Charter.

Even if the restriction on initiating discussion about voluntary assisted dying did not fall within an internal limitation in section 15(3) of the Charter, I am nevertheless satisfied that any limitation on the right to freedom of expression is demonstrably justified in accordance with section 7(2) of the Charter. The restriction is necessary to protect those who may be vulnerable to suggestion and coercion and to ensure the scheme is truly voluntary.

**Implied freedom of political communication**

In addition to the human rights concerns discussed above, the Committee has also raised concern about whether clause 8(1) of the Bill (which, as outlined above, prohibits registered health practitioners from initiating discussion with a person to whom they are providing professional care services that is, in substance, about voluntary assisted dying) effectively burdens the constitutionally implied freedom of political communication.

In my opinion, the restriction on initiating discussion about voluntary assisted dying in clause 8(1) of the Bill does not burden political communication in its terms, operation or effect. Under the Bill, 'voluntary assisted dying' means the administration of a voluntary assisted dying substance (which is also defined in the Bill) and includes steps reasonably related to such administration. Therefore, the restriction in clause 8(1) is clearly linked with the operation of the scheme set out in this Victorian Bill. Discussions between a registered health practitioner and a person to whom they are providing health services or professional care services that are, in substance, about voluntary assisted dying cannot be properly characterised as being discussions about governmental or political matters, such that the implied freedom would be burdened.

Even if the above conclusion were wrong and the restriction on initiating such discussions were somehow considered to impose a burden on political communication, in my opinion the restriction in clause 8(1) is appropriate and adapted to advance the legitimate purpose of protecting against the risk of undue influence and coercion and ensuring that any decision to access voluntary assisted dying is truly voluntary.

Thank you for the opportunity to respond to the Committee’s concerns. I trust that this information is of assistance, but should the Committee require any additional information or clarification in relation to the Bill, please contact my office.

Yours sincerely,

[Signature]

Hon Jill Hennessy MP
Minister for Health
Minister for Ambulance Services

27/10 / 2017
Appendix 2

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<td>Long Service Leave Bill 2017</td>
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<tr>
<td>Mineral Resources (Sustainable Development) Amendment (Latrobe Valley Mine Rehabilitation Commissioner) Bill 2017</td>
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<td>Oaths and Affirmations Bill 2017</td>
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<td>Offshore Petroleum and Greenhouse Gas Storage Amendment Bill 2017</td>
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<td>Parks and Crown Land Legislation Amendment Bill 2017</td>
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<tr>
<td>Planning and Building Legislation Amendment (Housing Affordability and Other Matters) Bill 2017</td>
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<td>Planning and Environment Amendment (Public Land Contributions) Bill 2017</td>
<td>14</td>
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<tr>
<td>Ports and Marine Legislation Amendment Bill 2017</td>
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<tr>
<td>Racing Amendment (Modernisation) Bill 2017</td>
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<tr>
<td>Residential Tenancies Amendment (Long-term Tenancy Agreements) Bill 2017</td>
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<tr>
<td>Resources Legislation Amendment (Fracking Ban) Bill 2016</td>
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<tr>
<td>Sentencing Amendment (Sentencing Standards) Bill 2017</td>
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<tr>
<td>Serious Sex Offenders (Detention and Supervision) Amendment (Governance) Bill 2017</td>
<td>12, 13</td>
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<tr>
<td>Sex Offenders Registration Amendment (Miscellaneous) Bill 2017</td>
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<td>Small Business Commission Bill 2016</td>
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<td>State Taxation Acts Amendment Bill 2017</td>
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<td>Statute Law Revision Bill 2017</td>
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<tr>
<td>Summary Offences Amendment (Begging or Gathering Alms) Bill 2016</td>
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<tr>
<td>Urban Renewal Authority Victoria Amendment (Development Victoria) Bill 2016</td>
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<tr>
<td>Victorian Data Sharing Bill 2017</td>
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<tr>
<td>Victorian Planning Authority Bill 2016</td>
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<tr>
<td>Voluntary Assisted Dying Bill 2017</td>
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<tr>
<td>Worksafe Legislation Amendment Bill 2017</td>
<td>5, 7</td>
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<tr>
<td>Wrongs Amendment (Organisational Child Abuse) Bill 2016</td>
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<tr>
<td>Yarra River Protection (Wilip-gin Birrarung murrum) Bill 2017</td>
<td>10, 13</td>
</tr>
</tbody>
</table>
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.

### Section 17(a)

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

<table>
<thead>
<tr>
<th>Bill</th>
<th>Alert Digest Nos.</th>
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<tbody>
<tr>
<td>Resources Legislation Amendment (Fracking Ban) Bill 2016</td>
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<td>Sentencing Amendment (Sentencing Standards) Bill 2017</td>
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<td>Voluntary Assisted Dying Bill 2017</td>
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<tr>
<td>Yarra River Protection (Wilip-gin Birrarung murron) Bill 2017</td>
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</table>

#### (vi) inappropriately delegates legislative power

<table>
<thead>
<tr>
<th>Bill</th>
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<tbody>
<tr>
<td>Bail Amendment (Stage One) Bill 2017</td>
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<tr>
<td>Building Amendment (Enforcement and Other Measures) Bill 2016</td>
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<tr>
<td>Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017</td>
<td>8, 9</td>
</tr>
<tr>
<td>Commercial Passenger Vehicle Industry Bill 2017</td>
<td>3, 4</td>
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<tr>
<td>Environment Protection Bill 2017</td>
<td>9, 10</td>
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<tr>
<td>Fines Reform Amendment Bill 2017</td>
<td>14, 15</td>
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<tr>
<td>Firearms Amendment Bill 2017</td>
<td>14, 15</td>
</tr>
<tr>
<td>Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017</td>
<td>8, 9</td>
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<tr>
<td>Justice Legislation Amendment (Protective Services Officers and Other Matters) Bill 2017</td>
<td>8, 9</td>
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<td>Serious Sex Offenders (Detention and Supervision) Amendment (Governance) Bill 2017</td>
<td>12, 13</td>
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<tr>
<td>Small Business Commission Bill 2016</td>
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<tr>
<td>State Taxation Acts Amendment Bill 2017</td>
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#### (viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities

<table>
<thead>
<tr>
<th>Bill</th>
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<tbody>
<tr>
<td>Administration and Probate and Other Acts Amendment (Succession and Related Matters) Bill 2016</td>
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<tr>
<td>Bail Amendment (Stage One) Bill 2017</td>
<td>8, 9</td>
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<tr>
<td>Building Amendment (Enforcement and Other Measures) Bill 2016</td>
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<tr>
<td>Caulfield Racecourse Reserve Bill 2017</td>
<td>12, 13</td>
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<tr>
<td>Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017</td>
<td>8, 9</td>
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<tr>
<td>Children, Youth and Families Amendment (Youth Offenders) Bill 2016</td>
<td>1, 3</td>
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<tr>
<td>Commercial Passenger Vehicle Industry Bill 2017</td>
<td>3, 4</td>
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<tr>
<td>Corrections Amendment (Parole) Bill 2016</td>
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<td>Corrections Legislation Miscellaneous Amendment Bill 2017</td>
<td>7, 8</td>
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<tr>
<td>Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre) Bill 2017</td>
<td>2, 3</td>
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<tr>
<td>Drugs, Poisons and Controlled Substances Miscellaneous Amendment Bill 2017</td>
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<tr>
<td>Bill Title</td>
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<tr>
<td>Family Violence Protection Amendment (Information Sharing) Bill 2017</td>
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</tr>
<tr>
<td>Firearms Amendment Bill 2017</td>
<td>14, 15</td>
</tr>
<tr>
<td>Firefighters’ Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017</td>
<td>8, 9</td>
</tr>
<tr>
<td>Gambling Regulation Amendment (Gaming Machine Arrangements) Bill 2017</td>
<td>14, 15</td>
</tr>
<tr>
<td>Jury Directions and Other Acts Amendment Bill 2017</td>
<td>3, 4</td>
</tr>
<tr>
<td>Justice Legislation Amendment (Body-worn Cameras and Other Matters) Bill 2017</td>
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<tr>
<td>Justice Legislation Amendment (Court Security, Juries and Other Matters) Bill 2017</td>
<td>8, 9</td>
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<tr>
<td>Justice Legislation Amendment (Parole Reform and Other Matters) Act 2016</td>
<td>1, 2</td>
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<tr>
<td>Local Government (Central Goldfields Shire Council) Act 2017</td>
<td>12, 13</td>
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<tr>
<td>Urban Renewal Authority Victoria Amendment (Development Victoria) Bill 2016</td>
<td>1</td>
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<tr>
<td>Victorian Planning Authority Bill 2016</td>
<td>1, 2</td>
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<tr>
<td>Voluntary Assisted Dying Bill 2017</td>
<td>14, 15</td>
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<tr>
<td>Worksafe Legislation Amendment Bill 2017</td>
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<tr>
<td>Wrongs Amendment (Organisational Child Abuse) Bill 2016</td>
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</tbody>
</table>
## Appendix 4

**Current Ministerial Correspondence**

**Table of correspondence between the Committee and Ministers or Members**

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.

<table>
<thead>
<tr>
<th>Bill Title</th>
<th>Minister/ Member</th>
<th>Date of Committee Letter / Minister’s Response</th>
<th>Alert Digest No. Issue raised / Response Published</th>
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<tbody>
<tr>
<td>Small Business Commission Bill 2016</td>
<td>Small Business, Innovation and Trade</td>
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<td>16 of 2016 1 of 2017</td>
</tr>
<tr>
<td>Administration and Probate and Other Acts Amendment (Succession and Related Matters) Bill 2016</td>
<td>Attorney-General</td>
<td>06.12.16 15.12.16</td>
<td>17 of 2016 1 of 2017</td>
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<tr>
<td>Resources Legislation Amendment (Fracking Ban) Bill 2016</td>
<td>Resources</td>
<td>06.12.16 22.02.17</td>
<td>17 of 2016 3 of 2017</td>
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<tr>
<td>Urban Renewal Authority Victoria Amendment (Development Victoria) Bill 2016</td>
<td>Major Projects</td>
<td>06.12.16 23.01.17</td>
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<tr>
<td>Wrongs Amendment (Organisational Child Abuse) Bill 2016</td>
<td>Attorney-General</td>
<td>06.12.16 15.12.16</td>
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<tr>
<td>Building Amendment (Enforcement and Other Measures) Bill 2016</td>
<td>Planning</td>
<td>07.02.17 17.02.17</td>
<td>1 of 2017 2 of 2017</td>
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<tr>
<td>Children, Youth and Families Amendment (Youth Offenders) Bill 2016</td>
<td>Ms Georgie Crozier MP</td>
<td>07.02.17 20.02.17</td>
<td>1 of 2017 3 of 2017</td>
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<tr>
<td>Corrections Amendment (Parole) Bill 2016</td>
<td>Hon Edward O’Donohue MP</td>
<td>07.02.17</td>
<td>1 of 2017</td>
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<tr>
<td>Justice Legislation Amendment (Parole Reform and Other Matters) Act 2016</td>
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<td>07.02.17 20.02.17</td>
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<td>Victorian Planning Authority Bill 2016</td>
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<tr>
<td>Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre) Bill 2017</td>
<td>Ms Fiona Patten MP</td>
<td>21.02.17 23.02.17</td>
<td>2 of 2017 3 of 2017</td>
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<tr>
<td>Commercial Passenger Vehicle Industry Bill 2017</td>
<td>Public Transport</td>
<td>07.03.17 20.03.17</td>
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<tr>
<td>Jury Directions and Other Acts Amendment Bill 2017</td>
<td>Attorney-General</td>
<td>07.03.17 20.03.17</td>
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<tr>
<td>Drugs, Poisons and Controlled Substances Miscellaneous Amendment Bill 2017</td>
<td>Police</td>
<td>21.03.17&lt;br&gt;27.04.17</td>
<td>4 of 2017&lt;br&gt;5 of 2017</td>
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<tr>
<td>Family Violence Protection Amendment (Information Sharing) Bill 2017</td>
<td>Special Minister of State&lt;sup&gt;+&lt;/sup&gt;</td>
<td>08.05.17&lt;br&gt;25.05.17</td>
<td>5 of 2017&lt;br&gt;8 of 2017</td>
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<td>Worksafe Legislation Amendment Bill 2017</td>
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<td>02.05.17&lt;br&gt;12.05.17</td>
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<td>Corrections Legislation Miscellaneous Amendment Bill 2017</td>
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<td>Treasurer</td>
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<td>Bail Amendment (Stage One) Bill 2017</td>
<td>Attorney-General</td>
<td>06.06.17&lt;br&gt;16.06.17</td>
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</tr>
<tr>
<td>Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017</td>
<td>Attorney-General</td>
<td>06.06.17&lt;br&gt;16.06.17</td>
<td>8 of 2017&lt;br&gt;9 of 2017</td>
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<tr>
<td>Firefighters’ Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017</td>
<td>Emergency Services</td>
<td>06.06.17&lt;br&gt;16.06.17</td>
<td>8 of 2017&lt;br&gt;9 of 2017</td>
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<td>Justice Legislation Amendment (Court Security, Juries and Other Matters) Bill 2017</td>
<td>Attorney-General</td>
<td>06.06.17&lt;br&gt;16.06.17</td>
<td>8 of 2017&lt;br&gt;9 of 2017</td>
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<td>Justice Legislation Amendment (Protective Services Officers and Other Matters) Bill 2017</td>
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<td>06.06.17&lt;br&gt;19.06.17</td>
<td>8 of 2017&lt;br&gt;9 of 2017</td>
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<td>Sentencing Amendment (Sentencing Standards) Bill 2017</td>
<td>Attorney-General</td>
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<tr>
<td>Environment Protection Bill 2017</td>
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</tr>
<tr>
<td>Yarra River Protection (Wilip-gin Birrarung murrum) Bill 2017</td>
<td>Planning</td>
<td>08.08.17&lt;br&gt;10.09.17</td>
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<td>Justice Legislation Amendment (Body-worn Cameras and Other Matters) Bill 2017</td>
<td>Attorney-General</td>
<td>22.08.17&lt;br&gt;04.09.17</td>
<td>11 of 2017&lt;br&gt;12 of 2017</td>
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<tr>
<td>Caulfield Racecourse Reserve Bill 2017</td>
<td>Energy, Environment and Climate Change</td>
<td>05.09.17&lt;br&gt;17.09.17</td>
<td>12 of 2017&lt;br&gt;13 of 2017</td>
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</tbody>
</table>

<sup>+</sup> The Committee first wrote to the Attorney-General who introduced this Bill on the 2 May 2016. However, the Committee now understands that this Bill is the responsibility of the Special Minister of State and has readressed its correspondence accordingly.
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<td>Corrections Legislation Further Amendment Bill 2017</td>
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<td>14 of 2017</td>
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<tr>
<td>Fines Reform Amendment Bill 2017</td>
<td>Attorney-General</td>
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<td>Firearms Amendment Bill 2017</td>
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<td>Voluntary Assisted Dying Bill 2017</td>
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</tbody>
</table>
The following Statutory Rules and legislative instruments were considered by the Regulation Review Subcommittee on 18 September and 30 October 2017.

**Monday 18 September 2017**

**Statutory Rules Series 2017**

SR No. 51 – Transport (Infringements) Amendment Regulations 2017
SR No. 53 – Public Health and Wellbeing Amendment Regulations 2017
SR No. 54 – Subordinate Legislation (Disability Regulations 2007) Extension Regulations 2017
SR No. 55 – Witness Protection Regulations 2017
SR No. 57 – Livestock Disease Control Regulations 2017
SR No. 58 – Fisheries and Fisheries and Fisheries (Fees, Royalties and Levies) Amendment (Recreational Fishery Licences) Further Amendment Regulations 2017
SR No. 59 – Working with Children Amendment (Reportable Conduct) Regulations 2017
SR No. 61 – Country Fire Authority (Community Fire Refuges) Amendment Regulations 2017
SR No. 63 – Tobacco (Victorian Health Promotion Foundation) Amendment Regulations 2017
SR No. 64 – Local Government (Planning and Reporting) Amendment Regulations 2017
SR No. 67 – Retirement Villages (Contractual Arrangements) Regulations 2017
SR No. 70 – Subordinate Legislation (Estate Agents (Fees) Regulations 2007) Extension Regulations 2017
SR No. 74 – Marine Safety Amendment (Expiry Date) Interim Regulations 2017
SR No. 83 – Radiation Regulations 2017

**Monday 30 October 2017**

**Statutory Rules Series 2017**

SR No. 41 – Road Safety Road Rules 2017
SR No. 52 – Victorian Energy Efficiency Target Amendment (Weather Sealing) Regulations 2017
SR No. 65 – Building Amendment Regulations 2017
SR No. 66 – Building (Building Legislation Amendment (Consumer Protection) Act 2016) Transitional Regulations 2017
SR No. 68 – Agricultural and Veterinary Chemicals (Control of Use) Regulations 2017
SR No. 69 – Agricultural and Veterinary Chemicals (Control of Use) (Infringement Notices) Amendment Regulations 2017
SR No. 71 – Victorian Energy Efficiency Target Amendment (Scheme Acquisition and Creation of Certificates) Regulations 2017
SR No. 73 – Tobacco Regulations 2017
SR No. 75 – Heavy Vehicle National Law Application (Infringements) Amendment Regulations 2017
SR No. 76 – Drugs, Poisons and Controlled Substances (Precursor Chemicals) Regulations 2017
SR No. 77 – Rail Safety (Local Operations)(Accreditation and Safety) Regulations 2017
SR No. 78 – Rail Safety (Local Operations) (Drug and Alcohol Controls) Regulations 2017
SR No. 79 – Road Safety (General) Amendment Regulations 2017
SR No. 80 – Treasury Corporation of Victoria (Prescribed Agencies) Amendment Regulations 2017
SR No. 81 – Building Further Amendment Regulations 2017
SR No. 82 – Magistrates’ Court Criminal Procedure (Amendment No.7) Rules 2017
SR No. 84 – Parliamentary Salaries and Superannuation (Allowances) Amendment Regulations 2017
SR No. 86 – Local Government (Electoral) Amendment Regulations 2017
SR No. 87 – Building Amendment (Macedon Ranges Siting Requirements and Other Matters) Regulations 2017
SR No. 88 – Conservation, Forests and Lands (Primary Industries Infringement Notices) Amendment Regulations 2017
SR No. 90 – Conservation, Forests and Lands (Infringement Notice) Amendment (Crown Land (Reserves)(Belfast Coastal Reserve)) Regulations 2017
SR No. 91 – Conservation, Forests and Lands (Infringement Notice) Amendment (National Parks) Regulations 2017
SR No. 92 – County Court (Chapter I Email Service Amendment) Rules 2017

Legislative Instruments

Ministerial Guidelines for Certification of Specialist E-Cigarette Retail Premises
Amended Keno Technical Standard
Declaration of Certain Plants to be State Prohibited Weeds, Regionally Prohibited Weeds, Regionally Controlled Weeds or Restricted Weeds
Ministerial Order 1038 – Teaching Service (Employment Conditions, Salaries, Allowances, Selection and Conduct) Order 2017
Ministerial Order No. 1030 – Victorian Institute of Teaching Schedule of Registration Fees 2017-2018
Ministerial Order No. 1039 – School Council Employees (Employment Conditions, Salaries, Allowances and Selection) Order 2017
Order Divesting Land from the Melbourne Market Authority to the Crown under the Project Development and Construction Management Act 1994
Approval of Wharfage Fees Determined by a Designated State Port Entity