

No. 5 of 2014

Tuesday, 6 May 2014

On the following Bills

Consumer Affairs Legislation
Amendment Bill 2014

Corrections Amendment
(Smoke-Free Prisons) Bill 2014

Crimes Amendment
(Protection of Children) Bill 2014

Crime Statistics Bill 2014

Energy Legislation Amendment
(Customer Metering Protections
and Other Matters) Bill 2014

Filming Approval Bill 2014

Gambling and Liquor Legislation
Amendment (Modernisation) Bill 2014

Jury Directions Amendment Bill 2014
(Council initiated)

Justice Legislation Amendment Bill 2014

Local Government Amendment
(Governance and Conduct) Bill 2014

Sentencing Amendment
(Baseline Sentences) Bill 2014

Vexatious Proceedings Bill 2014
(Council initiated)

The Committee



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



Deputy Chairperson
Hon. Christine Campbell MLA
Member for Pascoe Vale



Ms Ann Barker MLA
Member for Oakleigh



Mr Michael Gidley MLA
Member for Mount Waverley



Mr Don Nardella MLA
Member for Melton



Dr Bill Sykes MLA
Member for Benalla



Mr Graham Watt MLA
Member for Burwood

Parliament House, Spring Street
Melbourne Victoria 3002

Telephone: (03) 8682 2895

Facsimile: (03) 8682 2858

Email: andrew.homer@parliament.vic.gov.au

Web: www.parliament.vic.gov.au/sarc

Committee Staff

Mr Andrew Homer, Senior Legal Adviser

Ms Helen Mason, Legal Adviser - Regulations

Mr Simon Dinsbergs, Business Support Officer

Ms Sonya Caruana, Office Manager

Terms of Reference - Scrutiny of Bills

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

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

Table of Contents

	Page Nos.
Alert Digest No. 5 of 2014	
Consumer Affairs Legislation Amendment Bill 2014	3
Corrections Amendment (Smoke-Free Prisons) Bill 2014	5
Crimes Amendment (Protection of Children) Bill 2014	6
Crime Statistics Bill 2014	8
Energy Legislation Amendment (Customer Metering Protections and Other Matters) Bill 2014	9
Filming Approval Bill 2014	10
Gambling and Liquor Legislation Amendment (Modernisation) Bill 2014	11
Jury Directions Amendment Bill 2014 (Council initiated)	14
Justice Legislation Amendment Bill 2014	15
Local Government Amendment (Governance and Conduct) Bill 2014	16
Sentencing Amendment (Baseline Sentences) Bill 2014	17
Vexatious Proceedings Bill 2014 (Council initiated)	18
Appendices	
1 – Index of Bills in 2014	23
2 – Committee Comments classified by Terms of Reference	25
3 – Ministerial Correspondence 2014	27
4 – Statutory Rules and Legislative Instruments considered	29

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. 5 of 2014

Consumer Affairs Legislation Amendment Bill 2014

Introduced	25 March 2014
Second Reading Speech	27 March 2014
House	Legislative Council
Member introducing Bill	Hon Edward O'Donohue MLC
Portfolio responsibility	Minister for Consumer Affairs

Purpose

The Bill amends the:

- *Associations Incorporation Reform Act 2012* to:
 - a) ensure that when a grievance procedure has been initiated in an incorporated association by a member, the incorporated association cannot take disciplinary action against that member **[3]**
 - b) require secretaries of incorporated associations to advise the Registrar of Incorporated Associations in writing of a change of address within 14 days **[4]**
 - c) clarify that where an incorporated association provides for a formal audit of its annual financial statements it need not also conduct a review of its financial statements **[5, 6]**
- *Australian Consumer Law and Fair Trading Act 2012* to:
 - a) align the circumstances in which bodies corporate are prohibited from engaging in debt collection with those applicable to natural persons, subject to the addition of a due diligence exception. If a body corporate subsequently becomes aware that it has employed a prohibited person, it will be prohibited from engaging in debt collection until that person is removed from that employment. **[9 to 10]**
 - b) to clarify and enhance the investigatory and enforcement capacities of the Director of Consumer Affairs Victoria. **[11 to 28]**
- *Domestic Building Contracts Act 1995* to remove obsolete references to infringement offences. **[29]**
- *Estate Agents Act 1995* to simplify the industry nomination requirements for members of the Estate Agents Council where there are single vacancies and to apply a new test to require an agent to act reasonably and honestly in relation to a transaction where they are buying a property or business that they have been engaged to sell. **[30 to 32]**
- *Fire Services Levy Monitor 2012* to clarify and enhance the investigatory and enforcement capacities of the Fire Services Levy Monitor in respect to applications for court orders where persons fail to comply with requirements under the Act. **[34]**
- *Funerals Act 2006* to abolish the now redundant Funeral Industry Ministerial Advisory Council. **[35 to 37]**
- *Motor Car Traders Act 1986* to reduce administrative requirements on motor car traders by:
 - a) simplifying the provision concerning the cooling off period

- b) repealing the requirements for the disclosure of information concerning the previous owner of a vehicle
- c) reducing the period during which documents must be kept from 7 to 6 years
- d) amending the regulation powers concerning the rights of a purchaser under the Act and in respect to information about warranties and insurance policies. **[38 to 43]**
- *Retirement Villages Act 1986* to remove a redundant reference to a list in a prescribed form in the definition of residence documents and also repeal a related redundant offence provision. **[44 to 45]**
- *Sex Work Act 1994* to provide that sex work service providers may advertise for staff who do not engage in sex work (for example, administrative and cleaning staff) and to update certain redundant references in the Act. **[46 to 48]**

Charter report

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

The Committee makes no further comment

Corrections Amendment (Smoke-Free Prisons) Bill 2014

Introduced	25 March 2014
Second Reading Speech	27 March 2014
House	Legislative Council
Member introducing Bill	Hon Edward O'Donohue MLC
Portfolio responsibility	Minister for Corrections

Purpose

The Bill amends the *Corrections Act 1986* ('the Act') to allow regulations to be made which will prohibit smoking in prisons and regulate the entry, possession and use of tobacco products and tobacco related paraphernalia in prisons. [5]

The Act will be amended to make it clear that tobacco products and tobacco smoking accessories can be seized. [4]

The Bill will also amend the *Tobacco Act 1987* to remove exemptions to the offence of smoking in an enclosed workspace that apply to prisons. [6, 7]

Extracts from the second reading speech:

... The regulations prohibiting smoking in prisons, and the amendments to the *Tobacco Act* will both commence on 1 July 2015.

... In addition, prisoners will have access to smoking cessation programs and nicotine replacement therapy products.

Charter report

The Corrections Amendment (Smoke-Free Prisons) Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Crimes Amendment (Protection of Children) Bill 2014

Introduced	25 March 2014
Second Reading Speech	26 March 2014
House	Legislative Assembly
Member introducing Bill	Hon Robert Clark MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill amends the *Crimes Act 1958* ('the Act') to create two new offences:

Proposed section 49C – Failure by a person in authority to protect a child under the age of 16 years from a sexual offence

This will apply where a person occupies a position in an organisation with the authority or responsibility to reduce or remove a substantial risk that a child will be sexually abused by someone associated with the organisation and the person negligently fails to take reasonable steps to reduce or remove that risk. Organisations will include churches, a religious body, a hospital, schools, out of home care services, charities, sporting groups, youth organisations, a municipal council or public sector body, government department or agency. [3]

Proposed section 327 – Failure to disclose a sexual offence against a child under the age of 16 years

A person will commit this offence if he or she is an adult who has information that leads him or her to form a reasonable belief that a sexual offence has been committed in Victoria against a child under 16 by a person of or over 18 years. That person must not fail to disclose that information to Victoria Police as soon as it is practicable to do so, unless the person has a reasonable excuse for not doing so. [4]

The Bill also amends the *Serious Sex Offenders (Detention and Supervision) Act 2009* to include an offence against section 49B (grooming for sexual conduct) of the *Crimes Act 1958* in Schedule 1 to that Act. The Bill makes consequential amendments to the *Working with Children Act 2005*.

The Bill also amends the Act to:

- reflect terminology in respect to police officers used in the *Victoria Police Act 2013*. [7]
- substitute a reference to the corresponding provision of the new *Mental Health Act 2014*. [8]

Extracts from the second reading speech:

Failure to protect a child from a sexual offence

The Bill creates an offence of failing to protect a child under 16 from a sexual offence.

... The offence applies to negligently failing to reduce or remove a substantial risk that a person will commit a sexual offence against a child. The offence applies to a person in a position of authority within an organisation that has children under its care, supervision or authority where there is a substantial risk of a sexual offence being committed by a particular person associated with the organisation. The kinds of organisations the offence will cover include, for example, churches, out of home care services and government agencies. The offence concerns persons who hold positions of power or responsibility within such organisations, and applies to risks to children who are, or may come, under that

organisation's care, supervision or authority from other people associated with the organisation. The offence does not require that a specific child be identifiable as being at risk.

The offence targets a person who, by reason of the position he or she occupies in an organisation, has the power or responsibility to reduce or remove a substantial risk that a child under 16 years will become the victim of a sexual offence committed by an adult person associated with that organisation, where the person knew of that risk and negligently failed to reduce or remove the risk.

...

Failure to disclose a sexual offence against a child under 16

The Bill also creates an offence of failing to disclose a sexual offence against a child under 16. This offence applies to an adult who has information that leads him or her to form a reasonable belief that a sexual offence has been committed in Victoria against a child under 16 by an adult. That person must not fail to disclose that information to Victoria Police as soon as it is practicable to do so, unless they have a reasonable excuse for not doing so.

... A person who discloses information as required by this offence will receive certain protections under the law, similar to the protections afforded to those who make reports under the Children, Youth and Families Act 2005.

... In line with the Committee's reportⁱ, the new offence will not apply in relation to information obtained through a rite of confession or similar practice, provided that there is no criminal purpose involved in the confession. It will also not apply in cases of legal professional privilege.

... The new offence will also not require a medical practitioner or counsellor to disclose information to police obtained from a child when providing treatment and assistance to that child in relation to sexual abuse.

Charter report

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

The Committee makes no further comment

ⁱ Family and Community Development Committee (Parliament of Victoria), *Betrayal of Trust*, November 2013

Crime Statistics Bill 2014

Introduced	25 March 2014
Second Reading Speech	26 March 2014
House	Legislative Assembly
Member introducing Bill	Hon Kim Wells MLA
Portfolio responsibility	Minister for Police and Emergency Services

Purpose

The Bill is for a principal Act to provide for the publication of crime statistics by a new agency separate from Victoria Police and for the employment of a Chief Statistician for that purpose.

The Bill makes necessary consequential amendments to the *Commissioner for Law Enforcement Data Security Act 2005* and the *Victoria Police Act 2013*.

Charter report

The Crime Statistics Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Energy Legislation Amendment (Customer Metering Protections and Other Matters) Bill 2014

Introduced	2 April 2014
Second Reading Speech	3 April 2014
House	Legislative Council
Member introducing Bill	Hon Edward O'Donohue MLC
Portfolio responsibility	Minister for Energy and Resources

Purpose

The Bill amends the:

- *Electricity Industry Act 2000* to further provide for the powers to make Orders about advanced metering infrastructure, and to simplify licensed electricity distributors' and retailers' reporting obligations in regards to feed-in tariff schemes
- *Electricity Safety Act 1998* to abolish the electricity safety Equipment Advisory Committee
- *Gas Industry Act 2001* to repeal redundant definitions, and exceptions to the definitions, which relate to gas distribution and transmission systems that are now regulated under the *National Gas (Victoria) Act 2008*, which applies the National Gas Law in Victoria.

Charter report

The Energy Legislation Amendment (Customer Metering Protections 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

Filming Approval Bill 2014

Introduced	2 April 2014
Second Reading Speech	3 April 2014
House	Legislative Council
Member introducing Bill	Hon Edward O'Donohue MLC
Portfolio responsibility	Assistant Treasurer

Purpose

The Bill is for an Act to reduce red tape and harmonise the assessment and issuing of filming permits given under State and local laws by:

- prescribing film friendly principles that public agencies must comply with when performing any functions or duties, or exercising any powers, under any filming approval legislation in relation to commercial filming on public land (subject to the Bill and the filming approval legislation)
- allowing the Minister to make guidelines to assist public agencies in complying with the film friendly principles.

The Bill makes consequential amendments to 23 Acts. [**Schedule 2**]

Charter report

The Film Approval Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Gambling and Liquor Legislation Amendment (Modernisation) Bill 2014

Introduced	2 April 2014
Second Reading Speech	3 April 2014
House	Legislative Council
Member introducing Bill	Hon Edward O'Donohue MLC
Portfolio responsibility	Minister for Liquor and Gaming Regulation

Purpose

The Bill amends the:

Gambling Regulation Act 2003 to:

- replace out-dated provisions in Chapter 2 of the Act (General Prohibitions and Authorisations) with modernised general prohibitions on conducting, advertising, and providing places for unauthorised gambling **[3 to 51]** (*Refer to Charter report below*)

Extract from second reading speech:

The Bill simplifies and streamlines Chapter 2 of the Act by consolidating a range of prohibitions on various forms of gambling into provisions that prohibit the conduct, advertising and housing of all forms of gambling that are not authorised. ... It is not intended to prohibit activities that were previously permitted or to permit those previously prohibited. Rather they maintain the status quo.

- create a new offence for a registered bookmaker to employ a person who is not a fit or proper person. The offence restricts persons convicted of a serious offence within the last ten years from being employed or working with a bookmaker **[52]**
- remove the existing prohibition on the holder of a keno licence from conducting a trade promotion lottery to promote keno games **[53]**
- provide for the Minister to require licence holders to provide information to assist in the development of policy in accordance with the objectives of the gambling legislation. **[54]**

Liquor Control Reform Act 1998 to:

- make further provision in relation to the offence of permitting drunken or disorderly persons to be on licensed or authorised premises **[56]**

Extract from the second reading speech:

The Bill amends the existing defence to provide that the conduct and knowledge of relevant persons, for example, managers and employees of a liquor licensee, can be attributed to the licensee for the purposes of this defence. This means that the knowledge and conduct of an employee or agent of the licensee in knowing that a drunken or disorderly person is on a licensed premises and failing to remove that person can be attributed to the licensee.

This is appropriate as a liquor licensee is liable for the offence and must put in place sufficient arrangements to ensure that their employees and agents take all necessary steps to comply with the liquor legislation and to reduce alcohol-related harm.

- double the penalties that apply to eight offences under the Act relating to the supply of liquor to minors **[56 to 60]**

The Bill makes consequential amendments to the *Confiscation Act 1997* the *Liquor Control Reform Act 1998* and the *Racing Act 1958*. [61 to 63]

Charter report

Freedom of expression – Prohibition of advertising associated with unauthorised gambling

Summary: The Committee observes that new section 2.2.8 may prohibit some educational, literary and political advertising on the subject of unauthorised gambling. The Committee will write to the Minister seeking further information.

The Committee notes that clause 9, inserting a new section 2.2.8(1) into the *Gambling Regulation Act 2003*, provides:

A person must not publish, or cause to be published, any advertising that contains any information, term, expression, symbol or other thing associated with unauthorised gambling.

Penalty: 100 penalty units.

Additional sub-sections provide that the test for association is what a reasonable resident of Victoria would consider to be associated and that ‘publish’ includes dissemination by any means. The word ‘advertising’ is not defined.

The Committee observes that new section 2.2.8 is not limited to advertising that promotes unauthorised gambling. It may therefore prohibit some educational, literary and political advertising, for example:

- **a television commercial that warns of the risks of unauthorised gambling**
- **a newspaper advertisement for a book, television show or film on the topic of unauthorised gambling**
- **an internet site that promotes a political view about the proper regulation of unauthorised gambling**

The Committee considers that new section 2.2.8 may engage the Charter’s right to freedom of expression.ⁱⁱ

The Statement of Compatibility does not address new section 2.2.8. The explanatory memorandum remarks:

New section 2.2.8 of the GRA prohibits the advertising of unauthorised gambling. The provisions are based on the prohibition on gaming machine advertising inserted at section 3.5.34AA in 2009. A penalty of 100 penalty units applies to this offence. This is the same penalty that applied to the advertising of a prohibited lottery.

The Committee notes that existing s. 3.5.34AA (unlike new section 2.2.8) is limited to advertising by or on behalf of venue or casino operators. By contrast, existing s. 3.5.34, which governs advertising by anyone else, defines ‘gaming machine advertising’ in a narrow way as ‘any form of advertising that promotes or is intended to promote the playing of gaming machines’. Both definitions expressly exempt ‘information about, or the advertisement of services relating to, problem gambling’. The Committee also notes that the existing s. 2.2.3’s prohibition on lottery advertising is limited to publishing ‘information related to a lottery’, rather than information concerning lotteries in general.

The Committee observes that other prohibitions on gambling advertising in Australia are limited to advertising that either promotes gambling or provides information about a particular gambling event or venue.ⁱⁱⁱ For example, the federal prohibition of ‘interactive gambling service advertisements’ is

ⁱⁱ Charter s. 15(2).

ⁱⁱⁱ *Gaming Machine Act 2004* (ACT), s. 152(1); *Interactive Gambling Act 1998* (ACT), ss. 20(a), 127(1), 138(2)(a) & 152(1); *Casino Control Act 1982* (NSW), s. 70A(5); *Gaming Machines Act 2001* (NSW), s. 43(6) (compare s. 44(6), prohibiting

limited to a publication 'that gives publicity to, or otherwise promotes or is intended to promote' an interactive gambling service or services in general, and contains express exemptions for political communications and anti-gambling advertisements.^{iv}

The Committee will write to the Minister seeking further information as to the compatibility of new section 2.2.8 with the Charter's right to freedom of expression. Pending the Minister's response, the Committee draws attention to clause 9.

The Committee makes no further comment

'gambling-related signs' and see also *Gaming Machines Regulation 2010* (NSW), reg 46); *Gaming Control Act 1993* (NT), ss. 36(e) & 58; *Interactive Gambling (Player Protection) Act 1998* (Qld), ss. 23(a), 164(1) & 183(1)(b); *Lottery and Gaming Act 1936* (SA), ss. 8, 10, 60(c), 93 & 94; *Gambling Regulation Act 2003* (Vic), ss. 2.5.45(1) & 7.2.2(1)(c); *Gaming and Wagering Commission Act 1987* (WA), ss. 43A & 106(2)(c).

^{iv} *Interactive Gambling Act 2001* (Cth), Part 7A, Division 2.

Jury Directions Amendment Bill 2014 (Council initiated)^v

Introduced	26 March 2014
Second Reading Speech	27 March 2014
House	Legislative Council
Member introducing Bill	Hon Edward O'Donohue MLC
Portfolio responsibility	Attorney-General

Purpose

The Bill amends the *Jury Directions Act 2013* to simplify and clarify a number of problematic directions on:

- proof beyond reasonable doubt
- other misconduct evidence
- unreliable evidence
- identification evidence
- delay and forensic disadvantage
- delay and credibility in sexual offence cases
- a failure to call a witness or give evidence.

The Bill also amends the *Evidence Act 2008* to abolish corroboration directions except in case of perjury or a similar offence and also makes other consequential amendments to that Act.

The Bill makes consequential amendments to section 61 of the *Crimes Act 1958*.

Charter report

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

The Committee makes no further comment

^v The Committee reported on the identical Legislative Assembly initiated Bill (of the same short title introduced on 10 December 2013) on 4 February 2014 in Alert Digest No.1 of 2014. That Bill was defeated in the Legislative Assembly on 3 April 2014.

Justice Legislation Amendment Bill 2014

Introduced	25 March 2014
Second Reading Speech	26 March 2014
House	Legislative Assembly
Member introducing Bill	Hon Kim Wells MLA
Portfolio responsibility	Minister for Police and Emergency Services

Purpose

The Bill amends the:

- *Country Fire Authority Act 1958* to:
 - a. provide for the appointment of a skills-based Authority
 - b. remove reference to the role of municipal councils in designating community fire refuges
 - c. facilitate the provision of industry brigade assistance to the Chief Officer, the Authority and brigades
 - d. modernises the language used in the Act to be gender neutral. **[3 to 11]**
- *Emergency Management Act 1986* to provide for the prescribing of community fire refuges in regulations. **[12]**
- *Emergency Management Act 2013* (not yet in force) to correct an incorrect reference to a subsection in the *Forests Act 1958* **[13, 14]**
- *Emergency Services Telecommunications Authority Act 2004* to make it clear that the Authority may exercise functions and powers related to emergency warning and advisory services, at the request of the Chief Executive of Emergency Management Victoria. **[15]**

Content

Retrospective application

The Bill makes minor technical amendments retrospectively to 3 December 2013 (the date of Royal Assent of the *Emergency Management Act 2013*). The justification for these provisions are provided by the explanatory memorandum. **[13, 14]**

Charter report

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

The Committee makes no further comment

Local Government Amendment (Governance and Conduct) Bill 2014

Introduced	1 April 2014
Second Reading Speech	2 April 2014
House	Legislative Assembly
Member introducing Bill	Hon Tim Bull MLA
Portfolio responsibility	Minister for Local Government

Purpose

The Bill amends the *Local Government Act 1989* to:

- a) provide for Councillor induction programs for new and former Councillors and provide a revised oath of office to be taken after the completion of the induction program **[4 to 7]**
- b) clarify the functions of the Mayor of the Council **[8]**
- c) provide for caretaker provisions to apply to a Council in respect to major policy decisions (defined by the Bill) when there is a Bill to dismiss the Council being considered by Parliament **[10]**
- d) provide for a Chief Executive Officer Employment Matters Committee with an independent expert in employment law as its Chairperson. The Committee will also conduct CEO performance reviews. **[11]**
- e) empower the Chairperson of an audit committee (a non-councillor) to require an audit report to be tabled at the next ordinary meeting of the Council **[13]**
- f) prohibit the adoption or implementation of Councillor discretionary funds **[14]**
- g) enhance the governance standards of Councils and further provide for processes and procedures to be implemented by Councils to enhance the understanding of Councillors in relation to the standard of conduct expected of Councillors **[16 to 42]**
- h) empower the Mayor to remove a Councillor for misconduct at a meeting after issuing two verbal warnings to that Councillor **[39]**
- i) allow Councils to impose sanctions for the breach of their Code of Conduct **[22]**
- j) provide for the appointment of the Chief Municipal Inspector (the CMI) and set out the role of the CMI in investigating and prosecuting misconduct matters under the Act **[43 to 47]**
- k) provide for the appointment, powers and functions of municipal monitors **[47]**
- l) further provide for the resolution of allegations of Councillor misbehaviour using the internal processes of Councils

The Bill makes amendments to the *City of Greater Geelong Act 1993*, the *City of Melbourne Act 2001* in respect to the functions of the Mayor **[49, 50]**.

The Bill makes consequential amendments to the *Legal Profession Uniform Law Application Act 2014* and the *Victorian Civil and Administrative Tribunal Act 1998*. **[51, 52]**

Charter report

The Local Government Amendment (Governance and Conduct) Bill 2014 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Sentencing Amendment (Baseline Sentences) Bill 2014

Introduced	2 April 2014
Second Reading Speech	3 April 2014
House	Legislative Assembly
Member introducing Bill	Hon Robert Clark MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill amends the:

- *Sentencing Act 1991* to provide for baseline sentences for indictable offences. **[3 to 10]**
- *Crimes Act 1958* to fix a baseline sentence for:
 - a) murder of 25 years imprisonment
 - b) incest with one's, or one's de facto spouse's, child or other lineal descendant or step-child under the age of 18 of 10 years imprisonment
 - c) sexual penetration of a child under the age of 12 of 10 years imprisonment
 - d) persistent sexual abuse of a child under the age of 16 of 10 years imprisonment
 - e) culpable driving causing death of 9 years imprisonment. **[11 to 16]**
- *Drugs, Poisons and Controlled Substances Act 1981* to provide for a baseline sentence of 14 years imprisonment for the offence of trafficking in a large commercial quantity of a drug or drugs of dependence. **[17 to 18]**

Extract from the explanatory memorandum:

It is intended that the baseline sentences introduced for each of these offences will become the median sentence for that offence. Currently, the median sentence for each offence is lower than the baseline sentence. The Bill requires courts to increase sentences so that cases that currently receive a sentence at or near the current median sentence will in future receive a sentence length at or near the baseline sentence.

Sentencing practices are thus expected to adjust so that, over time, half the sentences imposed should be less than the baseline sentence and half should be greater. It is intended to influence the entire range of sentences imposed for each baseline offence, so that most sentences imposed for baseline offences under this Bill will increase to a greater or lesser extent.

Charter report

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

The Committee makes no further comment

Vexatious Proceedings Bill 2014 (Council initiated) ^{vi}

Introduced	26 March 2014
Second Reading Speech	27 March 2014
Withdrawn	3 April 2014
House	Legislative Council
Member introducing Bill	Hon Edward O'Donohue MLC
Portfolio responsibility	Attorney-General

Purpose

The Bill is for an Act to reform and consolidate the law relating to the management and prevention of vexatious litigation in Victorian courts and tribunals.

The term 'vexatious' in respect to a proceedings or an interlocutory application includes, behaviour that constitutes an abuse of court process or that of a tribunal, is commenced or taken to harass or annoy another, is pursued without reasonable grounds, is designed to cause delay or detriment or for another wrongful purpose.

The Bill enables the courts and VCAT to make various types of litigation orders which increase in the level of restriction imposed on the litigant dependent upon the person's litigation history and past behaviour. The Children's Court will also have the power to make vexatious litigation restraint orders but only under the intervention order legislation. The Bill also extends to the Victims of Crime Assistance Tribunal. The Bill does not apply to the Coroners Court.

In deciding to make a litigation restraint order a court or VCAT may have regard to the persons litigation history in Victoria and in other Australian jurisdictions.

The three levels of order, from least restrictive to most restrictive are:

- a *limited litigation restraint order* which prevents a person from making unnecessary interlocutory applications within the one proceedings. A person must obtain the leave of the court or VCAT before making an application for a restraint order. The court or VCAT may grant leave where the application has merit and is not an abuse of process. **[Part 2]**
- an *extended litigation restraint order* where a person has frequently commenced or conducted vexatious proceedings against a specified person or other entity (harassing a person or organisation) or in relation to re-litigating a specified matter. A person must obtain the leave of the court or VCAT before making an application for a restraint order. The court or VCAT may grant leave where the application has merit and is not an abuse of process. **[Part 3]**
- a *general litigation restraint order* to prevent a person from continuing or commencing any proceedings in a Victorian court or tribunal, without leave. The order can be made where a person has persistently and without reasonable grounds commenced or conducted vexatious proceedings. The order may prevent a person from commencing or continuing proceedings in

^{vi} Pursuant to section 17(a) of the Parliamentary Committees Act 2003 the Committee is required to report on any Bill introduced into the Legislative Council ('the Council') or the Legislative Assembly ('the Assembly').

The Committee notes that it has reported on the identical Assembly initiated Bill in Alert Digests No. 3 and No. 4 of 2014. The Assembly initiated Bill introduced on 19 February 2014, passed the Assembly on 3 April 2014 and was, on the same day, sent to the Council requesting its agreement. The Assembly initiated Bill was second read in the Council on 3 April 2014.

For the avoidance of doubt the Council has re-titled the Assembly initiated Bill as the ***Vexatious Proceedings Bill 2014 (No. 2)***. The Committee further notes that the Council initiated Bill introduced on 26 March 2014, the subject of this report, was later discharged and withdrawn in the Council on 3 April 2014.

any Victorian court or Tribunal. The order is reserved for the most serious vexatious behaviour, and in circumstances where a lesser order may be ineffective. This type of restraint order must be on the application of the Attorney-General made in the Supreme Court. **[Part 4]**

The Bill further enables courts and VCAT to make:

- *acting in concert orders* against persons who are acting in concert with a person who is subject to a litigation restraint order. **[Part 5]**
- *appeal restriction orders* that limit appeal rights from decisions to refuse leave to make or continue an interlocutory application in a proceedings or refuse leave to commence or continue a proceeding **[Part 6]**
- *variation or revocation of litigation restraint orders* to prevent a person's ability to apply for the variation or revocation of a litigation restraint order. **[Part 9]**

The threshold test to be applied in relation to an application for leave by a person subject to a litigation restraint order is that the proceedings is not vexatious and that there are reasonable grounds for bringing the proceedings. If the court or tribunal proposes to grant leave, the person named in the proceedings (the defendant) will be notified of the leave application and will be given an opportunity to oppose the grant of leave.

The Bill provides for transitional arrangements for existing vexatious litigant orders made under various Acts and makes consequential amendments to a number of Acts.

The Bill repeals the vexatious litigation regimes in the *Family Violence Protection Act 2008* and the *Personal Safety Intervention Orders Act 2010*

The explanatory memorandum remarks:

The Bill aims to improve the effectiveness of the justice system by ensuring that unmeritorious litigation is disposed of at an early stage and that persons are prevented from wasting court time with further unmeritorious cases. This will allow court and judicial resources to be allocated to the determination of meritorious cases, which will reduce delays in the court system for other pending matters.

The Bill enables the Supreme Court, the County Court, the Magistrates' Court and VCAT to make various types of "litigation restraint orders", which increase in severity in accordance with a person's litigation history and pattern of vexatious behaviour. The Children's Court is also given the power to make litigation restraint orders, but only in relation to litigation conducted under the intervention order legislation. The tiered approach to litigation restraint orders promotes early intervention and aims to provide flexibility for the Courts and VCAT to adopt a proportionate response to a person's conduct.

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.^{vii}

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;^{viii}
- 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

^{vii} Charter s. 24(1).

^{viii} There is an exception for general litigation restraint orders that provide otherwise: see clause 54(2).

- 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,^{ix} 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 wrote to the Attorney-General on 11 March 2014 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.

The Attorney-General responded to the Committee's inquiry in respect to this matter on 22 March 2014 and the response was included in Alert Digest No. 4 of 2014 tabled on 25 March 2014.

The Committee makes no further comment

Committee Room
5 May 2014

^{ix} Clauses 27(2) and 42(2). See also clause 15.

Appendix 1

Index of Bills in 2014

Alert Digest Nos.

Bills

Assisted Reproductive Treatment Further Amendment Bill 2013	1
Children, Youth and Families Amendment (Security Measures) Bill 2013	1
Consumer Affairs Legislation Amendment Bill 2014	5
Corrections Amendment (Further Parole Reform) Bill 2014	4
Corrections Amendment (Parole) Bill 2014	3
Corrections Amendment (Smoke-Free Prisons) Bill 2014	5
Corrections Legislation Amendment Bill 2013	1
Crimes Amendment (Grooming) Bill 2013	1
Crimes Amendment (Protection of Children) Bill 2014	5
Crime Statistics Bill 2014	5
Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Bill 2013	1
Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Bill 2014	2, 3
Energy Legislation Amendment (Customer Metering Protections and Other Matters) Bill 2014	5
Environment Protection and Sustainability Victoria Amendment Bill 2014	2
Fences Amendment Bill 2013	1
Fences Amendment Bill 2014	3
Film Approval Bill 2014	5
Gambling and Liquor Legislation Amendment (Modernisation) Bill 2014	5
Gambling and Liquor Legislation Amendment (Reduction of Red Tape) Bill 2014	3
Game Management Authority Bill 2013	1
Health Services Amendment Bill 2014	2
Honorary Justices Bill 2014	3
Jury Directions Amendment Bill 2013	1
Jury Directions Amendment Bill 2014 (Council initiated)	5
Justice Legislation Amendment Bill 2014	5
Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Bill 2014	2
Legal Profession Uniform Law Application Bill 2013	1, 2
Local Government Amendment (Governance and Conduct) Bill 2014	5
Mental Health Bill 2014	3, 4
Parliamentary Budget Officer Bill 2013	1
Sale of Land Amendment Bill 2014	2
Sentencing Amendment (Baseline Sentences) Bill 2014	5
Small Business Commissioner Amendment Bill 2013	1
State Taxation Legislation Amendment Bill 2014	2
Summary Offences and Sentencing Amendment Bill 2013	1
Transport Legislation Amendment (Further Taxi Reform and Other Matters) Bill 2014	4
Transport (Safety Schemes Compliance and Enforcement) Bill 2014	3
Vexatious Proceedings Bill 2014	3, 4
Vexatious Proceedings Bill 2014 (Council initiated)	5
Victorian Civil and Administrative Tribunal Amendment Bill 2014	2
Victoria Police Amendment (Consequential and Other Matters) Bill 2014	4
Water Amendment (Water Trading) Bill 2014	2
Witness Protection Amendment Bill 2014	4

Regulations

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

Appendix 2

Committee Comments classified by Terms of Reference

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

Alert Digest Nos.

Section 17(a)

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

Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Bill 2014	2
Gambling and Liquor Legislation Amendment (Modernisation) Bill 2014	5
Legal Profession Uniform Law Application Bill 2013	1
Mental Health Bill 2014	3
Vexatious Proceedings Bill 2014	3

Appendix 3

Ministerial Correspondence 2014

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

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
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
Gambling and Liquor Legislation Amendment (Modernisation) Bill 2014	Liquor and Gaming	06-05-14	5 of 2014

Appendix 4

Statutory Rules and Legislative Instruments considered

The following Statutory Rules and legislative instruments were considered by the Regulation Review Subcommittee on 5 May 2014

Statutory Rules Series 2013

- SR No. 172 – Education and Training Reform Amendment (Dispute Resolution and Student Welfare Scheme) Regulations 2013
- SR No. 173 – Subordinate Legislation (Country Fire Authority Regulations 2004) Extension Regulations 2013
- SR No. 174 – Road Safety (Drivers) Amendment (Fees) Regulations 2013
- SR No. 175 – Road Safety (Drivers) Amendment (Probationary Driver Licences and Other Matters) Regulations 2013
- SR No. 176 – Road Safety (Vehicles) Amendment (Written-off Vehicles) Regulations 2013
- SR No. 177 – Magistrates’ Court Criminal Procedure (Amendment No 4) Rules 2013
- SR No. 178 – Magistrates’ Court General Civil Procedure (Scale of Costs Amendment) Rules 2013

Legislative Instruments (2013)

- Amendment to Determination that Specified Areas are Designated Bushfire Prone Areas
- Ministerial Order 625 – Procedures for Suspension and Expulsion
- Notice under Section 3.6.5A of the Gambling Regulation Act 2003 Fixing the Value of the Supervision Charge for Venue Operators for 2012-13

Statutory Rules Series 2014

- SR No. 1 – Transport (Conduct) and (Infringements) Amendment (Extension of Smoking Bans) Regulations 2014
- SR No. 2 – Meat Industry Amendment Regulation 2014
- SR No. 3 – Co-Operatives National Law (Victoria) Local Regulations 2014
- SR No. 4 – Australian Crime Commission (State Provisions) Regulations 2014
- SR No. 6 – Transport (Conduct) Amendment Regulations 2014

Legislative Instruments (2014)

- Ministerial Order No. 705 – Education and Training Reform Act 2006
- Ministerial Order No. 713 – Education and Training Reform Act 2006
- Ministerial Order No. 714 – Education and Training Reform Act 2006
- Ministerial Order No. 715 – Education and Training Reform Act 2006
- Ministerial Order 723 – Structured Workplace Learning Arrangements for Non School Providers 2013
- Ministerial Order 724 – Work Experience Arrangements for Non School Providers 2013
- Notice of Amendments to Australian Rules of Harness Racing
- Strategic Planning Guidelines (Amendment) – TAFE Institutes