

No. 17 of 2012

**Tuesday, 26 November
2012**

On the

Alcoa (Portland Aluminium Smelter)
(Amendment) Act Amendment
Bill 2012

Commission for Children and Young
People Bill 2012

Criminal Organisations Control
Bill 2012

Electronic Conveyancing (Adoption of
National Law) Bill 2012

Fire Services Levy Monitor Bill 2012

Integrity and Accountability Legislation
Amendment Bill 2012

Justice Legislation Amendment (Family
Violence and Other Matters) Bill 2012

Liquor Control Reform Amendment
Bill 2012

Protected Disclosure Bill 2012

The Committee



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Member for Eastern Victoria



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Hon. Christine Campbell MLA
Member for Pascoe Vale



Mr Colin Brooks MLA
Member for Bundoora



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Terms of Reference - Scrutiny of Bills

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 *Information Privacy Act 2000*;
 - (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

'AAT' refers to the Administrative Appeals Tribunal;

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

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

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

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

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

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

'penalty units' refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (currently one penalty unit equals \$140.84).

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

'VCAT' refers to the Victorian Civil and Administrative Tribunal;

[] denotes clause numbers in a Bill.

Alert Digest No. 17 of 2012

Alcoa (Portland Aluminium Smelter) (Amendment) Act Amendment Bill 2012

| | |
|-------------------------|---------------------|
| Introduced | 14 November 2012 |
| Second Reading Speech | 14 November 2012 |
| House | Legislative Council |
| Member introducing Bill | Mr Greg Barber MLC |
| Private Members Bill | |

Purpose

- The purpose of the Bill is to remove an existing exemption from the operation of the *Freedom of Information Act 1984* for matters affecting or relating to the Alcoa smelters at Portland and Port Henry.
- The Second Reading Speech extract: *'The exemption rose out of the agreements between the Victorian Government and Alcoa to continue construction of the Portland aluminium smelter in 1984.... Removal of section 14 will not harm Alcoa's commercial interests...The provision is unnecessary today.'*

The Committee makes no further comment.

Commission for Children and Young People Bill 2012

| | |
|--------------------------|---|
| Introduced | 25 October 2012 |
| Second Reading Speech | 13 November 2012 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Mary Wooldridge MLA |
| Portfolio responsibility | Minister for Children and Early Childhood Development |

Purpose

The purposes of the Bill are:-

- To establish a Commission for Children and Young People;
- To provide for the functions, powers and duties of the Commission;
- To repeal and re-enact with amendments certain provisions of the *Child Wellbeing and Safety Act 2005*.

Part 2 – Commission for Children and Young People (the Commission)

- The Bill establishes the Commission and sets out its functions and powers. The Commission is to provide advice to the Minister and departments and promote the interests of vulnerable children and young persons in the community [6-9]. The Commissioner is appointed by the Governor in Council for a period of 5 years [11]. A standard delegation power for the Commissioner to delegate powers or functions is inserted [20].

Part 3 – Working with children – Part 4 Monitoring Out of home care services

- An annual report must be provided to the Minister in respect its functions related to the *Working with Children Act 2005* [24-25]. Access may be given to the Commission or an authorised person in respect of records kept by the Secretary to the Department of Justice under the *Working with Children Act 2005* [27]. The Commission's functions include the provision of out of home care services of children [28]. Access may be given to the Commission or an authorised person to information on the central register in relation to out of home care service [30].

Part 5 – Inquiries – Part 6 - Confidentiality – Part 7 - General

- Part 5 provides for Inquiries. Inquiries may be conducted into the provision of services and vulnerable children (Divisions 3 and 4). Inquiries must be conducted in relation to a child who has died and who was a child protection client (Division 2) [34-39]. For the purposes of an inquiry access is given to the Commission of documents and the information on the central register [42]. Reports must be given to the Minister. Reports under (Division 4) may be tabled in the Parliament. The reports must not contain information which identifies a child, family to whom the services were provided that are the subject of the inquiry. Reports tabled in the Parliament may also be published on the internet [46-50]. The penalty for disclosure of prohibited information is 60 penalty units [55]. There is mandatory notification of corrupt conduct to the Independent Broad-based Anti-corruption Commission (IBAC) [61]. A standard regulation making power is inserted [62].

The Committee makes no further comment.

Criminal Organisations Control Bill 2012

| | |
|---------------------------------|-----------------------|
| Introduced | 14 November 2012 |
| Second Reading Speech | 15 November 2012 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Robert Clark MLA |
| Portfolio responsibility | Attorney-General |

Purpose

The purposes of the Bill are:-

- To provide for the making of declarations and control orders by the Supreme Court for the purpose of preventing and disrupting the activities of organisations involved in serious criminal activity, and of their members, former members, prospective members and associates;
- To provide for the recognition and application of declarations and control orders made under corresponding interstate laws.

Part 1 – Preliminary

- Part 1 sets out the various definitions. ‘Associate with’ means to be company with or to communicate with by any means (including by electronic communication) [3]. An ‘applicable offence’ is a specified offence which involves 2 or more offenders, substantial planning and organisation, forms part of systemic criminal activity and has a purpose of obtaining profit, gain, power or influence or of sexual gratification where the victim is a child. A ‘specified offence’ means an indictable offence that is punishable by at least 10 years imprisonment or offences specified in the Schedule [4].
- ‘Member’ of an organisation includes a current paid member, an honorary member, an individual who identifies himself or herself as belonging to the organisation including an individual who displays the patches or insignia of the organisation, an office holder of the organisation and an individual whose conduct would reasonably lead another person to consider the individual to be a member of the organisation [3].

Part 2 – Declarations in the Supreme Court

- The Chief Commissioner may apply to the Supreme Court for a declaration that an organisation is a declared organisation or that an individual is a declared individual. Notice of the application for a declaration must be published in a newspaper circulating generally throughout the State within 7 days. [14, 16,]. The individual or organisation may object to the application for the declaration [17].
- The Court may make a declaration if satisfied that the organisation is involved in criminal activity or any 2 or more members are using the organisation for a criminal purpose and the activities pose a serious threat to public safety and order. (See Charter report) [19]. Declarations must be served on the organisation or individual, published in the Government Gazette and a newspaper circulating generally throughout the State. They remain in effect for 3 years. Application may be made for revocation or renewal of the declaration by the Chief Commissioner [33].

Part 3 – Control Orders in the Supreme Court – Declared organisations - Individuals

- The Chief Commissioner may apply to the Supreme Court for a control order in respect of an individual or organisation [38]. Notice of an application for a control order in respect of an organisation must be published in a newspaper circulating generally throughout the State as soon as practicable but no later than 7 days after the making of the notice. Objections to an application for a control order must be made within 60 days after notice is published (if respondent an organisation) or within 60 days after the application if served on the individual (if the respondent is an individual) [41]. The Court may make a control order if satisfied that the making of the control order is likely to prevent or disrupt serious criminal activity of the organisation or the individual. The Court must be satisfied by acceptable, cogent evidence that is of sufficient weight. Criminal history of current, former and prospective members of organisations may be taken into account. (See Charter report) [43,44].

Section 17(a)(i) – Rights and freedoms

- In making a control order, the Court may impose the conditions which it considers appropriate. This is not limited to but includes the prohibition of continuing to operate, taking on of new members; requiring the exclusion of members, former members and prospective members; the prohibition of the wearing of or displaying of patches or insignia; the prohibition of carrying out specified activities; the prohibition of using specified property either located in Victoria or elsewhere. In relation to individuals they may be prohibited from participating in an organisation; being a member of an organisation; prohibited from associating with another declared organisation member; prohibited from using property; prohibited from wearing or displaying patches or insignia etc [45,47].

The Second Reading Speech extract: *‘Law enforcement agencies have made clear that criminal organisations are involved in a variety of crime including the production and distribution of drugs, vehicle rebirthing, serious assaults, illegal firearms trafficking, prostitution, serious fraud and extortion. Organisations involved in serious criminal activity, including bkie gangs often regard themselves as beyond the reach of the law and commonly use violence and intimidation to achieve their criminal aims....*

This Bill recognises that traditional criminal laws are limited in their effectiveness to respond to these organisations, as such laws can only be used to prosecute illegal activity on a case-by-case basis after the event. This Bill provides new powers that will allow Victoria Police to apply to the Supreme Court for orders that will prevent and disrupt serious criminal activity before more crimes are committed....To make a control order the Court must be satisfied that the order is likely to contribute to the purpose of preventing or disrupting serious criminal activity. To come to this conclusion, the Court must be satisfied by acceptable, cogent evidence that is of sufficient weight to justify the making of a control order. If the Court decides to make a control order, it will be able to impose a wide range of prohibitions and conditions that will operate to disrupt the serious criminal activity of the declared organisation, its members or the declared individual.

For example, a control order can prohibit the organisation from continuing to operate, prohibit members from participating in the activities of the organisation or wearing or displaying the patches of the organisation, or restrict the organisation from carrying out an activity or activities specified in the order. Orders can also be made against specific members of the declared organisation that would prohibit them from associating with other members of that organisation, or from continuing to be a member of the declared organisation...Orders can only be made by the Supreme Court based on evidence provided to the Court and after parties have had the opportunity to be heard.’

Clauses 45 and 47 set out the range of orders which may be imposed by a Court if it considers appropriate. The conditions which may be imposed by a Court may engage the right of freedom of association, the right to property and the right to freedom of expression. The provisions may engage the Committee's terms of reference pursuant to section 17(a)(i) of the Parliamentary Committees Act 1968. The Committee notes the explanation provided in the Second Reading Speech and the draws the provisions to the attention of the Parliament.

- A control order remains in effect for 3 years [53]. Ancillary orders may be sought by the Chief Commissioner [56]. Application may be made for renewal of control orders [63]. The penalty for breach of a control order for an individual is 600 penalty units or 5 years of imprisonment or both. The penalty for a breach in relation to an organisation is 3000 penalty units [68].

Part 4 – Order in the Supreme Court – Protection of criminal intelligence

Section 17(a)(i) – Rights or freedoms

- If the Chief Commissioner has made a *substantive* application (an application for a declaration or a control order), the Chief Commissioner may apply to the Supreme Court for a criminal intelligence protection order [70,75]. Unless the Court otherwise orders, protection applications must be held in closed court [73]. Special counsel may be appointed by the Court to represent the interests of the respondent.
- Special counsel may communicate to the respondent any order made by the court but must not communicate any other information in relation to the hearing. Special counsel may seek information from the respondent that is necessary for the special counsel to represent the interests of the respondent [71]. It is an offence to enter a closed court. The penalty for a breach is 600 penalty units or 5 years imprisonment or both for an individual [74]. Clauses [79-81] enable the Supreme Court to appoint a special counsel for the respondent to any part of a proceeding on a substantive application where it is sought to protect criminal intelligence. Such applications must also be heard in closed court unless otherwise ordered.

The Second Reading Speech extract: - *'Where the police wish to rely on sensitive criminal intelligence information to support an application, the Chief Commissioner will be able to apply to the Court for an order to protect criminal intelligence. Criminal intelligence applications will be heard in closed court unless the Court determines otherwise. If the Court determines that the application should be heard in open court, the Chief Commissioner will have the option of withdrawing the application to ensure the confidentiality of the criminal intelligence is maintained.*

A hearing in closed court will prevent the respondents to the application from hearing the criminal intelligence. However, where the application is heard in closed Court, the Court will be able to appoint a 'special counsel' to represent the interests of the respondent organisation or person against whom the criminal intelligence information may be used.

The special counsel will be able to consult with the subjects of the application at any time before the special counsel receives the information that is sought to be protected. However, once the criminal intelligence is provided to the special counsel, he or she must not communicate any information about the hearing, other than orders made by the Court, to the respondent. Special counsel may, however, continue to seek information from the respondent that is necessary to represent the respondent's interests.....If the criminal intelligence is protected, a special counsel will continue to represent the interests of the respondents to the application before the courts at the hearing of the application.'

Clauses 70-73 and 75 set out the provisions which relate to criminal intelligence application orders which may be made heard by way of closed Court in the Supreme Court. Clauses 79-81 set out the

provisions which relate to the protection of criminal intelligence in substantive applications which may be heard by way of closed Court in the Supreme Court. They may engage the Committee's terms of reference pursuant to section 17(a)(i) of the *Parliamentary Committees Act 2003*. The Committee notes the explanation provided in the Second Reading Speech and draws the provisions to the attention of the Parliament.

Part 5 – Recognition of corresponding declarations and control orders

- The Chief Commissioner may apply to the Prothonotary for registration of corresponding declarations and control orders in other jurisdictions. Notice of registration of corresponding declarations and control orders must be published in the Government Gazette and in a newspaper circulating generally throughout the State and served on the respondent [86, 91, 92, 100, 101, 109]. The Chief Commissioner must establish and maintain a register of declarations, control orders, registered corresponding declarations and registered corresponding control orders [130].
- A body corporate can be found guilty of an offence whether or not the officer has been proceeded against or found guilty of offence [126]. The Chief Commissioner is required to report to the Attorney-General annually on the number and types of applications made under the Act [133]. Review of the Act must be undertaken within the first 5 years of operation and a report tabled in the Parliament [137]. A standard regulation making power is provided [138].

Charter report

Personal association discrimination – Freedom of association – Rights of communities and families – Declarations about organisations whose activities pose a serious threat to public safety and order

Summary: Clause 19 provides that the Supreme Court may make a declaration about an organisation based on findings about its connection to serious criminal activity and the threat its activities pose to public safety and order. The Committee notes that a court may be permitted to make declarations about groups of people who associate together due to personal or communal attributes that are protected by the Charter and on the basis of the activities of a small number of members or former members. The Committee will write to the Attorney-General seeking further information.

The Committee notes that clause 19 provides that the Supreme Court may declare that ‘an organisation the subject of [an] application’ by the Chief Commissioner ‘is a declared organisation’ based on findings about its connection to serious criminal activity¹ and the threat its activities pose to public safety and order. While such a declaration has no immediate legal consequences in Victoria,² it means that the Chief Commissioner may ask the Supreme Court to make a control order about any of the organisation's members, former members and prospective members.³

The Committee observes that clause 7 defines an organisation to mean a ‘body or association’, whether incorporated or not, and specifies that ‘an organisation can include individuals who are

¹ Clauses 3 and 4 define ‘serious criminal activity’ to mean conduct that would constitute an offence that is either punishable by at least 10 years imprisonment or is listed in Schedule 2 and involves 2 or more offenders, substantial planning and organisation, systemic criminal activity and a purpose of profit, gain, power, influence or child sexual gratification.

² The declaration, if registered in some other Australian jurisdictions, may automatically make some activities relating to that organisation criminal in that jurisdiction: see *Criminal Organisation Act 2009* (Qld), ss. 97 & 100; *Serious and Organised Crime (Control) Act 2008* (SA), ss. 34A, 34B, 35 & 39C(2). See also Crimes (Criminal Organisations Control) Amendment Bill 2012 (NSW), Schedule 1, cl. 17 (new section 27H); Criminal Organisations Control Bill 2011 (WA), cls. 106, 107 & 125(1).

³ Clause 43, discussed further below.

related to one another'. **The Committee notes that this definition may permit declarations to be made under clause 19 about groups of people who associate together due to personal or communal attributes that are protected by the Charter.**⁴ However, the Committee observes that the Charter's associational rights with respect to political and industrial activities⁵ are protected by clause 11, which provides that Parliament does not intend to diminish Victorians' freedoms 'to participate in lawful protest, advocacy, dissent or industrial action'.

The Statement of Compatibility remarks:

The Bill sets out clear criteria for the making of declarations (clause 19) which require serious criminal activity and a serious threat to public safety and order.

A declaration can only be made against an organisation or individual if the court is satisfied:

(beyond reasonable doubt) that the organisation, or the individual and other members using the organisation, have engaged in, organised, facilitated or supported serious criminal activity or are currently doing so; and

(on the balance of probabilities) that the activities of the organisation or of the individual and other members acting together pose a serious threat to public safety and order.

The Committee considers that the Charter's 'right to freedom of association with others'⁶ does not include the right to associate for the purpose of criminal activities. The Committee observes that the Bill's criteria for 'serious criminal activity'⁷ and clause 19's requirement that the Supreme Court must be satisfied beyond reasonable doubt that an organisation or its members have engaged in serious criminal activities are more stringent than all similar Australian statutes.⁸

However, the Committee notes that, under clause 19(2)(a)(ii), a declaration about an organisation may be made where a court finds beyond reasonable doubt that:

any 2 or more members, former members or prospective members of the organisation have used or are using—

(A) the organisation; or

(B) their relationship with that organisation or with the organisation's members, former members or prospective members—

⁴ Charter ss. 8(3) ('equal protection of the law without discrimination', including on the basis of 'personal association' with a person who is identified by reference to the attributes listed in s. 6 of the *Equal Opportunity Act 2010*), 14(1)(b) ('freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching... as part of a community'), 17(1) ('Families are the fundamental group unit of society and are entitled to be protected by society and the State') & 19 ('All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practise his or her religion and to use his or her language'. Sub-section (2) also sets out specific cultural rights for Aboriginal persons 'with other members of their community'.)

⁵ Charter ss. 8 (in combination with ss. 6(f) & (k) of the *Equal Opportunity Act 2010*) & 16(2) 'right to form and join trade unions.'

⁶ Charter s. 16(2).

⁷ Clause 4(1), requiring the involvement of 2 or more offenders, substantial planning and organisation, systemic criminal activity and a purpose of profit, gain, power, influence or child sexual gratification.

⁸ *Crimes (Criminal Organisations Control) Act 2012* (NSW), ss. 3, 32(1); *Serious Crime Control Act 2009* (NT), ss. 6, 83(1); *Criminal Organisation Act 2009* (Qld), ss. 7, 110.; *Serious and Organised Crime Control Act 2008* (SA), ss. 3, 5(1), all requiring proof on the balance of probabilities and none requiring proof of joint, organised or systemic conduct for declarations (although *Criminal Organisation Act 2009* (Qld), s. 18(1)(c) requires proof of joint conduct before a court can make a control order.) See also *Crimes (Criminal Organisations Control) Amendment Bill 2012* (NSW), Schedule 1, cl. 2; *Criminal Organisations Control Bill 2011* (WA), cl. 3(1) 163(2)(a).

for a criminal purpose.⁹

and on the balance of probabilities that ‘the activities of the organisation pose a serious threat to public safety and order’.¹⁰ **The Committee observes that clause 19(2)(a)(ii) may permit a declaration to be made about an entire organisation on the basis of activities by a small number of members or former members of the organisation.** The Committee notes that most similar Australian statutes bar a declaration about an organisation being made on the basis of activities of only some of the organisation’s members unless ‘those members constitute a significant group within the organisation’ in terms of numbers or influence.¹¹ None permit a declaration solely on the basis of the activities of former members.¹²

The Second Reading speech remarks:

Organisations involved in serious criminal activity, including bikie gangs, often regard themselves as beyond the reach of the law, and commonly use violence and intimidation to achieve their criminal aims.

These criminal organisations are resistant to traditional policing methods. Such groups typically intermingle their illegal activities with lawful business or social activity. This makes such groups harder to detect and prosecute using the criminal law...

In some cases organisations are primarily established and exist for the purpose of criminal activity. In other cases legitimate organisations with lawful purposes may have members and associates that seek to infiltrate and use the organisation for serious criminal purposes.

The Committee will write to the Attorney-General seeking further information as to:

- **whether or not declarations may be made under clause 19 about groups of people who associate together due to personal or communal attributes that are protected by the Charter; and**
- **whether or not requiring a court to make findings about the activities of a significant group within an organisation (in terms of numbers or influence) before it makes a declaration about the whole organisation is a less restrictive means reasonably available to achieve the purpose of preventing and disrupting the activities of organisations involved in serious criminal activity.**

Pending the Attorney-General’s response, the Committee draws attention to clause 19.

⁹ Clause 19(2)(a)(ii). Clause 19(5) provides that using an organisation or a relationship with an organisation for a criminal purpose includes associating for that purpose on the organisation’s land or common meeting places or at organisation meetings or while wearing the organisation’s patches or insignia or identifying themselves as the organisation’s members, as well as using their membership to obtain information, contacts or access to other people for that purpose. Clause 3 defines ‘criminal purpose’ to mean ‘the purpose of engaging in, organising, facilitating or supporting serious criminal activity’.

¹⁰ Clause 19(2)(b). The equivalent requirement in all similar Australian statutes requires a finding about the risk represented by ‘the organisation itself, rather than the ‘threat posed by’ its ‘activities’: see *Crimes (Criminal Organisations Control) Act 2012* (NSW), s. 9(1)(b); *Serious Crime Control Act 2009* (NT), s. 12(1)(b); *Criminal Organisation Act 2009* (Qld), s. 10(1)(c); *Serious and Organised Crime Control Act 2008* (SA), s. 11(1)(b). See also *Criminal Organisations Control Bill 2011* (WA), cl. 13(1)(c) and note *Crimes (Criminal Organisations Control) Amendment Bill 2012* (NSW), Schedule 1, cl. 7, which replaces that jurisdiction’s requirement with a new requirement that ‘the continued existence of the organisation represents a risk to public safety and order’.

¹¹ *Crimes (Criminal Organisations Control) Act 2012* (NSW), s. 9(4)(a); *Serious Crime Control Act 2009* (NT), s. 12(2)(a); *Criminal Organisation Act 2009* (Qld), s. 10(5). See also *Criminal Organisations Control Bill 2011* (WA), cl. 13(3)(a) and *Crimes (Criminal Organisation Control) Bill 2012* (NSW), Schedule 1, cl. 10. The exception is the *Serious and Organised Crime Control Act 2008* (SA), s. 11(5)(a).

¹² *Crimes (Criminal Organisations Control) Act 2012* (NSW), s. 9(1)(a); *Serious Crime Control Act 2009* (NT), s. 12(1)(a); *Criminal Organisation Act 2009* (Qld), s. 10(1)(b); *Serious and Organised Crime Control Act 2008* (SA), s. 11(1)(a). See also *Criminal Organisations Control Bill 2011* (WA), cl. 13(1)(b).

Reasonable limits – Control orders for current, former or prospective members of a declared organisation to contribute to preventing or disrupting serious criminal activity

Summary: Clause 43(2) permits the Supreme Court to make a control order for current, former or prospective members of a declared organisation if the order is likely to contribute to the purpose of preventing or disrupting serious criminal activity by that member. The Committee notes that significant restrictions on a member's Charter rights may be imposed on the basis of the possibility of future serious criminal activity, whether or not the activity or restrictions relate to the declared organisation or the member's associations have a criminal purpose. The Committee will write to the Attorney-General seeking further information.

The Committee notes that clause 43(2) permits the Supreme Court to 'make a control order that applies to' current, former or prospective members of a declared organisation if 'the making of the control order is likely to contribute to the purpose of preventing or disrupting' serious criminal activity by (or facilitated by) that member. While a control order has no automatic legal consequences in Victoria,¹³ clause 47(1) provides that the Supreme Court, in making the order, 'may impose the conditions the Court considers appropriate'. Clause 68 provides that a breach of any condition in a control order is an offence punishable by up to five years imprisonment.

The Statement of Compatibility remarks:

If a control order is made, the court is empowered to impose a range of conditions that may have an impact upon a range of rights of individuals, including freedom of expression, freedom of association, privacy, freedom of movement and property rights. The types of conditions are set out in clauses 45 and 47.

...

It is not possible to exhaustively set out the limits upon rights that may be imposed, as this will depend upon the particular circumstances. Nevertheless, I consider that the powers given to the court to impose conditions that are likely to result in restrictions upon rights are compatible with those rights either because they do not limit the rights as described in the charter or because any such limits are reasonable and justified under section 7(2).

...

The bill... sets out clear criteria for the making of control orders (clause 43). These criteria reflect the important purposes of such orders, namely to prevent and disrupt the activities of organisations involved in criminal activity. These purposes will also guide the court in determining what conditions should be imposed.

The court will also need to have regard to clause 11 which makes it clear that it is not intended that the powers in the bill be exercised in a way that diminishes the freedom of persons to participate in lawful protest, advocacy, dissent or industrial action. In addition, the bill contains a range of procedural safeguards before such conditions are able to be imposed.

The Committee notes that two key procedural safeguards in the Bill are that the Supreme Court (rather than, as in some similar Australian statutes, judges acting in their personal capacity¹⁴) makes both declarations and control orders and that (unlike in all similar Australian statutes) claims of prior or current serious criminal activity must be proved beyond reasonable doubt. The Committee

¹³ The order, if registered in some other Australian jurisdictions, may automatically make some activities relating to that organisation criminal in that jurisdiction: see *Criminal Organisation Act 2009* (Qld), ss. 97 & 100; *Serious and Organised Crime (Control) Act 2008* (SA), ss. 34B, 35 & 39N(2). See also Crimes (Criminal Organisations Control) Amendment Bill 2012 (NSW), Schedule 1, cl. 17 (new section 27U); Criminal Organisations Control Bill 2011 (WA), cls. 99, 102 & 142(1).

¹⁴ *Crimes (Criminal Organisations Control) Act 2012* (NSW), s. 5; *Serious and Organised Crime Control Act 2008* (SA), s. 8. See also Criminal Organisations Control Bill 2011 (WA), cl. 26.

observes that Victorian judges have held in other contexts that, where a court has found that the person has committed a serious offence and is more likely than not to do so again, legislation permitting the imposition of significant restrictions on the rights of a person to prevent future crimes is compatible with the Charter.¹⁵

The Committee notes that, like most similar Australian statutes,¹⁶ clause 43(2) permits the Supreme Court to impose a control order on current, prospective and former members of a declared organisation without any finding of previous or current criminal activity by that member. However, unlike all similar Australian statutes,¹⁷ it also requires the Supreme Court to find, on the basis of acceptable, cogent and sufficient evidence, that the order is 'likely to contribute to the purpose of preventing or disrupting' serious criminal activity by that member. The Committee observes that **clause 43(2) may nevertheless permit the imposition of significant restrictions on the Charter rights of any current, prospective or former member of a declared organisation on the basis of the possibility that the member will engage in or facilitate serious criminal activity in the future.**

The Committee also notes that there is no requirement in clause 43(2) or 47(1) require that the control order's purpose or content relate to the member's association with the declared organisation. The Committee observes that, while all similar Australian statutes operate in this way for current members of a declared organisation,¹⁸ some bar the imposition of control orders on former members unless they have an ongoing involvement with the organisation.¹⁹

The Committee further notes that clause 68(5) provides that a person can be convicted for associating with others in breach of a control order without any proof that the association was for a criminal or other unreasonable purpose. The Committee observes that most similar Australian statutes expressly exempt certain reasonable personal associations from restriction by control orders.²⁰

The Committee will write to the Attorney-General seeking further information as to whether or not providing express exemptions from control orders for former members with no significant current involvement with a declared organisation and certain reasonable personal associations are less restrictive means reasonably available to achieve the purpose of preventing or disrupting the activities of organisations involved in serious criminal activity. Pending the Attorney-General's response, the Committee draws attention to clauses 43(2), 47(1) and 68(5).

The Committee makes no further comment.

¹⁵ E.g. *R J E v Secretary to the Department of Justice* [2008] VSCA 265, [54], [119].

¹⁶ *Crimes (Criminal Organisations Control) Act 2012* (NSW), s. 19(1); *Serious Crime Control Act 2009* (NT), s. 23(1); *Serious and Organised Crime Control Act 2008* (SA), s. 22(2)(a). See also *Criminal Organisations Control Bill 2011* (WA), cl. 57(2)(a). The exception is the *Criminal Organisation Act 2009* (Qld), s. 18(1)(b).

¹⁷ *Crimes (Criminal Organisations Control) Act 2012* (NSW), s. 19(1)(b) (although it requires that 'sufficient grounds exist for making the order'); *Serious Crime Control Act 2009* (NT), s. 25(2)(a); *Criminal Organisation Act 2009* (Qld), s. 18(1), *Serious and Organised Crime Control Act 2008* (SA), s. 22(2) (although it requires that 'the making of the order is appropriate in the circumstances'.) See also *Criminal Organisations Control Bill 2011* (WA), cl. 57(2)(a) (although it requires that 'it is appropriate in the circumstances to make the order'.)

¹⁸ *Crimes (Criminal Organisations Control) Act 2012* (NSW), ss. 19(1) & 27; *Serious Crime Control Act 2009* (NT), s. 27(2)(a)(iv), (b), (3); *Criminal Organisation Act 2009* (Qld), ss. 18(1) & 19(1), (2)(c), (g) & (h); *Serious and Organised Crime Control Act 2008* (SA), ss. 22(2)(a) & 22(5). See also *Criminal Organisations Control Bill 2011* (WA), cls. 57(2)(a), 79 & 80.

¹⁹ *Crimes (Criminal Organisations Control) Act 2012* (NSW), s. 19(1)(a)(ii) & (8); *Serious and Organised Crime Control Act 2008* (SA), s. 22(2)(b). See also *Criminal Organisations Control Bill 2011* (WA), cl. 57(2)(b). The exceptions are the *Serious Crime Control Act 2009* (NT), s. 23(1)(b) and the *Criminal Organisation Act 2009* (Qld), s. 18(1)(a).

²⁰ *Crimes (Criminal Organisations Control) Act 2012* (NSW), ss. 19(7)(a) & 25(5); *Serious Crime Control Act 2009* (NT), s. 36(3); *Serious and Organised Crime Control Act 2008* (SA), s. 35(6). See also *Criminal Organisations Control Bill 2011* (WA), cl. 101. The exception is the *Criminal Organisation Act 2009* (Qld), s. 19(5)(b), but note s. 19(7).

Electronic Conveyancing (Adoption of National Law) Bill 2012

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|---------------------------------|---|
| Introduced | 13 November 2012 |
| Second Reading Speech | 14 November 2012 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Ryan Smith MLA |
| Portfolio responsibility | Minister for Environment and Climate Change |

Purpose

- The purpose of the Bill is to adopt a national law relating to electronic conveyancing.

The Second Reading extract: - *'In 2008 COAG endorsed creating a uniform, Australia-wide regulatory approach to electronic conveyancing...Under this agreement, each jurisdiction will enact legislation applying a Model law...The Australian Registrars' National Electronic Conveyancing Council consisting of the Registrar of Titles (or equivalent office holder) from each jurisdiction has been established to oversee national electronic conveyancing.'*

Section 17(a)(vi) delegates legislative power

The Bill comes into operation on a day or days to be proclaimed. There is no default commencement date [2]. The Explanatory memorandum: -*'There is no default commencement date as to the timing of commencement of the relevant provisions of the Bill is contingent on the commencement of the Electronic Conveyancing (Adoption of National Law) Bill 2012 (New South Wales). It is intended that Parts 1,2 and Divisions 1 to 3 of Part 3 will be proclaimed to follow proclamation of the New South Wales Bill.'*

The Committee notes the Explanatory memorandum, the operation of the commencement provision and draws the provision to the attention of the Parliament.

- It provides for the digital signing of electronic documents by subscribers to the Electronic Lodgement Network (ELN). ELN is an electronic system that enables the lodging of registry instruments and other documents in electronic form for the purposes of land titles legislation. The Registrar of Titles is responsible for the operation of the ELN. **[Appendix-Part 3]**. A private company (known as NECDL – National E-conveyancing Development Limited) has been established. It will operate an Australia wide electronic conveyancing system known as PEXA – Property Exchange Australia.

The Committee makes no further comment.

Fire Services Levy Monitor Bill 2012

| | |
|--------------------------|-------------------------------|
| Introduced | 13 November 2012 |
| Second Reading Speech | 14 November 2012 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Michael O'Brien MLA |
| Portfolio responsibility | Minister for Consumer Affairs |

Purpose

- The purpose of the Bill is to provide for the establishment, functions and powers of the Fire Services Levy Monitor (FSLM).

The extract from the Second Reading Speech: -

'This Bill will introduce a dedicated consumer protection framework.....to implement the recommendation of the Victorian Bushfires Royal Commission that the state replace the insurance-based fire services levy with a property based levy.....The Fire Services Property Levy Act abolishes the old insurance based model of funding for fire services and from 1 July 2013, will replace it with the Fire Services Property Levy that will apply to all land and buildings.....

.....The Bill will establish the Office of the Fire Services Levy Monitor who will oversee the fire services levy reforms during the transitional period. The Office of the Fire Services Levy Monitor will be headed by the Fire Services Levy Monitor and a Deputy Fire Services Levy Monitor.....The Bill will introduce two new prohibitions. A prohibition on insurance companies engaging in price exploitation and a prohibition on any person engaging in misleading and deceptive conduct.....The Monitor is specifically empowered to monitor prices in the insurance industry to assess whether price exploitation is occurring and will have the assistance of the Essential Services Commission.'

- The Bill establishes the office and functions of the Fire Services Levy Monitor. (The Monitor is the Head of the Office and is not subject to the direction or control of the Minister. Complaints may be referred to ASIC, the Australian Prudential Regulatory Authority and the Financial Ombudsman Service. [4-6]. A standard delegation power is given to the Monitor in respect of his or her functions [13]. Standard secrecy provisions apply to employees and the Monitor [17].
- It sets out the Monitor's powers to obtain information and documents to monitor compliance with the Act and the *Fire Services Property Levy Act 2012*. Failure to comply with a notice attracts respective penalties of 20 penalty units for a person and 100 penalty units for a body corporate. Documents which are produced to the Monitor may be copied and inspected by the Monitor.[18-25]. The Monitor may enter into an information sharing arrangement with relevant law enforcement and fair trading agencies for the purposes of performance of the Monitor's functions [25].
- The Monitor may issue guidelines published in the Government Gazette [27]. The Monitor also monitors prices [30]. It creates a prohibition on price exploitation by an insurance company in relation to the fire services levy reform [26]. It also creates a prohibition on conduct which is misleading, deceiving or falsely represents the effect of the fire services levy reform. Application may be made to the Supreme Court for the imposition of pecuniary penalties. The respective penalties which may be imposed are \$500,000 in respect of a person and \$1,000,000 in the case of a body corporate. (See Charter report) [31-32].
- Any person may make a fire services levy dispute complaint to the Monitor. Complaints are referred to the Director of Consumer Affairs for conciliation or mediation. The Director is empowered to institute, continue or defend proceedings on behalf of a person or persons in

relation to a fire levy dispute [44-47]. It provides for the appointment of inspectors by the Monitor and sets out the inspection powers.

- Application may be made to the Magistrates' Court on reasonable grounds for production and inspection of documents. Premises may be searched on the basis of reasonable belief with the consent of the occupier. Application may also be made to the Magistrates' Court for entry and search of premises with a warrant. [48-60]. It is an offence to give false or misleading information. The relevant penalties respectively are 60 penalty units in the case of a natural person and 300 penalty units in the case of a body corporate [67]. A person may complain to the Monitor about the exercise of a power by an inspector [73].
- The Monitor may require a claim to be substantiated with a substantiation notice [76]. A court may order compensation on the application of a person who has suffered loss because of a contravention of the Act or on the application of the Monitor [80]. The Monitor must keep a register of undertakings [94]. The Monitor or any other person may apply to the Supreme Court, County Court or Magistrates' Court for the grant of an injunction restraining a person from engaging in conduct that constitutes a contravention of a provision of the Act [95].
- The Monitor may issue public warning statements in relation to price exploitation and prohibited conduct if satisfied it is in the public interest [106]. The Monitor may with the consent of the Minister request the Essential Services Commission to provide information [109]. The Monitor must give a written report to the Minister on the performance of the functions of the Monitor [110]. A standard regulation making provision is set out [111].

Charter report

Expression – False representations or misleading or deceptive conduct about the likely effect of the abolition of the fire services levy

Summary: Clause 31 prohibits conduct that falsely represents or is likely to mislead or deceive any person about the effect or likely effect of the abolition of the fire services levy. The Committee will write to the Minister seeking further information as to whether or not clause 31's application to unintentionally false, misleading or deceptive statements in non-commercial contexts is reasonably necessary according to the test for limits on freedom of expression set out in the Charter.

The Committee notes that clause 31 prohibits conduct that 'falsely represents (whether expressly or impliedly)' or 'is likely to mislead or deceive any person about' the 'effect, or likely effect' of the abolition of the fire services levy by the *Fire Services Property Levy Act 2012*. If someone breaches clause 31, the Fire Services Levy Monitor may ask the Supreme Court to impose a penalty of up to \$500,000, issue injunctions to restrain the person's statements or require him or her to do an act or thing; or make corrective or punitive advertising orders.²¹

The Committee considers that clause 31 may engage the Charter's right to freedom of expression.²² The Committee notes that Charter s. 15(3) states:

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

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

The Statement of Compatibility remarks:

²¹ Clauses 32, 95, 96, 101 and 102.

²² Charter s. 15(2).

Clauses 18, 19, 30, 31, 67, 69 and 79 all impose prohibitions on engaging in conduct, making a representation, or providing information that is false or misleading, in certain specified circumstances. These clauses may engage the right to freedom of expression by curtailing a person's right to express or impart information in a false or misleading manner. However, it is unlikely that the right to freedom of expression extends to a right to false or misleading expression. Even if the right does extend to such forms of expression, I consider that... [t]hese prohibitions on false and misleading conduct, information and representations are reasonably necessary to protect public order and the rights of others.

The Committee notes that clauses 18, 19, 30, 67, 69 and 79 concern false statements to or about the Monitor and mostly require proof of knowledge that the statement was false.²³ By contrast, clause 31 concerns false, misleading or deceptive statements to anyone about the abolition of the fire services levy and does not require proof that the speaker knew of the falsehood or intended to mislead or deceive.²⁴

The Second Reading Speech remarks:

Penalties for contravention of these prohibitions are substantial and are consistent with the penalties introduced by the commonwealth into the Trade Practices Act in 1999-2000 in respect of similar prohibitions around the introduction of the goods and services tax.

The Committee notes that the equivalent federal provision relating to the goods and services tax was limited to conduct that is 'in trade or commerce, for the purpose of price exploitation, in connection with the supply or possible supply of goods or services' or the promotion of that supply.²⁵ By contrast, clause 31 is potentially applicable to false, misleading or deceptive statements in non-commercial contexts.

The Committee will write to the Minister seeking further information as to whether or not clause 31's application to unintentionally false, misleading or deceptive statements in non-commercial contexts is reasonably necessary according to the test for limits on freedom of expression set out in Charter s. 15(3). Pending the Minister's response, the Committee draws attention to clause 31.

The Committee makes no further comment.

²³ The exception is clause 79, concerning false or misleading information in compliance with a notice from the Monitor requiring a person who has made a claim about the likely effect of the fire services levy reform in trade or commerce to substantiate that claim.

²⁴ Clause 38 (1). However, reasonable mistake and due diligence are defences in penalty proceedings and the court may consider the defendant's intentions or knowledge when determining the amount of the penalty: clauses 32(3)(b) and 33(1).

²⁵ *Trade Practices Act 1974* (Cth), s. 75AYA (inserted by the *A New Tax System (Trade Practices Amendment) Act 2000* (Cth), Schedule 1, clauses 2 and 9.) Compare clause 76(1) (empowering the Monitor to require a person to substantiate claims about the effect or likely effect of the fire services levy reform), which is limited to 'a claim or representation in trade or commerce'.

Integrity and Accountability Legislation Amendment Bill 2012

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|---------------------------------|---|
| Introduced | 13 November 2012 |
| Second Reading Speech | 14 November 2012 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Anderw McIntosh MLA |
| Portfolio responsibility | Minister for responsible for the establishment of an anti-corruption commission |

Purpose

The purposes of the Bill are:-

- To make provision for the Independent Broad-based Anti-corruption Commission (IBAC) to use powers under the *Telecommunications (Interception and Access) Act 1979*;
- To amend the *Audit Act 1994*, the *Ombudsman Act 1973* as a consequence of the establishment of the IBAC and the Victorian Inspectorate;
- To amend the *Victorian Inspectorate Act 2011* to confer functions on the Victorian Inspectorate in relation to the Auditor-General, the Ombudsman and the offices of Chief Examiner and Examiner under the *Major Crime (Investigative Powers) Act 2004*;
- To confer functions on the Accountability and Oversight Committee of Parliament in relation to the Ombudsman and the Victorian Inspectorate;
- To confer functions on the Public Accounts and Estimates committee of Parliament in relation to the Victorian Inspectorate.

The Second Reading Speech extract: -

'The IBAC Parliamentary Committee will monitor and review the performance of the IBAC, Public Interest Monitors and the Victorian Inspectorate. The new Accountability and Oversight Committee will oversee the Ombudsman and will oversee the Victorian Inspectorate to the extent that the Inspectorate oversees the Ombudsman. The Public Accounts and Estimates Committee will continue to oversee the Auditor-General and likewise oversee the Victorian Inspectorate to the extent that the Inspectorate also oversees the Auditor-General.

The Victorian Inspectorate will undertake the day to day oversight of Victoria's key integrity body – the IBAC, the Ombudsman and the Auditor-General. It will have a broad jurisdiction and strong powers to receive and investigate complaints and may report directly to Parliament. The Victorian Inspectorate will also oversee the use of covert and intrusive investigative powers by specified integrity and law enforcement agencies. This will complement the role of the new Public Interest Monitor who will appear at the hearing of applications for warrants to use such powers and test the content and sufficiency of the information relied on in support of those applications.....

The IBAC will sit at the apex of the Victoria's new integrity system...The Ombudsman will continue its leading role in receiving and dealing with complaints about administrative action...The Ombudsman and the Auditor-General will also be subject to Victorian Inspectorate oversight of the use of their coercive powers and the conduct of investigations and inquiries....

The Bill transfers police oversight functions from the OPI and the Ombudsman to the IBAC in relation to the destruction of illicit drugs, maintenance of the Sex Offenders Register, use of restricted tolling information and the administration of terrorism and witness protection laws. The Bill also vests the IBAC with further investigative powers including under the Crimes (Assumed Identities) Act and the Crimes (Controlled Operations) Act. It also finalises the legislative requirements for the grant of telecommunications interception powers to the IBAC.....The Bill will transfer the functions, powers and work in progress of the Special Investigations Monitor (SIM) to the Victorian Inspectorate.....

To ensure that the IBAC is notified of all potential corrupt conduct, the Ombudsman and the Auditor-General will be required to notify matters that appear to involve corrupt conduct to the IBAC. Similarly, the Ombudsman and the Auditor-General will be required to refer matters to the Victorian Inspectorate which appear to be relevant to the Inspectorate's oversight role (for example, a complaint about the conduct of the IBAC.)'

Part 1 – Commencement provisions

Section 17(a)(i) – rights or freedoms – retrospectivity

- Commencement clause [2] provides that section 153 is taken to have come into operation on 6 March 2012. There is a common law assumption that legislation is not assumed to have retrospective operation.²⁶ The Explanatory memorandum: - *'The section makes two retrospective amendments to the Freedom of Information Amendment (Freedom of Information Commissioner) Act 2012 to clarify aspects of that Act's operation. The amendments are backdated to the date the Freedom of Information Amendment (Freedom of Information Commissioner) Act 2012 received the Royal Assent to enable that legislation to come into operation independently of other integrity legislation.'*
- Commencement clause [2] also provides that section 154 is taken to have come into operation on 18 September 2012. The Explanatory memorandum: - *'This will enable amendments to the Independent Broad-based Anti-corruption Commission Act 2011 (the IBAC Act) and the Victorian Inspectorate Act 2011 (VI Act) to come into operation at the same time as other amendments made by this Bill so that the amendments occur seamlessly. The amendments are backdated to the date the Evidence Amendment (Journalist Privilege) Act 2012 received the Royal Assent to enable that legislation to come into operation independently of the integrity legislation.'*

The Committee notes the retrospective operation of clause 2 may engage its terms of reference under section 17(a)(i) of the Parliamentary Committees Act 2003 and the Explanatory memorandum. The Committee draws the provision to the attention of the Parliament.

Part 2 – Amendments to the IBAC Act

- IBAC is required to provide written notice to persons who are notified of dismissal, investigation or referral of complaint that it is an offence to disclose that action under new section 101B [8]. It provides for the referral of some complaints by IBAC to the Racing Integrity Commissioner and the Commission for Children and Young People [10].
- It clarifies that the IBAC is not to notify certain persons such as the complainant, responsible Minister or the Premier of the outcome of an investigation if this could involve unreasonable disclosure of information about the personal affairs of another person [20]. New section 101A and 101B creates an offence of disclosing transferred restricted matter except as permitted. A penalty of 120 penalty units or imprisonment of 12 months or both applies [22].
- A standard regulation making power is inserted to allow the Governor in Council to make regulations of a transitional nature [24]. Substantive transitional provisions are set out in the Schedule inserted by clause [25]. The Schedule sets out the arrangements under which the Office of Police Integrity (OPI) is abolished and IBAC becomes its successor. Confidentiality obligations attach to OPI personnel before the commencement of the IBAC Act are ongoing should they be employed by IBAC. It provides for arrangements in respect of ongoing investigations, complaints, property and the transfer of records and information.

Part 3 – Amendments to the Victorian Inspectorate Act 2011 (VI Act)

- It provides the Victorian Inspectorate (VI) with new functions and the oversight in relation to the investigation of complaints against the Chief Examiner [26-27]. Clause [29] specifies

²⁶ Maxwell v Murphy (1957) 96 CLR, Fisher v Hebburn (1960) 105 CLR 188

when the Inspector can delegate the power to issue a certificate of charge. It is an offence for officers employed by the VI to disclose information obtained in the course of the performance of duties unless authorised. A penalty of up to 5 years imprisonment applies to contraventions [32-33].

- It sets out the circumstances in which complaints can be made to the VI about the conduct of the Chief Examiner or an Examiner [37]. Amended section 33N sets out the powers of the VI in relation to entry, inspection and seizure of documents or things to the premises of the Chief Examiner. The powers must be exercised on reasonable grounds with notification if the Chief Examiner has wilfully failed to give assistance in accordance with section 33(4) [48].
- The police personnel obligation or Chief Examiner to maintain secrecy in his or her service is overridden and does not apply to the disclosure of information under Part 3 of the VI Act [50]. Clause [51] makes amendments to existing section 33T which relates to the admission of compelled statements. (See Charter Report) It is contempt of court for such personnel to engage in obstructive behaviour [52].
- The VI may make private recommendations to the Chief Examiner. The VI may make public recommendations if it considers the Chief Examiner has failed to take appropriate action in relation to the recommendations. The VI may make recommendations to the Chief Commissioner of Police, the Director of Public Prosecutions, IBAC etc [54].
- The VI's annual report must include details of the Chief Commissioner's compliance with the VI Act [59]. The *Freedom of Information Act* 1982 does not apply to a document which discloses information relating to complaints made by the VI or the Chief Examiner [60]. Substantive transitional provisions are inserted by the Schedule by clause [62].
- The Schedule sets out the arrangements under which the Special Investigations Monitor (SIM) is abolished and the VI becomes its successor. It provides for arrangements in respect of ongoing investigations, complaints, property and the transfer of records and information. Current administrative actions under taken by the OPI are investigated by the Ombudsman. Such complaints will be investigated by the VI.

Part 4 – Other Amendments – *Telecommunications (Interception)(State Provisions) Act* 1988, *Crimes (Assumed Identities) Act* 2004, *Crimes (Controlled Operations) Act* 2004, *Firearms Act* 1996, *Fisheries Act* 1995, *Major Crimes (Investigative Powers) Act* 2004, *Sex Offenders Registration Act* 2004, *Surveillances Devices Act* 1999, *Wildlife Act* 1975,

- This Part generally transfers the same existing obligations, functions, records under a number of Acts from the now abolished SIM to the VI. It inserts references where appropriate to the VI and removes references to the SIM. It updates references in various Acts because IBAC will overtake the OPI's functions [71].
- It also sets out the VI's reporting obligations to the Police Minister [71]. The Explanatory memorandum: - '*Existing Division 3 allows the SIM to inspect and report on records relating to telephone interceptions held by the OPI. New Division 3 creates the same regime in relation to the VI and IBAC. VI is required to inspect IBAC's records relating to telephone interceptions at least once between the commencement day.... and the following 30 June and at least twice a year thereafter to ascertain the IBAC's compliance with Part 2B of the TISP Act. New section 15 requires the VI to report to the Minister within 3 months of the end of each financial year on the results of inspections under section 14 and at any time about the results of inspections conducted at the request of the Minister or Attorney-General. Copies of reports must be provided to the IBAC Commissioner and the Attorney-General.*'
- Clause [78] is a standard delegation power which allows the VI to delegate to an inspecting officer any of its functions and powers, other than the power of delegation and the power to report to the Police Minister or the Minister administering the IBAC Act. The VI has the power under the *Major Crimes (Investigative Powers) Act* 2004 to enter premises occupied

by the Chief Examiner or the police force (with notice) if the Chief Examiner has failed to provide required information or the assistance required [118].

- The Secretary to the Director of Primary Industries is required to submit reports to the VI under the *Fisheries Act* 1995 with details of authorised operations. The VI is required to submit annual reports to the Parliament [102-104]. New section 51 of the *Major Crimes (Investigative Powers) Act* 2004 sets out the role of the VI in providing oversight of the Chief Examiner and Examiners [110]. It sets out the VI's responsibility to report to Parliament annually in relation to its performance under the *Major Crimes (Investigative Powers) Act* 2004 [120].
- Clause [124] is a standard power of delegation to enable the VI to delegate functions, duties and powers to any employee of the VI other than the duty to make a report. The IBAC must perform the task of monitoring compliance by the Chief Commissioner of Police with requirements in relation to the keeping of the Register of Sex Offenders under *Sex Offenders Registration Act* 2004 [129, 133-135].
- The VI is required to inspect the records of Victorian law enforcement agencies to determine the extent of each agency's compliance with the *Surveillance Devices Act* 1999 [140]. The Secretary under the *Wildlife Act* 1975 is required to provide reports to the VI with details of authorised operations. The VI is required to table annual reports in Parliament on the work and activities of law enforcement officers [144-5].

Part 5 – Repeal and consequential amendments

- The Bill repeals the *Major Crime (Special Investigations Monitor) Act* 2004. The SIM's functions are transferred to the VI [147]. This Part substitutes references to the OPI with references to IBAC in a number of Acts where appropriate. Clause [148] is a standard delegation provision which specifies duties, functions or power which may be delegated by the Commissioner or the Deputy Commissioner to IBAC officers under the IBAC Act 2012. inserts new section 9GA into the Investigative Functions Act. It requires the IBAC Commissioner to give to the Minister a written report about information obtained by interceptions under warrant and about persons to whom the information was provided within three months of the warrant being issued [150].
- Clause [152] is a standard delegation provision specifying which duties, functions or power the Inspector may delegate to other VI officers. Clause [167] makes amendments which allow persons who are the subject of preventative detention orders under the *Terrorism (Community Protection) Act* 2003 to complain to the Ombudsman or to the IBAC about the application of their order and their treatment. Amendments to the *Witness Protection Act* 1991 give witnesses in the Victorian witness protection program a right to complain to the IBAC about police conduct and to appeal to the IBAC in relation to a decision to terminate protection and assistance [168]. (This was previously performed by the DPI).
- New section 236C requires the Chief Executive of the Victorian Workcover Authority (VWA) to notify IBAC of any matter which appears to involve corrupt conduct of the VWA. It allows the VWA's chief executive to consult with IBAC for the purposes of deciding whether to notification as to corrupt conduct [171]. New section 19A requires the Electoral Commission to notify IBAC of any matter which appears to involve corrupt conduct [173]. The same requirements to notify IBAC of corrupt conduct are imposed on the Chairman of the Environment Protection Authority [175], the Chief Executive Officer of the State Services Authority [178], the Racing Integrity Commissioner [181].

Part 6 – Audit Act 1994, the Victorian Inspectorate Act 2011, the Parliamentary Committees Act 2003 and related amendments

- The Bill amends the definition of the Victorian Auditor-General's office to make provision for the definition of Victorian Inspectorate [184]. It ensures that a requirement to appear before

the Auditor-General is in the form prescribed by the regulations [186]. It inserts new sections 11A to 11G which require the Auditor-General to comply with procedural fairness requirements when conducting audits. A person may seek legal advice from and be represented by a legal practitioner in relation to an audit conducted by the Auditor-General [187].

- It inserts new Part 4A into the *Audit Act* 1994 to provide for notifications and information sharing between integrity bodies [194]. The Auditor-General must not include in a report any information that the Auditor-General considers would prejudice any audit by the Auditor-General, any criminal proceedings or criminal investigation by IBAC or the VI [195].
- It amends section 1 of the *Victorian Inspectorate Act* 2011 to ensure that the VI's purpose includes oversight of the Auditor-General's Office and monitoring the interaction between IBAC and other integrity bodies to ensure compliance with the law [197-199, 201]. The VI may investigate the Auditor-General's office [207]. Section 33 of the *Victorian Inspectorate Act* 2011 empowers the VI to enter and inspect certain premises. The amendments apply these powers of entry, inspection and seizure to IBAC or IBAC personnel [213].
- It also gives the VI the same entry and search powers in relation to the Victorian Auditor-General's Office and VAGO officers. They may enter VAGO offices at any time if the VI believes on reasonable grounds there are documents relevant to an inquiry [213]. Clause [215] relates to the privilege against self-incrimination. (See Charter Report). New sections 35A and 35B set out the various recommendations which the VI may make to the Auditor-General [217]. It also sets out the matters which must be included in the VI's annual report [218] The Bill amends the *Parliamentary Committees Act* 2003 to confer functions on the Public Accounts and Estimates Committee in relation to the VI's oversight of the Victorian Auditor-General's Office and VAGO officers [223, 224].

Part 7 – Ombudsman Act 1973 and related amendments

- The Bill inserts new sections 13AA and 13AB to clarify the functions of the Ombudsman. The principal function is to enquire into or investigate any administrative action taken by or in an authority, other than administrative action that appears to involve corrupt conduct [228] The Explanatory memorandum: - '*Section 13(2) provides that this function includes the power to enquire into or investigate whether any administrative action that he or she may enquire into or investigate under subsection (1) is incompatible with a human right set out in the Charter of Human Rights and Responsibilities Act 2006. This section is equivalent to current section 13(1A).*'
- The Ombudsman may also enquire into any administrative action which appears to involve corrupt conduct on referral from IBAC [228]. New sections 14 to 15B set out how complaints may be made to the Ombudsman [230]. The Ombudsman must notify IBAC the any complaint or referred matter which appears to involve corrupt conduct or police personnel conduct. It must also notify the VI of any complaint or referred matter which appears to involve conduct of the IBAC or IBAC personnel [232].
- Reporting and confidentiality requirements are set out in clauses [243-245]. Oversight of the Ombudsman by the VI and the Accountability Oversight Committee of Parliament are provided for in new section 26G to 26I [246]. New Schedules 1,2 and 3 are inserted to set out specified entities for the purposes of the definitions in the *Ombudsman Act* 1973. IBAC is given the power to monitor and review compliance with the *Melbourne City Link Act* 1995 [259].
- The Accountability and Oversight Committee must report to both Houses of Parliament. Its expanded functions relate to the VI's oversight of Ombudsman officers [260-261]. The *Victorian Inspectorate Act* 2011 is amended to ensure that the VI provides independent oversight of the Ombudsman [263-264]. Clause [278] governs the admission of compelled

statements. (See Charter report). Matters relating to the Ombudsman must be included in the VI's annual report [281].

Charter report

Compelled self-incrimination – Admission of compelled statements in prosecutions relating to agencies overseen by the Victorian Inspectorate

Summary: Clauses 51, 215 and 278 allow the Victorian Inspectorate to compel anyone to truthfully state whether or not he or she is guilty of an offence under a statute governing a body it oversees and then supply that answer to a prosecutor for use as evidence against that person at a later trial for that offence. The Committee will write to the Minister seeking further information as to whether or not provisions in other Australian integrity legislation governing the use of compelled self-incriminatory answers are a less restrictive means reasonably available to achieve the purpose of facilitating the Victorian Inspectorate's oversight functions

The Committee notes that clauses 51, 215 and 278 amend existing s. 33T of the *Victorian Inspectorate Act 2011*, which bars the admission in most legal proceedings of incriminatory answers given at witness summons. The three clauses provide for exceptions to this ban for proceedings for any offence under, respectively, the *Major Crime (Investigative Powers) Act 2004*, the *Audit Act 1994* and the *Ombudsman Act 1973*, which govern bodies the Victorian Inspectorate oversees. **The effect of clauses 51, 215 and 278 is to allow the Victorian Inspectorate to compel anyone to truthfully state whether or not he or she is guilty of such an offence and then supply that answer to a prosecutor for use as evidence against that person at a later trial for that offence.** The Committee considers that clauses 51, 215 and 278 may engage the Charter's right against compelled self-incrimination.²⁷

The Statement of Compatibility remarks:

The objective of providing the Victorian Inspectorate with this power is to facilitate its oversight of the Chief Examiner, Examiners, the Auditor-General and the Ombudsman, all of which have significant powers. The Victorian Inspectorate will have an important role in ensuring the integrity and probity of the Auditor-General's and the Ombudsman's operations. It is therefore appropriate that the Victorian Inspectorate have the necessary powers to fulfil this function.

Provisions such as these are standard in legislation relating to investigatory bodies in Australia and are important to ensure that the Victorian Inspectorate has the tools it needs to undertake full and proper investigations.

The Committee notes that similar provisions in other Australian integrity legislation may only permit the admission of compelled self-incriminatory answers in later prosecutions for perjury, contempt or obstruction of the integrity body or (in some instances) other offences against integrity body's own statute.²⁸ In some jurisdictions where a single body performs both integrity function and Chief Examiner functions, this may permit the use of compelled self-incriminatory answers in prosecutions for offences relating to powers equivalent to those of the Chief Examiner.²⁹ For offences under

²⁷ Charter ss. 24(1) & 25(2)(k).

²⁸ *Law Enforcement Integrity Commissioner Act 2006* (Cth), s. 96(4)(c)-(f); *Crime Commission Act 2012* (NSW), s. 64(2); *Independent Commission Against Corruption Act 1988* (NSW), s. 37(4)(a), (b); *Police Integrity Commission Act 1996* (NSW), s. 28(2) & *Royal Commissions Act 1923* (NSW), s. 17(3)(a), (b); *Crime & Misconduct Act 2001* (Qld), ss. 197(3)(b)(i), (ii), 318(9)(a); *Corruption and Crime Commission Act 2003* (WA), ss. 145(1)(i), (ii), 197(3) & *Royal Commission Act 1968* (WA), s. 20. See also *Independent Commission Against Corruption Bill 2012* (SA), schedule 2, cl 8(5)(d).

²⁹ See the provisions of the *Crime and Misconduct Act 2001* (Qld) and the *Corruption and Crime Commission Act 2003* (WA).

separate legislation of agencies subject to oversight, other Australian integrity bodies generally may compel self-incriminatory answers and adduce evidence obtained as a result of those answers in later prosecutions, but cannot offer the answers themselves in evidence in prosecutions against the people who gave them.³⁰

The Committee will write to the Minister seeking further information as to whether or not the provisions in other Australian integrity legislation governing the use of compelled self-incriminatory answers are a less restrictive means reasonably available to achieve clauses 51, 215 and 278's purpose of facilitating the Victorian Inspectorate's oversight function. Pending the Minister's response, the Committee draws attention to clauses 51, 215 and 278.

The Committee makes no further comment.

³⁰ *Law Enforcement Integrity Commissioner Act 2006* (Cth), s. 96(4)(a), (b); *Crime Commission Act 2012* (NSW), s. 64(2); *Independent Commission Against Corruption Act 1988* (NSW), s. 37(3); *Police Integrity Commission Act 1996* (NSW), s. 28 & *Royal Commissions Act 1923* (NSW), s. 17(2); *Crime & Misconduct Act 2001* (Qld), ss. 197(2), 318(9); *Corruption and Crime Commission Act 2003* (WA), ss. 145(1)(a), 197(3) & *Royal Commission Act 1968* (WA), s. 20. Compare *Integrity Act 2009* (Tas), s. 92. See also *Independent Commission Against Corruption Bill 2012* (SA), schedule 2, cl 8(5)(a).

Justice Legislation Amendment (Family Violence and Other Matters) Bill 2012

| | |
|--------------------------|-----------------------|
| Introduced | 14 November 2012 |
| Second Reading Speech | 15 November 2012 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Robert Clark MLA |
| Portfolio responsibility | Attorney-General |

Purpose

The purposes of the Bill are: -

- To insert new indictable offences in relation to contraventions of family violence safety notices and family violence intervention order;
- To extend the operation of family violence safety notices;
- To expand the number of court venues which may make counselling orders;
- To amend the *Crimes Act 1958* create an offence relating to police pursuits;
- To amend the *Crimes (Assumed Identities) Act 2004* to provide a clear legislative basis for Victoria Police members to acquire and use assumed identities for the purpose of Victoria's witness protection program
- To amend the *Coroners Act 2008* and the *Human Tissue Act 1982* to facilitate the timely provision of the details of a deceased's next of kin to the Donor Tissue Bank of Victoria;
- To amend the *Victorian Civil and Administrative Tribunal Act 1998* in relation to oaths and affirmations and the term of office of Tribunal members.

Part 2 – Amendment of the *Family Violence Protection Act 2008*

- It extends the period of protection offered by a family violence safety notice (FVSN) before it is required to return for mention in the Magistrates' Court from 72 to 120 hours [4]. It makes it an offence to contravene a FVSN or a family violence intervention order (FVIO) if the accused intends to cause harm or knows that his or her conduct will probably cause physical or mental harm or apprehension or fear in the person protected by the FVSN. The penalty for a contravention of the Act is level 6 imprisonment or 5 years maximum and or a level 6 fine (600 penalty units) [6-9]. It creates an offence of persistent contravention of FSVNs and FVIOs [11]. The amendments provide a mechanism by which venues of the Magistrates' Court other than the Family violence Court Division are able to make counselling orders [13-15].

Part 3 – Amendment of the *Crimes Act 1958*, the *Crimes (Assumed Identities) Act 2004*,

- It inserts new section 319A into the *Crimes Act 1958* to provide for an indictable offence for person who drives a vehicle dangerously or negligently if the person knows or ought reasonably to know that they have been given a direction to stop the vehicle by a police member and the police member is in pursuit of the vehicle. The relevant penalty is 3 years imprisonment [32]. It amends the purposes of the *Crimes (Assumed Identities) Act 2004* so as to give express authority of the safe and effective exercise of functions in administering the Victorian witness protection program and this may be achieved by the lawful acquisition and use of assumed identities [34-38].

Part 5 – Amendment of the Coroners Act 2008, the Human Tissue Act 1982, the Victorian Civil and Administrative Tribunal Act 1988

- It requires the principal registrar of the Coroners Court in respect of a death reported to the Coroner to provide without delay to the Victorian Institute of Forensic Medicine a copy of any initial police report received by the Coroner and the name and details of the next of kin of the deceased within 24 hours of the death being reported to the Coroner [39]. The Explanatory memorandum extract: - *'This is because VIFM through the Donor Tissue Bank of Victoria must begin the process of tissue donation within 24 hours if the tissue is to be used for transplant purposes.'* It provides that the Deputy President of the Victorian Civil and Administrative Tribunal (VCAT) may be appointed on a part-time basis [40]. It increases the standard term of appointment for non-judicial members of VCAT from 5 years to 7 years subject to a statutory limit of age 70, other than for sessional members. It creates a requirement for a non-judicial member of VCAT to take an oath or affirmation of office [44].

The Committee makes no further comment.

Liquor Control Reform Amendment Bill 2012

| | |
|---------------------------------|-------------------------------|
| Introduced | 13 November 2012 |
| Second Reading Speech | 14 November 2012 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Michael O'Brien MLA |
| Portfolio responsibility | Minister for Consumer Affairs |

Purpose

The Bill amends the *Liquor Control Reform Act 1998*.

- It gives a member of the police force, a protective services officer on duty at a designated place of gambling and a liquor inspector the power to tip out liquor from a minor after it has been seized. Liquor that has been seized and tipped out is taken to have been forfeited to the Crown. No compensation is payable by the Crown in respect of liquor tipped out or disposed of in accordance with the provision [3]. It contains a standard delegation provision which allows the Commission to delegate its powers under Part 8B to a commissioner [3].

The Committee makes no further comment.

Protected Disclosure Bill 2012

| | |
|---------------------------------|---|
| Introduced | 13 November 2012 |
| Second Reading Speech | 14 November 2012 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Andrew McIntosh MLA |
| Portfolio responsibility | Minister for responsible for the establishment of an anti-corruption commission |

Purpose

The purposes of the Bill are:-

- To repeal the *Whistleblowers Protection Act 2001*;
- To encourage and facilitate disclosures of improper conduct by public officers, public bodies and other persons
- To encourage and facilitate disclosures of detrimental action taken in reprisal for a person making a disclosure under the Act;
- To provide protection for persons who make disclosures;
- To provide protection for persons who may suffer detrimental action in reprisal for those disclosures;
- To provide for the confidentiality of the content of those disclosures and the identity of persons who make those disclosures.

Part 1 – Preliminary

Section 17(a)(vi) legislative power

- The commencement provision states '*The Act comes into operation on a day or days to be proclaimed*' [2]. There is no default commencement date or explanation in the Explanatory Memorandum or Second Reading Speech. It contains the various definitions for the purposes of the Act [2-8].

The Committee will write to the Minister for further information and explanation as to why there is no default commencement provision. The Committee draws the provision to the attention of the Parliament.

Part 2 – Disclosures

- It provides for the disclosure of improper conduct or detrimental action. It is defined as information which shows or tends to show that a person, public officer or public body has engaged or is engaged in improper conduct. It includes information which the person believes on reasonable grounds shows or tends to show the person has engaged in improper conduct [9]. Disclosures must be made to the Independent Broad-based Anti-Corruption Commission (IBAC), the Victorian Inspectorate (VI) or the Ombudsman [14-18]. Disclosures relating to members of Parliament or Ministers of the Crown must be made either to the Speaker of the Legislative Assembly or the President of the Legislative Council [19].

Parts 3 and 4 – Notification and assessments

- Notification must be given to IBAC of disclosures made to other entities and the Chief Commissioner of Police [21]. If a disclosure is made to a Presiding Officer under section 19, the Presiding Officer may refer the disclosure to the IBAC [21]. The IBAC assesses whether a disclosure is a protected disclosure complaint [26]. If a disclosure is made to the VI which relates to the IBAC or an IBAC officer, it must assess whether the disclosure is a protected disclosure [31].

Part 5 – Notification of related disclosures made in the course of investigation

- Clause [5] defines ‘related disclosure’ made in the course of an investigation. A ‘related disclosure’ made by the person who made the protected disclosure complaint is taken to be part of the protected disclosure complaint [35]. It sets out the procedures for the handling of related disclosures that are made by a person other than the person who made the protected disclosure complaint [36]. Advice must be provided to a person who makes a related disclosure [37].

Part 6 – Protection of person making protected disclosure

- It sets out the protections for persons making protected disclosures whether or not there has been notification to the IBAC and whether or not the IBAC and the VI has determined that the disclosure is ‘protected disclosure complaint’. This includes immunity from liability and defamation [38-40]. It defines ‘detrimental action’ in reprisal for protected disclosure [43]. The penalty for taking detrimental action against another person in reprisal for a protected disclosure is 240 penalty units or 2 years imprisonment or both. A court can also order damages. Applications may be made to the Supreme Court for an injunction [45-49].

Part 7 – Confidentiality of disclosures

- Penalties are imposed on the disclosure of the content or information about an assessable disclosure: 120 penalty units or 12 months imprisonment or both for a natural person and 600 penalty units for a body corporate [52]. Clause [54] sets out the authorised circumstances under which information may be disclosed.

Part 8 – Functions and Powers of the IBAC and the VI – Part 9 -Guidelines

- The functions and powers of the IBAC and the VI are set out. This includes the assessment of disclosures, the provision of advice and the issuing of guidelines [55-57]. The IBAC and the VI must establish procedures consistent with the Act for the handling of disclosures [58-59]. Review of the procedures established is provided for in relation to the IBAC, the Ombudsman and the VI [60-62]. The Presiding Officer may establish procedures to facilitate the making of disclosures, the handling of disclosures. The procedures must be readily available to the public and the members of Parliament [65].

Part 10 – Reports – Part 11 – General – Part 12 – Transitional provisions

- The IBAC, the VI and other investigating entities must provide annual reports under Part 7 of the *Financial Management Act 1994* about the operation of the Act including the number and types of assessable disclosures. The reports must not include information that is likely to lead to the identification of a person who has made an assessable disclosure [67-71]. Part 11 sets out the various offences and penalties in relation to false disclosure, the disclosure of advice [72-75]. Standard immunity provisions for IBAC and VI officers [77].

- An exemption from the *Freedom of Information Act 1982* applies to documents which disclose information that relates to a protected disclosure, an assessable disclosure or is likely to lead to the identification of a person who has made a protected disclosure. A standard regulation making provision is inserted [78-79]. Part 12 contains transitional provisions which preserve current disclosures under the *Whistleblowers Protection Act 2001* and refers them to the Ombudsman, the VI or IBAC.

The Committee makes no further comment.

**Committee Room
26 November 2012**

Appendix 1

Index of Acts and Bills in 2012

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| Alcoa (Portland Aluminium Smelter) (Amendment) Act Amendment Bill 2012 | 17 |
| Appropriation (2012/2013) Bill 2012 | 8 |
| Appropriation (Parliament 2012/2013) Bill 2012 | 8 |
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| Australian Consumer Law and Fair Trading Bill 2011 | 1, 4 |
| Building Amendment Bill 2012 | 2 |
| Carers Recognition Bill 2012 | 2 |
| City of Melbourne Amendment (Enrolment) Act 2012 | 10 |
| City of Melbourne Amendment (Environmental Upgrade Agreement) Bill 2012 | 2 |
| Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2012 | 15 |
| Civil Procedure Amendment Bill 2012 | 11 |
| Climate Change and Environment Protection Amendment Bill 2012 | 15 |
| Community Based Sentences (Transfer) Bill 2012 | 10 |
| Commission for Children and Young People Bill 2012 | 17 |
| Control of Weapons and Firearms Acts Amendment Bill 2011 | 1, 4 |
| Courts and Sentencing Legislation Amendment Bill 2012 | 7 |
| Criminal Organisations Control Bill 2012 | 17 |
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| Land (Revocation of Reservations) Bill 2012 | 6 |
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Appendix 2

Committee Comments classified by Terms of Reference

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

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Section 17(a)

(i) Rights or freedoms

Road Safety and Sentencing Acts Amendment Act 2012 12

(vi) inappropriately delegates legislative power

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Primary Industry and Food Legislation Amendment Bill 12
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Section 17(b)

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

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Appendix 3

Ministerial Correspondence 2012

Table of correspondence between the Committee and Ministers during 2012

| Bill Title | Minister/ Member | Date of Committee Letter / Minister's Response | Alert Digest No. Issue raised / Response Published |
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| Associations Incorporation Reform Bill 2011 | Minister for Consumer Affairs | 07-02-12 24-02-12 | 1 of 2012 4 of 2012 |
| Australian Consumer Law and Fair Trading Bill 2011 | Minister for Consumer Affairs | 07-02-12 24-02-12 | 1 of 2012 4 of 2012 |
| Control of Weapons and Firearms Acts Amendment Bill 2011 | Minister for Police and Emergency Services | 07-02-12 29-02-12 | 1 of 2012 4 of 2012 |
| Water Legislation Amendment (Water Infrastructure Charges) Bill 2011 | Minister for Water | 28-02-12 14-03-12 | 12 of 2011 5 of 2012 |
| Disability Amendment Bill 2012 | Minister for Community Services | 13-03-12 26-03-12 | 4 of 2012 5 of 2012 |
| Water Amendment (Governance and Other Reforms) Bill 2012 | Minister for Water | 13-03-12 27-03-12 | 4 of 2012 5 of 2012 |
| Victorian Inspectorate Amendment Bill 2012 | Minister responsible for the establishment of an anti-corruption commission | 27-03-12 16-04-12 | 5 of 2012 6 of 2012 |
| Independent Broad-based Anti-corruption Commission Amendment (Examinations) Bill 2012 | Minister responsible for the establishment of an anti-corruption commission | 01-05-12 21-05-12 | 7 of 2012 8 of 2012 |
| National Energy Retail Law (Victoria) Bill 2012 | Minister for Energy and Resources | 17-04-12 01-05-12 | 6 of 2012 8 of 2012 |
| Working with Children Amendment Bill 2012 | Attorney-General | 05-06-12 16-06-12 | 9 of 2012 10 of 2012 |
| Health (Commonwealth State Funding Arrangements) Bill 2012 | Minister for Health | 05-06-12 19-06-12 | 9 of 2012 11 of 2012 |
| Marriage Equality Bill 2012 | Ms Sue Pennicuik MLC | 19-06-12 10-08-12 | 10 of 2012 11 of 2012 |
| Criminal Procedure Amendment Bill 2012 | Attorney-General | 14.08.12 23.08.12 | 11 of 2012 12 of 2012 |
| Primary Industries and Food Legislation Amendment Bill 2012 | Minister for Agriculture and Food Security | 28.08.12 13.09.12 | 12 of 2012 14 of 2012 |
| Road Safety and Sentencing Acts Amendment Act 2012 | Attorney-General | 28.08.12 20.09.12 | 12 of 2012 14 of 2012 |
| Local Government Legislation Amendment (Miscellaneous) Bill 2012 | Minister for Local Government | 14.08.12 04.10.12 | 11 of 2012 14 of 2012 |

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| Transport Legislation Amendment (Marine Drug and Alcohol Standards Modernisation and Other Matters) Bill 2012 | Minister for Ports | 09.10.12 18.10.12 | 14 of 2012 15 of 2012 |
| Drugs, Poisons and Controlled Substances Amendment Bill 2012 | Minister for Police and Emergency Services | 11.09.12 25.10.12 | 13 of 2012 16 of 2012 |
| Road Management Amendment (Peninsula Link) Bill 2012 | Minister for Roads | 23.10.12 31.10.12 | 15 of 2012 16 of 2012 |
| Offshore Petroleum and Greenhouse Gas Storage Amendment (NOPSEMA) Bill 2012 | Minister for Energy and Resources | 23.10.12 08.11.12 | 15 of 2012 16 of 2012 |

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| Bill Title | Minister/ Member | Date of Committee Letter / Minister's Response | Alert Digest No. Issue raised / Response Published |
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