

## **No. 4 of 2014**

**Tuesday, 25 March 2014**

**On the following Bills**

Corrections Amendment (Further Parole  
Reform) Bill 2014

Mental Health Bill 2014

Transport Legislation Amendment  
(Further Taxi Reform and Other  
Matters) Bill 2014

Victoria Police Amendment  
(Consequential and Other Matters) Bill  
2014

Vexatious Proceedings Bill 2014

Witness Protection Amendment  
Bill 2014

# The Committee



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



Deputy Chairperson  
Hon. Christine Campbell MLA  
Member for Pascoe Vale



Ms Ann Barker MLA  
Member for Oakleigh



Mr Michael Gidley MLA  
Member for Mount Waverley



Mr Don Nardella MLA  
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## Committee Staff

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Ms Helen Mason, Legal Adviser - Regulations

Mr Simon Dinsbergs, Business Support Officer

Ms Sonya Caruana, Office Manager

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## Terms of Reference - Scrutiny of Bills

The functions of the Scrutiny of Acts and Regulations Committee are –

- (a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly –
  - (i) trespasses unduly upon rights or freedoms;
  - (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;
  - (iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions;
  - (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000*;
  - (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2001*;
  - (vi) inappropriately delegates legislative power;
  - (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
  - (viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;
- (b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament –
  - (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the *Constitution Act 1975*, or raises an issue as to the jurisdiction of the Supreme Court;
  - (ii) if a Bill repeals, alters or varies section 85 of the *Constitution Act 1975*, whether this is in all the circumstances appropriate and desirable;
  - (iii) if a Bill does not repeal, alter or vary section 85 of the *Constitution Act 1975*, but an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;

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

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

'VCAT' refers to the Victorian Civil and Administrative Tribunal

[ ] denotes clause numbers in a Bill

# Alert Digest No. 4 of 2014

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## Corrections Amendment (Further Parole Reform) Bill 2014

<b>Introduced</b>	12 March 2014
<b>Second Reading Speech</b>	13 March 2014
<b>House</b>	Legislative Council
<b>Member introducing Bill</b>	Hon Edward O'Donohue MLC
<b>Portfolio responsibility</b>	Minister for Corrections

### Purpose

The Bill amends the *Corrections Act 1986* to:

- create a Serious Violent Offender or Sexual Offender Parole Division (SVOSO) of the Adult Parole Board whose function is to decide whether or not to release a prisoner on parole in respect of a sexual offence or a serious violent offence. The amended Act will apply to a prisoner who was sentenced to imprisonment in respect of an offence before or after the amendments come into operation. The SVOSO Division may only make an order that a prisoner be released on parole in respect of a sexual offence or a serious violent offence if another Division of the Board has recommended that parole be granted, and the SVOSO Division has considered the recommendation.
- provide that, subject to certain exceptions, if a prisoner has his or her parole cancelled and is convicted of an offence while on parole, the prisoner is not eligible to be released on parole again until he or she has served a term of imprisonment equal to half of the parole period remaining at the time the parole was cancelled

Extract from the explanatory memorandum:

The Bill also amends the Corrections Act 1986 to provide that, subject to certain exceptions, if a prisoner has his or her parole cancelled and is convicted of an offence while on parole, the prisoner is not eligible to be released on parole again until he or she has served a term of imprisonment equal to half of the parole period remaining at the time the parole was cancelled. In the case of a prisoner sentenced to be imprisoned for the term of his or her natural life, the prisoner is not eligible to be released on parole again until he or she has served 3 years imprisonment from the time the prisoner's parole was cancelled. These reforms arise from measure 3 of the Review.<sup>1</sup>

- make amendments to certain provisions relating to the procedures of the meetings of the Adult Parole Board.

### Charter report

The Corrections Amendment (Further Parole Reform) Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

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<sup>1</sup> Review of the Parole System in Victoria, *Ian Callinan AC*, Department of Justice, 2013

## Transport Legislation Amendment (Further Taxi Reform and Other Matters) Bill 2014

<b>Introduced</b>	11 March 2014
<b>Second Reading Speech</b>	13 March 2014
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Terry Mulder MLA
<b>Portfolio responsibility</b>	Minister for Public Transport

### Purpose

The Bill amends the:

*Transport (Compliance and Miscellaneous) Act 1983* to:

- reduce and streamline taxi industry accreditation requirements
- provide for a new regime for the monitoring and investigation of compliance with commercial passenger vehicle laws and the enforcement of those laws, including the appointment of taxi compliance officers whose role will be to exercise the monitoring, investigation and enforcement powers under the new regime
- establish a Register of taxi industry participants
- abolish the Public Transport Fund
- make further provision in relation to the regulation of taxi non-cash payment transactions
- make further provision for the making of regulations in relation to the parking of vehicles at train stations and similar parking places
- amend the *Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013*
- enable taxi-cab operators in the Regional Zone or the Country Zone to determine their own maximum fares or hiring rates and notify the Taxi Services Commission and hirers of them
- empower the Essential Services Commission to monitor prices, costs and return on assets in the taxi industry in the Regional Zone and the Country Zone
- improve the system for resolving disputes concerning the conditions of a driver agreement and expand the range of orders that VCAT can make in relation to such disputes
- enable the Taxi Services Commission to vary the zoning conditions for pre-booked work
- enable taxi-cab zones to overlap at Avalon Airport.

*Transport Integration Act 2010* to:

- make further provision in relation to the Taxi Services Commission's functions
- extend the application of the statutory scheme for the resolution of regulatory conflict under Part 7A to transport system agencies, Transport Corporations and the National Rail Safety Regulator.

*Heavy Vehicle National Law Application Act 2013* to make miscellaneous amendments to improve the operation of that Act.

*Ombudsman Act 1973* to extend the jurisdiction of the Ombudsman to administrative actions of taxi compliance officers.

*Transport (Compliance and Miscellaneous) Act 1983* and the *Road Safety Amendment (Operator Onus) Act 2012* to make statute law revisions.

## **Content**

### ***Explanatory memorandum – Statute law revision – Inadequate explanation - Practice Note No. 2***

The Committee notes the useful and detailed explanatory memorandum. However, the explanatory memorandum for clause 63 fails to provide an explanation for the ‘statute law revision’ amendment. The Committee notes that the amendment to section 10 of the *Road Safety Amendment (Operator Onus) Act 2012* (the amending Act) amending the *Road Safety Act 1986* (the Act) is to correct a legislative instruction (section numbering). The original amendment sought to insert a section 84BJ in the Act, however there was already a section 84BJ in the Act . The amending Act should have referred to the insertion of new section 84BIA. The Committee draws attention to its *Practice Note No. 2* concerning the explanation of statute law revision amendments. **[63]**

## **Charter report**

The Transport Legislation Amendment (Further Taxi Reform and Other Matters) Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

# Victoria Police Amendment (Consequential and Other Matters) Bill 2014

Introduced	11 March 2014
Second Reading Speech	12 March 2014
House	Legislative Assembly
Member introducing Bill	Hon Kim Wells MLA
Portfolio responsibility	Minister for Police and Emergency Services

## Purpose

The Bill :

- modernises and standardises terminology across the statute book used to refer to Victoria Police and the people who constitute Victoria Police
- amends cross-references to the *Police Regulation Act 1958* in other Acts to cross-reference the new equivalent provisions in the *Victoria Police Act 2013* ('the Act')
- amends the *Victoria Police Act 2013* to require the Police Registration and Services Board to publish statements of reasons for its decisions in certain circumstances
- amends the Act to provide a regulation-making power for appeals and reviews
- ensures the continued capacity of Deputy Commissioners to exercise powers under certain legislative schemes

Note: The Act largely replaces the *Police Regulation Act 1958* with the exception of the pension provisions which will be retained in the renamed *Police Regulation (Pensions) Act 1958*.

## Content

### ***Delegation of legislative power – Commencement by proclamation – Whether justified***

The Bill (other than specified exceptions) comes into operation before 1 January 2015.

In respect to the exceptions the Committee notes the explanatory memorandum:

Clause 10(2) and (3) and items 95, 141, 142 and 143 contain amendments in relation to national schemes which do not have forced commencement dates (the Legal Profession Uniform Law Application Act 2014, if passed, and the Rail Safety National Law Application Act 2013 and the related Act, the Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Act 2013). It is necessary to allow amendments that relate to those national schemes, and to Acts affected by those national schemes, to come into force when those national schemes commence, if they commence after the commencement of the Victoria Police Act 2013.

**The commencement by proclamation provision appears necessary.**

## Charter report

The Victoria Police Amendment (Consequential and Other Matters) Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Witness Protection Amendment Bill 2014

<b>Introduced</b>	11 March 2014
<b>Second Reading Speech</b>	12 March 2014
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Kim Wells MLA
<b>Portfolio responsibility</b>	Police and Emergency Services

### Purpose

The Bill amends the *Witness Protection Act 1991* ('the Act') to improve the operation of Victoria's witness protection program and better align the Act with counterpart interstate Acts by:

- providing a list of things the Chief Commissioner must have regard to in deciding whether to admit someone to the witness protection program **[8]**
- setting out the matters a witness must disclose to the Chief Commissioner before being included in the witness protection program **[10, 11]**
- enabling the Chief Commissioner of Police to authorise the use of temporary assumed identity documents pending determination of inclusion in the witness protection program **[16]**
- streamlining the review mechanism under the Act. Affected people will continue to have a right to an internal review and external Supreme Court judicial review of decisions. IBAC can still investigate decisions using their complaints powers **[25 to 28]**
- clarify that certain applications to the Supreme Court are closed to the public **[21]**
- formalising the ability of the Chief Commissioner to suspend protection and assistance measures (for example when someone goes into custody or overseas) **[23]**
- making clear that witness protection is not a way to avoid obligations associated with an original identity (for example, civil debts, a criminal record, parole obligations or sex offender register requirements) **[15]**
- introducing further measures to guard against the disclosure of identities of protected witnesses related to an assumed identity, an interim protection declaration or, in court proceedings **[17, 18]**
- making other minor and technical amendments.

### Charter report

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

**The Committee makes no further comment**



# Ministerial Correspondence

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## Mental Health Bill 2014

The Bill was introduced into the Legislative Assembly on 18 February 2014 by the Hon. Mary Wooldridge MLA. The Committee considered the Bill on 6 March 2014 and made the following comments in Alert Digest No. 3 tabled in the Parliament on 11 March 2014.

### Committee Comments

#### Charter report

**Presumption of innocence – Offence of giving information believed to be false or misleading – Both prosecution and accused bear the onus of proof on whether the accused believed the information was false or misleading – Practice Note No. 4**

Summary: The Committee will write to the Minister seeking further information as to whether, in proceedings for an offence under clause 358, it is the prosecution or the defence who bears the legal burden of proof in any dispute about whether the accused believed that the information he or she provided under the Act was false or misleading.

The Committee notes that clause 358 provides:

- (1) A person must not—
  - (a) give information, prepare a document or make a statement required to be given or made under this Act that the person believes to be false or misleading in any material particular; or
  - (b) produce a document under this Act that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.
- (2) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that, at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds that the information, document or statement was true or was not misleading.

The Statement of Compatibility remarks:

Clause 358(2) will place a legal burden of proof on the accused by requiring him or her to prove, on the balance of probabilities, the relevant defence. In doing so, this provision may be considered to limit the right to be presumed innocent ...

The burden of proof is imposed on the accused in respect of establishing the defence. The prosecution first has to establish the relevant elements of the offence.

However, the Committee observes that:

- clause 358(1) requires the prosecution to prove beyond reasonable doubt that the accused believed (or, in respect of a document produced but not made by the accused, knew) that the information provided was false or misleading;
- clause 358(2) requires that the accused to prove on the balance of probabilities that the accused believed that the information provided was true or not misleading.

The Committee recalls its *Practice Note No. 4*, which states that the Committee may write to Ministers where the explanatory material for a Bill that introduces a defence does not state

whether or not the defence places a legal onus on the accused. The Committee notes that both clause 358 and the Statement of Compatibility appear to indicate that, in proceedings for an offence against clause 358, both the prosecution and defence bear the burden of proof on the same issue: whether or not the accused believed that the information provided was false or misleading.

**The Committee will write to the Minister seeking further information as to whether, in proceedings for an offence under clause 358, it is the prosecution or the defence who bears the legal burden of proof in any dispute about whether the accused believed that the information he or she provided under the Act was false or misleading. Pending the Minister's response, the Committee draws attention to clause 358.**

**The Committee notes the very detailed and helpful explanatory memorandum and statement of compatibility accompanying the Bill.**

## Committee Comments

Thank you for your letter requesting further information about the Mental Health Bill 2014.

The Committee seeks further information as to whether in proceedings for an offence under clause 358 of the Bill, it is the prosecution or the defence who bears the legal burden of proof in any dispute about whether the accused believed that the information he or she provided under the Act was false or misleading.

Clause 358(1) creates an offence for a person to give information under the Act that the person believes (or, in respect of a document produced under the Act but not made by the person, knew) to be false or misleading

Clause 358(2) states that "it is a defence" to the offences in clause 358(1) that the accused prove that he or she believed that the information provided was true or was not misleading.

This places a legal burden of proof on the accused in any dispute about whether the accused believed that the information he or she provided under the Act was false or misleading, meaning he or she must prove the defence in clause 358(2) on the balance of probabilities.

I understand this provision impinges on the presumption of innocence in section 25(1) of the Charter Act due to the fact that it could lead to the accused being convicted in circumstances where an accused has been able to adduce enough evidence to raise a reasonable doubt about his or her guilt but has not been able to establish the issue on the balance of probabilities.

However, for the reasons set out in the Statement of Compatibility, such provisions are not incompatible with the presumption of innocence in the Charter Act.

The purpose of imposing a legal burden of proof on the accused is to allow him or her to avoid liability for breaching clause 358(1) if he or she is able to prove that, at the time at which the offence is alleged to have been committed, he or she believed that the information was true or not misleading.

In such circumstances, the accused possesses the requisite knowledge to establish the defence, and it is not unduly onerous for him or her to give sufficient evidence to discharge the burden placed upon him or her.

When the relevant facts are within the knowledge of the accused, it is impractical to require the prosecution to bear the burden of proof as it would give rise to evidentiary problems that could lead to a loss of convictions. It is therefore appropriate that the burden of proof for establishing the defence rests with the accused.

Additionally, the imposition of the burden of proof on the accused is directly related to the purpose of enabling the offence in clause 358(1) to operate as an effective deterrent while also providing a suitable defence.

I also note that the offence is punishable by way of pecuniary penalty and that there is no prospect of imprisonment for the accused.

Although an evidential burden would be less restrictive upon the right to be presumed innocent, it would not be as effective because it could be too easily discharged by the accused. The inclusion of a defence with a legal burden on the accused to prove the matter on the balance of probabilities achieves an appropriate balance of all interests.

To the extent that clause 358(2) may limit the right to be presumed innocent, that limitation is reasonable and demonstrably justified.

Thank you again for writing to me.

**Hon Mary Wooldridge MP**  
**Minister for Mental Health**

24 March 2014

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

## Vexatious Proceedings Bill 2014

The Bill was introduced into the Legislative Assembly on 18 February 2014 by the Hon. Robert Clark MLA. The Committee considered the Bill on 6 March 2014 and made the following comments in Alert Digest No. 3 tabled in the Parliament on 11 March 2014.

### Committee Comments

#### Charter report

#### **Fair hearing – Person may be permanently barred from having decisions relating to a litigation restraint order reviewed by a higher court**

Summary: The Committee observes that the combined effect of various clauses in the Bill may be that, in extreme cases, a person who is the subject of a litigation restraint order may be permanently barred from having any decisions made in relation to that order reviewed by a higher court. The Committee will write to the Attorney-General seeking further information.

The Committee notes that clauses 13, 25 and 32 provide that interlocutory applications and proceedings commenced in contravention of a litigation restraint order are 'of no effect'. The Committee observes that these clauses may engage the right of people who are subject to a litigation restraint order to a fair hearing.<sup>i</sup>

The Statement of Compatibility remarks:

The bill's regime for the making of litigation restraint orders serves the legitimate objectives of preventing abuse of the courts' and VCAT's processes, preventing vexatious litigants from bringing unmeritorious cases, and minimising the cost to the community of such behaviour....

The bill does not remove the right of a person subject to a litigation restraint order to issue proceedings, and thus does not remove their access to the courts and VCAT. A person subject to a litigation restraint order will be required to seek leave before commencing proceedings or making an application; if a proceeding has reasonable grounds and is not vexatious, leave will be granted.

The bill also contains safeguards, including an express right to be heard before a litigation restraint order, acting in concert order or appeal restriction order is made, and an express right to appeal from the making of litigation restraint orders and acting in concern orders. A person subject to a litigation restraint order may also seek leave to apply for the variation or revocation of the order, unless the person is subject to a variation or revocation application prevention order.

The Committee considers that clauses 13, 25 and 32 are compatible with the Charter's right to a fair hearing.

However, the Committee notes that:

- clauses 50(1), 52(3), 52(4), 54(2) and 65 specify that a person who is the subject of a litigation restraint order must apply for leave to commence a proceeding or to vary or revoke that order in a particular court or tribunal;<sup>ii</sup>

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<sup>i</sup> Charter s. 24(1).

<sup>ii</sup> There is an exception for general litigation restraint orders that provide otherwise: see clause 54(2).

- clauses 37 to 39 and 74 permit such a court or tribunal to bar that person in some circumstances from appealing refusals to give leave or from applying to vary or revoke the litigation restraint order.

The Committee observes that a person who is the subject of a litigation restraint order always remains able to apply for leave to commence a proceeding. However, the combined effect of the above clauses may be to bar some people from having decisions concerning their litigation restraint order reviewed by a higher court.

The Statement of Compatibility remarks:

The provisions relating to appeal restriction orders and variation or revocation application prevention orders provided for by clauses 37 to 39 and 74 allows the courts and VCAT to prevent the repeated commencement of vexatious litigation by a person, ensuring that court and judicial resources are more effectively and fairly allocated, reducing delays for meritorious matters and preventing repeated abuse of the courts' and VCAT's processes.

While the Committee considers that restraints on appeals and applications relating to litigation restraint orders, like other restrictions on litigation, may be compatible with the right to a fair hearing, it notes that:

- clauses 42(2) and 77(2) permit a court or VCAT to make appeal restraint and variation or revocation application prevention orders indefinite; and
- clauses 42(3) and 77(3) do not provide for a court or VCAT to vary or revoke such orders, other than to extend them;
- clause 79 does not provide for such orders to be appealed.

**The Committee observes that, where a litigation restraint order is itself indefinite,<sup>iii</sup> the combined effect of these provisions may be that, in extreme cases, a person who is the subject of a litigation restraint order may be permanently barred from having any decisions made in relation to that order reviewed by a higher court.** However, the Committee notes that clause 8 preserves the inherent or implied jurisdiction of the courts.

**The Committee will write to the Attorney-General seeking further information as to whether or not a person who is subject to indefinite litigation restraint, appeal restriction and variation or revocation application prevention orders is able to have decisions made in relation to the litigation restraint order reviewed by a higher court. Pending the Attorney-General's response, the Committee draws attention to clauses 42, 77 and 79.**

## Minister's response

Thank you for your letter of 11 March 2014 regarding the Vexatious Proceedings Bill 2014 (the Bill).

You have sought further information as to whether a person who is subject to indefinite litigation restraint, appeal restriction and variation or revocation application prevention orders is able to have decisions made in relation to the litigation restraint order reviewed by a higher court.

A person subject to these orders will be able to have relevant decisions reviewed by a higher court in several ways. Firstly, the person may appeal against the making of each order. Clause 79 of the Bill provides that a person subject to a litigation restraint order is able to appeal on a question of law against the making of the order, with leave of the Supreme Court. This

<sup>iii</sup> Clauses 27(2) and 42(2). See also clause 15.

could include an appeal concerning the terms of the order, for example a term which specifies that the order is to remain in force indefinitely.

A person may also appeal against the making of an appeal restriction order or a variation or revocation application prevention order pursuant to the relevant appeal provisions in the Supreme Court Act 1986, the County Court Act 1958, the Magistrates' Court Act 1989 and the Victorian Civil and Administrative Tribunal Act 1998. Clause 79 of the Bill does not remove a person's ability to appeal under these Acts; rather, it sets out specific rules for certain appeals under the Bill. However, as an appeal under these Acts would be classified as a 'proceeding' within the meaning of the Bill, the person seeking to appeal would need to obtain leave and would need to demonstrate that the proposed appeal is not vexatious and that there are reasonable grounds for the appeal. A person with a legitimate argument to be raised on an appeal will be granted leave, thereby ensuring that a higher court is able to review these decisions.

Secondly, a person subject to a litigation restraint, appeal restriction or variation or revocation application prevention order may seek judicial review of the decision to make the order, for example on the grounds of jurisdictional error. Judicial review may also be sought in relation to other decisions under the Bill that relate to the litigation restraint order, including a decision of a Victorian court or tribunal to refuse a person leave to commence or continue a proceeding. An appeal restriction order does not prevent the person from applying for judicial review in relation to such decisions. However, as noted above in relation to appeals, the person seeking judicial review will need to obtain leave to make the application and will need to show that the application is not vexatious and that it has reasonable grounds.

Finally, while an indefinite variation or revocation application prevention order will prevent a person subject to a litigation restraint order from applying for the variation or revocation of that order, the Bill does not prevent a higher court from exercising its own motion power under clause 69(2) to revoke the litigation restraint order or vary it in any manner it considers appropriate. This allows the court to vary the terms of a litigation restraint order, including the duration of the order, where this is required in the interests of justice.

**ROBERT CLARK MP**

Attorney-General

22 March 2014

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

**Committee Room**

**24 March 2014**

# Appendix 1

## Index of Bills in 2014

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## **Appendix 2**

# Committee Comments classified by Terms of Reference

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

**Alert Digest Nos.**

### **Section 17(a)**

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

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## Appendix 3

### Ministerial Correspondence 2014

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

<b>Bill Title</b>	<b>Minister/ Member</b>	<b>Date of Committee Letter / Minister's Response</b>	<b>Alert Digest No. Issue raised / Response Published</b>
Legal Profession Uniform Law Application Bill 2013	Attorney-General	04-02-14 14-02-14	1 of 2014 2 of 2014
Planning and Environment (Fees) Further Interim Regulations 2013 (SR No. 127 / 13)	Planning	09-12-13 17-02-14	17 of 2013 2 of 2014
Subdivision (Fees) Further Interim Regulations 2013 (SR No. 128 / 13)	Planning	09-12-13 17-02-14	17 of 2013 2 of 2014
Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Bill 2014	Education	18-02-14 26-02-14	2 of 2014 3 of 2014
Mental Health Bill 2014	Mental Health	06-03-14 24-03-14	3 of 2014 4 of 2014
Vexatious Proceedings Bill 2014	Attorney-General	06-03-14 22-03-14	3 of 2014 4 of 2014