

# **No. 3 of 2013**

**Tuesday, 5 March 2013**

## **On the**

Alpine Resorts And National Parks  
Acts Amendment Bill 2013

Company Titles (Home Units) Bill 2013

Co-operatives National Law  
Application Bill 2013

Major Sporting Events Amendment  
Bill 2013

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# Useful information

## Role of the Committee

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

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

## Interpretive use of Parliamentary Committee reports

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

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

## When may human rights be limited

Section 7 of the *Charter* provides –

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

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

## Glossary and Symbols

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

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

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

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

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

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

'*penalty units*' refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (currently one penalty unit equals \$122.14).

'*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 2013

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## Alpine Resorts And National Parks Acts Amendment Bill 2013

|                                 |   |
|---------------------------------|---|
| <b>Introduced</b>               | 19 February 2013                            |
| <b>Second Reading Speech</b>    | 20 February 2013                            |
| <b>House</b>                    | Legislative Assembly                        |
| <b>Member introducing Bill</b>  | Hon. Ryan Smith MLA                         |
| <b>Portfolio responsibility</b> | Minister for Environment and Climate Change |

### Purpose

The purpose of the Bill is to alter the boundaries of the Alpine National Park and the Fall Creek Alpine Resort.

Parts 2 and 3 – Amendment to the *National Parks Act 1975*, the *Alpine Resorts Act 1983* and *Alpine Resorts (Management) Act 1997*

- It excises two parcels of land (the *Rocky Valley land* - 9.6 ha and the *Sun Valley land* - 0.4 ha) from the Alpine National Park and incorporates it into the Falls Creek Alpine Resort [3-6]. The Second Reading Speech extract – *‘The area is a relatively disturbed part of the park, mainly as a legacy of its role in the construction of Rocky Valley Dam as part of the Kiewa Hydroelectric Scheme. The Bill preserve two existing leases over parts of the area that are associated with the Kiewa hydro-electric scheme.’*
- It excises a parcel of Crown land (the *Howman’s Gap land* - 0.25 ha) to the Falls Creek Alpine Resort. The Second Reading Speech extract – *‘The second addition is an area at Howman’s Gap containing the resort’s snow clearing base. The area is currently part of a government road and, prior to being added to the resort, will be discontinued as a road under the Road Management Act 2004.’* [3-6].
- It excises a parcel of land from the Falls Creek Alpine Resort (the *Park addition land* - 11.9 ha) and incorporates it into the Alpine National Park. The Second Reading Speech extract – *‘This land is currently part of the alpine resort, and is situated on the northern slopes of Mt McKay. The Falls Creek Biodiversity Management system has identified the land as suitably habitable for the critically endangered alpine water skink. The land contains snow gum woodland and is suitable for addition to the park. This addition will ensure that there is an overall increase in the area of the national park.’* [3-6].

**The Committee makes no further comment**

## Company Titles (Home Units) Bill 2013

|                                 |                               |
|---------------------------------|-------------------------------|
| <b>Introduced</b>               | 19 February 2013              |
| <b>Second Reading Speech</b>    | 20 February 2013              |
| <b>House</b>                    | Legislative Assembly          |
| <b>Member introducing Bill</b>  | Hon. Michael O'Brien MLA      |
| <b>Portfolio responsibility</b> | Minister for Consumer Affairs |

### Purpose

The Bill confers additional jurisdiction on the Victorian Civil and Administrative Tribunal (VCAT) to hear and determine neighbourhood disputes affecting company title corporations and service companies for building subdivision. The Second Reading Speech extract – *'Company title home units are apartment blocks owned by corporations established under the Corporations Act 2001. A person becomes entitled to use and occupy an apartment by buying shares in the corporation which then gives them a right of use and occupation for a particular apartment. The company title corporation's constitution typically contains the rules of the use and occupation in the block. These rules give the board of directors of the corporation the ability to control many aspects of the use and occupation of the apartments, including approval of share sales, leasing of apartments and matter such as whether apartment owners can have pets.'*

#### Part 2 – VCAT jurisdiction over neighbourhood disputes

- It sets out who can apply to VCAT to resolve neighbourhood disputes, the orders VCAT can make and what constitutes a 'neighbourhood dispute' (See Schedule). It specifically excludes from 'neighbourhood disputes' matters relating to the sale, transfer or forfeiture of a share or shares in a company title corporation or service company [5-8]. It sets out the factors that VCAT must consider when making orders [10].

#### **Section 17(b) of the Parliamentary Committee's Act – repeal, alteration or variation of section 85 of the Constitution Act 1975 (unlimited jurisdiction of the Supreme Court)**

Clause 17 declares the intention of clause 12 to alter or vary section 85 of the *Constitution Act 1975*.<sup>1</sup> Clause 12 provides that the court must stay the proceedings if the proceedings could be heard by VCAT and arise wholly from a neighbourhood dispute in respect of which VCAT has jurisdiction. An extract from the Second Reading Speech: -

*'Statement under section 85 of the Constitution Act 1975*

*Clause 17 of the bill states that it is the intention of clause 12 to alter or vary section 85 of the Constitution Act 1975. I therefore make the following statement under subsection 85(5) of the Constitution Act of the reason for altering or varying that section.*

*Clause 12 provides that if a person commences proceedings in a court that arise wholly from a neighbourhood dispute in respect of which VCAT has jurisdiction, the court must stay proceedings if the proceedings could be heard by VCAT and the court is satisfied that the proceedings would be more appropriately dealt with by VCAT. The reason for this is that it is intended to have an informal, low-cost procedure to deal with such disputes, without, for instance, the expense involved in having legal representation. It is considered critical to keep costs at a minimum to ensure that the benefit of*

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<sup>1</sup> Section 85(1) provides that the Supreme Court is created the superior court of Victoria with unlimited jurisdiction. Section 85(2) further provides that where a provision of an Act seeks to repeal, alter or vary the Court's unlimited jurisdiction, the provision(s) will not be effective unless certain procedures are followed. It requires the relevant provisions that intend to limit the Court's jurisdiction to be specifically identified by the Bill (the declaratory provision). It also requires the member of Parliament introducing the Bill to make a statement of the reasons for seeking to limit the Court's jurisdiction. Section 18(2A) of the *Constitution Act 1975* provides that a limitation amendment fails if it is not passed by an absolute majority of the members of both Houses of Parliament.

*any judgment is not effectively rendered useless by the costs involved. That intention is frustrated if proceedings relating wholly to neighbourhood disputes can be taken to the courts.'*

**Having reviewed the declaratory provisions in clauses 17 and 12 and the section 85 statement of the member introducing the Bill in the Second Reading Speech, the Committee is satisfied that the limitation provisions are appropriate and desirable in all the circumstances.**

**The Committee makes no further comment**

## Major Sporting Events Amendment Bill 2013

|                                 |                                   |
|---------------------------------|-----------------------------------|
| <b>Introduced</b>               | 19 February 2013                  |
| <b>Second Reading Speech</b>    | 20 February 2013                  |
| <b>House</b>                    | Legislative Assembly              |
| <b>Member introducing Bill</b>  | Hon. Hugh Delahunty MLA           |
| <b>Portfolio responsibility</b> | Minister for Sport and Recreation |

### Purpose

The Bill: -

- Amends the *Major Sporting Events Act 2009* (the Act) and extends the crowd management provisions to additional major sporting events and venues;
- Makes further provision for the powers of authorised officers in relation to crowd management;
- Provides for new offences and infringement offences;
- Extends the aerial advertising provisions to additional major sporting events;
- Enhances banning order powers;
- Makes further provision for the enforcement of offences against the sports event ticketing provisions.

### Part 2 – Crowd management

- The Bill adds various days and definitions such as Caulfield Guineas Day, Docklands Stadium concourse, Lakeside Stadium and Thousand Guineas Day to definitions of the Act so that they are subject to crowd management procedures set out in Part 4 of the Act. It amends the definition of ‘prohibited item’ to remove flags and banners over a certain size from the definition [4]. The Second Reading Speech extract – *‘Flags and banners are an integral part of many major sporting events and there are different practices at particular events and venues. Venue managers can control the entry of flags and banners through their conditions of entry. The current prohibition in the Act is therefore an unnecessary layer of regulation.’*<sup>2</sup>
- It inserts a new offence for a person to damage a sporting competition space within an event except with authorisation (new section 67A). It also prohibits defacing or damaging any structure, equipment or vehicle in a sporting competition space within an event except with authorisation. Both offences carry a maximum penalty of 20 penalty units [6]. A person must not without reasonable excuse enter any part of an event venue for which a ticket is required on a day when a major sporting event is being held without a valid ticket or authorisation (new section 74A). The maximum penalty is 20 penalty units [7].
- Existing section 83 specifies that an authorised officer may direct a person to leave and not re-enter or not to enter an event venue or event area if the authorised officer believes on reasonable grounds that the person has committed specified crowd management offences. The Bill extends it to incorporate the above new offences [9]. An authorised officer may require a person who has been directed to leave to give his or her name and address provided that authorised officer produces his or her identity card. Failure to comply attracts a penalty of 5 penalty units [10, 11, 14]. Section 87 of the Act makes provision for ban orders of guilty offenders. The Bill adds the new offences listed above so that a court may make ban orders when a person is found guilty of those offences [11]. If an authorised

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<sup>2</sup> See the Committee’s discussion on the Major Sporting Events Bill 2009 in *Alert Digest No. 3 of 2009*. See also the Minister’s response in *Alert Digest No. 5 of 2009*.

officer believes on reasonable grounds that a name or address given is false, the officer may request the person to produce evidence of the name and address [13].

- Police officers may serve a penalty infringement notice in respect of the new offences. The maximum penalties are from 1 to 7.5 penalty units. An infringement penalty for an offences against section 65 (possession of an unlit distress signal or firework) is 5 penalty units. It also specifies infringement penalties for the possession of alcohol not purchased at the venue, damaging the sporting competition space or equipment in that space, climbing the roof or parapet of a building or entering an event venue without ticket or authority [17].
- It amends the definitions of aerial advertising event to clarify that where an event such as the AFL Grand Final is protected by the aerial advertising provisions of the Act, any replay or rescheduled event is likewise covered [18].
- It creates two new ticketing offences. New section 166A prohibits the sale of five tickets or less at a price that is above face value without authorisation to do so. New section 166A makes it illegal to advertise or offer or resale five tickets above face value [22, 23]. The Second Reading Speech extract – *'Tickets for the AFL Grand Final in particular continue to be highly sought after, thereby creating conditions in which ticket scalping is likely to occur. Scalping of tickets for events like the Grand Final causes real harm as ticket on-sellers either make large profits from dedicated AFL fans or price them out of the market. To make enforcement more efficient and effective, the Bill creates two new ticketing offences that target illegal sales involving small numbers of tickets for events that are covered by an approved ticket scheme under the Act, where a condition that is part of the scheme is printed on the ticket ... New section 167A in clause 23 enables a police officer to serve an infringement notice on a person who commits an offence against section 166A or 166B. Both offences will carry on the spot fine of five penalty units. The creation of these infringement offences will significantly streamline enforcement of the ticketing laws.'*
- Crowd management may added to the list of matters in relation to which minimum event planning standards may be made in the guidelines. Guidelines are made by the Minister pursuant to section 25 [26].

**The Committee makes no further comment**



# Ministerial Correspondence

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## Co-operatives National Law Application Bill 2013

The Bill was introduced into the Legislative Assembly on 5 February 2013 by the Hon. Michael O'Brien MLA. The Committee considered the Bill on 18 February 2013 and made the following comments in Alert Digest No. 2 of 2013 tabled in the Parliament on 19 February 2013.

### Committee Comment

#### Charter report

#### **Freedom of expression – Offence to trade or carry on a business under a name containing the words 'cooperative' or 'coop'**

Summary: Section 225(1) of the Co-operatives National Law makes it an offence for anyone other than a co-operative to trade or carry on a business under a name or title containing the words 'co-operative', 'cooperative', 'co-op', 'coop' or words importing a similar meaning. The Committee will write to the Minister seeking further information as to the compatibility of s. 225(1) of the Co-operatives National Law with the Charter's right to freedom of expression.

**The Committee notes that s. 225(1) of the Co-operatives National Law (to be applied in Victoria by clause 4(1)) makes it an offence for anyone other than a co-operative to trade or carry on a business under a name or title containing the words 'co-operative', 'cooperative', 'co-op', 'coop' or words importing a similar meaning.<sup>i</sup> The Committee considers that s. 225 may engage the Charter's right to freedom of expression.<sup>ii</sup>**

The Committee notes that s. 225(2) provides that 'local regulations may... provide for the exemption of specified entities or kinds of entities' from s. 225(1). However, the Committee observes that this formulation may only apply to entities that are specifically named in the regulations or that fall within a class of entities that generally use these words<sup>iii</sup> and therefore might not accommodate one-off, descriptive and innocuous uses of these terms by a small business e.g. 'Cooperative Canines'<sup>iv</sup>.

**The Committee will write to the Minister seeking further information as to the compatibility of s. 225(1) of the Co-operatives National Law with the Charter's right to freedom of expression. Pending the Minister's response, the Committee draws attention to clause 4(1).**

### Minister's Response

Thank you for your letter dated 19 February 2013 concerning the above Bill.

The purpose of the prohibition in section 225(1) of the Co-operatives National Law is to prevent persons who are not co-operatives from misleading potential customers by falsely holding out their business as a co-operative. This section will not operate to prevent people from making one-off, descriptive or innocuous uses of the words "Co-operative" or "Cooperative", the abbreviations "Co-op" or "Coop", or words importing a similar meaning, unless such uses offend this purpose.

To the extent that the section may restrict a person's freedom to use these words to connote the noun "co-operative", the restriction is reasonably necessary to respect the rights and reputation of other

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<sup>i</sup> Compare existing s. 252(4) of the *Co-operatives Act 1996* (Vic), which bars registration of a name containing 'Co-operative' or 'Co-op' by a body corporate.

<sup>ii</sup> Charter s. 15(2). See *Davis v Commonwealth* (1988) 163 CLR 79.

<sup>iii</sup> E.g. the various Cooperative Research Centres established within universities.

<sup>iv</sup> See < <http://www.yellowpages.com.au/nsw/berrima/co-operative-canines-14528633-listing.html>>, a NSW business. Section 260(3) of the existing *Co-operatives Act 1992* (NSW) provides that any 'person or body may apply to the Registrar for exemption from' an identical offence provision.

persons within the meaning of section 15(3) of the Charter of Human Rights and Responsibilities Act 2006 ('the Charter Act'). In particular, it is reasonably necessary to respect the right of consumers to rely on the integrity of the co-operative business model, and to respect the reputation of the co-operatives sector which would be undermined if people were permitted to represent themselves as being part of this sector when in fact they are not.

I trust this information is of assistance to you.

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

28 February 2013

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

**Committee Room**  
**4 March 2013**

# Appendix 1

## Index of Acts and Bills in 2012-13

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## **Appendix 2**

### Committee Comments classified by Terms of Reference

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*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)**

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

Co-operatives National Law Application Bill 2013 2

Statute Law Amendment (Directors' Liability) Bill 2012 1

#### **Section 17(b)**



## Appendix 3

### Ministerial Correspondence 2012-13

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**Table of correspondence between the Committee and Ministers and members during 2012-13**

| <b>Bill Title</b>                                      | <b>Minister/ Member</b> | <b>Date of Committee Letter / Minister's Response</b> | <b>Alert Digest No. Issue raised / Response Published</b> |
|--|-------------------------|---|---|
| Tobacco Amendment (Smoking in Outdoor Areas) Bill 2012 | Ms Colleen Hartland MLC | 11-12-12<br>06-02-13                                  | 18 of 2012<br>2 of 2012                                   |
| Statute Law Amendment (Directors' Liability) Bill      | Attorney-General        | 05-02-13<br>18-02-13                                  | 1 of 2013<br>2 of 2013                                    |
| Co-operatives National Law Application Bill 2013       | Consumer Affairs        | 19-02-13<br>28-02-13                                  | 2 of 2013<br>3 of 2013                                    |