

# **No. 2 of 2014**

**Tuesday, 18 February 2014**

**On the following Bills and  
Regulations**

## **Bills**

Education and Training Reform  
Amendment (Registration of Early  
Childhood Teachers and Victorian  
Institute of Teaching) Bill 2014

Environment Protection and  
Sustainability Victoria Amendment  
Bill 2014

Health Services Amendment Bill 2014

Justice Legislation Amendment  
(Discovery, Disclosure and Other  
Matters) Bill 2014

Legal Profession Uniform Law  
Application Bill 2013

Sale of Land Amendment Bill 2014

State Taxation Legislation Amendment  
Bill 2014

Victorian Civil and Administrative  
Tribunal Amendment Bill 2014

Water Amendment (Water Trading)  
Bill 2014

## **Regulations**

Planning and Environment (Fees)  
Further Interim Regulations 2013

Subdivision (Fees) Interim  
Regulations 2013

# The Committee



Chairperson  
Hon. Richard Dalla-Riva MLC  
Member for Eastern Metropolitan



Deputy Chairperson  
Hon. Christine Campbell MLA  
Member for Pascoe Vale



Ms Ann Barker MLA  
Member for Oakleigh



Mr Michael Gidley MLA  
Member for Mount Waverley



Mr Don Nardella MLA  
Member for Melton



Dr Bill Sykes MLA  
Member for Benalla



Mr Graham Watt MLA  
Member for Burwood

Parliament House, Spring Street  
Melbourne Victoria 3002

Telephone: (03) 8682 2895

Facsimilie: (03) 8682 2858

Email: [andrew.homer@parliament.vic.gov.au](mailto:andrew.homer@parliament.vic.gov.au)

Web: [www.parliament.vic.gov.au/sarc](http://www.parliament.vic.gov.au/sarc)

## Committee Staff

Mr Andrew Homer, Senior Legal Adviser

Ms Helen Mason, Legal Adviser - Regulations

Mr Simon Dinsbergs, Business Support Officer

Ms Sonya Caruana, Office Manager

---

## 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;

# Table of Contents

---

	<b>Page Nos.</b>
<b>Alert Digest No. 2 of 2014</b>	
Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Bill 2014	1
Environment Protection and Sustainability Victoria Amendment Bill 2014	4
Health Services Amendment Bill 2014	5
Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Bill 2014	6
Sale of Land Amendment Bill 2014	7
State Taxation Legislation Amendment Bill 2014	8
Victorian Civil and Administrative Tribunal Amendment Bill 2014	10
Water Amendment (Water Trading) Bill 2014	11
<b>Ministerial Correspondence</b>	
Legal Profession Uniform Law Application Bill 2013	13
Planning and Environment (Fees) Further Interim Regulations 2013 and Subdivision (Fees) Interim Regulations 2013	18
<b>Appendices</b>	
1 – Index of Bills in 2014	21
2 – Committee Comments classified by Terms of Reference	23
3 – Ministerial Correspondence 2014	25

# 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 from 1 July 2013 one penalty unit equals \$144.36 )

'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 2014

---

## Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Bill 2014

<b>Introduced</b>	4 February 2014
<b>Second Reading Speech</b>	6 February 2014
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Martin Dixon MLA
<b>Portfolio responsibility</b>	Minister for Education

### Purpose

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

- make further provision for police record and criminal history checks on teachers
- make further provision for the conduct of formal hearings and clarify the power of the Victorian Institute of Teaching (the Institute') to publish determinations of formal hearings
- establish a register of disciplinary actions imposed in relation to teachers by the Institute
- provide for registration of early childhood teachers
- change the membership requirements of the Council of the Victorian Institute of Teaching

The Bill makes related consequential amendments to the *Children, Youth and Families Act 2005*, the *Child Employment Act 2003*, the *Fundraising Act 1998* and the *Working with Children Act 2005*.

Extracts from the second reading speech:

This Bill proposes amendments to the Education and Training Reform Act 2006 to provide for the registration of early childhood teachers, establish a register of disciplinary action, clarify provisions relating to police checks and publication of disciplinary proceedings, and alter the way that members are appointed to the council of the Victorian Institute of Teaching.

... The Bill brings our qualified early childhood teachers under the regulatory scope of the Victorian Institute of Teaching, recognising them as qualified teaching professionals and thereby acknowledging their vital role in educating our children. ... Like other professionals such as school teachers, nurses, architects, and solicitors, only educators registered by the institute as early childhood teachers will be able to call themselves 'early childhood teachers'. ... The disciplinary functions of the institute will apply to early childhood teachers.

... The Bill clarifies the process for teachers to obtain their national criminal history check through the Institute. It makes it clear that teachers must not only pay the relevant fees but also provide their consent and the identification needed for the checks to take place.

### Content

#### ***Delegation of legislative power – Delayed commencement – Whether appropriate justification***

The Bill provides for a delayed commencement with a forced commencement of 31 December 2015.

The explanatory memorandum states:

The forced commencement date is longer than 12 months after introduction of the Bill because of the above-stated intention to allow the early childhood sector and the Institute sufficient time to prepare for the new registration regime introduced by Part 5 of the Bill. **[2(4)]**

**The delayed commencement appears justified.**

***Rights or freedoms – Retrospective commencement – Statute law revision***

The Bill provides that section 15(2) is to be taken to have come into operation on 1 January 2011.

The explanatory memorandum states:

Clause 15(2) amends section 2.6.11(1) of the Principal Act to effect a statute law revision by changing an incorrect cross-reference relating to section 2.6.8. Section 2.6.8 of the Principal Act was substituted on 1 January 2011 by section 7 of the Education and Training Reform Further Amendment Act 2010 and this cross-reference should have been altered at that time. This amendment inserts the correct cross-reference to section 2.6.8 in section 2.6.11(1) retrospectively from the date of commencement of section 7 of the Education and Training Reform Further Amendment Act 2010 to ensure the validity of non-practising registrations of teachers granted on or after 1 January 2011. **[2(2)]**

**The retrospective provision appears justified.**

## **Charter report**

***Freedom of expression – Person who is not registered as a teacher must not claim to have been registered as a teacher***

Summary: The Committee will write to the Minister seeking further information as to the compatibility of clause 79, which may prohibit former teachers from making accurate claims about their previous registration as teachers or early childhood teachers, with the Charter's right to freedom of expression. Pending the Minister's response, the Committee draws attention to clause 79.

The Committee notes that clause 79, substituting existing sub-s. 2.6.58(1),<sup>1</sup> provides that:

- (1) A person who is not registered as a teacher under Division 3 must not claim to be or to have been, or hold himself out as being or having been, registered as a teacher under Division 3.

Penalty: 10 penalty units.

...

- (1B) A person who is not registered as an early childhood teacher under Division 3A must not claim to be or to have been, or hold himself or herself out as being or having been, registered as an early childhood teacher under Division 1A.

Penalty: 10 penalty units.

The Committee observes that the terms of new sub-sections 2.6.58(1) and (1B) may extend to accurate claims by a person who was (but no longer is) registered as a teacher or early childhood teacher about his or her past registration. For example, it may bar a person who has changed to a new profession (such as a former teacher who has become a member of Parliament) from listing his

---

<sup>1</sup> Existing s. 2.6.58(1) provides: "A person who is not a registered teacher must not claim to be a registered teacher or hold himself or herself out as being a registered teacher."

or her past employment as a school teacher or early childhood teacher in a resume or referring to his or her past job (whether in private or public).

The Committee notes that clause 79 may engage the Charter's right to freedom of expression.<sup>2</sup> The Statement of Compatibility does not discuss clause 79. The Second Reading Speech remarks:

Like other professionals, such as school teachers, nurses, architects, and solicitors, only educators registered by the institute as early childhood teachers will be able to call themselves 'early childhood teachers'.

The Committee observes that neither current Victorian laws on school teachers, nurses, architects and solicitors<sup>3</sup> nor other Australian laws on accreditation or registration of teachers bar people from making accurate claims about their previous occupations.<sup>4</sup>

**The Committee will write to the Minister seeking further information as to the compatibility of clause 79, which may prohibit former teachers from making accurate claims about their previous registration as teachers or early childhood teachers, with the Charter's right to freedom of expression. Pending the Minister's response, the Committee draws attention to clause 79.**

**The Committee makes no further comment**

---

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

<sup>3</sup> *Education and Training Reform Act 2006*, s. 2.6.58(1); *Health Practitioner Registration National Law*, s. 116(b)(ii), (c), (d); *Architects Act 1991*, s. 4(1); *Legal Profession Act 2004*, s. 4(1) (and see also the proposed *Legal Profession Uniform Law*, s. 11).

<sup>4</sup> *Teachers Accreditation Act 2004* (NSW), s. 26(2); *Education (Queensland College of Teachers) Act 2005* (Qld), s. 84; *Teachers Registration and Standards Act 2006* (SA), s. 20(1)(c); *Teachers Registration Act 2000* (Tas), s. 11(2); *Teachers Registration Act 2012* (WA), s. 9(1)(a).

## Environment Protection and Sustainability Victoria Amendment Bill 2014

<b>Introduced</b>	4 February 2014
<b>Second Reading Speech</b>	6 February 2014
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Ryan Smith MLA
<b>Portfolio responsibility</b>	Minister for Environment and Climate Change

### Purpose

The Bill amends the *Environment Protection Act 1970* ('the Act') to :

- establish a new framework for State-wide waste and resource recovery planning
- establish new Waste and Resource Recovery Groups to perform waste and resource recovery functions
- change the process for determining the landfill levy by using fee units instead of dollar amounts
- change the method of distributing the landfill levy
- provide for the exemption of certain occupiers of premises from the requirement to obtain a works approval
- repeal provisions relating to Environment and Resource Efficiency Plans
- change the process for renewing permits to transport prescribed waste
- repeal the requirement to lodge prescribed industrial waste returns annually
- amend provisions relating to clean up notices.

The Bill amends the *Sustainability Victoria Act 2005* to amend the functions and membership of Sustainability Victoria. [33 to 35]

The Bill amends the *Alpine Resorts (Management) Act 1997* to make consequential amendments to that Act resulting from earlier amendments to the *Environment Protection Act 1970*. [36]

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

The Bill provides that other than Parts 1, 2 and 5 the provisions of the Bill may not commence until 1 July 2015.

The explanatory memorandum provides:

A forced commencement date of 1 July 2015 will allow sufficient time for an orderly transition to the new institutional and governance arrangements for the waste and resource recovery sector.

**The delayed commencement appears justified.**

### Charter report

The Environment Protection and Sustainability Victoria Amendment Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Health Services Amendment Bill 2014

<b>Introduced</b>	4 February 2014
<b>Second Reading Speech</b>	6 February 2014
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Kim Wells MLA
<b>Portfolio responsibility</b>	Minister for Health

### Purpose

The Bill amends the *Health Services Act 1988* to:

- broaden the functions of Health Purchasing Victoria
- provide the Minister for Health with the power to approve the entering into of long term leases and licences with respect to hospital sites
- place certain restrictions on the investment powers of registered funded agencies and enable these organisations to comply with Standing Directions of the Minister for Finance with respect to investments.

### Charter report

The Health Services Amendment Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Bill 2014

Introduced	4 February 2014
Second Reading Speech	6 February 2014
House	Legislative Assembly
Member introducing Bill	Hon Robert Clark MLA
Portfolio responsibility	Attorney-General

### Purpose

The Bill amends the *Civil Procedure Act 2010* to provide for further case management powers in relation to discovery and disclosure in civil litigation

- enables courts to order parties to consult to prepare a statement of the key issues in dispute in the proceedings [5]
- allows courts a discretion to order that some or all of the costs of discovery to be paid by the party requesting discovery in appropriate circumstances [6]
- enable a court to order, with the consent of the parties that a party provide to another party all documents in their possession regardless of whether the documents would have been discoverable pursuant to the rules of court [7]

The Bill amends the *Corrections Act 1986* and the *Serious Sex Offenders (Detention and Supervision) Act 2009* to clarify that section 4 of *Judicial Proceedings Reports Act 1958* (prohibition of reporting of names) does not prevent the disclosure of information (including the victim's identity) for the purpose of the administration of orders under those Acts [12, 16]

The Bill amends the *Corrections Amendment (Breach of Parole) Act 2013* and the *Crimes Act 1958* to:

- a) clarify that if parole is cancelled during an investigation, police have a reasonable time to complete that investigation into the suspect who is in custody, without the need to obtain court permission irrespective of whether it is an investigation into a breach of parole offence and any reoffending.
- b) insert a new provision such that if a court, bail justice or member of police decides to release from custody a paroled prisoner who is suspected of having committed an offence, that decision does not take effect until the Adult Parole Board orders that the prisoner be released or decides not to cancel the prisoner's parole.
- c) provide for the application of the *Bail Act 1977* and provisions of the *Crimes Act 1958* governing the detention and questioning of suspects in custody to people arrested on suspicion of breach of parole.<sup>5</sup> [13 to 15]

### Charter report

The Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

---

<sup>5</sup> The Committee addressed the current provision (which provides that the *Bail Act 1977* and the provisions of the *Crimes Act 1958* governing the detention and questioning of suspects in custody do not apply to people arrested for breach of parole) in its *Alert Digest No. 10 of 2013* (reporting on the Corrections Amendment (Breach of Parole) Bill 2013), pp. 8-10.

## Sale of Land Amendment Bill 2014

<b>Introduced</b>	4 February 2014
<b>Second Reading Speech</b>	6 February 2014
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Heidi Victoria MLA
<b>Portfolio responsibility</b>	Minister for Consumer Affairs

### Purpose

The Bill amends the *Sale of Land Act 1962* to:

- re-enact, reform and modernise the provisions relating to statements made under section 32<sup>6</sup> of that Act [4]
- insert a new Division 2A in Part II to introduce a new separate requirement for vendors (or their estate agents) to make a due diligence check lists available to purchasers if the land includes a residence or is land on which a residence could be constructed. [5]

The Bill makes consequential amendments to the *Owners Corporations Act 2006* to improve the fee-making powers in relation to the issuing of owners corporation certificates and to provide flexibility in respect to the vendors requirement to provide an owners corporation certificate. The Bill makes it an offence for an owners corporation to charge more than the relevant prescribed fee for issuing an owners corporation certificate. [7, 8]

The Bill makes consequential amendments to other Acts. [9 to 12]

### Content

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

The Bill provides that certain provisions commence operation on proclamation but not later than by 1 July 2015. [2]

The explanatory memorandum states:

In accordance with clause 2(2), the remaining provisions of the Bill (i.e. Part 2, clause 7 in Part 3, Part 4 and Part 5) will come into operation on a day or days to be proclaimed. Deferring the commencement of Part 2 recognises that the legal profession and conveyancing industry require time to adapt to the changes to the Sale of Land Act 1962 contained in that Part. As Part 4 of the Bill consequentially amends various Acts in line with the changes made by Part 2, it will come into operation on the same day as that Part.

***The delayed commencement provision appears justified.***

### Charter report

The Sale of Land Amendment Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

---

<sup>6</sup> The obligation of vendors to disclose certain information about the land to prospective purchasers before entering into a contract to sell. The provision enables a purchaser to rescind the contract in certain circumstances.

## State Taxation Legislation Amendment Bill 2014

<b>Introduced</b>	4 February 2014
<b>Second Reading Speech</b>	6 February 2014
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Michael O'Brien MLA
<b>Portfolio responsibility</b>	Treasurer

### Purpose

The Bill amends the:

*Congestion Levy Act 2005* to expand the congestion levy boundary and apply a concessional rate from 1 January 2015 to those areas, and to create new exemptions and to clarify the circumstances in which the levy concessions apply. **[3 to 14]**

*Fire Services Property Levy Act 2012* to —

- reallocate various Australian Valuation Property Classification Codes (AVPCC) to different fire services property levy land use classifications;
- enable one fire services property levy rate to apply where a property is located across the metropolitan fire district and the country fire area;
- allow for the fire services property levy to be apportioned, where two or more parcels of land owned by different persons are treated as one leviable land and valued accordingly;
- allow for the fire services property levy to be apportioned where land ceases or becomes leviable during the financial year;
- align the eligibility requirements for the fire services property levy and the rates concession entitlement;
- require a revised assessment to be issued if an objection, review or appeal results in an alteration of a valuation or a decision to attribute a different AVPCC to land; and
- address technical and administrative issues that have been identified during the implementation of the fire services property levy. **[15 to 24]**

*Gambling Regulation Act 2003* to allow for a reduced return to player ratio required to be paid out per year by venue operators operating electronic gaming machines and to provide for increased taxation rates payable by venue operators in relation to gaming on electronic gaming machines. **[25 to 27]**

*Valuation of Land Act 1960* to—

- make provision for the Valuer-General to amend the Victorian Best Practice Specifications Guidelines during the biennial valuation period;
- ensure that a supplementary valuation can be conducted where a change of occupancy effects the use of the land;
- ensure that the fire services property levy can be adjusted retrospectively, where a supplementary valuation gives rise to a change in the fire services property levy land use classification; and
- address minor technical and administrative issues related to supplementary valuations in respect of non-rateable leviable land. **[28 to 33]**

## **Charter report**

The State Taxation Legislation Amendment Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Victorian Civil and Administrative Tribunal Amendment Bill 2014

<b>Introduced</b>	4 February 2014
<b>Second Reading Speech</b>	6 February 2014
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Robert Clark MLA
<b>Portfolio responsibility</b>	Attorney-General

### Purpose

The Bill amends the *Victorian Civil and Administrative Tribunal Act 1998* to:

- enable the Tribunal when exercising its review jurisdiction to invite the original decision-maker to reconsider the decision under review **[8]**
- create a rebuttable presumption that either the whole or a portion of the VCAT fees incurred in bringing a dispute before VCAT will be met by the unsuccessful party in certain types of dispute **[14]**
- enable the Tribunal to make an order in relation to fees, separate from its power to award costs **[14]**
- introduce a legislative scheme for the Tribunal in relation to expert witnesses and their evidence modelled on the provisions that apply to the courts under the *Civil Procedure Act 2010* **[4, 12, 21, 22]**
- enhance the power of VCAT to remove a party from a proceeding if they are no longer a proper or necessary party **[9]**
- provide a range of mechanical and technical amendments to improve the Tribunal's ability to manage proceedings. **[5, 6, 7, 10, 11, 13, 15, 17, 18, 19]**

### Charter report

The Victorian Civil and Administrative Tribunal Amendment Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Water Amendment (Water Trading) Bill 2014

<b>Introduced</b>	4 February 2014
<b>Second Reading Speech</b>	6 February 2014
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Peter Walsh MLA
<b>Portfolio responsibility</b>	Minister for Water

### Purpose

The Bill amends the *Water Act 1989* ('the Act') to promote compliance with and meet certain requirements of the water trading rules set out in Chapter 12 of the Basin Plan made under the *Water Act 2007 (Cth)*. The amendments allow more flexible trading of available and future water allocations; amend the Act in relation to dealings with water shares; and makes other minor amendments.

Extract from the second reading speech:

... This Bill will amend Victoria's Water Act to improve the efficiency and scope of water trade. The Bill removes limitations under the state Water Act relating to the classes of person to whom an allocation of water under a water share, bulk entitlement and environmental entitlement may be assigned and to whom a limited term transfer of a water share may be given.

The Bill will also remove indirect restrictions on trade by removing limitations on who the water register can record as holding allocations of water under a water share.

### Charter report

The Water Amendment (Water Trading) Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**



# Ministerial Correspondence

---

## Legal Profession Uniform Law Application Bill 2013

The Bill was introduced into the Legislative Assembly on 30 October 2013 by the Hon. Terry Mulder MLA. The Committee considered the Bill on 11 November 2013 and made the following comments in Alert Digest No. 15 of 2013 tabled in the Parliament on 12 November 2013.

### Committee Comments

#### Charter report

##### Provision that the Charter does not apply – Whether override declaration

Summary: Clause 6(1) provides that the Charter ‘has no application to’ the Legal Profession Uniform Law. The Committee will write to the Attorney-General seeking further information as to whether or not clause 6(1) is made under the Charter’s provision for override declarations in Charter s. 31.

**The Committee notes that clause 6(1) provides that the Charter ‘has no application to’ the Legal Profession Uniform Law.**

The Statement of Compatibility remarks:

Section 31 of the Charter Act empowers Parliament to override the Charter in this manner. Pursuant to subsection 31(6), the effect of clause 6 is that the Charter Act has no application to the uniform law.

The Committee observes that Charter s. 31 provides one way that Parliament may bar the application of the Charter to a statutory provision. The process set out in Charter s. 31 is as follows:

- ‘Parliament may expressly declare in an Act that that Act or a provision of that Act or another Act or a provision of another Act has effect despite being incompatible with one or more of the human rights or despite anything else set out in this Charter’: Charter s. 31(1). The Committee notes that clause 6(1) is not expressed in this way.
- ‘A member of Parliament who introduces a Bill containing an override declaration, or another member acting on his or her behalf, must make a statement to the Legislative Council or the Legislative Assembly, as the case requires, explaining the exceptional circumstances that justify the inclusion of the override declaration.’: Charter s. 31(2). The Committee notes that the Second Reading speech simply states that ‘[t]he bill includes a formal override of the Charter... to ensure uniformity in interpretation and application of the scheme across participating jurisdictions’.<sup>i</sup>
- ‘A provision of an Act containing an override declaration expires on the 5th anniversary of the day on which that provision comes into operation or on such earlier date as may be specified in that Act.’: Charter s. 31(7). The Committee notes that clause 6(2) provides that Charter s. 31(7) does not apply to clause 6.

---

<sup>i</sup> Charter s. 31(5)(a) provides for the Charter s. 31(3) statement to be made ‘during the Second Reading Speech’. Alternatively, Charter s. 31(5)(b) and (c) provide for the making of a statement after the Second Reading speech, either with 24 hours’ notice or with leave of the relevant chamber of the Parliament.

The Committee considers that clause 6(1) may not be an override declaration made under Charter s. 31.

The Committee notes that clause 6(1) will be effective to prevent the application of the Charter to the Legal Profession Uniform Law regardless of whether or not it is an override declaration made under Charter s. 31.<sup>ii</sup> However, if clause 6(1) is not an override declaration made under Charter s. 31, then clause 6(1) may not be effective to prevent the application of the Charter to the uniform regulations and rules made under Parts 9.1 and 9.2 of the uniform law.<sup>iii</sup>

**The Committee will write to the Attorney-General seeking further information as to whether or not clause 6(1) is made under the Charter's provision for override declarations in Charter s. 31. Pending the Attorney-General's response, the Committee draws attention to clause 6(1).**

---

### **Charter does not apply to Legal Profession Uniform Law (Victoria) – SARC's Charter reporting function does not apply to Legal Profession Uniform Regulations**

Summary: The Committee refers to Parliament for its consideration the questions of whether or not:

- clauses 6(1)(b) and 6(3), by excluding various aspects of the Charter from the Victorian version of the Legal Profession Uniform Law; and
- clause 7, by barring this Committee from reporting to a House of Parliament whether or not the Legal Profession Uniform Regulations are incompatible with a human right;

are reasonable limits on human rights to achieve the purpose of preventing inconsistencies in the interpretation and implementation of the Legal Profession Uniform Law between Victoria and other participating states and territories.

The Committee notes that clause 6(1)(b) provides that the Charter does not apply to the Legal Profession Uniform Law (Victoria). Clause 6(3) provides that the Charter's provisions for obligations of public authorities and for relief or remedies for actions that are unlawful under the Charter do not apply to functions performed or powers exercised under the Legal Profession Uniform Law (Victoria). Clause 7 provides that this Committee's function of reporting to a House of Parliament whether or not regulations that may be disallowed by Parliament are incompatible with the human rights set out in the Charter does not apply to regulations made under Part 9.1 of the uniform law.<sup>iv</sup>

The Statement of Compatibility remarks:

The purpose of clause 6 is to guarantee uniformity in interpretation and application of the scheme across the participating jurisdictions. It is being implemented to avoid any risk of non-uniform application through other jurisdictions being required to interpret

---

<sup>ii</sup> See *Constitution Act 1975*, s. 16 and Charter s. 31(9).

<sup>iii</sup> In contrast to clause 5 (which expressly extends to 'instruments made under' the Legal Profession Uniform Law (Victoria)), clause 6(1) is not expressed to apply to subordinate instruments made under or for the purpose of the Legal Profession Uniform Law. Charter s. 31(2), which provides that '[i]f an override declaration is made in respect of an Act or a provision of an Act that declaration must be taken to extend to any subordinate instrument made under or for the purpose of that Act or provision.', only applies if clause 6(1) is an override declaration made under Charter s. 31.

<sup>iv</sup> Clause 5 disapplies the *Subordinate Legislation Act 1994* from the Legal Profession Uniform Law, subject to clause 7. Clause 7 applies the Act's provisions for SARC scrutiny and parliamentary disallowance of statutory rules to the Legal Profession Uniform Law, but it expressly excludes s. 21(1)(ha) of that Act. Section 21(1)(ha) sets out SARC's function of reporting to a House of the Parliament on the incompatibility of a statutory rule with the human rights set out in the Charter.

the uniform law consistently with the charter act. Its purpose is also to avoid the inconsistency that may arise if inter-jurisdictional bodies in other participating states or territories performing uniform law functions are required to act compatibly with the charter act despite having no experience with its requirements. If the charter act were only partly excluded, so that it continued to apply in the Victorian context, there is a further risk that inconsistencies could arise in the interpretation and implementation of the uniform law between Victoria and other participating states and territories.

The Statement does not address clause 7's partial removal of this Committee's scrutiny function.

The Committee notes that this is the second occasion since the Charter's enactment that Victoria has hosted a national or uniform law.<sup>v</sup> The Committee observes that clause 6(1)(a), which provides that the Charter does not apply to Schedule 1 of the Bill (containing the text of the Legal Profession Uniform Law), puts a Victorian-hosted national or uniform law on the same footing as a national or uniform law hosted in another jurisdiction.<sup>vi</sup>

However, the Committee notes that clauses 6(1)(b), 6(3) and 7 prevent various aspects of the Charter from applying to the Victorian version of that law. The Committee observes that this generally differs from other uniform laws recently applied in Victoria. In particular:

- Clause 6(1)(b) differs from four of the five other national uniform schemes applied in Victoria this year, as well as the previous national uniform law hosted by Victoria, where the Charter continues to apply to the Victorian version of those laws.<sup>vii</sup>
- Clause 6(3) differs from all five other national uniform schemes applied in Victoria last year, as well as the previous national uniform law hosted by Victoria, where the Charter's obligations and remedies provisions continue to apply to public authorities acting under the Victorian version of those laws.<sup>viii</sup>
- Clause 7 differs from all three other provisions enacted this year for Victorian parliamentary scrutiny and disallowance of national regulations, as well as the previous national uniform law hosted by Victoria, which each preserve this Committee's function of reporting to Parliament on whether or not national regulations are incompatible with the human rights set out in the Charter.<sup>ix</sup>

### **The Committee refers to Parliament for its consideration the question of whether or not**

<sup>v</sup> The previous occasion was the Education and Care Services National Law, a schedule to the *Education and Care Services National Law Act 2010* (Vic).

<sup>vi</sup> The Charter automatically does not apply to a law hosted in another jurisdiction as the Charter's operative provisions are limited to Victorian legislation and Victorian public authorities.

<sup>vii</sup> *Co-operatives National Law Application Act 2013*, s. 4(1)(c); *Electronic Conveyancing (Adoption of National Law) Act 2013*, s. 4(c); *Heavy Vehicle National Law Application Act 2013*, s. 4(c); *Rail Safety National Law Application Act 2013*, s. 6(c); *Education and Care Services National Law Act 2010*, s. 5(2). The exception is the *Marine (Domestic Commercial Vessel National Law Application) Act 2013*, where the host jurisdiction is the Commonwealth parliament.

<sup>viii</sup> The *Marine (Domestic Commercial Vessel National Law Application) Act 2013*, s. 17 expressly provides that Victorian (but not federal) bodies and officials delegated or appointed under the national law are public authorities under the Charter. Under the remaining laws, the Charter's provision for obligations of public authorities automatically applies to national and Victorian bodies acting under the Victorian of the uniform law: see, e.g. Statement of Compatibility, Education and Care Services National Law Bill 2010, stating: "when exercising jurisdiction in Victoria, both the regulatory authority and the national authority are public authorities for the purposes of section 38 of the charter. When seeking information under the bill, the authorities and their officers will therefore be required to act in accordance with human rights."; SARC, *Alert Digest No. 7 of 2013*, p. 26 (ministerial correspondence on the Heavy Vehicle National Law Application Bill).

<sup>ix</sup> *Co-operatives National Law Application Act 2013*, s. 8; *Heavy Vehicle National Law Application Act 2013*, s. 6(1); *Rail Safety National Law Application Act 2013*, s. 12(1); *Education and Care Services National Law Act 2010*, Schedule, Clause 303(2). The Electronic Conveyancing National Law has no provision for national regulations and there is no provision for Victorian scrutiny or disallowance of federal regulations made under the Domestic Commercial Vessel National Law.

- **clauses 6(1)(b) and 6(3), by excluding various aspects of the Charter from the Victorian version of the Legal Profession Uniform Law; and**
- **clause 7, by barring this Committee from reporting to a House of Parliament whether or not the Legal Profession Uniform Regulations are incompatible with a human right;**

**are reasonable limits on human rights to achieve the purpose of preventing inconsistencies in the interpretation and implementation of the Legal Profession Uniform Law between Victoria and other participating states and territories.**

**The Committee makes no further comment**

## Minister's Response

I refer to your letter of 4 February 2013 in relation to the **Legal Profession Uniform Law Application Bill 2013** (the Bill) which repeals the *Legal Profession Act 2004* and replaces it with new template legislation (the Legal Profession Uniform Law (the Uniform Law)) regulating the legal profession, to be adopted uniformly in Victoria and NSW and any other subsequent participating jurisdictions.

The Committee noted in its *Alert Digest No.1 of 2014* that:

- section 6(1) of the Bill provides that the *Charter of Human Rights and Responsibilities Act 2006* (the Charter Act) 'has no application to' the Uniform Law (as set out in Schedule 1 to the Bill and as applied in Victoria), and
- section 31 of the *Charter of Human Rights and Responsibilities Act 2006* (the Charter Act) provides a means by which Parliament may bar the application of the Charter Act to a statutory provision, and prescribes a process to follow.

The Committee noted features of section 6(1) that differ from the form and process set out in section 31 of the Charter Act, and on that basis advised that it considers that section 6(1) may not be an override declaration made under section 31 of the Charter Act.

As neither the Charter Act as a whole, nor section 31 in particular, is legislatively entrenched, it is possible for a provision of a subsequent Bill to exclude the application of the Charter Act to the Bill without strict compliance with section 31. Nevertheless, I consider that section 6(1) is an override declaration within the meaning of section 31 of the Charter Act, and that the declaration will be effective to prevent the application of the Charter Act to the Uniform Rules and Uniform Regulations made under Chapter 9 of the Uniform Law.

In respect of the specific issues noted by the Committee, first, the Committee notes that section 6(1) of the Bill is not expressed in the language of clause 31(1) of the Charter Act. I note that while section 31(1) prescribes that an override declaration must be made 'expressly', it does not otherwise stipulate a precise form of wording to be used in an override declaration.

The wording of section 31(6) accurately reflects the intention behind the override declaration, which is that the Charter Act 'has no application' to the Uniform Law rather than that it has effect 'despite' the Charter Act, as stated in section 31(1). The wording of section 6(1) adopts the wording of section 31(6) of the Charter Act, which more clearly articulates the intention and effect of the override declaration.

The Committee also noted the requirement imposed by section 31(2) that a member of Parliament introducing a Bill containing an override declaration must make a statement to the relevant House of Parliament explaining the exceptional circumstances that justify the inclusion of the override declaration. The Committee noted that the Second Reading speech for the Bill contained only a brief explanation for the inclusion of the override declaration.

I draw the Committee's attention to the Override Statement that was given for the Bill in accordance with section 31(2) subsequent to the Committee's letter; in compliance with section 31(5)(b), the Override Statement was delivered to the Legislative Assembly on 5 February 2014, more than 24 hours after notice that the Statement was to be delivered was provided to the Legislative Assembly on 4 February. The Override Statement provides additional context for the override declaration, including an outline of the exceptional circumstances that justify its inclusion in the Bill.

Finally, the Committee noted that section 6(2) of the Bill provides that section 31(7) of the Charter Act, which provides that a statutory provision containing an override declaration expires after five years, does not apply to section 6 of the Bill. This exclusion of the time limit reflects the fact that the circumstances justifying the inclusion of the override declaration (namely, the need for inter-jurisdictional consistency in the interpretation and application of the Uniform Law) will continue indefinitely. I do not consider that providing that section 31(7) of the Charter Act does not apply to section 6 affects the status of section 6(1) as an override declaration within the meaning of section 31 of the Charter Act. Section 31(7) is a normal statutory provision which can be superseded by a later statutory provision, such as section 6(2). Further, it is the fact that section 6(1) of the Bill constitutes an override declaration within the meaning of section 31 of the Charter Act that necessitates the exclusion of section 31(7), which would not apply if section 6(1) were not an override statement.

I also note that the Committee in its Charter Act report on the Bill made comments concerning the policy justification for the exclusion of the Charter Act to the Uniform Law, in particular concerning the exclusion of the Charter Act from the Victorian version of the Uniform Law and the Victorian regulatory authorities performing functions under the Uniform Law, and concerning the exclusion of the Committee's role of reporting to a House of Parliament on whether or not Uniform Regulations made under the Uniform Law are incompatible with a human right.

While the Committee has referred these matters to Parliament for consideration and has not sought my specific comment, I would in this context also draw the Committee's attention to the Override Statement referred to above, not available at the time of the Committee's report, which provides further explanation of the rationale for the exclusion of the Charter Act from the Uniform Law. In relation to the exclusion of the Committee's reporting role in respect of Uniform Regulations, I also note that the scope of Uniform Regulations is circumscribed by section 417 of the Uniform Law, so that in effect Uniform Regulations may only relate to customising the coverage of NSW oversight legislation to the Uniform Law pursuant to section 416(4).

**ROBERT CLARK MP**  
Attorney-General

14 February 2014

**The Committee thanks the Attorney-General for this response.**

## **Planning and Environment (Fees) Further Interim Regulations 2013 and Subdivision (Fees) Interim Regulations 2013**

The Committee considered the regulations on 9 December 2013 and made the following comments in Alert Digest No. 17 of 2013 tabled in the Parliament on 10 December 2013.

### **Committee Comments**

#### **Planning and Environment (Fees) Further Interim Regulations 2013**

This is the fourth time the Regulations have been made with a Premier's certificate. The repeated making of regulations with a Premier's certificate may be the subject of Committee comment.

- The Planning and Environment (Fees) Interim Regulations 2011 were made with a Premier's certificate;
- The Planning and Environment (Fees) Interim Regulations 2012 were made with a Premier's certificate;
- The Planning and Environment (Fees) Interim Regulations 2013 were made with a Premier's certificate.
- The Planning and Environment (Fees) Further Interim Regulations 2013 are now also made with a Premier's certificate.

**It was originally estimated in 2011 that permanent regulations would be made by July 2012. It is now December 2013 and the current Regulations do not expire until October 2014. The Committee will write to the Minister noting that this is the fourth time the Regulations have been made with a Premier's certificate and request further information.**

#### **Subdivision (Fees) Interim Regulations 2013**

This is the fourth time the Regulations have been made with a Premier's certificate. The repeated making of regulations with a Premier's certificate may be the subject of Committee comment.

- The Subdivision (Fees) Interim Regulations 2011 were made with a Premier's certificate.
- The Subdivision (Fees) Interim Regulations 2012 were made with a Premier's certificate.
- The Subdivision (Fees) Interim Regulations 2013 were made with a Premier's certificate.
- Now the Subdivision (Fees) Further Interim Regulations 2013 are made with a Premier's certificate.

**It was originally estimated in 2011 that permanent regulations would be made by July 2012. It is now December 2013 and the current Regulations do not expire until October 2014. The Committee will write to the Minister noting that this is the fourth time the Regulations have been made with a Premier's certificate and request further information.**

### **Minister's Response**

I am writing in response to your letter of 10 December 2013 regarding the Planning and Environment (Fees) Further Interim Regulations 2013 and Subdivision (Fees) Interim Regulations 2013 and the subsequent request from Mr Michael Gidley MP for advice on the anticipated timing of making new regulations with a Regulatory Impact Statement (RIS).

It was my expectation that the RIS process would be completed before the previous interim regulations expired on 20 October 2013. I am cognisant of the procedural requirements of the *Subordinate Legislation Act 1994*. However, I am not satisfied with the options that have

been presented to me for permanent regulations and further work is required before I am prepared to seek public comment and submissions on a RIS.

Fees are integral to the efficient and effective operation of Victoria's planning system and so the basis for permanent regulations must be properly formed and rigorously assessed. I believe it is in the public interest that local government is able to continue to recover some of the costs of the statutory services they provide while a satisfactory permanent option is developed.

I anticipate that the RIS process, including public consultation, will be completed before the current interim regulation expire on 18 October 2014.

**MATTHEW GUY MLC**  
Minister for Planning

17 February 2014

**The Committee thanks the Minister for this response.**



# Appendix 1

## Index of Bills in 2014

---

### Alert Digest Nos.

#### Bills

Assisted Reproductive Treatment Further Amendment Bill 2013	1
Children, Youth and Families Amendment (Security Measures) Bill 2013	1
Corrections Legislation Amendment Bill 2013	1
Crimes Amendment (Grooming) Bill 2013	1
Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Bill 2013	1
Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Bill 2014	2
Environment Protection and Sustainability Victoria Amendment Bill 2014	2
Fences Amendment Bill 2013	1
Game Management Authority Bill 2013	1
Health Services Amendment Bill 2014	2
Jury Directions Amendment Bill 2013	1
Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Bill 2014	2
Legal Profession Uniform Law Application Bill 2013	1, 2
Parliamentary Budget Officer Bill 2013	1
Sale of Land Amendment Bill 2014	2
Small Business Commissioner Amendment Bill 2013	1
State Taxation Legislation Amendment Bill 2014	2
Summary Offences and Sentencing Amendment Bill 2013	1
Victorian Civil and Administrative Tribunal Amendment Bill 2014	2
Water Amendment (Water Trading) Bill 2014	2

#### Regulations

Planning and Environment (Fees) Further Interim Regulations 2013 (SR No. 127 / 13)	2
Subdivision (Fees) Further Interim Regulations 2013 (SR No. 128 / 13)	2



## **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**

Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Bill 2014	2
Legal Profession Uniform Law Application Bill 2013	1



## Appendix 3

### Ministerial Correspondence 2014

---

**Table of correspondence between the Committee and Ministers and members during 2013-14**

<b>Bill Title</b>	<b>Minister/ Member</b>	<b>Date of Committee Letter / Minister's Response</b>	<b>Alert Digest No. Issue raised / Response Published</b>
Legal Profession Uniform Law Application Bill 2013	Attorney-General	04-02-14 14-02-14	1 of 2014 2 of 2014
Planning and Environment (Fees) Further Interim Regulations 2013 (SR No. 127 / 13)	Planning	09-12-13 17-02-14	17 of 2013 2 of 2014
Subdivision (Fees) Further Interim Regulations 2013 (SR No. 128 / 13)	Planning	09-12-13 17-02-14	17 of 2013 2 of 2014
Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Bill 2014	Education	18-02-14	2 of 2014