

No. 6 of 2011

Tuesday, 14 June 2011

On the

Consumer Acts Amendment
Bill 2011

Health Practitioner Regulation
National Law (Victoria) Amendment
Bill 2011

Planning and Environment
Amendment (Growth Areas
Infrastructure Contributions)
Bill 2011

Road Safety Amendment (Hoon
Driving and Other Matters)
Bill 2011

Road Safety Camera Commissioner
Bill 2011

State Taxation Acts Amendment
Bill 2011

Terrorism (Community Protection)
Amendment Bill 2011

Transport Legislation Amendment
(Port of Hastings Development
Authority) Bill 2011

Transport Legislation Amendment
(Taxi Services Reform and Other
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Victorian Urban Development
Authority Amendment (Urban
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Bill 2011

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Useful information

Role of the Committee

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

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

Interpretive use of Parliamentary Committee reports

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

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

When may human rights be limited

Section 7 of the *Charter* provides –

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

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

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

Glossary and Symbols

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

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

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

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

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

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

'*penalty units*' refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (currently one penalty unit equals \$119.45).

'*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. 6 of 2011

Consumer Acts Amendment Bill 2011

Introduced	31 May 2011
Second Reading Speech	2 June 2011
House	Legislative Assembly
Member introducing Bill	Hon. Michael O'Brien MLA
Portfolio responsibility	Minister for Consumer Affairs

Background and Content

The Bill amends a number of consumer related and other Acts to –

1. amend section 55 of the *Estate Agents Act 1980* which currently restricts estate agents (or employee) who have been commissioned to sell a property from obtaining a beneficial interest in that property to allow the purchase of a property by an agent from a principal where certain conditions are met. **[4]**

Extract from the Second Reading Speech –

In essence, the Bill proposes that an estate agent or agent's representative will be prohibited from obtaining a beneficial interest in property that they have been commissioned to sell. The legislation specifies a wide range of examples where an estate agent will be considered to have obtained a beneficial interest. Significant penalties, including up to two years imprisonment, will apply if an estate agent or agent's representative contravenes the section.

However, the legislation also sets out an exemption to allow vendors and estate agents to reach mutually beneficial arrangements regarding the sale of property. The key elements of the exemption are that the estate agent: must obtain the vendor's acknowledgement and consent to the estate agent obtaining a beneficial interest; must act fairly and honestly; must not be paid commission or other remuneration; and must obtain the interest at a fair market value. This exemption will ensure that the onus will be on the estate agent -- and the estate agent alone -- to demonstrate that they had acted the best interests of the vendor. In doing so, the strict fiduciary duties that are owed by agents to their principals -- in this case, owed by estate agents to the vendors for whom they are acting -- will be reinforced. The Bill also requires the refund of any commission paid in contravention of section 55.

2. amend the *Owners Corporations Act 2006* to clarify delegations to owners corporation committees; allow owners corporations to restrict voting rights of certain proxy-holders of committee members; clarify the standing of a lot owner to apply to VCAT to resolve a dispute on behalf of the owners corporation; to have owners corporation disputes heard by the VCAT and; provide more flexibility for service of documents on lot owners persons living overseas. **[5 to 14]**
3. amend section 144 of the *Fair Trading Act 1999* to provide consistent enforcement with respect to the Australian Consumer Law. The section imputes a state of mind of a body corporate and its liability for the actions of officers, employees and agents in circumstances where the person was acting within the actual or apparent scope of their authority. **[16]** The Bill also clarifies that VCAT or any other court of competent jurisdiction may hear a cause of action under the Australian Consumer Law. **[18]**
4. amend the *Conveyancers Act 2006* to remove a restriction from 1 July 2012 on Victorian conveyancers undertaking legal work on sales of businesses provided they are qualified to do so. **[19 and 21]**

5. amend the *Consumer Affairs Legislation Amendment (Reform) Act 2010* in relation to uncollected goods provisions so as to increase the value limits for motor vehicles and allow the disposal of high-value goods by private sale where the receiver of the goods is of the opinion that the best price could be obtained by private sale and notice has been given. **[23]**
6. defer default commencement dates in several Acts. **[23, 28 to 30]** (*see notes below*)
7. repeal the *Companies (Administration) Act 1981* and provide savings and transitional provisions. This Act established the position of Commissioner for Corporate Affairs. The Act has become redundant with the transfer of responsibility for trustee companies to the Commonwealth such that the Commissioner no longer has any regulatory functions to perform under any legislation. **[31 to 34]**
8. provide statute law revision amendments to various Acts to reflect the change of name of the National Institute of Accountants to the Institute of Public Accountants. **[3, 6, 20, 36, 37, 39]**

Committee comment

Retrospective amendments – Statute law revision – Incorrect legislative instruction – Substitution not insertion

The Bill makes retrospective statute law revision amendments to –

1. section 16 of the *Consumer Affairs Legislation Amendment (Reform) Act 2010* to clarify that the heading to the Part was intended to be a substitution, not an insertion. Commencement is backdated to 31 October 2010 the day before the section came into operation. **[2 and 27]**
2. item 7 of the Schedule to the *Consumer Affairs Legislation Amendment Act 2010* reflecting that the heading to the Part was a substitution not an insertion. Commencement is backdated to 31 October 2010 the day before that Schedule came into operation. **[2 and 35(3)]**

Delayed commencement and commencement by proclamation

Delayed commencement – The Bill proposes to defer the default commencement dates for the *Associations Incorporation Amendment Act 2009* and the *Associations Incorporation Amendment Act 2010* from 1 December 2011 until 1 July 2012. **[28 and 29]**

Extract from the Second Reading Speech –

This allows sufficient time for the associations incorporation regulations to be remade taking account of the extensive amendments to the Associations Incorporation Act 1981, including reconsideration of the model rules for incorporated associations that are prescribed in those regulations. It also provides an opportunity for the government to consider further options for improving the regulation of incorporated associations, in consultation with the sector.

Delayed commencement – The default commencement date of the *Consumer Affairs Legislation Amendment (Reform) Act 2010* is also to be deferred from 1 September 2011 to 30 June 2012 for a number of reasons referred to in the Second Reading Speech and the explanatory memorandum. **[22]**

Extract from the Second Reading Speech –

This is to ensure that the replacement of the schedule of infringement offences in the Residential Tenancies Act 1997 by regulations specifying infringement offences and penalties in accordance with section 64 can incorporate offences contained in relevant provisions inserted by the Residential Tenancies Amendment Act 2010. It will also ensure new uncollected goods provisions can commence operation at the same time as the Personal Property Securities Register. Finally, it will mean that amendments made to the Sale of Land Act 1962 will be commenced coincidentally with consequential amendments to the contract for the sale of land prescribed under the Estate Agents Act 1980.

Commencement by proclamation – The Bill amends section 2 of the *Personal Property Securities (Statute Law Revision and Implementation) Act 2010* to remove the default commencement date of 1 December 2011. The effect of the amendment is that in the absence of a forced commencement provision the Act is to commence on proclamation. **[30]**

Extract from the explanatory memorandum –

This is to ensure that the Act can be proclaimed to come into operation on the same day as the Commonwealth's Personal Property Securities Register is established. The Commonwealth has announced that the Register will come into operation on 12 October 2011, but it is possible that there may be a further delay beyond 1 December 2011.

The Committee makes no further comment.

Health Practitioner Regulation National Law (Victoria) Amendment Bill 2011

Introduced	31 May 2011
Second Reading Speech	1 June 2011
House	Legislative Assembly
Member introducing Bill	Hon. Denis Napthine MLA
Portfolio responsibility	Minister for Health

Background and Content

The Bill amends the *Health Practitioner Regulation National Law (Victoria) Act 2009* (the 'National Law') to introduce a time limit of 28 days commencing on 1 July 2012, on the right of a registered practitioner (or applicant) to appeal against certain decision made under the National Law. Currently the National Law as adopted in Victoria does not specify a time period within which an appeal must be lodged with the VCAT.

Extract from the Explanatory Memorandum –

New subsection (1) provides that a person who wishes to appeal against a decision under section 199 of the Health Practitioner Regulation National Law Act 2009 may do so by lodging an application with the Victorian Civil and Administrative Tribunal for review of the decision. It is intended to clarify that a review under the Victorian Civil and Administrative Tribunal Act 1998 constitutes an appeal for the purposes of section 199 of the Health Practitioner Regulation National Law (Victoria) Act 2009. The intention is not to provide for a person to have a further substantive right to have a decision reviewed by the Victorian Civil and Administrative Tribunal in addition to the right that is provided by section 199 Health Practitioner Regulation National Law (Victoria) Act 2009.

Committee comment

Delayed commencement

In respect to the delayed commencement fixed at 1 July 2012 the Committee notes this extract from the Second Reading Speech notes –

To ensure that no practitioner's rights are affected without their knowledge, the commencement date for the introduction of the limitation period will be July 1st 2012. This will allow sufficient time for practitioners to be informed of the introduction of the 28-day limit.

The Committee makes no further comment.

Planning and Environment Amendment (Growth Areas Infrastructure Contributions) Bill 2011

Introduced	31 May 2011
Second Reading Speech	2 June 2011
House	Legislative Assembly
Member introducing Bill	Hon. Robert Clark MLA
Portfolio responsibility	Minister for Planning

Background

The Bill amends the *Planning and Environment Act 1987* to provide —

- that a person liable to pay a Growth Areas Infrastructure Contribution (GAIC) may enter into an agreement to provide land or State infrastructure in lieu of cash so as to meet their liability. To implement these changes the Bill makes consequential amendments to the *Land Acquisition and Compensation Act 1986* and the *Sale of Land Act 1962*.
- that a person liable to pay a GAIC in respect of certain types of contribution area land will be able to defer the payment of the whole of the contribution rather than only 70% of the dutiable transaction until the land is subdivide or developed for urban purposes.
- other consequential and miscellaneous changes to the GAIC scheme.

The Committee makes no further comment.

Road Safety Amendment (Hoon Driving and Other Matters) Bill 2011

Introduced	24 May 2011
Second Reading Speech	25 May 2011
House	Legislative Assembly
Member introducing Bill	Hon. Terry Mulder MLA
Portfolio responsibility	Minister for Roads

Background and Content

The Bill amends the –

Road Safety Amendment (Hoon Driving) Act 2010 to –

1. extend the period for which police may immediately impound or immobilise a vehicle upon the detection of a relevant offence to 30 days (the ‘designated period’ under section 84C(1) of the *Road Safety Act 1986*). Currently the period for which police may immediately impound or immobilise a vehicle is 48 hours*. **[3]** (Refer to Charter report below)

** The current level (48 hours) is to be extended to 14 days from 1 July 2011 as a result of the passage of the Road Safety Amendment (Hoon Driving) Act 2010.*

2. provide that where the driver of a motor vehicle carries more passengers in the vehicle than the vehicle is designed to carry, the vehicle impoundment, immobilisation and forfeiture sanctions in Part 6A of the *Road Safety Act 1986* may be applied. **[3]**
3. clarify that the provision contained in the Act that amends section 84ZS of the *Road Safety Act 1986*, preserves the entitlements of persons who hold security interests in uncollected impounded vehicles so that, where such a vehicle is sold, those security interest holders can continue to participate in the distribution of the proceeds of sale according to the order of priority set out in that provision. **[6]**

Road Safety Act 1986 to—

1. authorise the use of a particular instrument for the measurement of the concentration of alcohol in a person's breath. **[8]**
2. provide a number of exemptions from the prohibition on deliberately losing traction while driving a motor vehicle. **[9]**
3. provide that a motoring organisation that sanctions races or speed trials may apply for an exemption from the prohibition on participating in, organising and managing a race or speed trial on a highway. **[10]**
4. extend the period in which prior offences can be taken into account by the courts when they impose impoundment, immobilisation and forfeiture sanctions from the current 3 years prior convictions to the preceding 6 years prior convictions. **[12]**
5. provide that the Chief Commissioner of Police must apply for the registration of a financing statement or a financing change statement (as the case requires) on the Commonwealth Personal Property Securities Register in those cases where there is an intention to apply to the court for vehicle impoundment, immobilisation or forfeiture sanctions or where a court has made a determination with respect to the imposition of those sanctions or where the Chief Commissioner of Police intends to sell or dispose of a motor vehicle or where a motor vehicle has vested in the Crown. **[13 to 17]**

6. clarify that police officers are authorised to carry out roadworthiness inspections with respect to impounded, immobilised or forfeited vehicles. [18]
7. provide that persons exempt from holding a Victorian driver licence or permit will be disqualified from driving in Victoria for a specified period if they commit a drug-driving infringement. The period of disqualification or suspension will be the same as the period that would apply had the person held a Victorian licence or permit. [19]
8. provide necessary transitional provisions for the measures introduced by the Bill. [20]
9. make minor amendments of a statute law revision nature to the *Road Safety Act 1986*, the *Road Legislation Miscellaneous Amendments Act 2010* and the *Superannuation Legislation Amendment Act 2010*. [21 and 23]

Police Regulation Act 1958 to –

- authorise members of police personnel to access information and to disclose it to the Registrar of the Commonwealth Personal Property Securities Register for limited purposes connected with the Chief Commissioner’s functions under Part 6A of the *Road Safety Act 1986*. [22]

Committee comment

Retrospective amendment – Statute law revision – Incorrect reference

The Bill retrospectively amends the *Superannuation Legislation Amendment Act 2010* (the ‘Act’). The amendment corrects a typographical error in section 43(4) of that Act which provided for the insertion of ‘widower’ after ‘widow’ in clause 10 of Part III of the Fourth Schedule of the *Police Regulation Act 1958*. The reference to Part III was incorrect and should have instead referred to Part II. The amendment applies retrospectively to 30 June 2010 which is the day before section 43(4) of the Act came into operation. [23]

The explanatory memorandum provides –

The amendment is necessary to remove any doubt that the amendment of the Police Regulation Act 1958 set out in section 43(4) of the Superannuation Legislation Amendment Act 2010 took effect as intended. The amendment will have no detrimental effect on any person to whom the Schedule applies.

Charter report

Fair hearing – Presumption of innocence – Impounding or immobilisation for 30 days – Police officer’s reasonable belief that vehicle has been used in commission of offence

Summary: The Committee refers to Parliament for its consideration the question of whether or not clause 3(1) by allowing a motor vehicle to be impounded or immobilised for 30 days on the basis of a police officer’s reasonable belief that an offence has been committed and by providing only limited grounds for police and court reviews is a reasonable limit on the Charter right of criminal defendants to a fair hearing and to be presumed innocent until proved guilty according to law.

The Committee notes that existing s. 84F(1)(b) of the *Road Safety Act 1986* permits a police officer who ‘believes on reasonable grounds that a motor vehicle is being, or has been used in the commission of a relevant offence’ to ‘impound or immobilise the motor vehicle for the designated period’. Clause 3(1), amending existing s. 4(1)(a) of the *Road Safety Amendment (Hoon Driving) Act 2010*, alters that Act’s forthcoming extension of the ‘designated period’ from 14 days to 30 days.

The Statement of Compatibility remarks:

The right to a fair hearing implicitly requires that no punishment for criminal behaviour be imposed unless charges are brought and they are determined by a competent, independent and impartial court or tribunal after a fair and public hearing. The right to be presumed innocent implicitly requires that no punishment for alleged criminal behaviour be imposed until a person is proved guilty according to law. The imposition of a vehicle impoundment or immobilisation sanction for 30 days under division 2 of part 6A of the act occurs prior to any finding of guilt by a court and therefore limits both the right to a fair hearing and the right to be presumed innocent.

In its report on the Bill that led to the enactment of the *Road Safety Amendment (Hoon Driving) Act 2010*, the Committee remarked that the then proposed extension of the designated period from 48 hours to 7 days ‘may be incompatible with the Charter’s rights to be presumed innocent’.¹ In relation to clause 3(1), the question is whether an increase in the designated period from 14 days to 30 days adds a punitive element to the regime for immediate immobilisation, or does so to a sufficient extent, so as to amount to an unreasonable limit on the Charter’s fair hearing and proof rights according to the test set out in Charter s. 7(2).² The Committee observes that existing procedures for remand and bail allow for suspected offenders to be detained for lengthy periods without trial, albeit only after they are charged, for purposes defined by statute and with ongoing court supervision.

The Statement of Compatibility remarks:

During the period from January 2003 to November 2004, hoon driving behaviour contributed to 41 serious collisions in which 28 people were killed. This revelation was a significant impetus for the creation of the Victorian vehicle impoundment scheme. It has been acknowledged since the commencement of the scheme that immediate sanctions for hoon driving offences play a critical role in discouraging unsafe driving behaviour.

The imposition of vehicle impoundment or immobilisation for 30 days upon the detection of a ‘tier 1 relevant offence’ or a ‘tier 2 relevant offence’ by police allows for the immediate removal of an unsafe driver from the road and also provides a significant deterrent to that person and other drivers from engaging in unsafe driving behaviour.

In addition to the public safety benefits set out above, it is also expected that this reform will have a positive effect on traffic flow as the prevalence of motor vehicle accidents caused by unsafe driving behaviour is reduced.

Furthermore, a reduction in hoon driving behaviour will improve public amenity given that some hoon offences that are subject to impoundment and immobilisation sanctions involve the making of smoke, noise and other disturbances, which can cause intimidation, annoyance and distress to those in the vicinity of the offending behaviour.

The Committee notes that existing s. 48F of the *Road Safety Act 1986* already provides for immediate immobilisation of suspect vehicles for 48 hours and that such a risk management measure does not limit any Charter rights. However, the Committee observes that lengthier periods of immobilisation aimed at deterrence or incapacitation of actual offenders may amount to punishment of the vehicle’s driver or owner without charge, trial or verdict.

The Statement of Compatibility also remarks:

The limitation of the rights is constrained by a number of safeguards to ensure that it is not imposed inappropriately. Firstly, section 84M of the act provides that any decision to impose a 30 day

¹ Alert Digest No 13 of 2010, p. 15.

² Charter s. 7(2) provides: ‘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.’

impoundment or immobilisation sanction must be reviewed by a senior police officer within 48 hours of the impoundment or immobilisation being imposed.

Secondly, appeal rights exist under section 84O of the act where a person substantially affected by the 30 day impoundment or immobilisation sanction can seek the release of the vehicle on exceptional hardship grounds...

The Committee observes that New Zealand's similar 28-day impoundment scheme provides for similar reviews by the police and the courts. However, the grounds of review for both hearings are broader, extending to the police officer's grounds, the driver's circumstances and the owner's responsibility.³

The Committee refers to Parliament for its consideration the question of whether or not clause 3(1):

- ***by allowing a motor vehicle to be impounded or immobilised for 30 days on the basis of a police officer's belief that an offence has been committed; and***
- ***by providing only limited grounds for police and court reviews;***

is a reasonable limit on the Charter right of criminal defendants to a fair hearing and to be presumed innocent until proved guilty according to law.

The Committee makes no further comment.

³ *Land Transport Act 1998 (NZ)*, ss. 102, 110. Section 102 provides for the owner of the impounded vehicle to 'appeal to the Police' on grounds including the following: '(a) the impounded vehicle was a stolen or converted vehicle at the time of the seizure and impoundment; or (b) the enforcement officer who seized the vehicle did not have reasonable grounds of belief as required... or did not comply with the notice requirements...; or (c) the owner did not know and could not reasonably have been expected to know that the driver was not permitted to drive; or (d) the owner took all reasonable steps to prevent the driver from driving the vehicle; or (e) the driver drove the vehicle in a serious medical emergency...; (f)... the owner did not know and could not reasonably be expected to know that the operator of the vehicle would contravene [certain offence provisions]; or (g) ...the owner took all reasonable steps to prevent the operator of the vehicle from contravening [those provisions]', which must be set out in a statutory declaration. The appeal must be lodged within 14 days and decided by an officer authorised for that purpose within 5 days. The authorised officer may refuse to consider frivolous, vexatious or insufficiently evidenced claims. Section 110 provides for an unsuccessful appellant (or a person whose appeal was not decided within 5 days) to 'appeal to a District Court' on the same grounds as those in s. 102. See also the broad appeal right for a less comparable indefinite clamping scheme in NSW: *Road Transport (General) Act 2005 (NSW)*, ss. 218 & 224. However, the similar 28 day clamping laws in South Australia and Tasmania do not provide for any express reviews: *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007 (SA)*; *Police Offences Act 1935 (Tas)*, Part IVA, Division 2.

Road Safety Camera Commissioner Bill 2011

Introduced	24 May 2011
Second Reading Speech	31 May 2011
House	Legislative Assembly
Member introducing Bill	Hon. Peter Ryan MLA
Portfolio responsibility	Minister for Police and Emergency Services

Background and Content

The Bill establishes the office of the Road Safety Camera Commissioner and provides for the appointment, functions and powers of the Commissioner. **[4 to 13]**

Note: *The Bill defines Road safety camera system as the road safety cameras, speed detectors and processes prescribed under the Road Safety Act 1986 that are used to detect offences under that Act, including images or messages produced by them and their testing, sealing and manner of use.*

The Bill sets out the functions of the Commissioner including to —

- undertake, at least annually, reviews and assessments of the accuracy of the road safety camera system, in order to monitor compliance of the system with the *Road Safety Act 1986* and regulations made under that Act;
- undertake investigations requested by or agreed to by the Minister into the integrity, accuracy or efficiency of the road safety camera system;
- receive complaints about the road safety camera system, and either refer a complaint to an appropriate body for further action or provide information on the available avenues for resolution of a complaint;
- investigate those complaints that appear to indicate a systemic problem with the road safety camera system, and make recommendations to the Minister to address any systemic issues;
- investigate any matter in relation to the road safety camera system that the Minister refers to the Commissioner. **[10]**

The Bill provides that a Reference Group of advisers to the Commissioner may be established. The Reference Group will consist of not less than three and not more than seven members who are appointed by the Minister on the recommendation of the Commissioner. **[14 to 18]**

The Committee makes no further comment.

Terrorism (Community Protection) Amendment Bill 2011

Introduced	26 May 2011
Second Reading Speech	26 May 2011
House	Legislative Council
Member introducing Bill	Hon. Richard Dalla-Riva MLC
Portfolio responsibility	Premier, Attorney- General and Minister for Police and Emergency Services

Background and Content

The Bill amends the *Terrorism (Community Protection) Act 2003* (the 'Act') to provide for the review of the operation of the Act to be undertaken and completed by 30 June 2013. The original review of the Act was to be completed by 30 June 2006 however amending legislation in 2006 extended the review to 30 June 2011. (*Refer to Committee comment below*)

The 2006 amending legislation also extended the sunset provision of the Act from 1 December 2006 to 1 December 2016. This Bill does not extend the sunset provision of the Act.

Extract from the Explanatory Memorandum –

On 27 September 2005, the Council of Australian Governments (COAG) agreed to strengthen Australia's counter-terrorism legislation.

As part of these agreed reforms, COAG agreed to a review of national counter-terrorism legislation in 5 years time, and to a sunset date for the legislation in 10 years time.

In accordance with the COAG Agreement, the Terrorism (Community Protection) (Amendment) Act 2006 inserted Part 2A, entitled "Preventative Detention Orders", and Part 3A, entitled "Special Police Powers", into the Terrorism (Community Protection) Act 2003. This amending Act also extended the date for review of the Terrorism (Community Protection) Act 2003 by 5 years to 30 June 2011, and the sunset date by 10 years to 1 December 2016.

The original extension of the review date was to allow the Victorian review of the Act to coincide with the proposed COAG review of uniform national counter-terrorism legislation.

The COAG review will consider, among other things, Part 2A and Part 3A of the Terrorism (Community Protection) Act 2003.

The Victorian review will consider the operation of the Terrorism (Community Protection) Act 2003, including Part 2, Part 3 and Part 6.

The COAG review of counter-terrorism legislation was due to begin in late 2010. The review was delayed by the Commonwealth, in anticipation of the commencement of the Commonwealth's Independent National Security Legislation Monitor.

On 21 April 2011, the Commonwealth Government appointed an Independent National Security Legislation Monitor.

The COAG Review will not be completed by 30 June 2011.

This Bill amends the Terrorism (Community Protection) Act 2003 to extend the date for the completion of the review, and for the tabling of the review report in Parliament, to 30 June 2013.

Committee comment

Delay in review of Act containing preventative detention and covert search warrant powers – Whether delay subjects the exercise of legislative power to insufficient parliamentary scrutiny – Parliamentary Committees Act 2003, section 17(a)(vii)

The Committee reported on amendments to the Act made by the *Terrorism (Community Protection) (Amendment) Bill 2006* (the 'Bill') in *Alert Digest No.1 of 2006* and noted in that report that the Bill intended to extend the review date of the Commonwealth and Victorian Acts from 30 June 2006 to 30 June 2011.

The Committee made the following comment in *Alert Digest No.1 of 2006* –

The Committee draws the attention of Members to Parliament's necessary and legitimate oversight responsibilities when considering the review of legislation that enables the exercise by the executive of significant preventative detention and covert search warrant powers.

If a review of the operation of the whole Act is not intended to be tabled by 30 June 2006 and having in mind the nature of the powers, existing and proposed in the Act, the Committee refers for Parliament's consideration the question whether such a delay subjects the exercise of legislative power to insufficient parliamentary scrutiny within the meaning of section 17(a)(vii) of the Parliamentary Committees Act 2003.

The Committee draws attention to the provision.

<p>The Committee draws attention to the extended timetable for the statutory review of the Act.</p>

The Committee makes no further comment.

Transport Legislation Amendment (Port of Hastings Development Authority) Bill 2011

Introduced	31 May 2011
Second Reading Speech	1 June 2011
House	Legislative Assembly
Member introducing Bill	Hon. Denis Napthine MLA
Portfolio responsibility	Minister for Ports

Background and Content

The Bill amends the *Transport Integration Act 2010* (the 'Act'), the *Port Management Act 1995* and other Acts to provide for the —

- establishment of the Port of Hastings Development Authority.
- transfer of functions relating to the port of Hastings from the Port of Melbourne Corporation to the Port of Hastings Development Authority.
- transfer of functions relating to port of Hastings waters from the Port of Melbourne Corporation to the Victorian Regional Channels Authority.
- making of consequential and transitional amendments. [11]

The purpose of the Authority is to manage and operate the Port of Hastings; and facilitate the development of the port of Hastings as a viable alternative to the port of Melbourne.

The Bill transfers responsibility for the port of Hastings land from the Port of Melbourne Corporation to the Port of Hastings Development Authority and transfers responsibility for the Port of Hastings channels and waters from the Port of Melbourne Corporation to the Victorian Regional Channels Authority. [21]

The Bill makes associated changes to the Act, the *Port Management Act 1995*, the *Marine Act 1988*, the *Marine Safety Act 2010* and other Acts for related purposes. [Part 3 and 4]

Reverse onus defence – Offence to enter or remain in restricted declared area – Reasonable excuse defence – Port Management Act 1988, section 88B – Freedom of movement

The Bill applies the provisions relating to declaration of restricted access areas to the new Authority. Section 88B of the Act provides that it is an offence for a person to enter or remain in a restricted access area without a reasonable excuse.

Extract from the Statement of Compatibility –

Declaration of restricted access area

Clause 33 amends section 84 of the Port Management Act 1995 to allow the Minister, on the recommendation of the Port of Hastings Development Authority, to declare any part of the port of Hastings land a restricted access area. The new section contains limits on the size of the restricted area.

The effect of the amendment is to apply the provisions of the Port Management Act 1995, which relate to restricted areas, to the port of Hastings. These provisions limit the scope of the declaration power by requiring the minister to be satisfied that the declaration is necessary to enable the recommending authority to carry out its powers or functions and give effect to its objectives under the act (section 84(3)), and sets out certain categories of land which require external consultation or approval (section 84(4)-(7)). The declaration must also be published in the Government Gazette (section 86).

Once a declaration is in effect, warnings and directions may be given by the Port of Hastings Development Authority to a person to leave or to not enter the restricted access area (section 88E) and offences are created in respect of entering into or remaining in a restricted area, or interfering with activities in a restricted area (sections 88B, 88C).

...

The limited size of the restricted area, the prescribed length of time that a declaration can remain in force and the availability of a 'reasonable excuse' defence to the offences relating to entering a restricted area ensures, in my opinion, that the limitation is the least restrictive for its purpose.

The Committee makes no further comment.

Transport Legislation Amendment (Taxi Services Reform and Other Matters) Bill 2011

Introduced	31 May 2011
Second Reading Speech	2 June 2011
House	Legislative Assembly
Member introducing Bill	Hon. Terry Mulder MLA
Portfolio responsibility	Minister for Public Transport

Background

The Bill amends the *Transport Integration Act 2010* (the 'Act') and the *Transport (Compliance and Miscellaneous) Act 1983* (the '1983 Act') to –

- establish the Taxi Services Commission (the 'Commission') [7] and initially transfer the responsibility for regulation of commercial passenger vehicles from the Director of Public Transport to the Secretary (the 'Secretary') to the Department of Transport. [5 and 6], [59 to 100] Require the Taxi Services Commission to inquire into the structure, conduct, performance and regulation of the taxicab and hire car industry and report on that inquiry. [58]
- transfer the responsibility for the regulation of commercial passenger vehicles from the Secretary to the Commission following the completion of the inquiry. [105 to 127]

Extracts from the Second Reading Speech –

The Commission will be an independent statutory agency, structurally separate from the Department of Transport.

The Bill establishes the Commission as a body corporate in Part 5 of the Transport Integration Act 2010 along with the other central transport bodies critical to our transport system.

... Parts 2 and 3 of the Bill set out the two major stages for the Commission.

In its first stage, the Commission will conduct the comprehensive inquiry. It is anticipated that the Commission will provide a final report to government by mid-2012. During this stage, the Commission will have the mandate to promote major and enduring change to the taxi and hire car industry.

The inquiry will cover the commercial passenger vehicle industry in its entirety. While taxis will be the focus of the inquiry, this broad scope means that the Commission is able to inquire into hire cars, restricted hire cars, special-purpose vehicles and public commercial passenger vehicles (including certain buses).

The Commission will be able inquire into the holders of commercial passenger vehicle licences, the operators of commercial passenger vehicles, providers of taxi network services, and ancillary matters such as the supply of relevant goods and services in the industry. ... In its second stage, the Commission will assume the role of the industry regulator and take responsibility for implementing the reforms decided by the government as a result of the inquiry.

Committee comment

Delayed commencement – Delegation of legislative power

The Bill provides that Part 3 and Part 4 of the Bill which respectively provide for the post inquiry amendments and the repeal of the amending Act (this Bill) to come into operation on or before 1 July 2013. The explanatory memorandum provides –

The extended default commencement date provided in subclause (3) is necessary to permit sufficient time for the Taxi Services Commission to conduct its inquiry into commercial passenger vehicle regulation in Victoria and report to Government. The period is also necessary to provide time for Government to consider the Commission's findings and to put any necessary matters in place to enable

the Commission to take over from the existing agency as the regulator of commercial passenger vehicles in Victoria.

The Committee makes no further comment.

Victorian Urban Development Authority Amendment (Urban Renewal Authority Victoria) Bill 2011

Introduced	31 May 2011
Second Reading Speech	1 June 2011
House	Legislative Assembly
Member introducing Bill	Hon. Robert Clark MLA
Portfolio responsibility	Minister for Planning

Background and Content

The Bill amends the *Victorian Urban Development Authority Act 2003* (the 'Act') to –

- amend the name of the Act to reflect the establishment of the new Authority. **[4]**
- abolish the Victorian Urban Development Authority. **[6 to 8 and 15]**
- establish the Urban Renewal Authority Victoria (the 'Authority') as its successor in law. **[15]**
- set out additional functions of the Authority and amend the Act to reflect the purposes of the new Authority. **[9]**
- provide eligibility criteria for appointment to the Board of the new Authority. **[12]**
- make consequential amendments to other Acts. **[16 to 21]**

The Bill sets out the purposes of the Authority –

- carry out or manage or co-ordinate the carrying out of urban renewal projects.
- contribute to the implementation of government urban planning and development policies.
- undertake declared projects.
- complete the development of the Docklands Area. **[5]**

The Committee makes no further comment.

Ministerial Correspondence

State Taxation Acts Amendment Bill 2011

The Bill was introduced into the Legislative Assembly on 3 May 2011 by the Hon. Kim Wells MLA. The Committee considered the Bill on 23 May 2011 and made the following comments in Alert Digest No. 5 of 2011 tabled in the Parliament on 24 March 2011.

Committee comments

Charter report

Statement of compatibility – Clarification of intended legal effect of provision

The Committee notes that the statement of compatibility on clause 31 (substituting a new section 47(2)) contains a number of statements that the Committee considered Parliament may be assisted with further clarification: The statements:

- *refer to a requirement that defendants ‘adduce or point to the evidence’ of their lack of knowledge, that is, a reverse evidential burden.*
- *remark that ‘where a defendant raises evidence of lack of knowledge, the prosecution will have the burden of disproving these matters beyond reasonable doubt’, that is, no legal burden on the accused.*
- *remark that clause 31 imposes ‘a defence with a burden on the accused to prove the matters on the balance of probabilities achieves an appropriate balance of all interests’, that is, a reverse legal burden.*

The Committee will write to the Treasurer seeking further information as to the precise effect of clause 31.

Minister’s Response

Thank you for your correspondence dated 25 May 2011, seeking further clarification on the intended legal effect of clause 31 of the State Taxation Acts Amendment Bill 2011 (the Bill). In particular, you seek confirmation as to whether this clause was intended to create a reverse legal or evidential onus on the accused.

In response to this request, I confirm that clause 31 was intended to maintain a reverse legal onus for the accused. This will require the accused to satisfy the court, on the balance of probabilities, that they did not know information provided to the Commissioner of State Revenue in connection with an application for the first home owner grant was false and misleading. I note that the Statement of Compatibility for this Bill sets out how that provision satisfies the test for reasonable limits on rights under the Charter.

While I recognise that an evidential burden would have been less restrictive on the right to be presumed innocent, it could be too easily satisfied leaving the prosecution in a difficult position of having to prove something that is peculiarly within the knowledge of the accused. This would make prosecution of these matters difficult, limiting the effectiveness of clause 31 both as a penalty for those who have obtained an improper financial benefit by defrauding the first home owner grant scheme and as a deterrent for those considering defrauding the scheme. In this context, a legal reverse onus achieves an appropriate balance between the rights of the accused and protection of the public revenue for the benefit of all Victorians.

I appreciate the opportunity to clarify this matter.

KIM WELLS MP

Treasurer

9 June 2011

The Committee thanks the Treasurer for this response.

Committee Room

10 June 2011

Appendix 1

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Civil Procedure and Legal Profession Amendment Bill 2011	1
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Appendix 2

Committee Comments classified by Terms of Reference

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

Alert Digest Nos.

Section 17(a)

(i) trespasses unduly upon rights or freedoms

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

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

Justice Legislation Amendment Bill 2011

2

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

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

(vi) inappropriately delegates legislative power.

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

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

Building Amendment Bill 2011

1

Education and Training Reform Amendment (School Safety) Bill 2010

1

Justice Legislation Amendment Bill 2011

2

Liquor Control Reform Amendment Bill 2011

3

Sentencing Amendment Act 2010

1

Section 17(b)

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

Appendix 3

Ministerial Correspondence 2011

Table of correspondence between the Committee and Ministers during 2011

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Building Amendment Bill 2011	Minister for Planning	01.03.11 21.03.11	1 of 2011 2 of 2011
Education and Training Reform Amendment (School Safety) Bill 2010	Minister for Education	01.03.11 28.03.11	1 of 2011 3 of 2011
Justice Legislation Amendment Bill 2011	Minister for Consumer Affairs	22.03.11 04.04.11	2 of 2011 3 of 2011
Sentencing Amendment Act 2010	Attorney-General	01.03.11 05.04.11	1 of 2011 4 of 2011
Liquor Control Reform Amendment Bill 2011	Consumer Affairs	05.04.11 21.04.11	3 of 2011 4 of 2011
State Taxation Acts Amendment Bill 2011	Treasurer	25.05.11 09.06.11	5 of 2011 6 of 2011

Table of Ministers responses still pending

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
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