

No. 3 of 2011

Tuesday, 5 April 2011

On the

Education and Training Reform
Amendment (School Safety) Bill 2010

Fisheries Amendment Bill 2011

Health Services Amendment (Health
Innovation and Reform Council)
Bill 2011

Justice Legislation Amendment Bill
2011

Liquor Control Reform Amendment
Bill 2011

Multicultural Victoria Bill 2011

Parliamentary Salaries and
Superannuation Amendment Bill 2011

Residential Tenancies Amendment
(Public Housing) Bill 2011

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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) presented to the Parliament. The Committee does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of non-partisan legislative scrutiny. These traditions have been developed since the first Australian scrutiny of Bills committee of the Australian Senate commenced scrutiny of Bills in 1982. They are precedents and traditions followed by all Australian scrutiny committees. Non-policy scrutiny within its terms of reference allows the Committee to alert the Parliament to the use of certain legislative practices and allows the Parliament to consider whether these practices are necessary, appropriate or desirable in all the circumstances.

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

Interpretive use of Parliamentary Committee reports

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

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

When may human rights be limited

Section 7 of the *Charter* provides –

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

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

- (a) *the nature of the right; and*
- (b) *the importance of the purpose of the limitation; and*
- (c) *the nature and extent of the limitation; and*
- (d) *the relationship between the limitation and its purpose; and*
- (e) *any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve*

Glossary and Symbols

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

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

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

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

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

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

'*penalty units*' refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (currently one penalty unit equals \$116.82).

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

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

[] denotes clause numbers in a Bill.

Alert Digest No. 3 of 2011

Fisheries Amendment Bill 2011

| | |
|--------------------------|--|
| Introduced | 22 March 2011 |
| Second Reading Speech | 24 March 2011 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Peter Walsh MLA |
| Portfolio responsibility | Minister for Agriculture and Food Security |

Background

The Bill amends the *Fisheries Act 1995* (the Act) to –

- provide that fish and other biological material taken or possessed in contravention of the Act are forfeited to the Crown. [5]
- provide that if an owner of a thing seized under the Act fails to apply for its return after receiving a disposal notice, that thing is condemned as forfeited to the Crown. [6]
- establish a process for authorised officers to apply to a court for a condemnation order in regard to things seized under the Act. [6]
- increase the penalty for interfering with authorised officers. [7]
- prohibit the furnishing of misleading documents. [8]
- give the courts additional penalty options for persons who offend under the Act including restoration and enhancement of the environment in a public place or for the benefit of the Public, and being prohibited from recreational fishing. [9 and 10]
- makes other miscellaneous amendments to the Act. [3 and 4]

Committee comment

Rights and freedoms – Significant increase in penalties – Obstructing officers – Same offence in other legislation

The Bill increases the penalty for obstructing an authorised officer under the Act from 50 penalty units or 3 months imprisonment to 120 penalty units or 12 months imprisonment.

The explanatory memorandum notes that this level is consistent with similar legislation such as section 62 of the *Wildlife Act 1975*. [7]

The Committee makes no further comment.

Health Services Amendment (Health Innovation and Reform Council) Bill 2011

| | |
|--------------------------|--------------------------|
| Introduced | 22 March 2011 |
| Second Reading Speech | 24 March 2011 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Dennis Napthine MLA |
| Portfolio responsibility | Minister for Health |

Background

The Bill inserts a new Part 6A in the *Health Services Act 1988* to establish the Health Innovation and Reform Council (the 'Council') consisting of up to 7 members appointed by the Minister by Order published in the Government Gazette.

The functions of the Council are to provide advice to, and report to, the Minister and the Secretary of the Department of Health on the effective and efficient delivery of quality health services at the request of the Minister.

The Bill provides that up to seven members may be appointed by the Minister by Order published in the Government Gazette. The Council may establish a committee for the purposes of carrying out any of the functions of the Council. A committee appointed under this provision must report to the Council.

The Committee makes no further comment.

Liquor Control Reform Amendment Bill 2011

| | |
|--------------------------|-------------------------------|
| Introduced | 22 March 2011 |
| Second Reading Speech | 24 March 2011 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Michael O'Brien MLA |
| Portfolio responsibility | Minister for Consumer Affairs |

Background

The Bill amends the *Liquor Control Reform Act 1998* to impose further restrictions on the supply of liquor to minors in a residence to the following circumstances only—

- where the liquor is supplied by a parent, guardian or spouse (over 18 years of age); or
- where the liquor is supplied to the person under the age of 18 by someone who is authorised by that person's parent, guardian or spouse (over 18 years of age).

Content

Recognition and equality before the law – Age discrimination – Child's best interests – Competing rights – Charter sections 8 and 17 – Whether age discrimination a reasonable limitation and proportionate to achievement of other rights

The Bill amends the Act by substituting a new section 119(5)(e) in Division 2 of Part 8 (Underage drinking) to further restrict the supply of liquor to a person under the age of 18 in a residence to the supply of liquor by –

- a parent, guardian or spouse of the person (if the spouse is of or over the age of 18 years); or
- someone who is authorised by a parent, guardian or spouse of the person (if the spouse is of or over the age of 18 years) to supply liquor to the person.' [3]

Note: Section 119 of the Act concerns the circumstances where the supply of liquor to minors is prohibited. Subsection (5) lists the circumstances where the prohibitions do not apply.

The contextual substitution is as follows (insertion is underlined) –

“(e) ~~to the supply of liquor in a residence~~ to the supply of liquor in a residence to a person under the age of 18 years by—

(i) a parent, guardian or spouse of the person (if the spouse is of or over the age of 18 years); or

(ii) someone who is authorised by a parent, guardian or spouse of the person (if the spouse is of or over the age of 18 years) to supply liquor to the person.”.

The Committee notes the competing rights in the Charter, on the one hand the right to equal protection and non-discrimination in Charter, section 8 and on the other hand, the right of a child to such protection as is in his or her best interests and is needed by him or her by reason of being a child found in Charter section 17(2).

The question whether these competing rights are appropriately balanced in all the circumstances is a matter for Parliament's consideration.

Charter Report

Equality – Presumption of innocence – Residential supply of liquor to a minor – Supply permitted by or with the authority of a parent, guardian or spouse – Defendant must prove that evidence of age document was shown

Summary: Clause 3 amends the offence of supplying liquor to a minor by restricting the exception for liquor supplied in a residence to supplies by or with the authority of a parent, guardian or adult spouse of the minor. The Committee observes that clause 3 may engage the Charter's equality rights with respect to parental status and marital status and the right to the presumption of innocence.

The Committee notes that clause 3, amending the offence of supplying liquor to a minor in s. 119 of the *Liquor Control Reform Act 1998*, restricts the exception for liquor supplied in a residence to supplies by or with the authority of a parent, guardian or adult spouse of the minor.

The statement of compatibility remarks that '[t]his bill does not engage any of the rights under the charter act'. However, the Committee observes that clause 3 may engage the following Charter's rights:

- **equality rights with respect to parental status.**¹ 'Parent' is not defined in the *Liquor Control Reform Act 1998*.² The Queensland offence of irresponsible supply of liquor to a minor refers to 'an adult who has parental rights and responsibilities for the minor'.³ The Committee notes that 'parent' has many possible meanings, ranging from the natural or legal parents of the child,⁴ to people who exercise parental rights with respect to the child (including step-parents and foster parents)⁵ and other adults with whom the child lives as a family (e.g. grand-parents).⁶
- **equality rights with respect to marital status.**⁷ 'Spouse' is defined in s. 3 of the *Liquor Control Reform Act 1998* to mean a spouse by marriage. The other Australian jurisdictions that criminalise residential supply of liquor to minors do not provide any exception for supply by or with the authority of spouses.⁸ While the Committee recognises that there are few modern marriages involving minors, it notes that clause 3 distinguishes between minors married to adults and minors living with an adult as a couple on a genuine domestic basis.
- **the right to the presumption of innocence.**⁹ The offence of supplying liquor to a minor is subject to a reverse onus defence in s. 119(6) of the *Liquor Control Reform Act 1998* that requires the defendant to prove that he or she was shown an evidence of age document by the minor. A similar scheme in NSW limits the reverse onus to supply on licensed premises.¹⁰ While the

¹ Charter s. 8 c.f. *Equal Opportunity Act 1995*, ss. 6(ea) and 4 (defining 'parent' to 'include' step-parents, foster parents, adoptive parents and guardians.)

² Existing s. 3 defines a minor's 'guardian' to mean 'a person who is authorised by law to manage the affairs of that young person' and a 'spouse' to mean 'a person to whom the person is married'. By contrast, the section also defines a minor's 'responsible adult' to mean 'a person who is of or over the age of 18 years and who is- (a) the younger person's parent, step-parent, guardian or grandparent; or (b) the younger person's spouse; or (c) a person who is acting in place of a parent and who could reasonably be expected to exercise responsible supervision of the younger person'. The latter term is only used in provisions regulating when a minor can be present a licensed premises: see ss. 120 & 123.

³ *Liquor Act 1992* (Qld), ss. 5, 156(1) but c.f. *Liquor Act 2007* (NSW), where 'parent' is similarly undefined.

⁴ E.g. *Births, Deaths and Marriages Registration Act 1996*, s. 4.

⁵ E.g. *Limitation of Actions Act 1958*, s. 27A(1); *Racial and Religious Tolerance Act 2001*, s. 3; *Public Health and Wellbeing Act 2008*, s. 3(1).

⁶ E.g. *Community Services Act 1970*, s. 74A; *Evidence Act 2008*, Dictionary Clause 10(1)(b).

⁷ Charter s. 8 c.f. *Equal Opportunity Act 1995* (Vic), ss. 6(e) and 4 (defining 'domestic partner' to include 'a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender)').

⁸ *Liquor Act 2007* (NSW), s. 117(4); *Liquor Act 1992* (Qld), ss. 5, 156.

⁹ Charter s. 25(1). See the Committee's *Practice Note No. 3*.

¹⁰ *Liquor Act 2007* (NSW), s. 117(4) but c.f. the general reverse onus in *Liquor Act 1982* (Qld), s. 230.

Committee accepts that a reverse onus is appropriate in the case of supply in licensed premises (where a licensee can rely on evidence of a system for checking the age of patrons) and that anyone who supplies liquor to a potential minor has the responsibility to seek either proof of the person's age or the authorisation of the person's parent, guardian or spouse, it notes that it may be difficult for a defendant to prove to a court that he or she was shown an evidence of age document (as the document may have been shown on an earlier occasion and the minor may not want to admit to police that he or she possessed a false document.¹¹)

The Committee will write to the Minister seeking further information as to the meaning of 'parent' in clause 3. Pending the Minister's response, the Committee refers to Parliament for its consideration the questions of whether or not clause 3's extension of the offence of supplying liquor to minors in a residence:

- ***by exempting liquor supplies by or with the authority of the minor's 'spouse', a term that is limited to a person married to the minor, is compatible with the Charter's right against discrimination on the basis of marital status***
- ***by requiring defendants to prove to the court that they had been shown an evidence of age document relating to the minor, is compatible with the Charter's right to be presumed innocent until proved guilty.***

The Committee makes no further comment.

¹¹ It is an offence to use, make or obtain a false evidence of age document: *Liquor Control Reform Act 1998*, ss. 123-124.

Multicultural Victoria Bill 2011

| | |
|---------------------------------|--|
| Introduced | 22 March 2011 |
| Second Reading Speech | 24 March 2011 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Nicholas Kotsiras MLA |
| Portfolio responsibility | Minister for Multicultural Affairs and Citizenship |

Purpose

The Bill proposes a new principal Act titled the *Multicultural Victoria Act 2011* and —

- establishes the principles of multiculturalism.
- establishes the Victorian Multicultural Commission ('the Commission') composed of 12 members appointed by Governor in Council on the recommendation of the Minister.
- provides for the establishment of regional advisory councils.
- establishes reporting requirements for the Commission.
- establishes reporting requirements for government departments in relation to multicultural affairs.
- repeals the *Multicultural Victoria Act 2004* and make necessary transitional provisions.

Content

The Bill sets out and provides for recognition by the Victorian Parliament of seven principles of multiculturalism. These include principles such as mutual respect, equal access to opportunities, and a shared commitment to Australia and to community service and links Parliamentary recognition of the principles of multiculturalism to the rights and responsibilities of citizenship and the promotion of diversity in the Victorian community. The Bill provides that it is the intention of the Parliament that this Bill is to be administered and interpreted having regard to the principles of multiculturalism. [4] The Bill declares that that the Part (Principles of Multiculturalism) does not create in any person any legal right or give rise to any civil cause of action. [5] The Bill provides that the Commission is to establish 8 regional advisory councils for regional areas of the State. [22]

Committee comment

Rights and freedoms – Every person's right to have the opportunity, without discrimination to participate in the conduct of public affairs directly or through freely chosen representatives (Charter, s.18) – Disqualification of certain office holders – Conflict of interest – Whether a reasonable limitation

The Bill establishes the Commission to consist of the 12 members appointed by the Governor in Council on the recommendation of the Minister. Members of the Parliament of Victoria, Councillors, electorate officers, Ministerial officers and Parliamentary advisers cannot be recommended for appointment as members of the Commission. [12]

The Committee refers to the Parliament the question whether the limitation proposed by the Bill is justified.

The Committee makes no further comment.

Parliamentary Salaries and Superannuation Amendment Bill 2011

| | |
|---------------------------------|--------------------------|
| Introduced | 22 March 2011 |
| Second Reading Speech | 24 March 2011 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Andrew McIntosh MLA |
| Portfolio responsibility | Premier |

The Bill amends the *Parliamentary Salaries and Superannuation Act 1968* to provide for a fine to be imposed on a member who is suspended after being named.

Content

From the Explanatory Memorandum –

The Bill provides that if a member is suspended from the service of the Legislative Council or the Legislative Assembly after being named under the Standing Orders of the Legislative Council or the Legislative Assembly, a fine is imposed on the member. The amount of the fine is to be determined by multiplying the daily rate of the basic salary of the member by the number of days in the sitting period during which the member is suspended from the service of the Legislative Council or the Legislative Assembly.

The Clerk of the Council or the Clerk of the Assembly must notify the member in writing of the amount of the fine. Although the fine is deducted from a member's salary, it is explicitly provided that the fine does not constitute a reduction in salary.

The Bill further provides that Separate Fines Funds are to be established for the Legislative Assembly (Assembly Suspension Fines Fund) and Legislative Council (Council Suspension Fines Fund), into which fines of members are to be paid. The Speaker of the Legislative Assembly and the President of the Legislative Council administer the Fines Fund for their House. The Speaker must distribute the amount standing to the credit of the Assembly Suspension Fines Fund as at 30 June each year to one or more charitable institutions nominated by the Speaker in each year, and table a report specifying the amount distributed and the name of the charitable institution or charitable institutions to which the amount was distributed. The President must do the same in respect of the Council Suspension Fines Fund.

Committee comment

Rights and freedoms – Representative government – Free speech – Member's disorderly conduct – Inherent powers of a House of Parliament to regulate its proceedings – Standing Orders of a House of the Parliament – Fine imposed on suspension of Member – Power to punish for contempt – High Court of Parliament – Inherent powers necessary for proper functioning of legislature

The Committee observes that a statutory power to fine a Member of a House of the Parliament for disorderly conduct after being named raises issues involving the inherent powers of Parliament to regulate its own proceedings and to punish for contempt for a range of reasons and circumstances.

The Committee observes that section 43(1)(f) of the *Constitution Act 1975 (Vic)* provides that standing rules and orders may be made in respect to the conduct of all business and proceedings of a House, and that each House of the Victorian Parliament has adopted by resolution standing orders that include provisions concerning disorder.¹² Those Standing Orders provide for the suspension of Members for disorderly conduct, and further provides for a declaration that a Member is guilty of contempt if the member disobeys an order of the House.

¹² Standing Orders of the Legislative Council, *Chapter 13*, Standing Orders of the Legislative Assembly, *Chapter 13*.

The Committee notes that the practice of fining Members for disorderly conduct has no precedent in an Australia Parliament.¹³ The Committee however notes that the standing orders of the House of Commons of the Parliament of the United Kingdom provides for the suspension of a Member's salary as an automatic consequence of suspension.¹⁴

The Committee notes that the power to impose a sentence or a pecuniary penalty is ordinarily an incident of the exercise of judicial power by a court or tribunal after a merits determination process engaging the principles of natural justice which include an impartial adjudication and a hearing governed by rules and procedures. The Committee observes that the imposition of a penalty by a House on one of its own Members is a unique instance of a pecuniary penalty being imposed by a non-judicial body and one which may not be reviewable.

For the avoidance of doubt the Committee does not doubt the power of the Parliament to punish for contempt either committed by Members or non-Members.

Power to fine suspended Member – Fair hearing – Reviewable decision – Whether reviewable by court

Commonwealth enactment dealing with contempt of Parliament – Power to fine – Decisions reviewable under Act by court – Act not dealing with disorder – Relevance to Bill

The Committee notes that the question of fair hearing and reviewability is raised in the Charter report below.

The Committee makes some observations concerning the relevance of Commonwealth legislation to the proposed Bill.

The Committee notes that the Parliament of the Commonwealth of Australia has enacted legislation which provides a statutory definition of the elements of the offence of contempt of Parliament in certain circumstances and within that Act restricts the category of acts which may be treated as a contempt.¹⁵ The Committee notes that whilst a House of the Commonwealth Parliament may make a decision concerning a contempt under the Act the decision is subject to review by the Federal Court. However, for current purposes, the Commonwealth Act appears not be in point as it appears to cover contempt committed by persons other than Members and the penalties provisions of that Act allude only to penalties imposed on 'a person' as distinct from a penalty imposed on 'a Member'¹⁶. The Act further provides for Member's immunities from arrest and attendance before courts when the House is sitting.¹⁷

It appears to the Committee that where the Parliament provides no statutory definition restricting or defining what may constitute contempt by Members that the decision by the House will not be subject to judicial review. Further the standing orders of the two Houses provide no avenue for rebuttal, providing instead, that on the question of suspension the President or Speaker as the case may be, *'must put the question immediately without amendment, adjournment or debate.*

¹³ Second Reading Speech, Legislative Assembly, 24 March 2011.

¹⁴ Standing Order 45A, House of Commons, Parliament of the United Kingdom, *'The salary of a Member suspended from the service of the House shall be withheld for the duration of his suspension'*.

¹⁵ *Parliamentary Privileges Act 1987* (Cth), section 4: 'Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member'.

¹⁶ *Parliamentary Privileges Act 1987* (Cth), section 7

¹⁷ *Parliamentary Privileges Act 1987* (Cth), section 14

The Committee provides a Charter report on this proposed provision. (*see below*)

The Committee refers the question of the appropriateness of the provision for the respective Houses to consider.

In respect to the inherent power of Parliament to punish for contempt the Committee provides the following material for the information of Members.

Constitution Act 1975 (Vic)

19 Privileges powers etc. of Council and Assembly

- (1) *The Council and the Assembly respectively and the committees and members thereof respectively shall hold enjoy and exercise such and the like privileges immunities and powers as at the 21st day of July, 1855 were held enjoyed and exercised by the House of Commons of Great Britain and Ireland and by the committees and members thereof, so far as the same are not inconsistent with any Act of the Parliament of Victoria, whether such privileges immunities or powers were so held possessed or enjoyed by custom statute or otherwise.*
- (2) *The Parliament may by Act legislate for or with respect to the privileges immunities and powers to be held enjoyed and exercised by the Council and the Assembly and by the committees and the members thereof respectively.*

43. Standing rules and orders

- (1) *The Council and the Assembly may from time to time make amend or vary standing rules and orders for or with respect to –*
 - (f) *the conduct of all business and proceedings in the Council and the Assembly severally and collectively.*

Erskine May's, Parliamentary Practice (UK)

The power of both Houses to punish Members and non-Members for disorderly and disrespectful acts has much in common with the authority inherent in the superior courts 'to prevent or punish conduct which tends to obstruct, prejudice or abuse them' while in the exercise of their responsibilities. By this means the two Houses are enabled to safeguard and enforce their necessary authority without the compromise or delay to which recourse to the ordinary courts would give rise. The act or omission which attracts the penal jurisdiction of either House may be committed in the face of the House or of a committee, within the Palace of Westminster or outside it. Nor is it necessary that there should have been a breach of one of the privileges enjoyed, collectively or individually, by either House: anything done or omitted which may fall within the definition of contempt (see p 128), even if there is no precedent, may be punished.¹⁸

Suspension and the Salary of Members

Since the passing of Standing Order No 45A in 1998, withholding of the Member's salary is an automatic consequence of suspension. Subsequently the House agreed with a recommendation from the Committee on Standards and Privileges that, in appropriate cases, the Committee should recommend as a penalty withholding of a Member's salary for a specified period without suspending the Member.¹⁹

Odggers' Australian Senate Practice

Power to punish contempts

Each House of the Parliament possesses the power to declare an act to be a contempt and to punish such act, even where there is no precedent of such an act being so judged and punished. ... the power

¹⁸ Erskine May, *Parliamentary Practice*, Butterworths, 23rd Edition, at page 155

¹⁹ Erskine May, *Parliamentary Practice*, Butterworths, 23rd Edition, at page 164

does not depend on the acts judged and punished being violations of particular immunities. This power to deal with contempts of either House is the exact equivalent of the power of the courts to punish contempts of court.

The rationale of the power to punish contempts, whether contempt of court or contempt of the Houses, is that the courts and the two Houses should be able to protect themselves from acts which directly or indirectly impede them in the performance of their functions.

...

The power of the Houses to punish contempts was recognised and upheld by the courts as part of the ordinary law. This recognition lay in the refusal of the courts to release persons committed for contempt, and in the rule that the courts would not inquire into a parliamentary warrant for the committal of a person for contempt where the warrant did not specify the contempt (R. v Richards ex parte Fitzpatrick and Brown 1955 92 CLR 157: but this law is changed by the 1987 Act: see below under Statutory definition of contempts).

...

That the power of a legislature to punish contempts is regarded as inherent in the legislative function is best demonstrated by an examination of the American law. In the United States it has been held that each House of the Congress and of the state legislatures possesses the power to punish acts which obstruct the performance of the duties of a legislature in spite of the absence of any express provision in the United States Constitution; it is an inherent power, springing from the legislative function.²⁰

Charter Report

Fair hearing – Fine for suspension

Summary: Clause 3 provides that ‘a fine is imposed’ on any Member of Parliament who is suspended after being named. The Committee notes that there is no provision for a hearing in relation to the naming or suspension of a Member.

The Committee notes that clause 3, inserting a new section 7B into the *Parliamentary Salaries and Superannuation Act 1968*, provides that ‘a fine is imposed’ on any Member of Parliament who is suspended after being named. The fine is calculated by reference to the salary of the Member during the period of suspension and is deducted from the Member’s salary. However, new section 7B(6) provides that ‘the fine does not constitute a reduction of salary’.

The Committee notes that Parliament and its officers are not public authorities for the purposes of the Charter and are not obliged to act compatibly with human rights or to give proper consideration to human rights.²¹ However, like all other new legislation, bills that regulate Parliament or its members are subject to the Charter’s provisions for scrutiny of new laws.²²

The statement of compatibility remarks that the Bill ‘does not engage or limit any human right protected by the charter act’. However, the Committee observes that the imposition of a fine may engage Charter s. 24(1), which provides:

A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The European Court of Human Rights has held that the Maltese Parliament breached an equivalent right in the European human rights convention when it imposed a fine for contempt in a non-member without satisfying the requirement of impartiality.²³ The United Kingdom Parliament’s Joint

²⁰ Odgers’ Australian Senate Practice, 9th Edition, Department of the Senate, at page 57

²¹ Charter s. 4(1)(i).

²² Charter Part 3, Division 1.

²³ *Demicoli v Malta* [1991] ECHR 37; (1991) 14 EHRR 47

Committee on Parliamentary Privilege has remarked that 'it would be unwise to assume the requirements of fairness would be significantly less for members',²⁴ while its Joint Committee on Human Rights has determined that internal disciplinary proceedings that have financial consequences for Members engage the right to a fair hearing.²⁵

While the Committee accepts that a house of the Parliament of Victoria is 'a competent, independent and impartial... tribunal' for the purposes of Charter s. 24(1), it notes that there is no provision for a hearing in relation to the naming or suspension of a Member. The current Standing Orders provide that the motion to suspend 'must not be amended, adjourned or debated,'²⁶ although the Bill does not prevent these aspects of the Standing Orders from being changed by either House.

The Committee refers to Parliament for its consideration the question of whether or not clause 3, by imposing a fine on a member suspended after being named without providing for a hearing on either the naming or the suspension, is compatible with the Charter's right to a fair hearing.

The Committee makes no further comment.

²⁴ Joint Committee on Parliamentary Privilege, *First Report*, 1999, [283].

²⁵ Joint Committee on Human Rights, *Nineteenth Report*, 2009.

²⁶ Legislative Council Standing Order 13.04(2) c.f. Legislative Assembly Standing Order 126(2).

Residential Tenancies Amendment (Public Housing) Bill 2011

| | |
|---------------------------------|-------------------------|
| Introduced | 22 March 2011 |
| Second Reading Speech | 24 March 2011 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Hugh Delahunty MLA |
| Portfolio responsibility | Minister for Housing |

Purpose

The Bill amends the *Residential Tenancies Act 1997* (the 'Act') to allow the Director of Housing (the 'Director') to issue a notice to vacate to a tenant of the Director who carries out certain illegal activities on the premises, or in common areas of the land on which the rented premises are located.

The relevant illegal activities prescribed in the Bill are –

- trafficking or attempted trafficking in a drug of dependence.
- supplying a drug of dependence to a person under the age of 18 years.
- possessing a preparatory item with the intention of using it for the purpose of trafficking in a drug of dependence.
- possessing, without a lawful excuse, a tablet press or precursor chemical.
- cultivating or attempting to cultivate a narcotic plant.

The Director may give a tenant a notice to vacate under new section 250A(1) even if the tenant has not been charged with, or found guilty of, an offence arising from the relevant illegal activity. The Director of Housing may issue a notice to vacate under new section 250A(1) if the Director believes on reasonable grounds that the tenant has engaged in the relevant illegal activity on the rented premises or in a common area. [3]

The Bill inserts a new section 250B which will enable the Director to evict a tenant after at least 14 days notice if the Director reasonably believes the tenant has committed an indictable offence which is prescribed by the regulations. The section will apply whether or not the person has been charged with, convicted of or found guilty of a prescribed offence. [3]

Reviewable administrative decision – Notice to vacate

The Committee observes that a decision of the Director under new sections 250A or 250B is reviewable under Part 11 of the Act.

The Committee notes this extract from the Statement of Compatibility –

If a notice to vacate is issued under the proposed new provisions and the tenant remains in the rented premises, the Director may only regain possession of the rented premises if the Victorian Civil and Administrative Tribunal ('VCAT') grants a possession order. VCAT may only grant the possession order if VCAT is satisfied of a number of factors, including that the director was entitled to give the notice to vacate (section 330 of the act). At the VCAT hearing, the tenant will have an opportunity to test the evidence on which the director based the director's decision to issue the notice to vacate.

Extract from the Second Reading Speech –

... The Bill will address these shortcomings in the Act by ensuring that the Director may issue a tenant with a notice to vacate the premises after at least 14 days, where the Director is reasonably satisfied that the tenant has engaged in certain illegal drug activities, including drug trafficking, manufacturing

and cultivation, or if the tenant has carried out other indictable offences prescribed by the regulations, in his or her rented premises, or in the common areas.

It will not be necessary for the Director to wait for criminal prosecution to occur before taking action. This will allow the Director to take action swiftly to ensure the safety and wellbeing of all tenants.

Charter Report

Arbitrary interference in home – Notice to vacate for particular illegal acts on rented premises or in common area

Summary: The Committee refers to Parliament for its consideration the question of whether or not clause 3, by providing for a notice to vacate based on the tenant's commission of a specified illegal act on rented premises or in a common area, rather than the tenant's deliberate use of those premises for an illegal purpose, is compatible with the Charter's right against arbitrary interference in the home.

The Committee notes that clause 3, inserting new sections 250A and 250B into the *Residential Tenancies Act 1997*, permits the Director of Housing to give a notice to vacate to a tenant who has committed particular illegal acts 'on the rented premises or in a common area'. The Committee observes that, by permitting a notice for acts that merely occur 'on the rented premises' or 'in a common area', new sections 250A and 250B go further than existing section 250, which only permits a notice to vacate 'if the tenant has used the rented premises... for any purpose that is illegal'.

In relation to existing s. 250, the Victorian Civil and Administrative Tribunal has remarked that:²⁷

it is not sufficient that the premises are merely the scene of the commission of the crime. There must be a deliberate use of the premises for the illegal purpose. There must be some real connection between the use of the rented premises and the illegal activity alleged. It is not sufficient that there be a passing connection to the rented premises. The purpose of the legislation is not to re-punish tenants for crimes they commit, but to prevent rented premises from being used for a purpose that is illegal. This interpretation is an interpretation which is consistent with the important right to a home as articulated in s 13(a) of the Charter.

The Committee notes that new sections 250A and 250B do not require proof of any 'deliberate use of the premises for the illegal purpose'. For example, new section 250A(1)(c) would allow the Director of Housing to issue a notice to vacate if a tenant merely downloads instructions for cultivating cannabis on a computer in the premises or parks a car containing an instrument for cultivating cannabis in the premise's car park, even if the tenant's intention is to grow and traffick the cannabis elsewhere.

The Statement of Compatibility remarks:

[I]n accordance with the director's administrative law and charter obligations, the director must have a reasonable belief that the tenant has engaged in the illegal conduct specified in the provisions of the act, or committed the indictable offences prescribed by the regulations. Accordingly, prior to issuing the notice to vacate, the director must consider all the available evidence, the circumstances of the case, and the tenant's response to the allegations.

Given the above, and that serious illegal activity, such as drug trafficking, manufacture and cultivation, have been identified as impacting negatively on public housing estates, and that it is important to protect the safety of other public housing tenants in their home, any interference with the home and family will be proportionate...

²⁷ *Director of Housing v TK* [2010] VCAT 1839, [92]. Charter s. 13(a) provides that: 'A person has the right... not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with'. See also *Director of Housing v TP* [2008] VCAT 1275, [39] and *Director of Housing v T* [2009] VCAT 1732, [55].

At the VCAT hearing [for a possession order], the tenant will have the opportunity to test the evidence on which the director based the director's decision to issue the notice to vacate.

The Committee observes that a case is presently pending before the Court of Appeal that is expected to clarify the extent of the legal obligations of public landlords under the Charter and the ability of VCAT to provide a remedy for any breach of those obligations.²⁸

The Committee refers to Parliament for its consideration the question of whether or not clause 3, by providing for a notice to vacate based on the tenant's commission of a specified illegal act on rented premises or in a common area, rather than the tenant's deliberate use of those premises for an illegal purpose, is compatible with the Charter's right against arbitrary interference in the home.

The Committee makes no further comment.

²⁸ The appeal is from *Director of Housing v Sudi* [2010] VCAT 328.

Ministerial Correspondence

Education and Training Reform Amendment (School Safety) Bill 2010

The Bill was introduced into the Legislative Assembly on 21 December 2010 by the Hon. Martin Dixon MLA. The Committee considered the Bill on 28 February 2011 and made the following comments in Alert Digest No. 1 of 2011 tabled in the Parliament on 1 March 2011.

Committee comments

Charter report

Privacy – Property – Power to search students’ bags – Power to ask students to disclose concealed items – Requirement to surrender items to police upon request – Limits of powers set by regulations

Summary: Clause 3 gives government school officials new powers with respect to harmful items. The Committee is concerned that some exercises of the new powers may limit Charter rights with respect to privacy and property, if regulations limiting those powers are not enacted before the Bill commences. The Committee will write to the Minister seeking further information. .

The Committee notes that clause 3, inserting a new Part 5.8A into the Education and Training Reform Act 2006, gives principals, assistant principals and authorised teachers of government schools new powers with respect to harmful items, including:

- *a power to search ‘any bag or other article that is being used by a student for storage’ for harmful items if the official ‘reasonably suspects that the search will uncover harmful items’: new sections 5.8A.3(1)(d) & 5.8A.3(2).*
- *a power to ‘ask a student to turn out the student’s pockets’ and ‘to disclose whether or not the student is concealing a harmful item: new section 5.8A.3(3)(c)-(d).*
- *a requirement to surrender non-weapon items to a police officer ‘if so requested by the member of the police force’: new section 5.8A.5(2)(b).*

The Committee observes that new section 5.8A.3(2) is consistent with rulings in North America permitting searches of students by school officials on the basis of reasonable suspicion. The Supreme Court of Canada has held:

This modified standard for reasonable searches should apply to searches of students on school property conducted by teachers or school officials within the scope of their responsibility and authority to maintain order, discipline and safety within the school. This standard will not apply to any actions taken which are beyond the scope of the authority of teachers or principals.

Further a different situation arises if the school authorities are acting as agents of the police... There would obviously be a potential for abuse, were that not the case.

However, the Committee notes most limitations on the exercise of the search, seizure and retention powers granted by the Bill will be dealt with by regulations. The Second Reading Speech remarks:

Regulations will be developed to help guide principals in the exercise of this power and the related seizure powers under this bill. These regulations will establish a framework for the development of appropriate protocols between Victoria Police and the Department of Education and Early Childhood Development, on behalf of principals, regarding the manner in which certain powers should be exercised in different circumstances, and how seized items should be handled and how school principals will liaise with Victoria Police in the execution of these new powers.

The Committee is concerned that some exercises of the new powers may limit Charter rights with respect to privacy and property, if regulations limiting those powers are not enacted before the Bill commences.

In particular:

- *new section 5.8A.3(1)(d) appears to permit searches of students' property conducted at the request of the police, without complying with restrictions on the police's own search powers.*
- *new section 5.8A.3(3)(c)-(d) appears to permit requests to students to turn out their pockets or disclose concealed items without informing them that they do not have to obey such requests.*
- *new section 5.8A.5(2)(b) appears to permit police to seize non-weapon items without complying with restrictions on the police's general seizure powers.*

The Committee will write to the Minister seeking further information as to whether or not regulations under new sections 5.8A.3(4), 5.8A.4(4) and 5.8A.5(2) will be enacted before the commencement of new Part 5.8A. Pending the Minister's response, the Committee draws Parliament's attention to new sections 5.8A.3(1)(d), 5.8A.3(3)(c) and 5.8A.5(2)(b).

Minister's Response

Thank you for your letter concerning the Education and Training Reform Amendment (School Safety) Bill, 2010.

The Committee in its Charter report raised a number of concerns regarding the timing of the enactment of regulations to support the Bill.

As requested, I am providing comment and advice to the Committee in relation to these concerns.

The Bill provides that the Act comes into operation on a day or days to be proclaimed. If a provision of this Act does not come into operation before January 2012, it comes into operation on that day. Regulations will be developed in consultation with key stakeholders once the Bill is passed.

It is anticipated that the Act and Regulations will commence on the same day.

If you have any additional queries in relation to the Bill, or would like further information, please contact Mr Greg Donaghue, Manager, Legislation Services Unit, Department of Education and Early Childhood Development, on 9637 3116, or by email: donaghue.greg.f@edumail.vic.gov.au.

*The Hon. Martin Dixon, MP
Minister for Education*

28 March 2011

The Committee thanks the Minister for this response.

Justice Legislation Amendment Bill 2011

The Bill was introduced into the Legislative Assembly on 1 March 2011 by the Hon. Michael O'Brien MLA. The Committee considered the Bill on 21 March 2011 and made the following comments in Alert Digest No. 2 of 2011 tabled in the Parliament on 22 March 2011.

Committee comments

[4]

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

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

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

[12]

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

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

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

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

The Committee will seek further advice from the Minister.

[Charter report]

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

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

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

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

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

The Statement of Compatibility remarks:

These barring orders and accompanying offences are important in reducing violent incidents outside licensed premises and protecting the safety of patrons within the vicinity. The limitation is directly aimed at protecting public order, as well as the rights and freedom of others, including the right to life in section 9 and the right to liberty and security of person in section 21 of the charter act. The nature and extent of the limitation is confined by a number of safeguards in the Bill.

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

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

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

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

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

Minister's Response

Thank you for your letter of 22 March 2011 enclosing the Scrutiny of Acts and Regulations Committee (SARC) Digest No. 2 of 2011, which raises a number of issues regarding the Justice Legislation Amendment Bill 2011 (the Bill). I am pleased to take this opportunity to address the Committee's concerns.

Barring orders - statutory review provision

The SARC Alert Digest No. 2 of 2011 notes that 'no statutory provision has been provided in the Bill for an independent body to review a decision by the Director of Liquor Licensing (the Director) under new Part 7A (Barring Orders)'.

Under the Administrative Law Act 1978 persons affected by a decision of the Director may make an application to the Supreme Court which allows them access to the usual range of administrative law remedies. Grounds upon which an individual could apply to the Supreme Court would include failure to accord natural justice, procedural error and unreasonableness. As the Bill does not seek to remove the jurisdiction of the Supreme Court, the usual rights of judicial review of administrative decisions will apply.

By way of example, banning notices issued under existing powers in Part 8A of the Liquor Control Reform Act 1998 (the Act) are able to be reviewed by the Supreme Court in this same way. Banning

notices may be revoked or varied by a police officer of or above the rank of sergeant; such a decision can only be reviewed by the Supreme Court. Similarly, decisions to vary or revoke barring orders issued under the new powers will be subject to review by the Supreme Court under the Administrative Law Act 1978.

Statute law revision – previous drafting error

The SARC Alert Digest notes that the Second Reading Speech does not explain why the technical amendment to section 141(2)(ea) is made. Please be advised that section 141(2)(ea) is repealed as it provides for an infringement notice to be issued under s108A (licensee must produce evidence that responsible service programs undertaken).

Although section 108A was repealed in 2010, due to a drafting error the corresponding infringement power in s141(2)(ea) was not also repealed. This section is therefore now redundant, and should be removed from the Act.

Charter report

The SARC Alert Digest makes a number of comments about the Bill in relation to the Charter of Human Rights and Responsibilities, primarily in relation to the rights to freedom of movement and to a fair hearing.

Firstly, SARC notes that the Bill does not provide guidance as to what would constitute a reasonable excuse in relation to entering the vicinity of a licensed premises when someone is barred from doing so. Reasonable excuse criteria have not been provided for the barring order provisions in recognition of the wide diversity of circumstances in which an individual may have a reason to enter an area from which they are banned. The inclusion of guidance or examples would potentially limit the application of the reasonable excuse defence, and lead to the barring order provisions being implemented inflexibly and unfairly. The reasonable excuse defence will instead rely on generally accepted principles of reasonable excuse in criminal law, which require that a reasonable excuse is dependent upon both subjective and objective considerations which are related to the immediately prevailing circumstances.

This approach will provide police and the courts with the discretion required to ensure the provisions are implemented appropriately in each case.

Secondly, SARC notes that it considers that the Statement of Compatibility does not address the Charter's right to a fair hearing. I consider that this issue is addressed through the inclusion of the power for the Director to vary or revoke a barring order, and the scope for the Director's decision to be reviewed by the Supreme Court. The Director's review power in the Bill is very broad, and does not limit the Director's power to make decisions in any way he sees fit. An individual subject to a barring order therefore may provide the Director with any relevant information when applying for a variation or revocation.

Finally, SARC questions whether the purpose of reducing alcohol-related disorder could be reasonably achieved with less restriction of the right to freedom of movement. In particular, SARC appears to consider that the 20-metre definition of 'vicinity' may be too broad. I note that, whilst a 20-metre radius of a licensed premises may be a more general measurement than specifying actual locations (such as footpaths leading to entrances), to be more specific would make the provisions extremely difficult to communicate and implement. This would require each and every barring order to be tailored to the individual licensed premises, which would disproportionately increase the compliance burden on licensees and potentially confuse barred individuals. It would also reduce clarity for the police in enforcing the orders. In practice, I consider that a 20-metre radius is the most effective way in which to implement this provision.

I would also like to take this opportunity to respond to the comment made by SARC that the prohibition on the re-entry of a person to a licensed premises who has been ejected or refused entry is not expressly limited to refusals based on that person's inappropriate behaviour. This provision applies to all persons who have been requested to leave or denied entry to a licensed premises, as limiting the application to specific criteria would require venue operators to individually assess whether the provision was to apply to each patron. The approach used in the Bill means that all patrons will be subject to the same requirements for denial of entry or ejection, which will provide licensees and customers with a consistent understanding of the provisions. However, the practical effect of the measures will apply in circumstances where a patron comes to the attention of a licensee and police as a result of their antisocial behaviour.

I trust that this information is of assistance to you.

*HON. MICHAEL O'BRIEN MP
Minister for Consumer Affairs*

Received 4 April 2011.

The Committee thanks the Minister for this response.

**Committee Room
4 April 2011**

Appendix 1

Index of Bills in 2011

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Appendix 2

Committee Comments classified by Terms of Reference

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

Alert Digest Nos.

Section 17(a)

(i) trespasses unduly upon rights or freedoms

(ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers

(iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions

Justice Legislation Amendment Bill 2011

2

(iv) unduly requires or authorise acts or practices that may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000*;

(v) unduly requires or authorise acts or practices that may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2001*;

(vi) inappropriately delegates legislative power.

(vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny.

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

Building Amendment Bill 2011

1

Education and Training Reform Amendment (School Safety) Bill 2010

1

Justice Legislation Amendment Bill 2011

2

Liquor Control Reform Amendment Bill 2011

3

Sentencing Amendment Act 2010

1

Section 17(b)

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

Appendix 3

Ministerial Correspondence 2011

Table of correspondence between the Committee and Ministers during 2011

| Bill Title | Minister/ Member | Date of Committee Letter / Minister's Response | Alert Digest No. Issue raised / Response Published |
|---|-------------------------------|---|---|
| Building Amendment Bill 2011 | Minister for Planning | 01.03.11 21.03.11 | 1 of 2011 2 of 2011 |
| Education and Training Reform Amendment (School Safety) Bill 2010 | Minister for Education | 01.03.11 28.03.11 | 1 of 2011 3 of 2011 |
| Justice Legislation Amendment Bill 2011 | Minister for Consumer Affairs | 22.03.11 04.04.11 | 2 of 2011 3 of 2011 |
| Liquor Control Reform Amendment Bill 2011 | Consumer Affairs | 05.04.11 | 3 of 2011 |

Table of Ministers responses still pending

| Bill Title | Minister/ Member | Date of Committee Letter / Minister's Response | Alert Digest No. Issue raised / Response Published |
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| Sentencing Amendment Act 2010 | Attorney-General | 01.03.11 | 1 of 2011 |