59th Parliament
Alert Digest

No. 5 of 2019

Tuesday, 30 April 2019
on the following Bills

Justice Legislation Miscellaneous Amendment Act 2018 (House Amendment)

Professional Engineers Registration Bill 2019

Sale of Land Amendment Bill 2019

Water and Catchment Legislation Amendment Bill 2019

West Gate Tunnel (Truck Bans and Traffic Management) Bill 2019
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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 Privacy and Data Protection Act 2014;
   (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the Health Records Act 2001;
   (vi) inappropriately delegates legislative power;
   (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
   (viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;

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

Parliamentary Committees Act 2003, section 17
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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 developed since the first Australian scrutiny of Bills committee of the Australian Senate commenced scrutiny of Bills in 1982. They are precedents and traditions followed by all Australian scrutiny committees. Non-policy scrutiny within its terms of reference allows the Committee to alert the Parliament to the use of certain legislative practices and allows the Parliament to consider whether these practices are necessary, appropriate or desirable in all the circumstances.

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

Interpretive use of Parliamentary Committee reports

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

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

When may human rights be limited

Section 7 of the Charter provides –

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

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

(a) the nature of the right; and

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

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

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

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

Glossary and Symbols

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


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

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

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

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

‘PCA’ refers to the Parliamentary Committees Act 2003

‘penalty units’ refers to the penalty unit fixed from time to time in accordance with the Monetary Units Act 2004 and published in the government gazette (as at 1 July 2018 one penalty unit equals $158.57)

‘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
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Sale of Land Amendment Bill 2019

Bill Information

<table>
<thead>
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<th>Member</th>
<th>Hon Marlene Kairouz MP</th>
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<td>Portfolio</td>
<td>Consumer Affairs, Gaming and Liquor Regulation</td>
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Summary

The Bill amends the *Sale of Land Act* 1962. In particular it:

- Provides for restrictions on the use of sunset clauses in certain off-the-plan contracts;
- Prohibits the use of certain terms contracts.\(^1\)[20] New section 29EA prohibits a person from knowingly selling residential land (other than residential land that is agricultural land) under a terms contract where the sale price is less than the monetary amount prescribed in the regulations.
- Prohibits the use of rent-to-buy arrangements.\(^2\)[22] New section 29WC prohibits a person from knowingly selling residential land under a prohibited rent-to-buy arrangement. Note exemptions may be prescribed such as for a rent-to-buy arrangement that involves a contract entered into by the Director of Housing etc.
- Regulates money paid in respect of options to purchase land under banking schemes.[22] New section 29WH(1) provides that a vendor must not sell to a purchaser an option to purchase land under a land banking scheme except as provided for in section 29WH. Note the Explanatory Memorandum which states: - ‘Section 29WH(2) provides that section 29WH(1) does not apply where the option to purchase land under a land banking scheme is a registered managed investment scheme or where the option to purchase land under a land banking scheme is a financial product issued by the holder of an Australian financial services licence. This is in recognition that such options to purchase land are already regulated to some extent by the Corporations Act.’

The Bill also:

- Amends the *ANZAC Day Act* 1958 to restrict the conduct of public auctions on ANZAC Day before 1.00 pm;

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\(^1\) See the Statement of Compatibility: - ‘A terms contract for the sale of land includes (broadly) a contract under which the purchaser is obliged to make two or more payments (other than a deposit or final payment) to the vendor after the execution of the contract and before the purchaser is entitled to a conveyance or transfer of the land, or under which the purchaser is entitled to possession of the land or receipt of rents and profits before the purchaser becomes entitled to a conveyance or transfer of the land.’

\(^2\) See the Statement of Compatibility: - ‘A rent-to-buy arrangement is defined as an arrangement that involves a person entering into one or more contracts that provide for a right of, or obligation on, that person to purchase residential land and for payment of rent or any other amount by that person in respect of a period of occupation of the residential land for more than 6 months before the right to purchase that land may be exercised or the purchase of the land is completed.’
• Amends the Estate Agents Act 1980 in respect of payments that may be made from the Victorian Property Fund.

**Comments under the PCA**

*Commencement provision – Retrospective effect (section 17(a)(i), PCA)*

Clause 2 is the commencement provision.³ It provides that clauses 4(1), 12(1), 25 and 26 are taken to have come into operation on 23 August 2018. Clause 4(1) inserts various definitions including ‘sunset clause’ and ‘sunset date’ into the Sale of Land Act 1962.

Clause 12 introduces new sections 10A to 10D into the Sale of Land Act 1962 which regulate the manner in which a residential off-the-plan contract can be rescinded by a vendor under a sunset clause.⁴ New section 10A permits rescission of residential off-the-plan contracts with sunset clauses in accordance with Division 1 of Part 1 of the Sale of Land Act 1962. New section 10B limits the ability of a vendor to rescind a residential off-the-plan contract under a sunset clause if the relevant plan of subdivision has not been registered by the sunset date of an occupancy permit has not been issued under the Building Act 1993. New section 10C provides that a provision in a residential off-the-plan contract that is inconsistent with sections 10A and 10B will have no effect to the extent of the inconsistency. New section 10D provides that the purported rescission of a residential off-the-plan contract in contravention of the Division is taken to be a breach of that contract. (Note that new section 10E sets out the power of the Supreme Court to permit rescission of a contract does not commence until the day after Bill receives Royal Assent.) Clause 25 inserts a new Division heading into Part 3. Clause 26 inserts new Division 2 in Part 3 of that Act to provide for a number of transitional provisions relating to amendments made by the Bill.

The Committee notes the comments in the Statement of Compatibility: -

The purpose of these amendments is to protect purchasers. New sections 10A-10F of the Act seek to regulate and prevent the misuse of sunset clauses in response to evidence that suggests some developers are delaying progress of their developments and rescinding off-the-plan contracts under such clauses, in order to capitalise on increased property values since the contracts were signed, to the detriment of purchasers under those contracts. These issues were identified in the course of a public review of the operation of the Act undertaken between 2016 and 2017...

To the extent that the amendments are taken to come into operation on 23 August 2018 and apply to contracts in force immediately before that date, they have potential to affect the rights which may have accrued under those contracts and therefore have a retrospective operation... The retrospective operation is designed to ensure that vendors taken to be on notice of the proposal cannot take advantage of relevant sunset clauses in the period between the original Second Reading Speech and the date when this Bill comes into operation... The retrospective application of new section 10D provides potential contractual remedies for

³ Note the Explanatory memorandum which states: ‘Providing that these clauses are taken to come into operation on 23 August is designed to protect purchasers under existing residential off-the-plan contracts from vendors seeking to take advantage of existing rights to rescind a residential off-the-plan contract under a sunset clause in the period between the day after the date on which the Sale of Land Amendment Bill 2018 was second read in Parliament and this Bill receiving Royal Assent. From this date until the day after the day on which the Bill receives Royal Assent, vendors will only be able to rescind residential off-the-plan contracts under sunset clauses (as defined by the Bill) with a purchaser’s consent. After that day, vendors will also be able to go the Supreme Court for an order permitting the rescission.’

⁴ A sunset clause is defined as a provision of a residential off-the-plan contract that allows the rescission of that contract in either of two cases. The first is if the relevant plan of subdivision has not been registered by the sunset date. The second is if an occupancy permit has not been issued under the Building Act 1993 by the sunset date.
purchasers where vendors have sought to take advantage of relevant sunset clauses to rescind an existing contract before the passage of other amendments...

The Committee notes that the retrospective commencement of clauses 4(1), 12(1), 25 and 26 may adversely affect certain vendors but would operate to the benefit of purchasers under residential off-the-plan contracts. The Committee notes the comments under the Charter Report and will write to the Minister.

Charter Issues

Deprivation of property – Fair hearing – Off-the-plan residential contacts – Restriction on rescission clauses – Purported rescission taken to be a breach of contract – Supreme Court may approve rescission – Retrospective operation

Summary: The combined effect of clauses 2(2), 12(1) and 26 is that, if a vendor applied or applies a contractual rescission clause between 23 August 2018 and the day the Bill receives Royal Assent, the vendor can in some circumstances be sued by each purchaser as if the vendor had breached the contract. The Committee will write to the Minister seeking further information.

Relevant provision

The Committee notes that clause 12(1), inserting new sections 10A, 10B and 10C, provides that a vendor can only apply a provision of a residential off-the-plan contract that allows the contract to be rescinded on a specified date in some circumstances if each purchaser gives written consent to rescinding the contract after receiving a specified notice from the vendor. Section 10D provides that any other ‘purported rescission... is taken to be a breach of that contract’. At common law, if one party breaches a contract, the other party can sue for various remedies, including damages.

The Committee observes that the effect of clause 12(1) may be that a vendor who applies certain contractual rescission clauses without obtaining consent from each purchaser can be sued by each purchaser for damages.

The Committee also notes that clause 2(2) provides that clauses 12(1) and 26 operate from 23 August 2018. Clause 26, inserting a new section 54, provides that clause 12(1) applies to any contract, including a contract entered into before the Bill was announced or enacted, except for the purposes of any proceeding concerning such a rescission clause that commenced before the commencement of clause 12(1).

The Committee observes that the effect of clauses 2(2) and 26 is that any vendor who, between 23 August 2018 and the date of the Bill’s eventual enactment, applied or applied certain contractual rescission clauses without obtaining each purchaser’s consent, can be sued for damages, even if a court proceeding concerning the rescission clause commenced or commences between 23 August 2018 and the Bill’s Royal Assent.

The Committee further notes that clauses 12(2) and 12(3), inserting a new subsection 10E and amending new subsection 10C, provide for the Supreme Court to make an order permitting the vendor to rescind the contract despite not obtaining each purchaser’s consent. Clauses 2(3) and 27, amending new section 54, provide that new subsection 10E commences on the day after the Bill receives Royal Assent and applies to all contracts, including one entered into before the Bill received Royal Assent, except for the purpose of any proceeding concerning such a rescission clause commenced before the commencement of new section 10E.
The Committee observes that it may not be clear whether or not new subsection 10E can operate to retrospectively validate a purported rescission, including a purported rescission made between 23 August 2018 and the commencement of new subsection 10E.5

In short, the combined effect of clauses 2(2), 12(1) and 26 is that, if a vendor applied or applies a contractual rescission clause between 23 August 2018 and the day the Bill receives Royal Assent, the vendor can in some circumstances be sued by each purchaser as if the vendor had breached the contract. It is not clear whether and when clauses 2(3), 12(2), 12(3) and 27 permit the Supreme Court to validate a purported rescission retrospectively.

Charter analysis

The Statement of Compatibility remarks:

To the extent that the amendments are taken to come into operation on 23 August 2018 and apply to contracts in force immediately before that date, they have potential to affect the rights which may have accrued under those contracts and therefore have a retrospective operation. An accrued right may in some cases be considered a property right in and of itself. Any deprivation of a property right effected by the retrospective operation has been done according to law, and while there was no legislation in force from 23 August 2018, vendors were on notice of the Government’s intention. A similar Bill to the present Bill was introduced into the previous Parliament, which included provisions equivalent to new sections 10A-10C and 10E. That Bill was read for a second time in the Legislative Assembly on 22 August 2018. The retrospective operation is designed to ensure that vendors taken to be on notice of the proposal cannot take advantage of relevant sunset clauses in the period between the original Second Reading speech and the date when this Bill comes into operation. To the extent that the retrospective operation might be considered to limit property rights, in my view it is justified because the provisions operate to protect purchasers, in circumstances where vendors may misuse sunset clauses and have done so in the past. Further, as noted, most vendors are likely to be corporations and therefore do not enjoy human rights.

New section 10D was not included in the original Bill; however, I also consider its retrospective commencement and application to be appropriate. The retrospective application of new section 10D provides potential contractual remedies for purchasers where vendors have sought to take advantage of relevant sunset clauses to rescind an existing contract before the passage of the other amendments. In my view, any limitations on the property right of vendors are reasonable and justified in the circumstances for the reasons noted above.

The Committee observes that a person’s Charter right to not be ‘deprived of his or her property other than in accordance with law’6 may include a right not to be liable to pay damages for actions that were only made legally actionable after those actions occurred.

The Committee also observes that the statement does not address the compatibility of clause 26, which only exempts proceedings commenced before 23rd August 2018 – but not those commenced between that date and the date the Bill receives Royal Assent – with the Charter right of a party to a civil proceeding to have that proceeding determined after a fair hearing by an independent court or tribunal.7

The Committee notes that, although vendors may be taken to have been on notice of the requirements of new sections 10A, 10B and 10C from 23rd August 2018, that notice may be taken to have expired on

5 The Committee notes that it is clear that subsection 10E cannot be used at all if a proceeding concerning the rescission clause was commenced on or before the day the Bill receives Royal Assent.
6 Charter s. 20.
7 Charter s. 24(1).
30th October 2018 when the Sale of Land Amendment Bill 2018 lapsed with the issue of writs for the 2018 state election. As well, vendors may not be taken to have been on notice until 19th March 2019 that, if they applied a contractual rescission clause without the consent of each purchaser, they could be sued by each purchaser for breach of contract.

Relevant comparisons

The Committee notes that:

- the Bill introduced last year could only have retrospective effect for at most two months, from 23 August 2018 (when the Bill was second-read) until 30th October 2018 (when the Bill would lapse if it was not already enacted.)
- a very similar regime in New South Wales only retrospectively limited such clauses for three weeks, from 2 November 2015 (when the Minister announced an intention to introduce the Bill for that scheme) until 24 November 2015 (when the Bill received Royal Assent after an urgent passage through the NSW Parliament.)

By contrast, the present Bill’s retrospective operation will apply for a minimum of eight months from 23 August 2018 (when the previous Bill was second-read) until 30 April 2019 (Parliament’s next scheduled sitting day.) This period includes Parliament’s dissolution for the 2018 state election and four further sitting weeks before the present Bill’s introduction.

The Committee also notes that neither the previous Bill nor the NSW law allow purchasers to sue a vendor for breach of contract if the vendor purports to apply a contractual rescission clause without the consent of each purchaser.

Conclusion

The Committee will write to the Minister seeking further information as to whether or not:

- reducing the retrospective operation of clause 12(1) so that it applies only from the date of the second reading of the current Bill (rather than the previous Bill) is a less restrictive alternative reasonably available to achieve clause 12’s purpose;
- reducing the retrospective operation of new section 10D so that it applies only from the date of the second reading of the current Bill (rather than the previous Bill) is a less restrictive alternative reasonably available to achieve clause 12’s purpose;
- new section 54(2)’s exemption for proceedings commenced before 23rd August 2018 (rather than before the Bill’s enactment) is compatible with the Charter right of parties to civil proceedings to have those proceedings determined by an independent court or tribunal after a fair hearing;
- a Supreme Court order made under new section 10E will retrospectively validate a purported rescission made by the vendor before obtaining that order (including a purported rescission made before new section 10E commences.)
Expression – Presumption of innocence – Offence to knowingly conceal a material fact with the intention of inducing any person to buy land

Summary: The effect of clause 14(1) may be to criminalise anyone who ‘knowingly’ conceals any ‘material facts’ when selling land, whether or not the fact was concealed fraudulently. The Committee will write to the Minister seeking further information.

Relevant provision

The Committee notes that clause 14(1), amending existing s. 12(d), provides that any person who, with the intention of inducing any person to buy any land, ‘knowingly’ conceals any material facts shall be guilty of an offence.

The Committee observes that the effect of clause 14(1) may be to criminalise anyone who ‘knowingly’ conceals any ‘material facts’ when selling land, whether or not the fact was concealed fraudulently.

The Committee also observes that it may be unclear whether or not the amended s. 12(d) requires the prosecution to prove only that the accused knew that he or she was concealing a particular fact (which a court later finds is a ‘material’ fact) or whether the prosecution must also prove that the accused knew that the fact was a material fact. For example, if a vendor knows that a neighbouring property is home to several convicted child sex offenders but chooses to conceal that fact from a purchaser, will the prosecution have to prove in court only that that fact was a material one, or also that the vendor knew that it was material?

The Committee also notes that clause 15, inserting a new section 12A, provides that the Director of Consumer Affairs Victoria may make guidelines to ‘assist’ vendors and agents to understand ‘what a material fact is likely to be for the purposes of section 12(d)’. New section 12A(2) provides that a court may have regard to those guidelines. New section 12A does not state how these guidelines will be developed and whether or how they will be published.

The Committee observes that it may be unclear when a court may have regard to the guidelines. For example, if the guidelines specify that facts about the residents of neighbouring properties are not likely to be material facts, will a court have regard to those guidelines in determining whether or not such a fact is material under amended s. 12(d) or in determining whether or not an accused ‘knowingly’ concealed that fact?

The Committee further notes that clause 14(2) increases the maximum fine for breaching existing s. 12 (as amended) from 50 penalty units (currently approximately $8000) to 120 penalty units (approximately $20,000.) Existing s. 12(d) includes prohibitions on anyone who, with the intention of inducing a person to buy any land, ‘knowingly or recklessly makes or publishes any false representation or wilfully false promise’ (s. 12(a)) or ‘makes or publishes any statement promise or forecast which he knows to be misleading or deceptive or fraudulently conceals any material facts or recklessly makes any statement or forecast which is misleading or deceptive’.

The Committee observes that prosecutions under existing ss. 12(a) or (d) may be subject to existing s. 13, which provides:

In any action commenced in respect of the sale of any land if it is proved that any representation made on such sale was false and that any party to such action was induced by such representation to enter into a contract to purchase such land the person making such representation shall be deemed to have made the same with knowledge of its falsity unless he proves—
(a) that he had reasonable ground to believe and did believe that the representation was true or that he had no reason to suspect that the representation was false; and

(b) that otherwise he had acted innocently.

The effect of existing s. 13, if it applies, may be to require people prosecuted for making false statements in relation to the sale of land to prove on the balance of probabilities that they acted innocently (amongst other things.)

Charter analysis

The Statement of Compatibility does not address clause 14.

The Committee notes that clause 14(1) may engage the Charter’s right to freedom of expression, which includes the right not to speak.

The Committee also notes that clause 14(2) may engage the Charter’s right to be presumed innocent until proved guilty according to law. The Committee’s Practice Note states:

The Statement of Compatibility for any Bill that creates a provision that reduces the prosecution’s burden to prove the accused’s guilt or requires an accused to offer evidence of their innocence (or extends the operation of or increases the applicable penalty in respect of such a provision) should state whether and how that provision satisfies the Charter’s test for reasonable limits on rights.

Relevant comparisons

The Committee notes that NSW law provides that a real estate agent (or similar professional) who, ‘by any concealment of a material fact (whether intended or not), induces any other person to enter into any contract or arrangement is guilty of an offence’, unless the accused ‘proves that [he or she] did not know, and had no reasonable cause to suspect, that the statement, representation or promise was false, misleading or deceptive.’

The Committee also notes that Queensland law makes it an offence for a licensee or real estate salesperson to wilfully conceal a material fact in relation to the letting, exchange or sale of real property, and places the onus on the accused to prove that he or she had reasonable grounds for making a representation.

The Committee observes that Victoria is the only Australian jurisdiction that criminalises a non-professional vendor’s concealment of a material fact in relation to the sale of land. If existing s. 13 applies, then it is also the only Australian jurisdiction to require a person charged with making a false statement in relation to the sale of land to prove on the balance of probabilities that he or she acted innocently.

Conclusion

The Committee will write to the Minister seeking further information as to the compatibility of clause 14(1) with the Charter’s right to freedom of expression and clause 14(2) (when read with existing s. 13) with the Charter’s right to be presumed innocent until proved guilty according to law.

8 Charter s. 15(2).
9 Charter s. 25(1).
10 Scrutiny of Acts and Regulations Committee, Practice Note of 26th May 2014, B. iii.
11 Property, Stock and Business Agents Act 2002 (NSW), s. 52(1).
12 Property Occupations Act 2014 (Qld), s. 212(1), (5) & (8).
Water and Catchment Legislation Amendment Bill 2019

Bill Information

<table>
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<tr>
<th>Member</th>
<th>Hon Lisa Neville MP</th>
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<th>19 March 2019</th>
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<td>Portfolio</td>
<td>Water</td>
<td>Second Reading Date</td>
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Summary

The Bill amends the Water Act 1989 and the Catchment and Land Protection Act 1994 to implement reforms set out in Water for Victoria.\(^\text{13}\)

The Bill amends the Water Act 1989: -

- To amend the purposes so as to ensure that Victoria’s water resources and waterways are managed in a way that considers Aboriginal cultural values and uses of waterways and the social and recreational uses and values of waterways\(^\text{[4]}\);
- To include specified Aboriginal parties in water resource planning and the development and review of strategies.\(^\text{[7, 9, 10]}\) It also provides certainty that consultation will not affect any right or obligation under a land use activity agreement or any other agreement under the Traditional Owner Settlement Act 2010\(^\text{[7]}\);
- In relation to water resource assessments and strategies.\(^\text{[10]}\) New section 22G(3) provides that if the Minister endorses a new sustainable water strategy for a region, the Minister may revoke or amend all or any part of an existing strategy for all or part of the same region.\(^\text{[12]}\) Sustainable water strategies are reviewable after 10 years.\(^\text{[13]}\) A review of the Murray-Darling Basin will be carried out in 2026\(^\text{[14]}\);
- To provide for a simpler framework for the determination of water supply, sewerage, irrigation and waterway management districts. Water districts are renamed water supply districts.\(^\text{[51]}\) An authority may provide or install and maintain a meter on any land to measure the amount of water supplied or delivered to the land and the amount of water taken or used\(^\text{[55]}\);
- To clarify the functions and powers of the Minister in relation to mitigate salinity including carrying out works, research, investigation and assessment and meeting the State’s obligations under the Murray-Darling Basin Agreement.\(^\text{[83]}\);
- To provide for salinity impact charges and to validate the imposition of salinity impact charges\(^\text{[83, 89]}\);
- To further provide for offences and related provisions in respect of compliance and enforcement under that Act.

\(^\text{13}\) See the Statement of Compatibility which provides ‘The Bill will implement the Government’s commitment in Water for Victoria, to modernise the compliance and enforcement regime to reflect best practice regulation and to implement certain recommendations of the Murray-Darling Basin Water Compliance Review of November 2017.’

\(^\text{14}\) See the Second Reading Speech which provides ‘In August 2018 we commenced the first of these long-term, 15 yearly, assessments of Victoria’s water resources. Water for Victoria recognises it is premature to commence the long-term resource assessment for northern Victoria, while we are continuing to implement commitments under the Murray-Darling Basin Plan to return water to the environment until the Basin Plan is reviewed in 2026. To align the timing of the long-term water resource assessment for northern Victoria with the Commonwealth’s review of the Basin Plan in 2026, the bill provides for the cessation of the long-term assessment of northern water resources currently underway and requires it to be commenced by 1 February 2025... We have also commenced the ten-yearly reviews of the first generation of sustainable water strategies, completing the central region strategy in October 2018 and getting ready to start the review of the northern region strategy in October 2019.’
The Bill amends the *Catchment and Land Protection Act 1994*: -

- In relation to the Victorian Catchment Management Council and Melbourne Water Corporation. It provides new functions and duties for the Melbourne Water Corporation in its waterway management district for the preparation of special water supply catchment area plans for water supply catchment areas.[122, 124];

- To amend the objectives of that Act to extend the establishment of processes and the encouragement and support of landholders to include Aboriginal cultural values and traditional ecological knowledge of management of land and water resources[119];

- To include specified Aboriginal parties in the preparation of certain catchment strategies and special area plans.[119-123].

**Comments under the PCA**

*Powers of entry (section 17(a)(i), PCA)*

Clause 44 inserts new section 80(1) which provides that the Minister may direct an owner of any public or private dam to make specified repairs or alterations to the dam and take specified measures to keep the dam under surveillance. The direction may be made if the Minister decides the dam is likely to be hazardous to public safety, property or the environment because of its location or the nature of its construction. Clause 46 inserts new section 81(1) which provides that the Minister may carry out this work and take other measures if the Minister considers that a person has failed to comply with a direction.

The Committee notes the comments in the Statement of Compatibility: -

The powers provided in new sections 80 and 81 of the Water Act, to respectively, inspect dams and to carry out work on dams, bores or works... will permit authorised officers to enter land... The section 80 power... will only apply if a dam is of a construction or location that makes it hazardous or potentially hazardous for public safety, property or the environment... The section 81 power will also be limited in its application to dams, bores or works, as these types of works are usually located on commercial or business land or premises... To the extent that the provision may apply to a residential property, the section 133(1B)... limits entry to residential land... between 7.30 am and 6.00 pm and the officer gives the occupier 7 days’ written notice or the occupier consents to entry or entry in an emergency.

The Committee is of the view that the provisions are justified.

Clause 55 inserts new section 142 which provides for water corporation officers to enter private land for the purpose of installing and maintaining a meter. Entry is limited to residential property in the same terms as outlined above. The Committee notes the comments in the Second Reading Speech: -

The powers in new section 142 already substantially exist in the existing section 142... The new provisions make changes that are limited in scope: they only improve the structure of the provision and add that a meter may be installed for the purpose of measuring the amount of water taken or used, and may be installed at any point from which water is taken... This will provide more certainty in the provision.

The Committee is of the view that the provision is justified.

*Strict Liability offences (section 17(a)(i), PCA)*

The Bill restructures various existing water offences into three tiers of offences. A first tier offence is an offence committed *knowingly*. A second tier offence is an offence committed *recklessly*. A third tier
offence committed without being authorised is a **strict liability** offence. The Bill contains a number of strict liability offences.\(^{15}\) It establishes a water infringement penalty system for specified offences.\(^{16}\)[5] The Committee notes that each of the offences is subject only to a financial penalty (240 penalty units for an individual and 1200 penalty units for a body corporate). The possibility of imprisonment does not apply.

The Committee notes that an offence is of strict liability if there is no requirement to prove *mens rea*\(^{17}\) on the part of the accused but where the defence of ‘honest and reasonable mistake of fact’ is available.

The Committee notes the comments in the Second Reading Speech:

> The set of principal offences with high penalties for intentional or reckless commission of the offence includes the unauthorised undertaking of works or erection of structures on land that impact on drainage, the flow of stormwater and floodwaters, waterways and on tidal waters. The effect of these offences is becoming more critical as a result of climate change causing more intense rain events, with more significant flooding and rising sea levels. By making it clear that enforcing a breach of an aggravated incident of the specified group of offences requires proof of intention or recklessness, the bill also enables the option of enforcing a strict liability version of the principal offences with a lower maximum penalty. This level of penalty will enable the development of a comprehensive penalty infringement scheme to address minor instances of offending.

**The Committee is satisfied that the application of strict liability to the offences identified is justified.**

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\(^{15}\) See new Section 33E(3) which provides that ‘A person must not take water from a relevant water source in a declared water system without being authorised to do so’. See also new section 33EB(1) which provides that an infringement notice may be served on a person whom the officer has reason to believe has contravened section 33E(3) if the person was not authorised to take water under a water share and took an amount of water equal to or less than 10 megalitres. An infringement notice may also be served on a person whom the officer has reason to believe is authorised and takes an amount of water in addition to the authorised amount and the amount of that additional water was equal to or less than 20% of the total authorised amount and was equal to or less than 10 megalitres.

See new Section 63A(3) which provides that ‘A person must not take or use water from a relevant water source in a non-declared water system without being authorised to do so.’ See also new section 63B which provides that an infringement notice may be served on a person whom the officer has reason to believe has contravened section 63(3) if the person was not authorised to take or use water under an authorisation and took or used an amount of water equal to or less than 10 megalitres. An infringement notice may also be served on a person whom the officer has reason to believe is authorised to take or use a specified amount of water and takes an amount of water in addition to the authorised amount and the amount of that additional water was equal to or less than 20% of the authorised amount and was equal to or less than 10 megalitres.

See also new 289(3) which provides that a person must not take, use or divert an Authority’s water without the consent of the Authority or another authorisation under this Act or any other Act. See also new section 289C which provides the power to issue infringement notices in relation to offences under sections 289(3) and 289B(3). This is where the person was not authorised to take water or has interfered with the flow of water and the amount taken, used or diverted was an amount equal to or less than 10 megalitres.

\(^{16}\) See new section 3(1) inserted by clause 5 which inserts the definition of ‘water infringement offence’ which means an offence against section 33E(33) to which section 33EB applies, section 63(3) to which section 63B applies, section 289(3) or 289B(3) to which section 289C applies and any other provision of this Act or the regulations or the by-laws made under this Act, that is prescribed for the purposes of section 295A(1).

\(^{17}\) *Mens rea* is a Latin term which means ‘guilty mind’. Different standards of mens rea apply depending on the offence, i.e., that the accused: actually intended to do the act for which they have been charged; or had the knowledge as to the possible harmful consequences of the act; or was negligent regarding the likelihood of the harm that would be caused by the act.
Retrospectivity – Validation of salinity charges (section 17(a)(i), PCA)

Clause 99 inserts new Part 16 which contains transitional provisions into the Water Act 1989. New section 340 provides that any requirement or purported requirement to make a payment or payments under section 287A as in force before the validation date, and any payment collected or received or purportedly collected or received under that section as in force before the validation date is to be taken to be valid and effective. (The section also validates the application of charges under section 287A to works and measures carried out or to be carried out after the commencement of the section.)

New section 341 of the Water Act 1989 provides that any fee relating to salinity mitigation or offsetting fixed or purportedly fixed under section 64R collected or received or purportedly collected or received before the validation date is taken to be validly fixed, collected or received. In addition, any action, matter or thing taken or arising from such a fixing, collection or receipt is taken to be valid and effective. New section 342 provides that any proceedings on foot in a court or tribunal commenced prior to the validation date but not completed by that date are not affected.

The Second Reading Speech states:

Recent litigation has raised questions of legitimacy of various aspects of the scheme and how charges are imposed. The bill will clarify the Minister’s functions and powers to carry out salinity mitigation works and measures, determine salinity impact zones and charges and the administration of the revenue from the charges. The bill will also validate past charges up to the introduction of the bill in Parliament.

The Committee is satisfied that the retrospective effect of the provisions is justified.

Charter Issues

The Water and Catchment Legislation Amendment Bill 2019 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

18 Existing Section 287A(1) sets out the circumstances in which the Minister may require the owner of any land to make a payment or payments to meet or contribute to the cost of works or measures where the owner is using water on the land for the purposes of irrigation.
19 Note the validation date is defined as the date on which the Bill was introduced into the Parliament, 19 March 2019.
20 Existing section 64R provides that the Minister may fix fees to be paid by licence holders for the provision of services by the Minister.
The Committee received responses on the Bills listed below.

Responses are reproduced here – please refer to Appendix 3 for additional information.

Justice Legislation Miscellaneous Amendment Act 2018 (House Amendment)

Professional Engineers Registration Bill 2019

West Gate Tunnel (Truck Bans and Traffic Management) Bill 2019
The Hon Mark Gepp MLC
Chairperson
Scrubtiny of Acts and Regulations Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

Dear Chairperson,

Thank you for your letter dated 5 February 2019 regarding the House Amendment to the Justice Legislation Miscellaneous Amendment Act 2018.

I confirm that the language of the new section 319(1B) of the Crimes Act 1958 is that of an evidential onus.

I do not consider that this onus is a limitation on the presumption of innocence. I note that the legal burden of proof remains with the prosecution. Once the accused has adduced or pointed to evidence that their driving was not dangerous, thereby shifting the evidential presumption, the prosecution must prove all elements of the offence beyond reasonable doubt.

Thank you for seeking clarification of this important issue.

Yours sincerely,

Hon Jill Hennessy MP
Attorney-General
Minister for Workplace Safety

27/3/19
Mr Mark Gepp MLC  
Chairperson  
Scrutiny of Acts and Regulations Committee  
Parliament House  
Spring Street  
EAST MELBOURNE  VIC  3002

Dear Mr Gepp

PROFESSIONAL ENGINEERS REGISTRATION BILL 2019

I write with respect to the letter sent by the Deputy Chairperson of the Scrutiny of Acts and Regulations Committee, Mr Neale Burgess MP, on 19 March 2019.

- The Committee has requested advice on two matters relating to the Professional Engineers Registration Bill 2019 (the Bill): the scope of the proposed delegation power for the Victorian Building Authority (VBA) in clause 9, and the operation of clause 68(4) restricting the use of the title ‘professional engineer’, including the compatibility of that clause with the right to freedom of expression in section 15 of the Charter of Human Rights and Responsibilities Act 2006 (the Charter).

Proposed power of delegation in clause 9

With respect to clause 9 of the Bill, the proposed power of delegation for the VBA is modelled on that in section 199 of the Building Act 1993. That section provides for a broad power of delegation, restricting only the transfer of functions of employee building surveyors under section 80D and the giving of directions to building surveyors under section 205M to the chief executive officer of the VBA. Clause 9 of the Bill provides for a similarly broad delegation power for the VBA to ensure that the VBA can maintain consistency of decision-making approaches across both the Bill and the Building Act in matters such as enforcement (for example, by enabling similar delegations to VBA inspectors and others involved in investigations of engineers and others involved in building work).

Use of the term ‘professional engineer’

You have also queried clause 68(4) of the Bill. The protection of the title ‘professional engineer’ is an important part of the regulatory scheme. As the Committee notes, Queensland and New Zealand maintain the titles of ‘registered professional engineer’ and ‘chartered professional engineer’ respectively. However, such specific protections are unusual. All of Canada’s Provinces, all except one of the United States, and the Republic of South Africa (all of which have express statutory protection for freedom of expression) as well as the Republic of Singapore and Malaysia provide for the broader protection of either the title ‘professional engineer’ or the title ‘engineer’.
This broad approach to protecting titles ensures a clear delineation of people who are recognised as being a member of the profession of engineering. It aims to protect consumers from poor quality professional engineering services provided by unqualified persons which may in turn give rise to a risk to safety or health. It achieves this by enabling consumers to readily determine that a person with whom they are dealing has had their qualifications and experience checked through the processes in the Bill without the need for that consumer to check a register. A similar approach is taken with respect to other professionals such as 'legal practitioners' and 'medical practitioners'.

Related to this, I note that the Committee was concerned about the scope of the offence outside this commercial context. While the offence in the Bill is not expressly limited to commercial matters, such a limitation can be inferred from the purposes of the Bill, and particularly the purpose of ensuring that professional engineering services are provided only by suitably qualified and experienced engineers.

A further reason why the offence is expressed broadly is that, while the scheme will initially cover the five areas of engineering specified in clause 4, there is the capacity to expand the scheme beyond these areas through regulations. The legislation has been designed so that as more assessment schemes are developed, the scheme will become comprehensive and eventually cover the whole engineering profession. A less restrictive approach, such as protecting the title 'professional engineer' only for areas covered by the Bill, would undermine the consumer protection objective I referred to above because some 'professional engineers' would not have had their qualifications and experience checked.

I note that software engineering is already covered by schemes regulating engineering in many jurisdictions in the United States and Canada such as Florida, Texas and British Columbia. The importance of regulating engineers in this area of the profession reflects that embedded software in medical, transport or other systems can impact the health or safety of individuals.

I consider that the restriction of the use of the title 'professional engineer' is compatible with the right of freedom of expression contained in section 15 of the Charter. This right is not absolute; among other things lawful restrictions reasonably necessary to protect the rights of other persons, or for the protection of public order and public health, are permissible.

The protection of the title 'professional engineer' limits an individual's right to freedom of expression, to the extent that the protection restricts an individual's ability to communicate ideas and information. However, as Nettle JA noted in Noone v Operation Smile Inc [2012] VSCA 91, "there can be no doubt that the proscription of misleading and deceptive conduct in trade and commerce is reasonably necessary to respect the rights of other persons".

In my opinion, this limit on the right to freedom of expression is a reasonable one as the protection falls within the exception to the right in section 15(3) of the Charter, being reasonably necessary to respect the rights of other persons by ensuring they are not misled by a person claiming to be a professional engineer and, by implication, having had their qualifications and experience checked through the registration scheme.

I trust this information addresses the Committee’s concerns.

Yours sincerely

TIM PALLAS MP
Treasurer
23 APR 2019
Dear Ms Mason

WEST GATE TUNNEL (TRUCK BANS AND TRAFFIC MANAGEMENT) BILL

I refer to the letter of 5 March 2019 from the Committee Chairperson seeking further information arising out of the Committee’s report on this Bill, being information in relation to:

- whether it is intended that the West Gate Tunnel Corporation and West Gate Tunnel operator will be public authorities for the purpose of the Charter; and
- the compatibility of clause 51 with the rights of criminal defendants prosecuted for a tolling offence on the basis of a nomination by a vehicle’s registered operator.

Public authority – West Gate Tunnel Corporation and West Gate Tunnel operator

It is not intended that either the West Gate Tunnel Corporation or West Gate Tunnel operator will be a public authority for the purpose of the Charter (except in the unlikely event that a public authority is declared to be the West Gate Tunnel Corporation or West Gate Tunnel operator, which is discussed below).

The West Gate Tunnel (WGT) is being constructed and will be operated under a public-private partnership between the State and Transurban WGT Co Pty Ltd (Transurban). Under the WGT project agreement (Agreement), the State has agreed to lease land for the WGT to Transurban and to grant Transurban the right to levy and collect tolls, in consideration for Transurban building the WGT and operating and maintaining it throughout the 28 year concession.

It is anticipated that Transurban will be declared the West Gate Tunnel Corporation under clause 8(1) of the Bill. It is also anticipated that Transurban will engage a related corporation (OpCo) to perform certain Transurban operational functions under the Agreement, and that OpCo will be declared the West Gate Tunnel operator under clause 9(1).

Transurban and OpCo are companies established under the Corporations Act 2001 (Cth). Neither is a public official within the meaning of the Public Administration Act 2004 and neither is established by or under a provision of a Victorian Act.

Transurban and OpCo would therefore only be public authorities for the purpose of the Charter if they were to perform functions of a public nature on behalf of the State or a public authority.
On the question of whether either Transurban or OpCo is performing functions of a public nature, the Committee has referred to clause 18(1), Part 3 and clause 69 of, and to consequential amendments made by, the Bill.

I deal first with Part 3 of the Bill, which relates to tolling.

The levying and collection of tolls has not been a government function in Victoria since the abolition of tolls on the West Gate Bridge in 1985. The current Victorian practice, reflected in the existing commercial arrangements and legislation for City Link and EastLink, and followed for the WGT, is for Parliament to enact legislation to support the State’s grant of a concession to build and operate the road, which legislation confers power to levy and collect tolls directly on the concession holder.

The tolling provisions of the Bill are substantially similar to the City Link and EastLink legislation. Clause 21 confers the right to levy and collect tolls on the West Gate Tunnel Corporation. This right must be exercised in accordance with the Agreement and the Act. Other provisions in Part 3 confer rights that are incidental to the right to levy and collect tolls, including rights to fix amounts of tolls (clause 22), to request payment of tolls (clause 29), to register vehicles for use on the WGT (clause 33) and to request the enforcement agency to take action where a person commits a tolling offence (clause 41).

Transurban, as private operator of the WGT, like the operators of Victoria’s other tolled roads, will not be exercising powers delegated to it by government and will not be providing services to or on behalf of government. Rather, Transurban will provide, operate and maintain transport infrastructure on a commercial basis in accordance with the terms of the Agreement.

I emphasise that the WGT will, like City Link and EastLink, provide travel options that are in addition to, and not a substitute for, the public road system. People who wish to use the public road system will continue to have that option.

In this respect, the operator of the WGT is similar to a non-government school that provides an alternative to the public system for educating students. The Charter makes clear that such entities do not exercise public functions on behalf of the State, and are therefore not public authorities for the purposes of the Charter.

The Committee also referred to clause 69(1) of the Bill, which provides that the West Gate Tunnel Corporation is taken to be a governmental agency for the purpose of Part 5 of the Emergency Management Act 1986. However, Part 5 of that Act does not confer functions or powers on governmental agencies. Rather it provides for the Minister to give directions to governmental agencies and use property where a state of disaster exists. Clause 69(2) recognises that, while the West Gate Tunnel Corporation may be directed to make its property available for the purpose of managing a disaster, as a non-government body it is entitled to be compensated for use of its property.

The Committee has not specified which of the consequential amendments made by the Bill it considers to be relevant, but I will refer to clause 144, which confers some of the functions and powers of road authorities under the Road Management Act 2004 on the West Gate Tunnel Corporation. The Committee will note that these provisions, like similar provisions that confer road management functions on the operators of City Link and EastLink, have been carefully crafted to ensure that the functions given to the private operator are essentially operational in nature, and that regulatory and other governmental functions remain with public road authorities.

Clause 18(1) provides that the Agreement may be enforced only by the parties and, in the case of parties other than the State, parties’ successors and assignees. This provision underscores the intention that the obligations of West Gate Tunnel Corporation and West Gate Tunnel operator under the Agreement are not intended to be enforceable by non-parties.
Finally, I note that clauses 8 and 9 are framed in a way which ensures that, in the unlikely event of an entity which is a public authority being declared to be the West Gate Tunnel Corporation or the West Gate Tunnel operator, that entity does not cease to be a public authority as a consequence of being so declared. This contemplates the possibility that the State may appoint a public authority to perform functions of the West Gate Tunnel Corporation (for example, in the exercise of 'step-in' rights under the Agreement).

Presumption of Innocence - Examination of witnesses - Driving unregistered vehicle in a toll zone - Prosecution of person nominated by the vehicle's registered operator - Practice Note B.iii

The Committee notes in its summary that the effect of clause 51 may be that any person named by the registered operator of a vehicle can be found guilty of the offence of driving that vehicle in a toll zone without registration as if he or she was the vehicle’s driver.

The Committee notes further that "clause 51 provides that an offence against clause 32(1) ‘is an operator onus offence for the purposes of Part 6AA of the Road Safety Act 1986.’ Clause 32(1) makes it an offence to ‘drive’ a vehicle in a toll zone specified under Division 2 of Part 3 unless the vehicle is registered to the relevant West Gate Tunnel Corporation at that time.

The Committee goes on to describe the effect of Part 6AA of the Road Safety Act 1986, and to identify the following provisions within that Part as provisions which may engage Charter rights of criminal defendants:

- section 84BG(2), which may engage the right of criminal defendants under section 25(2)(g) of the Charter to ‘examine, or have examined, witnesses against him or her’;
- section 84BH(c), which may engage the right of criminal defendants under section 25(1) of the Charter to be presumed innocent; and
- section 84BH(c), which may engage the right of criminal defendants (under section 25(2)(k) of the Charter) ‘not to be compelled to testify against himself or herself or to confess guilt’.

I have no issue with the Committee’s summary of the relevant provisions or its Charter analysis.

However, I need to address the Committee’s observation that the Statement of Compatibility did not discuss clause 51, and its reference to paragraph B.iii of the Practice Note:

"The Statement of Compatibility for any Bill that creates a provision that reduces the prosecution’s burden to prove the accused’s guilt or requires an accused to offer evidence of their innocence (or extends the operation of or increases the applicable penalty in respect of such a provision) should state whether and how that provision satisfies the Charter’s test for reasonable limits on rights."

As is made clear in the Committee's Charter analysis, the Charter rights are engaged by the operation of Part 6AA of the Road Safety Act 1986, which reverses the onus of proof with respect to any offence which is specified to be an operator onus offence.

However, the Bill itself does not reduce any prosecution burden in relation to the offence of driving an unregistered vehicle in a WGT toll zone, because the offence that is made subject to the operator onus scheme does not presently exist. For the same reason the Bill does not extend the operation of any provision created by the Bill to the operator onus scheme. The offence is created by the Bill and is only an operator onus offence from the time it comes into effect.

I expect that the Committee’s concern may be that clause 51 of the Bill has the effect of extending the operation of Part 6AA of the Road Safety Act 1986. However, any such extension is only an extension in the geographical sense. Identical operator onus offences
already apply to the driving of an unregistered vehicle on City Link and EastLink. The effect of the Bill is that legal consequences in respect of an unregistered vehicle driven on City Link will also apply if the vehicle is driven on the WGT.

The geographical application of Part 6AA is routinely extended in this way. The operator onus provisions apply generally to speeding and certain other traffic offences. Such offences apply on all declared roads, and most are created by erecting signs or other traffic control devices. The geographical operation of Part 6AA is therefore extended every time a new road is declared, traffic sign erected or speed limit imposed. The effect of clause 51 with respect to the tolling offence is no different in substance.

In this context, I also note the Committee’s statement that Part 6AA of the Road Safety Act 1986 was enacted before the Charter was enacted.

While that is not incorrect, it is important to note that Part 6AA was extended to tolling offences under the Melbourne City Link Act 1995 and the EastLink Project Act 2004 after the Charter was enacted.

The Charter impact of applying Part 6AA to the tolling offences created by those Acts has been assessed in a Statement of Compatibility (tabled with the Roads Legislation Further Amendment Bill 2007) and considered by the Committee (in its report on that Bill).

In relation to the presumption of innocence in section 25(1) of the Charter, the Statement tabled with the Roads Legislation Further Amendment Bill 2007 said:

"Clause 10 will amend section 84BB of the Road Safety Act 1986 to expand the existing definition of a ‘responsible person’ to include a person who has been nominated in an effective tolling statement under either the Melbourne City Link Act 1995 or EastLink Project Act 2004. By doing so, it makes persons nominated in such tolling statements subject to the ‘operator onus’ provisions of part 6AA of the Road Safety Act 1986.

The operator onus provisions in part 6AA have the effect that ‘a responsible person’ is liable for an infringement and for certain purposes will be deemed to have committed an offence unless that person establishes that he or she was not in control of the vehicle at the time.

The person must do so by providing a statement in a particular form and with prescribed particulars.

While the provisions in clause 10 appear to have the effect of attributing guilt to a nominated person, these provisions also allow a person so nominated to identify another person as responsible for the vehicle. Subject to certain procedural requirements being satisfied, the person so nominated then becomes liable. Various provisions allow a nominated person to dispute the nomination, and the effect is that the nomination under these provisions is akin to an ‘allegation’ rather than a conclusive attribution of guilt.

Accordingly, the provisions in clause 10 do not limit a person’s right to be presumed innocent until proven guilty under section 25 of the charter."

In relation to that matter, the Committee stated (Alert Digest No 15 of 2007, 20 November 2007):

Presumption of innocence (Charter s.25(1)): Provisions [...] requiring owners of vehicles that infringe tolling rules to nominate a responsible person in order to avoid liability for the offence (clause 10, amending s.84BB.) The Committee observes that reverse onus provisions are not unusual in offence provisions that make one person criminally responsible for another’s conduct.

In each instance the Statement of Compatibility contends that the respective rights are not infringed or are subject only to reasonable limits under Charter s.7(2). Having considered the above Charter rights and provisions, the Committee is satisfied that the all of the
measures so engaged do not warrant any special mention or adverse comment in respect to possible incompatibility with human rights."

Clause 51 of the Bill is identical to sections 219 of the EastLink Project Act 2004 and section 87(1) of the Melbourne City Link Act 1995.

Given that the Committee has previously considered and satisfied itself in relation to the application of operator onus to tolling offences in the specific context of section 25(1) of the Charter, I trust that no further information is required.

Yours sincerely

[Signature]

TIM PALLAS MP
Treasurer

19 MAR 2019
Committee Comment

The Committee notes the issues raised in the Treasurer’s response. The Committee may consider these in any future review of its Practice Notes.
## Appendix 1
### Index of Bills in 2019

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Appendix 2
Committee Comments classified by Terms of Reference

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

Alert Digest Nos.

Section 17(a)

(i) trespases unduly upon rights or freedoms
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Primary Industries Legislation Amendment Bill 2019 4
Sale of Land Amendment Bill 2019 5
Spent Convictions Bill 2019 2, 3
West Gate Tunnel (Truck Bans and Traffic Management) Bill 2019 3, 5

(ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;
Professional Engineers Registration Bill 2019 4, 5

(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities
Audit Amendment Bill 2018 1, 2
Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Bill 2018 1, 2
Justice Legislation Miscellaneous Amendment Act 2018 (House Amendment) 1, 5
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Section 17(b)

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

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<td>West Gate Tunnel (Truck Bans and Traffic Management) Bill 2019</td>
<td>Transport Infrastructure</td>
<td>05.03.19</td>
<td>3 of 2019 5 of 2019</td>
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<td>Primary Industries Legislation Amendment Bill 2019</td>
<td>Agriculture</td>
<td>19.03.19</td>
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<td>Fishing and Boating</td>
<td>19.03.19</td>
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<td>Professional Engineers Registration Bill 2019</td>
<td>Treasurer</td>
<td>19.03.19</td>
<td>4 of 2019 5 of 2019</td>
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<td>23.04.19</td>
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<tr>
<td>Sale of Land Amendment Bill 2019</td>
<td>Consumer Affairs, Gaming and Liquor Regulation</td>
<td>5 of 2019</td>
<td>30.04.19</td>
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Appendix 4
Statutory Rules and Legislative Instruments considered

The following Statutory Rules were considered by the Regulation Review Subcommittee on 29 April 2019.

Statutory Rules Series 2018

SR No. 138 – National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Regulations 2018
SR No. 145 – Victorian Energy Efficiency Target Regulations 2018
SR No. 156 – Planning and Environment (Fees) Amendment Regulations 2018
SR No. 158 – Magistrates’ Court General Civil Procedure (Miscellaneous Amendments) Rules 2018
SR No. 159 – Magistrates’ Court General Civil Procedure Amendment (Service Out of Jurisdiction) Rules 2018
SR No. 160 – Crimes (Controlled Operations) Regulations 2018
SR No. 161 – Family Violence Protection Regulations 2018
SR No. 162 – Sentencing Amendment Regulations 2018
SR No. 163 – Metropolitan Fire Brigades (General) Interim Regulations 2018
SR No. 164 – Wildlife Further Amendment Regulations 2018
SR No. 166 – Health Practitioner Regulation National Law Regulation 2018
SR No. 173 – Major Crime (Investigative Powers) Amendment Regulations 2018
SR No. 175 – Victorian Energy Efficiency Target (Project-Based Activities) Amendment Regulations 2018
SR No. 176 – Occupational Health and Safety Amendment (Mines) Regulations 2018
SR No. 177 – Transport Accident Amendment (Home Modification Agreement) Regulations 2018
SR No. 178 – Drugs, Poisons and Controlled Substances Further Amendment Regulations 2018
SR No. 180 – Building Further Amendment Regulations 2018
SR No. 181 – Road Safety (Drivers) and (General) Amendment (Unlicensed Driving and Other Matters) Regulations 2018
SR No. 182 – Magistrates’ Court (Family Violence Protection) Rules 2018
SR No. 183 – Terrorism (Community Protection) Regulations 2018
SR No. 184 – Public Interest Monitor Amendment Regulations 2018
SR No. 185 – Children, Youth and Families (Children’s Court Family Division) Amendment (Witness Summons) Rules 2018
SR No. 186 – Children’s Court Criminal Procedure (Committal Amendments) Rules 2018
SR No. 188 – Retirement Villages (Infringements) Regulations 2018

Legislative Instruments

Amendment of the Declaration of the Feral or Wild Population of the Cat as an Established Pest Animal on Specified Crown Land
Exemption order under section 120W, Electricity Act 1998 – AusNet and six high voltage customer sites
Exemption order under section 120W, Electricity Act 1998 – AusNet and Seymour station
Exemption order under section 120W, Electricity Act 1998 – Powercor
Identity Verification Standards 2018
Managing asbestos in workplaces
Ministerial Direction – Self-exclusion programs
Practitioner Remuneration Order
Prevention of falls in general construction
Prevention of falls in housing construction
Removing asbestos in workplaces

Waste Management Policies

Waste Management Policy (Combustible Recyclable and Waste Materials)