

No. 2 of 2011

Tuesday, 22 March 2011

On the

Building Amendment Bill 2011
Country Fire Authority Amendment
(Volunteer Charter) Bill 2011
Justice Legislation Amendment Bill
2011
Parliamentary Committees
Amendment Bill 2011
Regional Growth Fund Bill 2011

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* *The Committee has commented on this Bill*

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) presented to the Parliament. The Committee does not make any comments on the policy aspects 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*;

'*child*' means a person under 18 years of age;

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

'*court*' refers to the Supreme Court, the County Court, the Magistrates' Court or the Children's Court as the circumstances require;

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

'*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 \$116.82).

'*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. 2 of 2011

Country Fire Authority Amendment (Volunteer Charter) Bill 2011

Introduced	1 March 2011
Second Reading Speech	3 March 2011
House	Legislative Assembly
Member introducing Bill	Hon. Peter Ryan MLA
Portfolio responsibility	Minister for Police and Emergency Services

Background

The Bill amends the *Country Fire Authority Act 1958* (the 'Act') to —

- recognise the Country Fire Authority (CFA) as a volunteer-based organisation.
- recognise the Volunteer Charter.
- require the CFA to have regard to the Volunteer Charter and make other amendments in relation to the CFA's responsibility to volunteers.

Extracts from the Second Reading Speech

[The Bill] ... acknowledges the importance of the contribution of CFA volunteers by recognising the Volunteer Charter in the Country Fire Authority Act 1958.

The Charter requires that the government of Victoria and the CFA consult with Volunteer Fire Brigades Victoria on behalf of CFA volunteers, in accordance with the Charter, prior to making a decision on any matter that might reasonably be expected to affect them. The individual and collective interests and needs of volunteers must always be considered and protected if they are to deliver CFA services safely and effectively.

The Volunteer Charter also recognises and acknowledges that a primary responsibility of the CFA and people employed by the CFA is to nurture and encourage volunteers and to facilitate and develop their skills and competencies.

The Committee makes no further comment.

Justice Legislation Amendment Bill 2011

Introduced	1 March 2011
Second Reading Speech	3 March 2011
House	Legislative Assembly
Member introducing Bill	Hon. Michael O'Brien MLA
Portfolio responsibility	Minister for Consumer Affairs

Background

The Bill amends the –

- *Liquor Control Reform Act 1998* inserting a new Part 7A (Barring Orders) to enable persons to be barred from licensed premises and their vicinity. Vicinity is defined by the Act to be within 20 metres of the licensed premises. **[3 to 8]**
- *Summary Offences Act 1996* to increase the penalties for being drunk and disorderly (the offence) and to amend the Act in respect to infringement penalty notices for the offence. **[9 to 11]**

Extracts from the Second Reading Speech

Barring orders

... These new provisions will have no effect on a licensee and permittee's rights at common law to exclude persons from their premises. Under a barring order, a licensee, permittee, responsible person or member of the police force may prohibit a person from remaining on, or in the vicinity of, a licensed premises. This right may be exercised in two specific circumstances.

The first is where a person is drunk, violent or quarrelsome on the licensed premises. This provides licensees, permittees, responsible persons and members of the police with a tool to directly counteract antisocial behaviour on licensed premises.

The second circumstance in which a barring order may be issued is more pre-emptive than the first. Where a licensee, permittee, responsible person or member of the police force holds a reasonable belief that the person, or any other person in the licensed premises, is at substantial or immediate risk as a result of the consumption of alcohol by that person, a barring order may be issued. Under this approach, a person can be barred from a licensed premises to prevent violent, abusive and any other undesirable behaviour from arising.

At first instance, a barring order will have a maximum duration of one month, unless it is revoked beforehand. In the event that a person is served with a second barring order from the same licensed premises, the order may be imposed for three months, and with a third order able to be extended up to six months.

The authority to vary or revoke barring orders will rest with the person who served the order.

...The Director of Liquor Licensing will play an important role in the barring order process. The director will have the authority to vary or revoke any barring order.

... It is anticipated that this power will be used sparingly by the Director, to expeditiously effect minor changes, such as revoking an order that was served incorrectly on a person due to mistaken identity or to vary a barring order that contains incorrect details. Any variation by the director is binding and not subject to further variations by the person who issued the order.

... The requirements not to disclose information in the records and to destroy records after three years will protect the interests of the barred persons, placing a time limit on the existence, and potential disclosure, of the order and the person's personal information.

Responsible person

One of the changes brought in by this Bill is to insert the new definition of 'responsible person'. This term covers any person who is responsible for the management or control of licensed premises as a whole.

New offences

The Bill introduces two new offences into the Liquor Control Reform Act 1998 relating to the refusal of entry to, or expulsion from, a licensed premises.

The first offence, remaining in the vicinity of a licensed premises from which the person has been refused entry or asked to leave, has been included in the Bill to provide members of the police force with a tool to assist in diffusing tensions outside nightspots.

... The second new offence created by this Bill is the offence of entering licensed premises from which the person has been refused entry or asked to leave. This offence is targeted at those persons who have been removed from a licensed premises or refused entry and proceed to enter the premises through a different door or later in the evening. The offence prohibits the person from entering the licensed premises for a period of 24 hours without reasonable excuse, for which an infringement notice can be issued. An example of a reasonable excuse would include returning to retrieve personal property, though the range of reasonable excuses would likely be more limited than those available to persons remaining in the vicinity of the licensed premises.

Tougher penalties

... Under the Liquor Control Reform Act 1998, those persons failing to obey instructions to leave licensed premises on account of being drunk, violent, or quarrelsome will now face an increased penalty of 50 penalty units ... the Bill amends the maximum penalty under the Summary Offences Act 1966 for the offence of drunk and disorderly behaviour to 20 penalty units. The infringement penalty for drunk and disorderly behaviour has also increased from 4 to 5 penalty units for a first offence, and to 10 penalty units where a person has previously been served with an infringement notice for drunk and disorderly conduct in the previous three years or has been convicted of that offence.

Committee comment

Reverse evidential onus – Defences, Exemptions, Exceptions and Provisos

The Committee notes that proposed new offence provisions in new section 106J(1) and (2) include 'a reasonable excuse' defence and that the defendant will have the onus of pointing to some evidence of such an excuse at his or her trial. The Committee observes that provisions requiring a defendant to point to some evidential fact may be acceptable in certain circumstances. The Committee accepts that defences, exemptions, exceptions or provisos are ordinarily matters within the knowledge of the defendant. The Committee accepts that, without a reverse evidential onus on non-essential aspects of offences, prosecutions for such offences would be onerous or inefficient. [4]

Section 17(iii) – makes rights, freedoms or obligations dependant on non-reviewable administrative decisions

The Committee notes that no statutory provision has been provided in the Bill for an independent body to review a decision by the Director under new Part 7A (Barring Orders).

The Committee will seek further advice from the Minister with regard to whether there is a review mechanism of the Director's administrative decisions under new Part 7A.

Insufficient explanatory memorandum – Statute law revision – Absence of characterisation of previous drafting error – Scrutiny Committee Practice Note No. 2

The Committee notes that the Minister’s comment in the Second Reading Speech provides that the Bill ‘will also make minor technical changes to the Liquor Control Reform Act 1998 by repealing section 141(2)(ea) to correct a previous drafting error’ without any explanation or characterisation of what that error was. Section 141(2) deals with offences where an infringement (penalty) notice may be issued, in particular (2)(ea) is an offence for a licensee to fail to produce evidence that responsible service programs have been undertaken.

The Committee draws attention to Practice Note No. 2, item 2.2 concerning statute law revision type amendments and their explanatory notes.

In general the Committee considers that the explanatory memorandum and the Statement of Compatibility are essential to appropriate Parliamentary scrutiny including the statutory scrutiny of Bills required to be undertaken by this Committee. In appropriate circumstances explanatory material may also be used by a court to interpret legislation under section 35(b)(iv) of the Interpretation of Legislation Act 1984.

The Committee will seek further advice from the Minister.

Charter Report

Movement – Fair hearing – Vicinity of licensed premises – Barring orders – Statement of compatibility

Summary: The Bill creates two new offences barring some people from public places near licensed premises. While the Committee agrees that reducing alcohol-related violence is an appropriate reason to limit people’s freedom to remain outside of licensed premises, it notes several aspects of the offences.

The Committee notes that the Bill creates two new offences barring some people from public places near licensed premises:

- clause 4, inserting a new section 106J(2) into the *Liquor Control Reform Act 1998*, makes it an offence for anyone subject to a barring order in respect of those premises to re-enter or remain in the vicinity of those premises without a reasonable excuse
- clause 7, inserting a new sub-section 114(3) into the *Liquor Control Reform Act 1998*, makes it an offence for anyone who has been refused entry to or has been requested to leave licensed premises to remain in the vicinity of those premises without a reasonable excuse.

The vicinity of licensed premises means a public place within 20 metres of those premises.¹ The Committee considers that clauses 4 and 7 engage the Charter’s right to freedom of movement.²

The Statement of Compatibility remarks:

These barring orders and accompanying offences are important in reducing violent incidents outside licensed premises and protecting the safety of patrons within the vicinity. The limitation is directly aimed at protecting public order, as well as the rights and freedom of others, including the right to life

¹ Clause 3, inserting a new sub-section 3(4) into the *Liquor Control Reform Act 1998*. Compare s.77(1) *Liquor Act 2007* (NSW), ‘vicinity of licensed premises means any place less than 50 metres from any point on the boundary of the premises’.

² Charter s. 12 provides that ‘Every person lawfully within Victoria has the right to move freely within Victoria’.

in section 9 and the right to liberty and security of person in section 21 of the charter act. The nature and extent of the limitation is confined by a number of safeguards in the Bill.

While the Committee agrees that reducing alcohol-related violence is an appropriate reason to limit people's freedom to remain outside of licensed premises, it notes that:

- the offences are not limited to the footpath or road outside of the entrance to those premises, but instead extend to 20m in all directions from the boundaries of those premises, and apply even when the licensed premises are closed.³
- new section 106J(2) may apply to people for periods of months at the discretion of private individuals (licencees, permittees and bar managers authorised to issue barring orders.⁴) The Committee observes that orders barring people from public places are similar to civil injunctions and therefore that people subject to those orders may have a right to have them determined by a court or tribunal after a fair hearing.⁵
- new sub-section 114(3) applies to anyone who is 'refused entry' to licensed premises but does not expressly limit the ban to refusals based on that person's inappropriate behaviour, specify how long a person must remain away from the vicinity of the premises⁶ or provide for such people to be informed that it is an offence to remain within 20m of the premises.

Although the Committee considers that these matters are ameliorated by a reasonable excuse defence and (in the case of new section 106J(2)) potential review by the Director of Liquor Licensing,⁷ it observes that there is no guidance in the Bill as to the criteria for either of these protections.

The Committee observes that the statement of compatibility does not address the Charter's right to a fair hearing or whether the purpose of reducing alcohol-related disorder can be reasonably achieved with less restriction of the Charter's right to freedom of movement.⁸

The Committee will write to the Minister seeking further information about the statement of compatibility. Pending the Minister's response the Committee refers to Parliament for its consideration the question of whether or not clauses 4 and 7 are reasonable limits on the Charter's rights to freedom of movement and a fair hearing.

The Committee makes no further comment.

³ Compare s. 118(6)(b)(i) of the *Liquor Control Act 1988* (WA), which is limited to 'any footpath... that is adjacent to the licensed premises'.

⁴ See new section 106D and clause 3, inserting a new definition of 'responsible person'.

⁵ Charter s. 24(1) provides that: 'A... party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.' See *Clingham v Royal Borough of Kensington and Chelsea* [2002] UKHL 39, [29].

⁶ Compare s. 77(8) of the *Liquor Act 2007* (NSW), which is limited to refusal on the grounds of intoxication, violence, quarrelling, disorder or illegal behaviour, and bars re-entry for six hours.

⁷ New section 106I(2).

⁸ Charter s. 7(2)(e).

Parliamentary Committees Amendment Bill 2011

Introduced	1 March 2011
Second Reading Speech	3 March 2011
House	Legislative Assembly
Member introducing Bill	Hon. Robert Clark MLA
Portfolio responsibility	Attorney-General

Background

The Bill amends the *Parliamentary Committees Act 2003* to—

- increase the minimum membership of a Joint Investigatory Committee from four members to five members. The maximum membership of a Joint Investigatory Committee remains at ten members.
- decrease the minimum number of members of a Joint Investigatory Committee that must come from each House of Parliament from two members to one member.
- remove the requirement that a quorum for a Joint Investigatory Committee must not comprise of members of one House of Parliament.

The Committee makes no further comment.

Regional Growth Fund Bill 2011

Introduced	1 March 2011
Second Reading Speech	3 March 2011
House	Legislative Assembly
Member introducing Bill	Hon. Peter Ryan MLA
Portfolio responsibility	Minister for Rural and Regional Development

Purpose

The Bill establishes a fund in the Public Account as part of the Trust Fund to be called the Regional Growth Fund. The Bill repeals and replaces the *Regional Infrastructure Development Fund Act 1999*. The Bill also includes amendments to the *Regional Development Victoria Act 2002* to abolish the Regional Development Advisory Committee and establish a Regional Advisory Committee.

The Bill also makes a consequential amendment to the *Parliamentary Committees Act 2003* in respect to the definition of 'regional Victoria'.

The Committee makes no further comment.

Ministerial Correspondence

Building Amendment Bill 2011

The Bill was introduced into the Legislative Assembly on 8 February 2011 by the Hon. Robert Clarke MLA. The Committee considered the Bill on 26 July 2010 and made the following comments in Alert Digest No. 1 of 2011 tabled in the Parliament on 1 March 2011.

Committee comments

Recognition and equality before the law – Equal and effective protection against discrimination – Impairment discrimination – Access provisions of building standards – Definition of unjustifiable hardship

Summary: The Bill uses a different definition of unjustifiable hardship from that used in the national premises standards. The Committee will write to the Minister seeking further information.

The Committee notes that clause 5, inserting a new section 160B, provides for the Building Appeals Board to determine that, because compliance would impose unjustifiable hardship, an access provision of building regulations does not apply to a building. The Committee considers that clause 5 engages the Charter right of disabled people to equal and effective protection against discrimination on the basis of impairment.

The Statement of Compatibility remarks:

I consider new section 160B inserted by clause 5 of the bill is necessary for consistency with the national premises standards and the Disability Discrimination Act 1992 (Cth).

However, the Committee observes that the Bill uses a different definition of unjustifiable hardship from that used in the national premises standards:

- Section 4.1(5) of the Disability (Access to Premises – Buildings) Standards 2010 (Cth) provides:

*For these Standards, **unjustifiable hardship** is to be interpreted and applied having due regard to the scope and objects of the Act (in particular the object of removing discrimination as far as possible) and the rights and interests of all relevant parties.*

(‘Act’, in the Standards, means the Disability Discrimination Act 1992 (Cth).)

- New section 160B(7) provides:

*For the purposes of this section, **unjustifiable hardship** is to be interpreted and applied having due regard to the rights and interests of all relevant parties.*

The Committee is concerned that the definition in new section 160B(7) may provide less protection to disabled people than the definition in the national premises standards.

The Committee will write to the Minister seeking further information as to the significance of the difference between new section 160B(7) and s. 4.1(5) of the Disability (Access to Premises – Buildings) Standards 2010 (Cth). Pending the Minister’s response, the Committee draws attention to new section 160B(7).

Minister’s Response

Thank you for your letter dated 1 March 2011 to the Attorney-General which has been referred to me for a reply as the responsible Minister for the above Bill.

The Scrutiny of Acts and Regulations Committee has requested further information as to whether the difference between proposed new s 160B(7) of the Building Act 1993 (Building Act) and s 4.1(5) of the

Disability (Access to Premises - Buildings) Standards 2010 (Cth) (National Premises Standards) is significant. Your letter raises the concern that the definition in proposed new section 160B(7) may provide less protection to persons with a disability than the definition in the National Premises Standards.

I advise that, for the reasons set out below, the proposed new s 160B does not provide less protection to persons with a disability than the National Premises Standards, and the difference between the proposed new s 160B(7) of the Building Act and s 4.1(5) of the National Premises Standards is insignificant.

The National Premises Standards

The National Premises Standards were prepared by the Commonwealth Attorney-General for the purpose of setting national standards for access to premises for persons with a disability. The National Premises Standards have the force of law under the Disability Discrimination Act 1992 (Cth) (DDA). When they take effect on 1 May 2011, an aggrieved person may make a complaint to the Australian Human Rights Commission that certain persons, usually building owners, have not ensured that their building complies with the National Premises Standards.

The National Premises Standards have two components. The first component is the technical building access requirements designed to eliminate, as far as possible, discrimination against persons with a disability in the area of access to premises. These technical access requirements were drafted by the Australian Building Codes Board, and are known as the Access Code. The second component of the National Premises Standards is the application provisions, contained in Parts 1-4. These provisions set out the different classes of buildings to which the Access Code applies, and how the Access Code applies to new and existing buildings.

Part 4 of the National Premises Standards, importantly, provides for exceptions and concessions from compliance with the Access Code in certain circumstances. The majority of these exceptions and concessions are based on non-discretionary criteria (such as for existing lifts and toilets). However, there is also provision for when compliance with the Access Code would impose an unjustifiable hardship on a person, which involves balancing the factors set out in s 4.1(3).

Victorian response

The National Premises Standards, while being a Commonwealth law with respect to disability, overlap with building regulation, being an area regulated by the States and Territories. Victoria has therefore sought to align the Victorian building control scheme with the National Premises Standards, to avoid the risk of Victorian buildings failing to comply with the National Premises Standards.

As part of this measure, the technical building access requirements of the Access Code will be incorporated into the Building Code of Australia (BCA). The BCA is adopted by and forms part of the Victorian Building Regulations 2006 (Building Regulations). The technical access requirements will therefore form part of the body of Victorian building law.

The Australian Building Codes Board, in conjunction with the Australian Human Rights Commission, has prepared a document entitled A Model Process to Administer Building Access for People with a Disability 2010 (the Protocol). The Protocol is intended to provide guidance to State and Territory administrations in aligning their building control schemes with the National Premises Standards.

Victoria has sought to apply the technical access requirements in the same manner as Parts 1-4 of the National Premises Standards, and has used the Protocol as a guide for this purpose. The Protocol does not require that each State and Territory replicate Parts 1-4 of the National Premises Standards in their respective building control schemes. Instead, it was considered that each State and Territory should determine what is appropriate for their own jurisdiction. Victoria has proposed a number of changes to the Building Regulations, which include provision for the exceptions and concessions based on non-discretionary criteria that are set out in the National Premises Standards (such as for existing lifts and toilets). Changes are also proposed to the Building Act to make provision for the exception or concession from the technical access requirements where compliance would impose an 'unjustifiable hardship'.

Unjustifiable hardship

'Unjustifiable hardship' is noted by the Protocol to be a concept foreign to the current building law regimes of the States and Territories. To introduce the concept, the Protocol recommends that States and Territories establish panels comprised, at least in part, of persons with expertise in access. These panels would then determine, on a case by case basis, whether unjustifiable hardship exists. The Protocol was drafted to assist in such decision making, and contains factors for consideration.

Victoria determined that the Building Appeals Board (BAB), already established as a body of experts in building regulation, was best placed to make these decisions for Victoria. Section 160 of the Building Act gives the BAB the power to determine that a building may not comply, or may comply in part, with the Building Regulations (which from 1 May 2011 will include the technical access requirements of the Access Code, forming part of the BCA). Victoria considered whether s 160 of the Building Act should be used by the BAB to exempt, vary or modify the application of the technical access requirements where unjustifiable hardship exists. However, it was determined that if the BAB were to have regard to the same factors as in s 4.1 of National Premises Standards when making determinations on unjustifiable hardship, then builders and persons with a disability would have more certainty that buildings were consistent with the National Premises Standards.

Accordingly, the proposed new s 160B was drafted to provide certainty for both persons with a disability and builders. The proposed new s 160B sets out a process containing detailed factors which must be balanced in order to determine whether there is, or is not, unjustifiable hardship, including:

- all the relevant circumstances of the particular case (s 160B(4));
- benefits reasonably likely to accrue from compliance with the provision, including benefits to persons with disabilities, to building users or to other affected persons, or detriment likely to result from non-compliance (s 160B(4)(j));
- detriment reasonably likely to be suffered by the applicant, building developer, or building manager, or by persons with disabilities or other building users, including in relation to means of access, comfort and convenience, if compliance with the provision is required (s 160B(4)(k));
- if the applicant has given an action plan (within the meaning of Part 3 of the DDA) to the Commission under section 64 of that Act, the terms of the action plan and any evidence of its implementation (s 160B(4)(n)); and
- the nature and results of any processes of consultation, including at local, regional, State, national, international, industry or other level, involving, or on behalf of the applicant, a building developer, building manager or the relevant building surveyor and persons with disabilities, about means of achieving compliance with the provision, including in relation to the factors listed in section 160B(4) (s 160B(4)(o)).

Further, s 160B(5) provides that if a substantial issue of unjustifiable hardship is raised having regard to the factors in subsection (4), the BAB must consider the following additional factors:

- the extent to which substantially equal access to public premises is or may be provided otherwise than by compliance with the access provision of the building regulations; and
- any measures undertaken, or to be undertaken, by, or on behalf of, or in association with, a person or organisation in order to ensure substantially equal access.

Perhaps most importantly, a determination under s 160B must provide for compliance with the technical access requirements to the maximum extent not involving unjustifiable hardship (s 160B(6)).

The effect of these provisions is that 'unjustifiable hardship' as a concept, has a broad scope. Proposed new s 160B enables all the relevant factors to be weighed in each individual case, including giving full weight to the protection of persons with a disability.

In addition to the broad factors set out in s 160B, the Protocol has been provided to the BAB as a guide to decision making. The Protocol provides that determinations in relation to unjustifiable hardship should be made in the context of the objective set out in the DDA of eliminating discrimination as far as possible.

You have noted that the wording of s 160(7) differs in part from its counterpart in s 4.1(5) of the National Premises Standards. The difference is that s 160B(7) does not require the BAB to interpret

and apply 'unjustifiable hardship' having due regard to the scope and objects of the DDA. It is important to clarify that this difference does not alter the definition of 'unjustifiable hardship', as suggested in Alert Digest No. 1 of 2011, because these provisions are merely interpretative clauses. There is nothing in s 160B which prevents the BAB from interpreting 'unjustifiable hardship' having regard to the relevant objects of the DDA. Therefore, when utilising the Protocol as a guide to decision making, the BAB may validly interpret unjustifiable hardship having regard to the object of eliminating discrimination as far as possible.

The reference to the objects and scope of the DDA was not included in s 160B, following discussions between the department and the Office of Chief Parliamentary Counsel, so as to enhance the overall clarity and effectiveness of the provision. This is because the scope and objects of the DDA are much broader than building and access to premises for persons with a disability. It was determined that to include such a reference would create confusion as it might be construed as requiring consideration of matters extraneous to building and access to premises for persons with a disability when carrying out the balancing process in individual cases. It was determined that reliance on the Protocol would be of greater utility because it was prepared to provide guidance for determining access requirements for buildings.

Given that the provisions of s 160B mirror s 4.1 of the National Premises Standards in all other relevant respects, when the totality of factors (such as those described above) are considered in each individual case, and regard is had to each individual circumstance, the difference in wording described above will be insignificant and will not lead to less protection for persons with a disability. The broad scope of s 160B will allow for fair decisions to be made on a case by case basis.

MATTHEW GUY MLC
Minister for Planning

Received 21 March 2011

The Committee notes this response and may report on its content in a subsequent Alert Digest.

Committee Room
21 March 2011

Appendix 1

Index of Bills in 2011

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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.

Alert Digest Nos.

Section 17(a)

(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

Justice Legislation Amendment Bill 2011

2

(iv) unduly requires or authorise 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 authorise 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 Act 2006*

Building Amendment Bill 2011

1

Education and Training Reform Amendment (School Safety) Bill 2010

1

Justice Legislation Amendment Bill 2011

2

Sentencing Amendment Act 2010

1

Section 17(b)

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

Appendix 3

Ministerial Correspondence 2011

Table of correspondence between the Committee and Ministers during 2011

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Building Amendment Bill 2011	Minister for Planning	01.03.11 21.03.11	1 of 2011 2 of 2011
Education and Training Reform Amendment (School Safety) Bill 2010	Minister for Education	01.03.11	1 of 2011
Sentencing Amendment Act 2010	Attorney-General	01.03.11	1 of 2011
Justice Legislation Amendment Bill 2011	Minister for Consumer Affairs	22.03.11	2 of 2011