

No. 1 of 2015

Tuesday, 24 February 2015
on the following Bills

Back to Work Bill 2014

Cemeteries and Crematoria Amendment
(Veterans Reform) Bill 2015

Education and Training Reform
Amendment (Funding of Non-
Government Schools) Bill 2014

Interpretation of Legislation Amendment
Bill 2015

Parliamentary Committees and Inquiries
Acts Amendment Bill 2015

Statute Law Repeals Bill 2014

Statute Law Revision Bill 2014

Summary Offences Amendment
(Move-on Laws) Bill 2015

Wrongs Amendment (Asbestos Related
Claims) Bill 2014

Table of Contents

	Page Nos.
Table of Contents	i
Useful information	ii
Alert Digest No. 1 of 2015	1
Back to Work Bill 2014	1
Cemeteries and Crematoria Amendment (Veterans Reform) Bill 2015	5
Education and Training Reform Amendment (Funding of Non-Government Schools) Bill 2014	6
Interpretation of Legislation Amendment Bill 2015	7
Parliamentary Committees and Inquiries Acts Amendment Bill 2015	8
Statute Law Repeals Bill 2014	9
Statute Law Revision Bill 2014	10
Summary Offences Amendment (Move-on Laws) Bill 2015	13
Wrongs Amendment (Asbestos Related Claims) Bill 2014	14
Appendix 1 Index of Bills in 2014-2015	17
Appendix 2 Committee Comments classified by Terms of Reference	19
Appendix 3 Ministerial Correspondence 2015	21
Appendix 4 Statutory Rules and Legislative Instruments considered	23

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Useful information

Role of the Committee

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

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

Interpretive use of Parliamentary Committee reports

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

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

When may human rights be limited

Section 7 of the *Charter* provides –

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

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

Glossary and Symbols

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

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

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

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

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

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

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

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

'VCAT' refers to the Victorian Civil and Administrative Tribunal

[] denotes clause numbers in a Bill

Alert Digest No. 1 of 2015

Back to Work Bill 2014

Introduced	23 December 2014
Second Reading Speech	11 February 2015
House	Legislative Assembly
Member introducing Bill	Hon. Tim Pallas MLA
Portfolio responsibility	Treasurer

Purpose

The object of this Bill is to establish a Back to Work Scheme for the purpose of providing relief to employers in respect of the costs associated with hiring certain unemployed or retrenched workers and to make consequential amendments to the *Taxation Administration Act 1997* and for other purposes.

Content

Enforcement provisions – Part 5 [27 to 47]

Part 5 of the Bill provides for enforcement powers and authorised investigations, including –

1. Appointment of authorised officers under the *Taxation Administration Act 1997*. [27, 28]
Powers of entry by either consent of the occupier or by judicial warrant issued in accordance with the form and rules prescribed by the *Magistrates' Court Act 1989*.
Entry under search warrant may encompass the search of residential premises. [31, 32]
2. Powers of investigation including to attend to give evidence orally and under oath or by statutory declaration. Powers to require the production of documents. [30]
3. Provides a modified privilege against self-incrimination. [35]
4. Creates an offence to obstruct an authorised officer. [36]

Rights or freedoms – Presumption of innocence – Burden of proof – Reverse legal onus – Common law rule that the prosecution has burden to prove elements of offence – Power to impose penalty

Part 3 of the Act establishes a scheme for Back to Work payments to employers. The Commissioner for State Revenue (the Commissioner) is to decide the merits of a claim based on the eligibility criteria determined by the Minister and to be published in the Government Gazette. [5 to 10]

An employer may make an objection to a decision on a claim and to a decision to require the claimant to pay a penalty imposed under section 37 (see below report) (power to require repayment and impose penalty). [11 to 13] The Commissioner's determination of the objection may be reviewed by VCAT (the Tribunal). [14 to 19] The Bill provides that on a review the objector bears the burden of proof before the Tribunal. [17]

The Committee notes that at common law the legal burden of proof rests with the prosecution. Further, the prosecution's burden of proof (proof beyond reasonable doubt) is fundamental to the presumption of innocence.

It appears to the Committee that on an objection to a decision¹ under section 37 (penalty to be paid by claimant) the claimant may bear the legal burden of proof to avoid the penalty. It appears that no reasoning or justification has been provided justifying this reverse legal burden.

The Committee further notes that the statement of compatibility states:

There are no provisions in this Bill that reverse the onus of proof.

The Committee further reports on this matter in the Charter report below.

Rights or freedoms – Common law special plea of previous acquittal or previous conviction – Double jeopardy² – Punished more than once for the same offence

The Committee notes the common law special pleas or rule against double jeopardy. That is that a person not be placed at risk of a second conviction for the same offence arising out of substantially the same facts. The second related rule against double jeopardy is the rule that a person previously acquitted should not be tried for the same offence based on the same facts.

The Committee considers that it is not clear whether a person may be prosecuted under more than one section of the Act, or indeed another Act. The range of penalty offences under the Bill are; section 37(2) (power to require repayment and impose penalty); section 48 (false and misleading information in connection with claims); section 22 (inclusion of false or misleading information in records). There is also the offence under section 82 of the *Crimes Act 1958* (obtaining financial advantage by deception).

The Committee further reports on this matter in the Charter report below.

Rights or freedoms – Privilege against self-incrimination – Information, answers or document must be provided for offence against the Act but are not admissible in any proceedings against the person for offence under the Act

Section 35 in Part 5 provides for a limited form of protection against self-incrimination. The section provides that a person may refuse to give information, produce documents or answer questions on the ground that it would incriminate the person in respect of an offence other than an offence under the Act.

Information given, documents produced, or questions answered by a person are not admissible in evidence in any proceedings against the person in respect of an offence against the Act. [35]

In the context of a voluntary incentive scheme providing benefit to employers, the privilege against self-incrimination provision appears appropriate.

¹ Back to Work Bill 2014, clause 11(1)(b)

² The Common law rule against a person being placed in double jeopardy, that is, placing an accused person in peril of being convicted or subject to penalty for the same offence or substantially the same offence more than once.

Charter report

Property – Presumption of innocence – Double jeopardy – Practice Note – Commissioner may impose a penalty if payment made as a result of claimant’s dishonesty – Claimant must prove to VCAT that the penalty should not have been imposed

Summary: Clause 37(2) provides that, if a Back to Work payment is paid as a result of a claimant’s dishonesty, the Commissioner may impose a penalty on the claimant. Clause 17 requires the claimant to prove to VCAT that the Commissioner should not have imposed the penalty. The Committee will write to the Treasurer seeking further information as to whether or not clause 37(2) imposes a criminal penalty for the purposes of the Charter’s rights in criminal proceedings and, if so, whether or not clauses 17 and 37(2) are compatible with the Charter’s rights to property, to be presumed innocent and against double jeopardy.

The Committee notes that clause 37(2) provides that, if a Back to Work payment is paid as a result of a claimant’s dishonesty, the Commissioner may impose a penalty on the claimant. The penalty may be up to the amount of the Back to Work payment that the Commissioner has separately required the claimant to repay. The penalty is a debt due to the State and can be recovered from third parties who hold money for or owe money to the claimant.

The Committee observes that clause 37(2) is identical to existing provisions in the first home owner grant scheme and similar to existing provisions in Victoria’s general taxation administration law.³ Like those schemes, clauses 11(1)(b) and 14 provide for the claimant to object to the imposition of the penalty and to have the objection determined by the Commissioner and reviewed by VCAT.

The Statement of Compatibility remarks:

Section 20 of the Charter protects against the deprivation of property other than in accordance with law....

While the Bill does not operate to deprive any person of their legal property, the Bill makes provision for the Commissioner to require a repayment, to impose penalty and interest and to recover these amounts from claimants of amounts that have been erroneously or dishonestly claimed....

The repayment represents an amount to which the claimant was not entitled. In taking action to obtain repayment of this amount, the Commissioner is not depriving a person of their rightful property, but recovering an amount of money to which they were not entitled.

The Committee notes that the penalty imposed under clause 37(2) is additional to any amounts the Commissioner requires the claimant to repay for Back to Work payments paid in error or because the Commissioner reversed an earlier decision to pay, as well as for any penalties for non-repayment or interest imposed on such debts.⁴ The Committee therefore observes that the penalty imposed under clause 37(2) deprives the claimant of his or her legal property, rather than money he or she was wrongly paid.

The Committee also notes that the Statement of Compatibility does not address whether or not a penalty imposed by the Commissioner under clause 37(2) is a criminal penalty for the purposes of the Charter’s rights in criminal proceedings.

The Committee’s *Practice Note of 26 May 2014* states:

The Statement of Compatibility for provisions that may impose penalties, fines or other burdens on a person who is found to have breached a rule or standard should state whether

³ *First Home Owner Grant Act 2000*, ss. 48(2), 49(4); *Taxation Administration Act 1997*, ss. 40(2), 54.

⁴ Clauses 37(1), (3) and (5).

or not it is a criminal penalty for the purposes of the Charter. The Committee notes that such a penalty may be a criminal penalty for the purposes of the Charter, even if Victorian law characterises it otherwise, e.g. as a civil, disciplinary or regulatory penalty. The explanatory material may address whether or not the penalty is equivalent in effect to a criminal penalty having regard to its nature or severity. Where a penalty is a criminal penalty for the purposes of the Charter, the explanatory material may address whether or not the legislation that imposes it is compatible with the criminal process rights set out in Charter ss. 21(5) and 22-27

The Committee observes that English and European courts have held that similar provisions allowing government taxation agencies to impose penalties for dishonesty under England's taxation law are criminal penalties for the purposes of criminal process rights in the European Convention on the Protection of Human Rights and Fundamental Freedoms.⁵

The Committee notes that, if clause 37(2) imposes a criminal penalty, then the Bill may engage the following Charter rights:

- the right of a charged person 'to be presumed innocent until proved guilty according to law'⁶: Clause 17 requires the claimant to prove to VCAT that the Commissioner should not have imposed the penalty under clause 37(2).⁷
- every person's right not to 'be tried or punished more than once for an offence'⁸: The Bill does not prevent a person from being both required by the Commissioner to pay a penalty for dishonestly obtaining a Back to Work Payment under clause 37(2) and being prosecuted and punished for making a false claim or dishonestly obtaining a financial advantage in respect of the same payment.⁹

The Committee will write to the Treasurer seeking further information as to whether or not clause 37(2) imposes a criminal penalty for the purposes of the Charter's rights in criminal proceedings and, if so, whether or not clauses 17 and 37(2) are compatible with the Charter's rights to property, to be presumed innocent and against double jeopardy.

Pending the Treasurer's response the Committee makes no further comment

⁵ *Georgiou v UK* (European Court of Human Rights (3rd section), 16 May 2000), pp. 6-7; *King v Walden (HM Inspector of Taxes)* [2001] EWHC Ch 419, [55]-[61]; *Han & Ors v Customs & Excise* [2001] EWCA Civ 1048, [65]-[79], [86].

⁶ Charter s. 25(1).

⁷ By contrast, see *First Home and Housing Construction Grants Act 2000* (SA), Part 2, Division 6; *First Home Owner Grant Act 2000* (Tas), Part 2, Division 6.

⁸ Charter s. 26.

⁹ By contrast, see *Building Boost Grant Act 2011* (Qld), s. 92.

Cemeteries and Crematoria Amendment (Veterans Reform) Bill 2015

Introduced	10 February 2015
Second Reading Speech	11 February 2015
House	Legislative Assembly
Member introducing Bill	Hon. Jill Hennessy MLA
Portfolio responsibility	Minister for Health

Purpose

The Bill amends the *Cemeteries and Crematoria Act 2003* to provide cemetery trusts with new powers to manage the cremated human remains of deceased veterans and their family members.

Note from the statement of compatibility:

Where a veteran's cremated remains are interred at a cemetery pursuant to a limited (25 year) tenure right of interment, the cemetery trust responsible for managing that cemetery will be empowered, upon the expiry of 25 years, to convert the right of interment to a perpetual right and either leave the veteran's cremated remains undisturbed in perpetuity or reinter the remains at a location suitable for perpetual interment. Where a veteran's cremated remains are interred together with or in the vicinity of members of their family, the cemetery trust may also reinter the remains of the veteran's family members at a location which is suitable for perpetual interment.

Charter report

The Cemeteries and Crematoria Amendment (Veterans Reform) Bill 2015 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Education and Training Reform Amendment (Funding of Non-Government Schools) Bill 2014

Introduced	23 December 2014
Second Reading Speech	11 February 2015
House	Legislative Assembly
Member introducing Bill	Hon. James Merlino MLA
Portfolio responsibility	Minister for Education

Purpose

The Bill amends *Education and Training Reform Act 2006* (the Act) to:

- provide a transparent approach to funding across the education system, with the primary goal of meeting student needs. The Bill secures recurrent funding for non-Government schools.
- establish a School Policy and Funding Advisory Council and provides for its membership and functions [4]
- insert Schedule 10 in the Act to prescribe the schools excluded from calculation of Government school recurrent funding. [5]

Charter report

The Education and Training Reform Amendment (Funding of Non-Government Schools) Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Interpretation of Legislation Amendment Bill 2015

Introduced	10 February 2015
Second Reading Speech	11 February 2015
House	Legislative Assembly
Member introducing Bill	Hon. Martin Pakula MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill amends the *Interpretation of Legislation Act 1984* (the Act) to:

- clarify how an Act may be cited by its title appearing before the enacting words and in respect to references to Parts in Acts that also contain Chapters [4, 6]
- include additional powers for the Chief Parliamentary Counsel to authorise limited stylistic changes to legislation and statutory rules [10]
- insert two new definitions for use in Victorian legislation and subordinate instruments for police officer and registered medical practitioner [7, 8]

Content

Interpretative provisions - The Bill will insert three new interpretive provisions in the Act. The Committee notes two of these provisions engaging the Committees terms of reference. [5, 9]

Parliamentary Committees Act 2003, section 17(a)(i) – rights or freedoms

Section 14 of the Act provides that the repeal, cessation, lapsing, expiry of an Act or provision does not, unless the contrary intention expressly appears, revive or affect any of the matters prescribed by the section. The Bill inserts two new paragraphs in section 14(2) of the Act, they are paragraphs (ea) and (g). These paragraphs respectively clarify that if an Act or provision related to an indemnity or immunity ceases operation for any reason, such cessation does not affect the indemnity or immunity, or any proceeding or remedy in respect of it. [5]

The explanatory memorandum states:

This will ensure that outdated provisions or Acts may be repealed or expire or lapse without affecting rights and protections. The Interpretation of Legislation Act already deals with other types of provisions that cease operation; this amendment will clarify the position in respect of indemnities and immunities. [5]

Parliamentary Committees Act 2003, section 17(a)(ii) – administrative powers

The Bill provides that, a power to delegate in an Act or subordinate instrument does not include a power to delegate the power of delegation. At present this constraint on sub-delegation is ordinarily included in the individual delegation provisions of Acts. [9]

Charter report

The Interpretation of Legislation Amendment Bill 2015 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Parliamentary Committees and Inquiries Acts Amendment Bill 2015

Introduced	10 February 2015
Second Reading Speech	11 February 2015
House	Legislative Assembly
Member introducing Bill	Hon. James Merlino MLA
Portfolio responsibility	Premier

Purpose

The Bill amends the *Parliamentary Committees Act 2003* to merge six existing Joint Investigatory Committees to form three new committees.

The new committees are the:

- Economic, Education, Jobs and Skills Committee
- Environment, Natural Resources and Regional Development Committee
- Law Reform, Road and Community Safety Committee

The Bill also amends the *Inquiries Act 2014* to facilitate the continued operation of Royal Commissions and instruments of appointment of Board of Inquiry that were established before this Act came into operation. The Bill further updates references, definitions and provides for the payment of witness expenses where a Formal Review's establishing instrument authorises such payments. [12 to 16]

Charter report

The Parliamentary Committees and Inquiries Acts Amendment Bill 2015 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Statute Law Repeals Bill 2014

Introduced	23 December 2014
Second Reading Speech	10 February 2015
House	Legislative Assembly
Minister introducing Bill	Hon. Jacinta Allan MLA
Portfolio responsibility	Premier

Purpose

This Bill repeals four spent Appropriation Acts.

The explanatory memorandum provides that these Appropriation Acts are no longer required because their operative provisions have taken effect and are spent. Section 14 of the *Interpretation of Legislation Act 1984* provides that the repeal of these Acts will not affect the previous operation of, or anything done under these Acts.

Note: The Committee was referred this Bill for further consideration, inquiry and report on 11 February 2015. The Committee received evidence from the First Deputy Chief Parliamentary Counsel, Mr John Butera on 12 February 2015 and received a certificate from the Office of Chief Parliamentary Counsel. The evidence and certificate declared that the Acts to be repealed were appropriate to be included in a statute law repeals Bill. The Committee tabled its report on this Bill in the Parliament on 12 February 2015.

Charter report

The Statute Law Repeals Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Statute Law Revision Bill 2014

Introduced	23 December 2014
Second Reading Speech	11 February 2015
House	Legislative Council
Minister introducing Bill	Hon. Gavin Jennings MLC
Portfolio responsibility	Premier

Purpose

The Bill makes statute law revision amendments to a number of Acts. The proposed amendments are listed as items in the Schedule. The items propose amendments to sixty-eight (68) Acts. Included in the items are six (6) proposed retrospective amendments. These are also dealt with by the Committee in this report.

Note: The Bill has also been referred by the Legislative Council to the Committee on 12 February 2015, for consideration, inquiry and report. The Committee intends to report on the Bill at the earliest opportunity.

Content

The Bill includes six items that propose to amend Acts with retrospective effect. In each case retrospective operation seeks to remove any doubt that the amendments took effect as intended from the commencement of the section.

These are:

Item 9 – Children, Youth and Families Act 2005 (No. 96/2005) (the Act)

The item substitutes section 17(4) of the Act which was amended by section 5(2) of the *Children, Youth and Families Amendment (Security Measures) Act 2014* (the amending Act) (to be repealed on 1 July 2015). This item corrects an incorrect instruction in section 5(2) of the amending Act to substitute the whole of section 17(4). The purpose of the amendment made by section 5(2) of the amending Act to section 17(4) of the Act was to substitute some of the words in section 17(4). The instruction should have said ‘In’ section 17(4) rather than ‘For’ section 17(4).

The amendment is made retrospective to 1 July 2014, which is the day section 5(2) of the amending Act came into operation, to remove any doubt that the amendment took effect as intended.

Item 16 – Dangerous Goods Act 1985 (No. 10189) (the Act)

The item substitutes the definition of Authority in section 3(1) of the Act which was amended by item 11(1) of Schedule 9 to the *Workplace Injury Rehabilitation and Compensation Act 2013* (the amending Act). Schedule 9 of the amending Act is to be repealed on 1 July 2015. Item 11(1) of Schedule 9 incorrectly omitted the words ‘section 18 of’ which were part of the words to be deleted from the phrase to be substituted by the amending Act.

The amendment is made retrospective to 1 July 2014, the day on which item 11(1) of Schedule 9 came into operation, to remove any doubt that the amendment took effect as intended.

Item 19 – Environment Protection and Sustainability Victoria Amendment Act 2014 (No. 20/2014) (the amending Act)

The item amends section 30 of the amending Act to repeal section 71(1)(cb) and (cc) of the *Environment Protection Act 1970* (the Act). Section 30 of the amending Act had incorrectly referred to section 71(cb) and (cc) of the Act.

The item has been made retrospective to 29 June 2014, the day before section 30 of the amending Act came into operation. The amendment has been made to remove any doubt that section 30 of the amending Act took effect as intended from its commencement day.

Item 23 – Greenhouse Gas Geological Sequestration Act 2008 (No. 61/2008) (the Act)

The item amends section 311 (a transitional provision) which amends section 264(1) and (2) of the Act (on the fourth anniversary of section 264 coming into operation) to replace the reference to ‘the Minister’ with the word ‘Minister’. The instruction in section 311 for amending section 264(1) was incorrect. The amendment made by this item makes the amendment to section 264(1) effective and does not affect the operation of the amendment to section 264(2).

The amendment is made retrospective to 30 November 2013, the day before section 311 came into operation, to remove any doubt that the amendment to section 264(1) took effect as intended.

Item 62 – Victoria Police Amendment (Consequential and Other Matters) Act 2014 (No. 37/2014)

Item 62.1 amends item 46.3 of the Schedule to substitute the incorrect reference to section 92(1)(a) of the *Domestic Animals Act 1994* with section 92(a) of that Act.

The item is made retrospective to 30 June 2014, the day before item 46.3 came into operation, to remove any doubt that the amendment took effect as intended.

Item 62.2 amends item 54.4 of the Schedule that commenced on 1 July 2014 and which incorrectly refers to the *Police Regulation Act 2013* rather than to the *Police Regulation Act 1958* in section 20E(6)(b) of the *Emergency Services Superannuation Act 1986*.

The amendment is made retrospective to 30 June 2014, the day before item 54.4 came into operation to remove any doubt that the amendment took effect as intended.

Item 62.3 amends item 85.1(h) of the Schedule that commenced on 1 July 2014 and which incorrectly refers to the substitution of words in paragraph (b) rather than paragraph (a) of the definition of report of the Chief Commissioner of Police in section 3(1) of the *Independent Broad-based Anti-corruption Commission Act 2011*.

The amendment is made retrospective to 30 June 2014, the day before item 85.1(h) came into operation to remove any doubt that the amendment took effect as intended.

Item 62.4 amends item 184.20(b) of the Schedule that commenced on 1 July 2014 and which incorrectly includes the word “a” in the words to be substituted and the substituted words in section 62(2) and (3) of the *Wildlife Act 1975*. In both cases the word “a” should be omitted. The amendment made by this item makes the amendment to section 62(2) and (3) effective and does not affect the operation of the amendment made to section 62(5).

The amendment is made retrospective to 30 June 2014, the day before item 184.20(b) came into operation to remove any doubt that the amendment took effect as intended.

Item 66 – Victorian Managed Insurance Authority Act 1996 (No. 11/1996) (‘the Act’)

The item substitutes section 24(2) of the Act which was amended by item 34 of Schedule 9 to the *Workplace Injury Rehabilitation and Compensation Act 2013* ('the 2013 Act'). Schedule 9 of the 2013 Act will be repealed on 1 July 2015.

Item 34 of Schedule 9 of the 2013 Act referred to the definition of Victorian WorkCover Authority in section 24(2) of the Act in inserting a reference to the 2013 Act in the Act. However, section 24(2) of the Act does not contain a definition of Victorian WorkCover Authority.

The amendment is made retrospective to 1 July 2014, the day item 34 of Schedule 9 of the 2013 Act came into operation, to remove any doubt that the amendment took effect as intended.

The Committee is satisfied that the items proposing to make retrospective amendments are appropriate and do not appear to encroach on any rights, freedoms or privileges.

Charter report

The Statute Law Revision Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Summary Offences Amendment (Move-on Laws) Bill 2015

Introduced	10 February 2015
Second Reading Speech	11 February 2015
House	Legislative Assembly
Minister introducing Bill	Hon. Martin Pakula MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill amends the *Summary Offences Act 1966* (the Act) to repeal the move-on amendments made to the Act by the Summary Offences and Sentencing Amendment Act 2014.

The Bill will repeal:

- the amendments expanding move on powers under section 6 of the Act
- the specific arrest powers for contraventions of move-on directions under section 6A of the Act
- the power under section 6B of the Act to police officers and Protective Services Officers (PSO's) to require a person to state their name and address where the officer intends to direct the person to move-on
- Division 1B of Part I of the Act (sections 6C to 6J), which provides for the making of exclusion orders where a person has been repeatedly moved on from a particular place.

Charter report

The Summary Offences Amendment (Move-on Laws) Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Wrongs Amendment (Asbestos Related Claims) Bill 2014

Introduced	23 December 2014
Second Reading Speech	12 February 2015
House	Legislative Assembly
Member introducing Bill	Hon. Martin Pakula MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill amends Part VBA of the *Wrongs Act 1958* (the Act)¹⁰ to ensure that claimants with asbestos-related conditions can bring their claims for compensation expeditiously. The amendments have the effect of exempting such claimants from the need to comply with the requirements to demonstrate, under Part VBA of the Act, that the claimant has suffered a significant injury in order to make a claim for damages.

Extract from the statement of compatibility:

The Bill operates retrospectively to exempt sufferers of asbestos-related conditions from the requirement to demonstrate that they have suffered a 'significant injury' under Part VBA of the *Wrongs Act 1958* (the Act) in order to make a claim for damages for non-economic loss. In doing so, the Bill makes it easier for claimants who suffer from asbestos-related conditions to seek compensation for their injuries.

Content

Commencement

The provisions in the Act come into operation on the day after Royal Assent.

Transitional

The Committee notes the retrospective operation of the amendments made by the Bill and notes the following transitional provisions.

New section 28LZR (to be inserted in Part VBA)—in respect to a claim in a proceeding for damages for non-economic loss in respect to an asbestos related condition.

Effect of time of causation – Subsection (1) provides that subject to subsection (2) as amended by the Bill the amendments apply irrespective of when the act or omission causing the injury and giving rise to the claim for damages in respect of the injury occurred.

The effect of this provision is that claims are allowed in respect of injuries that were sustained at any time to be exempted from the requirements of Part VBA.

Effect on completed proceedings – Subsection (2) provides that the amendments made by the Bill do not apply if before the Bill came into operation, the proceeding had been finally determined or the claim had otherwise been finally settled.

¹⁰ Part VBA – (Thresholds in relation to recovery of damages for non-economic loss) of the *Wrongs Act 1958* contains procedures for ascertaining whether a claimant has suffered a 'significant injury' for the purposes of bringing a claim for the recovery of damages for non-economic loss (distress, pain and suffering, loss of amenities, loss of expectation of life).

The effect of this provision is that proceedings that have been settled or finally determined are not impacted by the amendments.

Effect on proceedings underway but not completed – Subsection (3) provides that, if immediately before the commencement of the Bill a proceeding has been commenced and begun to be heard but was not determined by the court or otherwise finally settled at the commencement of the provisions in the Bill, the claim is taken to have always been a claim to which Part VBA does not apply as if the exclusion of such conditions had been enacted and in operation at the time the proceeding in respect of the claim was commenced.

The effect of this provision is that it exempts proceedings that are part-heard at the time of the commencement of the Act from the need to comply with Part VBA of the Act.

Effect on specific case before Supreme Court – Subsection (4) provides that, despite the operation of section 14(2) of the *Interpretation of Legislation Act 1984*, Part VBA as amended by the Act applies to proceeding number S CI 2390 of 2013 in the Supreme Court of Victoria: *Multari v Amaca Pty Ltd* (under New South Wales administered winding up) & Another.

The effect of this provision is that Part VBA of the Act as amended by the Bill will apply to this proceedings currently on foot in the Supreme Court.

Charter report

The Wrongs Amendment (Asbestos Related Claims) Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

**Committee Room
23 February 2015**

Appendix 1

Index of Bills in 2014-2015

Alert Digest Nos.

Bills

Back to Work Bill 2014	1
Cemeteries and Crematoria Amendment (Veterans Reform) Bill 2015	1
Education and Training Reform Amendment (Funding of Non-Government Schools) Bill 2014	1
Interpretation of Legislation Amendment Bill 2015	1
Parliamentary Committees and Inquiries Acts Amendment Bill 2015	1
Statute Law Repeals Bill 2014	1
Statute Law Revision Bill 2014	1
Summary Offences Amendment (Move-on Laws) Bill 2015	1
Wrongs Amendment (Asbestos Related Claims) Bill 2014	1

Appendix 2

Committee Comments classified by Terms of Reference

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

Alert Digest Nos.

Section 17(a)

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

Back to Work Bill 2014

1

Appendix 3

Ministerial Correspondence 2015

Table of correspondence between the Committee and Ministers or Members during 2015

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

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Back to Work Bill 2014	Treasurer	24-02-15	1 of 2015

Appendix 4

Statutory Rules and Legislative Instruments considered

The following Statutory Rules and legislative instruments were considered by the Regulation Review Subcommittee on 23 February 2015

Statutory Rules Series 2014

- SR No. 108 – Workplace Injury Rehabilitation and Compensation (Savings and Transitional) Amendment Regulations 2014
- SR No. 109 – Building Amendment (New Residential Zones) Regulations 2014
- SR No. 110 – Honorary Justices Regulations 2014
- SR No. 111 – Honorary Justices (Transitional) Regulations 2014
- SR No. 112 – Magistrates’ Court General Regulations 2014
- SR No. 114 – Owners Corporations Amendment Regulations 2014
- SR No. 115 – Sale of Land (Infringements) Regulations 2014
- SR No. 116 – Residential Tenancies Amendment (Prescribed Rating for Replacement Water Appliances) Regulations 2014
- SR No. 117 – Non-Emergency Patient Transport Amendment Regulations 2014
- SR No. 118 – Evidence (Affidavits and Statutory Declarations) Amendment Regulations 2014
- SR No. 119 – Coroners Court (Form 10 Amendment) Rules 2014
- SR No. 120 – Motor Car Traders Amendment (Red Tape Reduction) Regulations 2014
- SR No. 121 – Magistrates’ Court Criminal Procedure (Infringement Court Venue Amendment) Rules 2014
- SR No. 126 – Planning and Environment Amendment (VicSmart) Regulations 2014
- SR No. 127 – Subordinate Legislation (Instruments (Fees) Regulations 2004) Extension Regulations 2014
- SR No. 128 – Subordinate Legislation (Property Law (Fees) Regulations 2004) Extension Regulations 2014
- SR No. 129 – Subordinate Legislation (Subdivision (Registrar’s Fees) Regulations 2004) Extension Regulations 2014
- SR No. 130 – Subordinate Legislation (Transfer of Land (Fees) Regulations 2004) Extension Regulations 2014
- SR No. 138 – Criminal Organisations Control Amendment Regulations 2014
- SR No. 139 – Confiscation Amendment Regulations 2014
- SR No. 144 – Road Safety (Drivers) and (General) Amendment (Motor Cycle Graduated Licensing System) Regulations 2014
- SR No. 145 – Road Safety (General) and (Drivers) Amendment Regulations 2014
- SR No. 146 – Road Safety Road Rules Amendment Rules 2014
- SR No. 150 – County Court (Chapter I Costs Amendment) Rules 2014
- SR No. 151 – Victorian Inspectorate Amendment Regulations 2014
- SR No. 152 – Infringements (General) Further Amendment Regulations 2014
- SR No. 153 – Estate Agents (General, Accounts and Audit) Amendment (Penalty and Infringements) Regulations 2014
- SR No. 155 – Wildlife Further Amendment Regulations 2014

Heavy Vehicle National Law

Legislative Instruments

Alteration of Fees and Charges of a Class of Cemetery Trust Pursuant to Section 39 of the Cemeteries and Crematoria Act 2003

Approved Competency Units for Part 12 of the Plumbing Regulations

Exemption Order for Retail Sale or Catering – Eggs from Small Producers

Ministerial Determination – Section 5 of the Retail Leases Act 2003

Ministerial Direction 142 – Standing Application to Amend an RTO's Scope of Registration

Ministerial Order 769 – Amendment to Ministerial Order 615 Fixing of Fees Administered by the Victorian Registration and Qualifications Authority

Ministerial Order No. 755 – Exemption from Attendance or Enrolment at School (Amendment) Order – 2014

Ministerial Order No. 790 – Amending Ministerial Orders No. 615 – Amendment to Order Fixing of Fees Administered by the Victorian Registration and Qualifications Authority

Notice of Legislative Instrument under the Food Act 1984

Order – Exemption for Persons from Primary Production and Processing Requirements of the Food Standards Code

Variation to the Best Practice Environmental Management – Siting, Design, Operation and Rehabilitation of Landfills (EPA Victoria Publication 788)