58th Parliament
Alert Digest

No. 2 of 2018

Tuesday, 20 February 2018
on the following Bills

Audit Amendment Bill 2017

Bail Amendment (Stage Two) Bill 2017

Children Legislation Amendment (Information Sharing) Bill 2017

Electricity Safety Amendment (Electrical Equipment Safety Scheme) Bill 2018

Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Bill 2018

Labour Hire Licensing Bill 2017

Marine and Coastal Bill 2017

and Subordinate Legislation

SR No 108 – Heritage Regulations 2017
The functions of the Scrutiny of Acts and Regulations Committee are –

(a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly –
   (i) trespasses unduly upon rights or freedoms;
   (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;
   (iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions;
   (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the Privacy and Data Protection Act 2014;
   (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the Health Records Act 2001;
   (vi) inappropriately delegates legislative power;
   (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
   (viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;

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

Role of the Committee

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

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

Interpretive use of Parliamentary Committee reports

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

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

When may human rights be limited

Section 7 of the Charter provides –

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

(2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—

(a) the nature of the right; and

(b) the importance of the purpose of the limitation; and

(c) the nature and extent of the limitation; and

(d) the relationship between the limitation and its purpose; and

(e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

Glossary and Symbols

‘Assembly’ refers to the Legislative Assembly of the Victorian Parliament


‘Council’ refers to the Legislative Council of the Victorian Parliament

‘DPP’ refers to the Director of Public Prosecutions for the State of Victoria

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

‘IBAC’ refers to the Independent Broad-based Anti-corruption Commission

‘penalty units’ refers to the penalty unit fixed from time to time in accordance with the Monetary Units Act 2004 and published in the government gazette (as at 1 July 2016 one penalty unit equals $155.46)

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

‘VCAT’ refers to the Victorian Civil and Administrative Tribunal

[ ] denotes clause numbers in a Bill
Electricity Safety Amendment (Electrical Equipment Safety Scheme) Bill 2018

Bill Information

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Bill Summary

The Bill would amend the Electricity Safety Act 1998 to implement the Electrical Equipment Safety Scheme — a harmonised scheme for participating jurisdictions in Australia and New Zealand aimed at ensuring consistent safety requirements for relevant ‘in-scope electrical equipment’.1

This would involve the regulation of responsible suppliers registered in the register established under the Electrical Safety Act 2002 of Queensland.

The Bill would also the Energy Safe Victoria Act 2005 to provide for the use and disclosure of information by Energy Safe Victoria.

Type of Bill

☒ Government Bill
☐ Private Members Bill

CONTENT ISSUES

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

Details

Delegation of legislative power – Commencement by proclamation – Whether appropriate provision

The Bill provides that the Act will come into force on a day or days to be proclaimed. There is no default commencement date for the Bill.

The Explanatory Memorandum states that the Bill:

...does not identify a default commencement date as the commencement of the Electrical Equipment Safety Scheme law is to be co-ordinated with Queensland and other participating jurisdictions. As an inter-jurisdictional scheme, the Electrical Equipment Safety Scheme law relies on each participating jurisdiction entering into an intergovernmental agreement to formalise the arrangements for the governance, implementation and administration of the

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1 “In-scope electrical equipment” is defined as equipment that will be subject to the new scheme and comprises 3 risk-categories (level 1, level 2 and level 3), each of which is subject to a different level of regulation.
scheme. Accordingly, to allow for any contingencies that may occur in other jurisdictions entering into the intergovernmental agreement, no default commencement date is set.

The Committee considers that commencement on proclamation is justified in the circumstances.

Right to be presumed innocent – legal burden to prove defence

As discussed in the Charter Report below, new sections 54 and 55 would make it an offence to supply certain electrical equipment ‘unless’ certain conditions are met or authorisations are in place.

It is unclear from the Statement of Compatibility whether sections 54 and 55 would limit the presumption of innocence by imposing a legal burden on an accused to prove that the conditions are met. While the Statement of Compatibility states that a number of other offence provisions in the Bill would impose an evidential (as opposed to a legal) onus on an accused, it does not refer to sections 54 and 55, even though those sections also impose an onus on the accused. It is therefore unclear to the Committee whether sections 54 and 55 would impose an evidential or a legal onus.

The Committee’s Practice Note provides that the Committee will draw to the attention of Parliament, and seek further advice from the responsible Minister or Member, where a Bill provides insufficient or unhelpful explanatory material, particularly in respect to rights or freedoms, such as the right to the presumption of innocence (i.e., provisions which reverse the onus of proof in criminal or civil penalty offences).

The Committee draws attention to the possible reversal of the onus of proof in sections 54 and 55 and, as noted in the Charter Report below, will write to the Minister to seek further information as to whether sections 54 and 55 would impose an evidential or a legal onus on an accused.

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**Recommendation**

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

**CHARTER ISSUES**

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

**Details**

Presumption of innocence – Exceptions to criminal offences – Onus on Defendant to prove the exception applies

**Summary:** New sections 54 and 55 of the Act make it an offence to supply certain electrical equipment unless certain conditions are met. These sections may impose a burden on an accused to prove that these conditions are met. The Committee will write to the Minister seeking further information.

**Relevant provisions**

54 Standards for electrical equipment that is not in-scope electrical equipment

A person must not supply or offer to supply electrical equipment that is not in-scope electrical equipment unless the electrical equipment—
(a) satisfies the standard prescribed for electrical equipment of the type of electrical equipment to which it belongs; and
(b) is safe to be connected to an electricity supply.

55 Declaration of electrical equipment to be controlled electrical equipment

(1) Energy Safe Victoria may declare that an item, description, type or component of electrical equipment, that is not in-scope electrical equipment, is controlled electrical equipment.

(2) A declaration made under subsection (1) takes effect on the date specified in the notice.

(3) A person must not supply or offer to supply controlled electrical equipment unless the electrical equipment—
   (a) is the subject of a certificate of conformity issued by Energy Safe Victoria that has not expired or been cancelled or suspended and is marked as prescribed; or
   (b) is the subject of a certificate of conformity issued by a regulatory authority that has not expired or been cancelled or suspended and is marked as prescribed; or
   (c) is the subject of a certificate of conformity issued by an external certifier that has not expired or been cancelled or suspended and is marked as prescribed.

Charter analysis

New sections 54 and 55 of the Act make it an offence to supply certain electrical equipment unless certain conditions or authorisations are met or obtained. These sections may impose a burden on an accused to prove that these conditions are met. The Statement of Compatibility notes that various provisions in the new Division 7 impose an evidential onus on an accused, and discusses the effect of these provisions on the presumption of innocence:

New division 7 creates a number of offences, which each contain a series of exceptions (new sections 67, 67A, 67B, 67C, 67D, 67F, 67G, 67J of the principal act). Further exceptions are also created by new section 62Q, which provides that ESV may exempt a type or class of in-scope electrical equipment, specific electrical equipment, or a responsible supplier from certain requirements, breach of which would otherwise constitute an offence.

Under the Criminal Procedure Act 2009, where a defendant wishes to rely on an exception, they are required to point to some evidence which would establish facts suggesting a reasonable possibility that the exception applies. Once a defendant identifies that evidence, a prosecution authority would need to disprove those facts beyond reasonable doubt. By imposing an obligation on a defendant to point to relevant evidence in order to avoid conviction, exception provisions therefore impose what is referred to as an evidential onus of proof.

However, in my view, and consistent with case law, these provisions do not limit the right to be presumed innocent. The burden of proof remains with the prosecution to prove each element of the offence. Then, once the defendant has pointed to some evidence to suggest that an exception applies, the burden shifts back to the prosecution to prove the absence of the exception raised. Imposing an evidential onus in this way is reasonable. In most cases, the exceptions relate to matters of which the defendant is likely to have greater knowledge and be well placed to point to evidence. In some cases, if the onus were placed on the prosecution (to prove as an element of the offence) it would involve the proof of a negative, which would be too onerous a burden for the prosecution to discharge effectively. The exceptions in s 62Q (or their scope) relate to matters likely to be known to prosecuting authorities as well as defendants (such as whether and what type of exemptions have been provided). Nevertheless, I consider that it is reasonable to require participants in a regulated industry to be sufficiently
apprised of the standards applicable to them that they are able to point to evidence that they may fall within an exception to rules, breach of which would ordinarily constitute an offence.

New section 62V of the principal act similarly imposes an evidential onus of proof by providing that a court must accept certain certificates that appear to be signed by the chief executive officer responsible for the Queensland act as proof of the matters stated in them if there is no evidence to the contrary. For the same reasons as outlined above, I do not consider that such certificates limit the right to the presumption of innocence. A defendant is entitled to put contrary evidence to suggest that the content of a certificate is inaccurate, which the prosecution is then required to rebut in order to prove otherwise (in addition to the elements of any relevant offence). The legal onus therefore remains with the prosecution.

However the Statement of Compatibility does not consider whether new sections 54 and 55 limit the presumption of innocence.

The Committee notes that any provision that places a legal onus of proof on a person accused of a criminal offence may engage the Charter right of an accused person to be presumed innocent until proved guilty according to law in s 25(1). The Committee’s practice note indicates that the Statement of Compatibility for a bill that places the onus of proof on an accused should state whether and how that provision satisfies the Charter’s test for reasonable limits on rights. In particular where a legal onus is imposed the analysis in the Statement of Compatibility should address whether an evidential onus would be a less restrictive alternative reasonably available to achieve the provision’s purpose.

Conclusion

The Committee will write to the Minister seeking further information as to the compatibility of new sections 54 and 55 with the Charter’s right to the presumption of innocence, whether these sections impose an evidential or a legal onus and if the latter, whether an evidential onus would be a less restrictive alternative reasonably available to achieve the provisions’ purposes.

The Committee makes no further comment.

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Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Bill 2018

Bill Information

Minister Hon Gavin Jennings MP  
Introduction Date 6 February 2018  
Portfolio Special Minister of State  
Second Reading Date 7 February 2018

Bill Summary

The Bill would:

- amend the Protected Disclosure Act 2012 to:
  - rename that Act as the Public Interest Disclosure Act 2012 and adopt the term "public interest disclosure" throughout the Act
  - expand and clarify the types of public sector improper conduct that a person can disclose in a public interest disclosure
  - clarify, simplify and increase the pathways for making a public interest disclosure
  - protect public interest disclosures made to persons and bodies outside of the integrity system in limited circumstances
  - simplify confidentiality obligations that apply to people who make and handle public interest disclosures, including to allow access to support services
  - protect disclosers from legal costs in the event that they are unsuccessful in a claim for compensation under the Protected Disclosure Act 2012

- amend the Ombudsman Act 1973 to:
  - provide the Ombudsman with clear jurisdiction over publicly funded services
  - allow people aged 10 to 16 to provide information to the Ombudsman on a voluntary basis, with safeguards
  - clarify and modernise the Ombudsman’s investigation powers and improve the Ombudsman’s powers to deal with complaints
  - allow the Ombudsman to share information to collaborate with the public sector, effectively resolve complaints and help authorities to improve their practices and procedures.

Other key reforms in the Bill include:

- increasing the threshold for the Independent Broad-based Anti-corruption Commission (IBAC) to hold a public examination
- specifying procedural fairness safeguards in the Independent Broad-based Anti-corruption Commission Act 2011 for public examinations
- removing the Crown’s right to claim any privilege when the IBAC is executing a search warrant or examining a public officer (including any requirement under a witness summons)
- overriding any statutory secrecy obligation or restriction on the disclosure of information that applies to a public officer when the IBAC is executing a search warrant or examining a public officer (including any requirement under a witness summons)
clarifying and strengthening the Victorian Inspectorate's oversight of coercive powers used by integrity and accountability bodies

streamlining the Parliamentary oversight of the Ombudsman, IBAC, Information Commissioner and the Victorian Inspectorate by merging the Accountability and Oversight Committee with the IBAC Committee and renaming this the Integrity and Oversight Committee

providing the Ombudsman, IBAC and Victorian Inspectorate with greater independence in their respective budget processes similar to the Auditor-General's budget process

giving the Ombudsman and IBAC greater discretion to deal with complaints.

**Type of Bill**

- Government Bill
- Private Members Bill

**CONTENT ISSUES**

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

**Details**

*Delegation of legislative power – delayed commencement — whether justified*

Clause 2 provides that Part 5 of the Bill would come into operation on 1 July 2020, which is more than 12 months from the date of the Bill's introduction.

The Committee notes the explanation in the Explanatory Memorandum:

Delayed commencement of Part 5 is required to give the IBAC, Ombudsman and the Victorian Inspectorate time to develop and deliver implementation plans to commence budget independence for their respective offices on and from the financial year beginning 1 July 2020.

The Committee is satisfied that the delay in the commencement of Part 5 of the Bill is justified.

*Legal professional privilege*

As discussed in the Charter Report below, new sub-section 18K(1)(c) (clause 164) may override common law and statutory duties of confidentiality that protect private individuals if those duties would prevent the disclosure of information for the purposes of an investigation by the Ombudsman. This may include legal professional privilege for legal advice given to private people.2

However, the Committee notes that neither the Explanatory Memorandum nor the Statement of Compatibility specifically address the question whether new section 18K(1)(c) should be construed as overriding legal professional privilege.

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2 Legal professional privilege (also known as 'client legal privilege') is a common law principle which provides that confidential communications between legal practitioner and client for the sole purpose of the client obtaining, or the legal practitioner giving, legal advice or for use in existing or contemplated litigation need not be given in evidence nor disclosed by the client or by the legal practitioner, without the consent of the client.
Paragraph A (iv) of the Committee’s Practice Note, states that it is a matter of concern to the Committee where a Bill provides insufficient or unhelpful explanatory material in respect to rights or freedoms.3

Given the uncertainty regarding the construction of sub-section 18K(1)(c), the Committee will write to the Minister to request clarification.

Recommendation

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

CHARTER ISSUES

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

Details

Privacy – Legal duties of confidentiality do not apply to disclosures for the purposes of an investigation by the Ombudsman

Summary: New sub-section 18K(1)(c) may override common law and statutory duties of confidentiality that protect private individuals if those duties would prevent the disclosure of information for the purposes of an investigation by the Ombudsman. The Committee will write to the Minister seeking further information.

Relevant provision

The Committee notes that clause 164, inserting a new section 18K(1) into the Ombudsman Act 1973, provides that:

Any provision of another enactment or any rule of law that—

(a) prohibits the disclosure of information or production of a document or other thing by a person in the service of the Crown, an authority or a public interest disclosure entity; or

(b) imposes an obligation to maintain secrecy on a person in the service of the Crown, an authority or a public interest disclosure entity; or

(c) imposes a duty of confidentiality in relation to the disclosure of information or production of a document or other thing—

does not apply to the disclosure of information or production of a document or other thing for the purposes of an investigation under this Act or a witness summons.

The Committee observes that the effect of new section 18K(1) is to disapply some statutory or common law rules to the extent that those rules would limit the disclosure of information for the purposes of an investigation by the Ombudsman. However, while new sub-sections 18K(1)(a) and 18K(1)(b) are expressly limited to confidentiality and secrecy laws that apply to ‘a person in the service of the Crown, an authority or a public interest disclosure entity’, new sub-section 18K(1)(c) is not expressly limited in this way. New sub-section 18K(1)(c) may therefore override common law and statutory duties of

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3 The Practice Note also provides a non-exhaustive list of such rights and freedoms.
confidentiality that protect private individuals if those duties would prevent the disclosure of information for the purposes of an investigation by the Ombudsman. Those duties may include legal professional privilege for legal advice given to private people, religious confession privilege, professional duties of confidentiality (such as those owed by doctors to patients) and duties arising from a breach of confidence.

The Explanatory Memorandum remarks:


However, the Committee notes that there is no equivalent to new section 18K(1)(c) in existing s. 18 of the Ombudsman Act 1973.

Charter analysis

The Statement of Compatibility remarks:

The bill does not create or increase the coercive powers, it merely expands the scope of people to whom the powers apply. The use of coercive powers in an investigation, such as compelling a person to disclose personal information about themselves or another person, or to produce a document or thing, may limit the right to privacy and reputation in section 13 of the charter. However, I consider any limitation of the rights is reasonable and justifiable, given:

- the coercive powers are only applied in restricted circumstances;
- when necessary to enable the Ombudsman to effectively gather information to perform functions under the Ombudsman act; and
- to enhance accountability and integrity of bodies that are performing public services;
- a person cannot be compelled to provide documents or give evidence that they could not be compelled to give in a proceeding before a court, including information that is self-incriminating; and
- the risk to a person’s reputation is limited, given the Ombudsman can only disclose information in limited circumstances.

In my opinion any limitation on rights imposed by the exercise of coercive powers is necessary to enable the Ombudsman to effectively obtain information and fulfil her functions.

However, the Committee notes that the existing law does not limit any duty of confidentiality, except for secrecy or confidentiality obligations that the law imposes on a person in the service of the Crown, an authority or a public interest disclosure entity, or the statutory privilege available to journalists. Existing s. 18(1), which applies some repealed provisions of the Evidence (Miscellaneous Provisions) Act 1958 governing Royal Commissions to Ombudsman investigations, does not apply provisions that allow a Royal Commission to override legal professional privilege.4

The Committee observes that, while new section 18K(5) provides that a witness before the Ombudsman has the same legal protections from compulsion as a witness in court, that provision is ‘[s]ubject to subsection... (1)’ (including para (1)(c)) and therefore may not protect witnesses before the Ombudsman from being ‘compelled to provide documents or give evidence that they could not be compelled to give in a proceeding before a court’.

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4 See Evidence (Miscellaneous Provisions) Act 1958, s. 190.
Relevant comparisons

The Committee notes that the language in new section 18K(1)(c) is similar to existing ss. 34(1) and 74(1) of the Inquiries Act 2014, which respectively allow a Royal Commission or (if it chooses in relation to a specific witness) a Board of Inquiry to override ‘another enactment... that imposes a duty of confidentiality on the person in relation to the information, document or other thing.’ However, these provisions do not override common law duties of confidentiality, such as legal professional privilege or the equitable remedy arising from a breach of confidence.

The Committee observes that similar legislation governing Ombudsman investigations in most other Australian jurisdictions only disapply secrecy or confidentiality rules that apply to public bodies and officers, not duties owed to private citizens. While the ACT and Tasmanian legislation remove all statutory prohibitions on disclosure (and, in the ACT – in relation to government legal advice only – legal professional privilege), these provisions do not override common law duties of confidentiality that protect private individuals.

Conclusion

The Committee will write to the Minister seeking further information as to the compatibility of new section 18K(1)(c) with the Charter’s right to privacy.

Recommendation

☐ Refer to Parliament for consideration  ✗ Write to Minister/Member for clarification  ☐ No further action required

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5 Ombudsman Act 1976 (Cth), ss. 7A, 8 & 9; Ombudsman Act 2009 (NT), s. 117; Ombudsman Act 1974 (NSW), s. 21(3); Ombudsman Act 2001 (Qld), s. 45; Ombudsman Act 1972 (SA), s. 20; Parliamentary Commissioner Act 1971 (WA), s. 20(2A).

6 Ombudsman Act 1989 (ACT), s. 11(5); Ombudsman Act 1978 (Tas), s. 17.
SR No. 108 – Heritage Regulations 2017

The Committee wrote to the Minster for Planning in relation to the above regulation.

The Committee thanks the Minister for the attached response.

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\(^i\) The Committee reports on this regulation pursuant to section 17(fa) of the *Parliamentary Committees Act 2003* and section 21(1)(ha) of the *Subordinate Legislation Act 1994*. 
5 December 2017

The Honourable Richard Wynne MP  
Minister for Planning  
Level 16 - 8 Nicholson Street  
EAST MELBOURNE VIC 3002

Email: richard.wynne@parliament.vic.gov.au

Ministerial Adviser: peter.keogh@minstaff.vic.gov.au

Dear Minister

SR No. 108 – Heritage Regulations 2017

The Regulation Review Subcommittee (the Subcommittee) considered the above Regulations at a meeting on 27 November 2017. The Subcommittee has not yet approved the Regulations.

The Subcommittee seeks further information in relation to the defence in regulation 31(2). The Subcommittee accepts the explanation in the Human Rights Certificate as to why the regulation is compatible with the Charter of Human Rights and Responsibilities (the Charter). However it is also of the view that pursuant to section 21(1)(i) of the Subordinate Legislation Act 1994, regulation 31(2) may require further explanation as to its form or intention.

The Subcommittee notes that the offence set out in regulation 31(1) applies when a survey of land ‘does not reveal an archaeological site’. However the defence set out in regulation 31(2) applies when the defendant lacks knowledge that an ‘archaeological site was an archaeological site’. The Subcommittee observes that any defence of ignorance for regulation 31(1) may be better directed to the situation where the defendant lacks knowledge that the survey did not reveal (or the surveyed land did not contain) an archaeological site.

The Subcommittee also notes that the defence in regulation 31(2) applies if the defendant either ‘did not know or could not reasonably have been expected to know’ the correct facts. This appears to provide a defence to some defendants who know the correct facts in some circumstances (ie: where his or her knowledge went beyond what he or she could reasonably be expected to know.) The Subcommittee observes that
any defence of ignorance may be better directed to defendants who both ‘did not know and could not be reasonably expected to know’ the correct facts. (For example, see Dangerous Goods (Transport by Road or Rail Regulations 2008, regulation 37(2).)

The Subcommittee would appreciate your response.

Yours sincerely

[Signature]

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

Dear Ms Blandthorn

SR NO. 108 - HERITAGE REGULATIONS 2017

I refer to the matters raised by the Regulation Review Subcommittee of the Parliament of Victoria in your letter of 5 December 2017 in relation to the Heritage Regulations 2017.

The Subcommittee sought further information in relation to the defence in regulation 31(2). I am pleased to provide the following information in relation to the two matters raised.

1. Intention of regulation 31(2)
The Subcommittee sought further explanation as to the intention of regulation 31(2). As the Subcommittee has noted, the offence set out in regulation 31(1) applies when a survey of land ‘does not reveal an archaeological site’. The defence set out in regulation 31(2) applies to a defendant’s lack of knowledge that an ‘archaeological site was an archaeological site’.

The inclusion of regulation 31(2) was intended to mirror the approach taken in section 127 of the Heritage Act 2017; in particular, section 127(3). Section 127 of the Act provides that the discovery of an archaeological site must be reported to the Executive Director and makes it an offence if this does not occur. Section 127(3) provides a defence to the offence if the person did not know or could not reasonably have been expected to know the site was an archaeological site.

The intent behind including regulation 31(2) was, similarly to the intention underpinning the inclusion of section 127(3) of the Act, to avoid inadvertently capturing people who might be innocent of the conduct the offence is aimed at.

I am now advised that, due to the narrow scope of the offence in regulation 31(1), there is no need for the defence in regulation 31(2) and that removal of the defence would not adversely or unfairly impact upon the public. I will seek to amend the Regulations to remove regulation 31(2) at the earliest opportunity.

2. Form of regulation 31(2)
The Subcommittee observed that the defence in regulation 31(2) appears to potentially provide a defence to some defendants in unintended circumstances. This matter will be resolved by the removal of regulation 31(2) through amendment of the Regulations.

Ref. MIN038678
Thank you for raising these matters and providing me with the opportunity to respond to the subcommittee's concerns. I trust that this response addresses your concerns. Please contact my office should the subcommittee require any additional information or clarification.

Yours sincerely

[Signature]

HON RICHARD WYNNE MP
Minister for Planning

28/12/17
Appendix 1

Ministerial responses to Committee correspondence

The Committee received Ministerial responses on the Bills listed below.

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

Audit Amendment Bill 2017

Bail Amendment (Stage Two) Bill 2017

Children Legislation Amendment (Information Sharing) Bill 2017

Labour Hire Licensing Bill 2017

Marine and Coastal Bill 2017
19 FEB 2018

Ms Lizzie Blandthorn MLA
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
Spring Street
EAST MELBOURNE VIC 3002

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

Dear Chairperson

I am writing to provide further information on the issues raised by the Scrutiny of Acts and Regulations Committee (the Committee) in your letter dated 6 February 2018 in relation to the Audit Amendment Bill 2017 (the Bill).

The possible delayed commencement date is necessary to allow sufficient time for implementation and education relating to the changes to the duties, powers and functions of the Auditor-General set out in the Bill. In addition, the Bill’s default commencement date is consistent with that of the Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Bill 2018, as the two bills contain provisions that interact.

In relation to the Committee’s query about the construction of clauses 52, 53 and 54, I can confirm that the proposed offences set out in these clauses are not intended to operate as strict liability offences.

I understand that the Committee will seek further information from the Attorney-General as to whether the new section 63 imposes a limit on the freedom of political expression of the Auditor-General.

The Bill retains the current prohibition on questioning the merits of Government policy objectives by the Auditor-General in a report. As the Auditor-General is a statutory office holder, this provision does not limit his right to freedom of expression, as such rights only attach to persons, and not to statutory officers.

I trust this information is of assistance to the Committee.

Yours sincerely,

Gavin Jennings MLC
Special Minister of State
19 FEB 2018

Ms Lizzie Blandthorn MP
Chairperson
Scrutiny of Acts and Regulation Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

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

Dear Ms Blandthorn

Thank you for your letter of 6 February 2018 in relation to the Bail Amendment (Stage Two) Bill 2017. I understand that the Committee is seeking further information as to whether and how the revised order of the unacceptable risk tests listed in new section 4E(1) is relevant to the question of whether an accused will be released on bail.

New section 4E(1), inserted by clause 7, provides:

A bail decision maker must refuse bail for a person accused of any offence if the bail decision maker is satisfied that—

(a) there is a risk that the accused would, if released on bail—
   (i) endanger the safety or welfare of any person; or
   (ii) commit an offence while on bail;
   (iii) interfere with a witness or otherwise obstruct the course of justice in any matter; or
   (iv) fail to surrender into custody in accordance with the conditions of bail; and

(b) the risk is an unacceptable risk.

The new section 4E(1) is in similar terms to existing section 4(d)(i) of the Bail Act 1977, but lists the four identified risks in a new order, as recommended by Mr Coghlan in recommendation 3 of his first report.

Recommendation 3 is as follows:

That the unacceptable risk test be amended to provide as follows:
In all cases bail must be refused if the prosecution satisfies the bail decision maker that there is an unacceptable risk that the accused if released on bail would:

a) endanger the safety or welfare of any person; and/or
b) commit an offence; and/or
c) interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or herself or any other person; and/or
d) fail to appear in court in answer to bail.
Mr Coghlan further provides in paragraph 4.30 of the first report:

*I regard the specified factors in section 4(d)(ii) as being sound, but recommend they be reordered so that primacy is given to considerations concerning further offending and community safety rather than a failure to appear in court.*

Mr Coghlan, throughout his report, displays an awareness that the Bail Act is applied on a daily basis by bail decision makers, including police officers and volunteer bail justices. Mr Coghlan found in his first report that the current Bail Act is ‘a complex, cumbersome Act, which has significant internal inconsistencies and is difficult to read, understand and apply’. A number of his recommendations for changes to the Act are not aimed at changing the legal effect of the Act, but at ensuring the Act is better understood and more easily applied by bail decision makers.

Recommendation 3 aims to ensure that bail decision makers have community safety in front-of-mind when assessing an accused’s level of risk, by moving it to the top of the list of considerations.

The re-ordering may be compared with the changes made by the *Bail Amendment (Stage One) Act*. This Act implemented recommendation 1 or Mr Coghlan’s report by introducing a new purposes section and guiding principles to the Act. Similarly to recommendation 3, Mr Coghlan did not intend this change to alter the legal effect of the Bail Act, but to ‘inform the community and remind decision makers of the important legal principles engaged in considerations regarding bail, in particular, the balance to be struck between the presumption of innocence and the protection of the community’.

These changes are complemented by other substantive changes that will alter the application of the Bail Act to make it more difficult for an accused person who poses a risk to community safety to be released on bail, such as the expansion of the category of offences for which an accused will be refused bail if he or she cannot show that there exists either a compelling reason or exceptional circumstances that justify a grant of bail.

I trust this information is of assistance to the Committee.

Yours sincerely

[Signature]

THE HON MARTIN PAKULA MP
Attorney-General
Lizzie Blandthorn MLA
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
Parliament House, Spring Street
East Melbourne VIC 3002

Dear Chairperson,

Thank you for your letter dated 6 February 2018 requesting further information in respect of the Children Legislation Amendment (Information Sharing) Bill 2017 (the Bill).

The Scrutiny of Acts and Regulations Committee (the Committee) has requested further information on—

- the reason for Ministerial guidelines made under new section 41ZA(7) of the Child Wellbeing and Safety Act 2005 (clause 8 of the Bill) being exempt from the definition of legislative instrument.

- whether or not new section 41ZB (clause 8 of the Bill) permits complaints or proceedings to be brought with respect to the disclosure of information by an individual (absent bad faith or negligence) under Victoria privacy legislation and/or the Charter.

Background

Before addressing the specific matters raised by the Committee, it is important to highlight certain aspects of the background to this Bill.

Victoria has conducted numerous independent reviews which have focused on the wellbeing and safety of children. These include reviews undertaken by the Coroners Court of Victoria, the Commission for Children and Young People, the Victorian Auditor-General and the Cummins Inquiry into Protecting Victoria’s Vulnerable Children, some of which relate to the deaths of children. All of these reviews have recommended that improvements be made to the State’s information sharing arrangements to promote better outcomes for children.

In 2009, New South Wales introduced legislation under Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 (NSW) (Chapter 16A) to establish a scheme for information exchange in support of the wellbeing or safety of children. This legislation was introduced in response to the Special Commission of Inquiry into Child Protection Services in New South Wales, which noted the many barriers to effective cooperation between organisations that are responsible for ensuring children’s wellbeing and safety. The Special Commission specifically recommended the
Introduction of a legislative scheme to enable direct exchange of information between government and non-government organisations of information related to the wellbeing and safety of children.

Since that time, Chapter 16A has been viewed as an example of leading practice in sharing information between sectors with responsibility for child wellbeing and safety. This position was bolstered further after an evaluation of the reforms undertaken in 2015 by the Social Policy Research Centre of the University of New South Wales concluded that the reforms have improved child information-sharing culture and practice across sectors and agencies in New South Wales.

The Victorian Royal Commission into Family Violence (Family Violence Royal Commission) recommended that Chapter 16A be used as a model to base the development of an information sharing scheme in the context of family violence. The recently established family violence information sharing scheme under new Part 5A of the *Family Violence Protection Act 2008* (FVP Act), which will commence on 26 February 2018 with the proclamation of the *Family Violence Protection Amendment (Information Sharing) Act 2017*, implements this recommendation of the Family Violence Royal Commission.

Recommendations 8.6 to 8.8 in the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse (McClellan Royal Commission) recommended that all state and territory governments establish nationally consistent legislative and administrative arrangements for a specified range of prescribed bodies to share information related to the safety and wellbeing of children, including but not limited to child sexual abuse in institutional contexts. Chapter 16A was specifically identified by the McClellan Royal Commission as the most appropriate model in which to respond to this recommendation and has been used as the legislative model for this Bill.

A key theme of the Victorian reviews, Family Violence Royal Commission and the McClellan Royal Commissions has been that, with the benefit of hindsight, the risk of harm to children could have been avoided or significantly reduced if relevant agencies and service providers had been empowered to take a proactive approach to information exchange and a more collaborative, integrated approach to service provision for children and families.

The Bill addresses these issues and recommendations by establishing a scheme designed to improve the ability of relevant agencies and service providers to exchange information relevant to promoting a child’s or group of children’s wellbeing or safety, with a focus on early intervention.

The Bill has been designed to complement the family violence information sharing scheme established under the FVP Act, as both schemes recognise that the safety of children, including their right to be safe from family violence, must take precedence. Together, the two schemes will facilitate the early identification and management of risks to child wellbeing or safety in a wide range of contexts, enabling services to respond to the multiple, complex needs of children, women and families. The importance of consistency between the two schemes is relevant to each of the queries raised in your letter.

**The reason for ministerial guidelines made under section 41ZA(7) of the Bill being exempt from the definition of legislative instrument**

Part 2A of the *Subordinate Legislation Act 1994* (SL Act) sets out requirements with respect to the making of legislative instruments. This includes certain requirements for government consultation\(^1\),

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\(^1\) Section 12C(a) of the *Subordinate Legislation Act 1994*
consultation with affected sectors of the public\(^2\) and consideration of any human rights implications\(^3\). Further, a regulatory impact statement must also be undertaken, which provides analysis to quantify the level of burden attributed to affected sectors of the public.

In maintaining consistency with the family violence information sharing scheme established under new Part 5A of the FVP Act, new section 41ZA in the Bill provides that the Minister must issue guidelines in relation to the operation of the information sharing scheme under new Part 6A. Consistent with new section 144P of the FVP Act, this provision also clarifies that the guidelines are not considered a legislative instrument for the purposes of the SL Act, providing explicit confirmation that the guidelines are intended to be administrative in nature.

The guidelines are intended to provide direction with respect to responsible information handling practices under the scheme and to assist in applying the legislative principles of the scheme in practice. This may include guidance on relevant considerations in determining whether to request information, how to share information responsibly and appropriately under the scheme and practical examples.

For example, while the McClellan Royal Commission recommended in its final report that the terms ‘safety’ and ‘wellbeing’ should not be defined in legislation, it noted that setting out a non-exhaustive list of examples in guidelines of matters relevant to safety and wellbeing may be helpful in supporting professionals to exercise their professional judgement.\(^4\)

It is not intended that the guidelines will place additional burden on entities who are prescribed to share information under the scheme, but rather provide administrative guidance on how to apply the legislation. As such, providing a measurement of economic burden under a regulatory impact statement is not intended, as it is expected that the implications for affected sectors of the community will have already been considered as part of the development of the Bill and the regulations prescribing information sharing entities and recording requirements under the Bill.

In saying that, the Bill does not displace the public consultation requirements of the SLA in substance. Consistent with new section 144P of the FVP Act, new section 41ZA in the Bill provides that the Minister must publish, on an appropriate Internet site, a draft of the proposed guidelines for a public submission period of 28 days prior to their finalisation.\(^5\) Further to this, as soon as practicable after finalising the draft regulations, the Minister must publish the regulations on an Internet site so that they can be accessed by the public.\(^6\) Consistent requirements for the consultation and publication of the guidelines made under the Bill will better ensure that they are able to be appropriately aligned with the guidelines issued for the family violence information sharing scheme. These guidelines will help to ensure that any information sharing entities that are prescribed under both schemes understand their obligations and only share information to the extent that it is appropriate to do so under each scheme. Consistency in approaches to consultation

\(^2\) Section 12C(b) of the Subordinate Legislation Act 1994

\(^3\) Section 12D of the Subordinate Legislation Act 1994

\(^4\) Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse, Volume 8 pg. 207

\(^5\) New section 41ZA(3) of the Children Legislation Amendment (Information Sharing) Bill 2017

\(^6\) New section 41ZA(4) of the Children Legislation Amendment (Information Sharing) Bill 2017
and publication of the guidelines will avoid confusion and will be critical to ensuring consistency in the implementation and operation of the two schemes generally.

It is also important to note that the Bill will not be excluded from Parliamentary scrutiny. In addition to the regulations made under the Bill, new sections 412N and 412O in the Bill provide that the Minister must cause an independent review of Part 6A to be conducted within two years of commencement and then again within five years of commencement. New section 46X of the Bill provides that Part 7A, which is expected to commence in a staged manner between 2019 and 2021, must be subject to an independent review within two years of commencement.

Each of these reviews must include consideration of any adverse effects of the scheme and must be tabled in Parliament. These reviews will assist to identify inappropriate information sharing practices and provide a basis for the introduction of legislative improvements.

It is also important to note that the exclusion of the guidelines as a legislative instrument will not exclude them from the application of the Charter of Human Rights and Responsibilities Act 2006 (the Charter). In accordance with section 38 of the Charter, and irrespective of the application of the SLP Act, the Minister will still be obliged as a public authority to act compatibly with the Charter and give proper consideration to relevant human rights when making a decision to issue the guidelines under new section 417A of the Bill.

Whether or not new section 412ZB (clause 8 of the Bill) permits complaints or proceedings to be brought with respect to the disclosure of information by an individual (absent bad faith or negligence) under Victoria privacy legislation and/or the Charter

New section 412ZB in the Bill provides that individuals who use or disclose confidential information in good faith and with reasonable care under new Part 6A are protected from any professional or disciplinary proceedings or penalties, any civil liability or any findings of breach under professional codes of conduct or ethical standards. Further, use or disclosure in good faith and with reasonable care under Part 6A will not constitute a contravention by an individual of any other Act.

As noted above, New South Wales’ Chapter 16A was identified by both the Family Violence Royal Commission and the McClellan Royal Commission as a model for their respective recommended information sharing schemes. Importantly, section 245G in Chapter 16A provides as follows:

“245G Protection from liability for providing information

(1) This section applies if a person, acting in good faith, provides any information in accordance with this Chapter.

(2) Any such person is not liable to any civil or criminal action, or any disciplinary action, for providing the information.

(3) In providing the information, the person cannot be held to have breached any code of professional etiquette or ethics or departed from any accepted standards of professional conduct.”

This particular aspect of Chapter 16A was specifically identified by both the Family Violence Royal Commission and the McClellan Royal Commission as a critical feature of their recommended information sharing schemes. Both Royal Commissions observed that while legislative reform is a necessary part of improving information sharing arrangements, existing barriers include risk-averse practices and individual, institutional and cultural resistance to information sharing. Providing
protection to individuals who share information in good faith was viewed by both Royal Commissions as a key aspect of their recommended reforms.

In its final report published in March 2016, the Family Violence Royal Commission recommended the following:

"Protection for people sharing information

In order to encourage information sharing, people who share information in accordance with the Family Violence Protection Act should be protected. Information sharing in good faith should not amount to unprofessional conduct or a breach of professional ethics and should not expose the information sharer to any criminal or civil liability."\(^7\)

In its final report published in December 2017, the McClellan Royal Commission echoed this finding for the purposes of its own recommended information sharing scheme:

"Protection from liability

Laws that impose civil or criminal liability for improper disclosure of information may add to anxiety and reluctance to share personal or confidential information related to the safety and wellbeing of children. Broad protection from liability for sharing information in good faith may help to counter this reluctance and encourage appropriate proactive sharing.

In our view, in establishing our recommended information exchange scheme, Australian governments should include provisions providing protection from liability for sharing information in good faith. In particular, protection should be provided against any civil or criminal liability, including liability for a breach of any duty of confidentiality or secrecy imposed by law. This should extend to protection against disciplinary action for professional misconduct, breaches of professional ethics or standards, or breaches of other rules relating to conduct in employment or as a volunteer."\(^8\)

Supported by these findings, good faith protection provisions have been provided for in both the family violence information sharing scheme (new section 144PA of the FVP Act) and the child information sharing scheme (new section 41ZB in the Bill).

It is important to note that, as with new section 144PA of the FVP Act, new section 41ZB applies to individuals and does not include organisations and other bodies. This is because organisations should not be relieved of complying with their legal obligations solely because they act reasonably and in good faith. Applying section 41ZB to individuals only means that organisations will be expected to comply with the law and ensure that their employees comply with the requirements of the scheme, notwithstanding that those employees themselves may be protected from liability where they have acted reasonably and in good faith.

Consistent with the approach adopted in the family violence information sharing scheme, using and disclosing confidential information in good faith and with reasonable care will also be available as a defence to the offence of unauthorised use and disclosure of confidential information collected

\(^7\) Final Report of the Royal Commission into Family Violence, Volume 1 pg. 192

\(^8\) Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse, Volume 8 pg. 226
under new Part 6A in the Bill (see new sections 41ZK(1) and (2)). However, as under the family violence information sharing scheme, it will not be available as a defence to intentional or reckless unauthorised use and disclosure of confidential information under new section 41ZL.

This approach is supported by the final report of the McClellan Royal Commission, which found as follows:

“Elements of an information exchange scheme may be able to safeguard against the risk of inappropriate information sharing, including by ... preserving liability for improper sharing of information – that is, if information is shared improperly or vexatiously in order to damage a person’s reputation the exclusion of liability for information shared in good faith will not apply”9

Privacy and Data Protection Act 2014 and the Health Records Act 2001

New section 41ZG in the Bill extends the operation of the Privacy and Data Protection Act 2014 (PDP Act) to cover any information sharing entity or restricted information sharing entity that is not already covered by that Act or the Commonwealth Privacy Act 1988.

This provision will ensure that any individual whose personal information is handled by an information sharing entity under new Part 6A will be entitled to make a complaint to the Victorian Information Commissioner about an interference with their privacy under the PDP Act.10

Similarly, the Health Records Act 2001 (Health Records Act) allows an individual to complain to the Health Complaints Commissioner about an act or practice that may be an interference with the privacy of the individual.11 The Health Records Act applies to a public sector or private sector organisation that is a health service provider or that collects, hold or uses health information in accordance with that Act. The Health Records Act will therefore apply automatically to information sharing entities that collect, use or disclose health information under new Part 6A.12

As such, the ordinary complaint mechanisms under the PDP Act and the Health Records Act will continue to apply to organisations that collect, use or disclose information under new Part 6A, although individuals within those organisations who use or disclose information under Part 6A in good faith and with reasonable care will be protected from liability.

Charter of Human Rights and Responsibilities Act 2006

As discussed above, section 38 of the Charter provides that public authorities must act in accordance with and give proper consideration to human rights. Any public authority that is prescribed as an information sharing entity under new Part 6A in the Bill will continue to be obliged to act in accordance with the Charter.

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9 Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse, Volume 8 pg. 216
10 Section 57 of the Privacy and Data Protection Act 2014
11 Section 45 of the Health Records Act 2001
12 Sections 10 and 11 of the Health Records Act 2001
With respect to legal proceedings, the Charter provides that if a person has a right to seek relief or a remedy other than in accordance with the Charter (under the Bill, for example), founded on the unlawfulness of some conduct by a public authority, then any unlawfulness arising because of the Charter may be a further ground in the cause of action.\textsuperscript{13}

It is not intended that new section 41ZB would prevent proceedings from being brought against a public authority under the Charter generally. It is important to note that while new section 41ZB provides only that individuals will be protected from liability where they use or disclose information in good faith and with reasonable care, it is not expected that a public authority who fails to act compatibly with the Charter or give proper consideration to human rights would avoid a claim under the Charter.

If you would like further information, you may contact Kathryn Johnson, Executive Director, Legal Division, Department of Education and Training, on 9637 3713 or at johnson.kathryn.k@edumail.vic.gov.au.

Yours sincerely

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\begin{minipage}{0.8\textwidth}
Jenny Mikakos MP  
Minister for Families and Children  
Minister for Early Childhood Education  
Minister for Youth Affairs  

\textit{14/12/2018}
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\textsuperscript{13} Section 39 of the \textit{Charter of Human Rights and Responsibilities Act 2006}
Dear Ms Blandthorn,

LABOUR HIRE LICENSING BILL 2017

I write in response to your letter dated 6 February 2018. You have asked me to provide an explanation for the possible delayed commencement of the Bill beyond 12 months from the date of its introduction.

The Bill will require a new Authority to be established. It will require a Commissioner and staff to be advertised, recruited, engaged and trained. It will be necessary to establish compliance and enforcement processes and procedures to ensure inspection and other powers can be properly exercised in accordance with legislative requirements. An IT system will need to be built, procured and adapted to support the labour hire licensing scheme, modelled and tested to support on-line applications and other administrative processes. A public register of licensed providers must also be established.

As the new scheme is expected to cover more than one thousand labour hire firms, and affect many thousands of employees and host employers, it will also be necessary to roll out an extensive information campaign, a website and other materials to inform all stakeholders of the new obligations.

Before the Bill can commence operation in full, regulations need to be developed and go through the normal processes of drafting, public consultation and regulatory impact assessment. These include important regulations that go to the coverage of the scheme. Consultation on proposed regulations has already commenced, but passage of the Bill must of course occur before they can be made.
The relevant implementation processes are already underway in my department so far as is possible prior to passage of the Bill. It is proposed that the commencement will occur in stages once passage of the Bill has occurred and as soon as implementation phases are completed. Each of the implementation stages will take some months although many of them will also cross over and run concurrently. It is the Government’s intention that the licensing scheme commence as quickly as can be properly managed. In summary, however, it is prudent to have a period sufficient to ensure the successful introduction and operation of the new scheme.

Yours sincerely

[Signature]

HON NATALIE HUTCHINS MP
Minister for Industrial Relations
Date: 14.2.2018
Ms Lizzie Blandthorn MLA
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002
By email: nathan.bunt@parliament.vic.gov.au

Dear Ms Blandthorn

MARINE AND COASTAL BILL 2017

I refer to your letter of 6 February 2018 seeking clarification as to whether clauses 65, 66 and 67 of the Marine and Coastal Bill 2017 should be construed as mens rea, strict liability or absolute liability offences.

I confirm that it is intended that those three offences, relating to consents to use, develop or undertake works on marine and coastal Crown land, are to be construed as strict liability offences. I consider this is appropriate given the relatively low penalty for each of these offences, and the difficulty that would be faced by the prosecution in proving knowledge or intention on the part of an accused. Requiring proof of these fault elements would make these offences ineffective in protecting marine and coastal Crown land.

Thank you for the opportunity to respond to the committee’s concerns. I trust that this information is of assistance.

Please contact my office should the committee require any additional information or clarification in relation to the Bill.

Yours sincerely

Hon Lily D’Ambrosio MP
Minister for Energy, Environment and Climate Change
Minister for Suburban Development

15/2/18
## Appendix 2
### Index of Bills in 2018

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**Appendix 3**  
**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 clarification from the appropriate Minister or Member.

Alert Digest Nos.

### Section 17(a)

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

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***(vi)*** inappropriately delegates legislative power

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

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## Appendix 4

### Current Ministerial Correspondence

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

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

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Appendix 4
Statutory Rules and Legislative Instruments considered

The following Statutory Rules and legislative instruments were considered by the Regulation Review Subcommittee on 27 November 2017 and 19 February 2018.

Monday 27 November 2017

Statutory Rules Series 2017

SR No. 85 – Electricity Safety (Bushfire Mitigation Duties) Regulations 2017
SR No. 89 – Gas Safety (Gas Quality) Regulations 2017
SR No. 93 – Sex Work Amendment Regulations 2017
SR No. 94 – Racing (Specified Race-Course) Amendment Regulations 2017
SR No. 95 – Borrowing and Investment Powers (Stock, Bonds and Debentures) Regulations 2017
SR No. 96 – Children’s Services Amendment Regulations 2017
SR No. 97 – Supreme Court (Chapters I and II Amendment) Rules Regulations 2017
SR No. 98 – Supreme Court (Harmonised Subpoenas Amendment) Regulations 2017
SR No. 99 – Victoria State Emergency Service Regulations 2017
SR No. 100 – Road Safety (Drivers) and (Vehicles) Amendment (Fees) Regulations 2017
SR No. 101 – Owner Drivers and Forestry Contractors Regulations 2017
SR No. 102 – Water (Lake Eildon Recreational Area)(Houseboats) Amendment Regulations 2017
SR No. 103 – Magistrates’ Court General Civil Procedure (Miscellaneous Amendments) Rules 2017
SR No. 104 – Metropolitan Fire Brigades (General) Interim Regulations 2017
SR No. 105 – Transport (Buses, Taxi-Cabs and Other Commercial Passenger Vehicles)(Taxi-Cab Industry Accreditation and Other Matters) and (Infringements) Amendment Regulations 2017
SR No. 106 – Professional Standards Regulations 2017
SR No. 107 – Veterans (Patriotic Funds) Regulations 2017
SR No. 110 – Victorian Civil and Administrative Tribunal (Amendment No.18) Rules Regulations 2017
SR No. 111 – Taxation Administration Regulations 2017

Legislative Instruments

Order in Council – Mayoral Allowances – Greater Geelong City Council
Determination of Fees – Annual Licence Fees and Licence Application Fees
Cenitex – Victorian Government Purchasing Board
Guidelines for the Verification of Identity under Section 67A(1) of the Radiation Act 2005
Specification of Additional Matters to be Addressed in Security Standards for Security Plans and Transport Security Plan under Section 67C(1) and (2) of The Radiation Act 2005


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**Statutory Rules Series 2017**

SR No. 108 – Heritage Regulations 2017
SR No. 109 – Heritage (Underwater Cultural Heritage) Regulations 2017
SR No. 112 – Family Violence Protection Amendment Regulations 2017
SR No. 113 – National Domestic Violence Order Scheme Regulations 2017
SR No. 114 – Supreme Court (Fees) 2017 Interim Regulations 2017
SR No. 115 – County Court (Fees) Interim Regulations 2017
SR No. 116 – Retirement Villages (Infringements) Regulations 2017
SR No. 117 – Road Safety (Vehicles) Amendment (Short Term Registration) Regulations 2017
SR No. 118 – Fisheries (Fees, Royalties and Levies) Regulations 2017
SR No. 120 – Transport Accident (Administration of Charges) Amendment Regulations 2017
SR No. 121 – Improving Cancer Outcomes (Screening Reporting) Amendment Regulations 2017
SR No. 123 – Water (Resource Management) Regulations 2017
SR No. 124 – Supreme Court (Chapter 1 Appendices A and B Amendment) Rules 2017
SR No. 125 – Supreme Court (Chapter 1 Order 42A Amendment) Rules 2017
SR No. 126 – Supreme Court (Criminal Procedure) Rules 2017
SR No. 127 – Supreme Court (E-Filing Further Amendment) Rules 2017

**Legislative Instruments**

Catchment and Land Protection Act 1994 – Declaration of Certain Animals to be Prohibited Pest Animals, Controlled Pest Animals, Regulated Pest Animals or Established Pest Animals
Notice of Declaration of Discount Factors
Event Management Declaration for Kardinia Park Events

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