

No. 6 of 2012

Tuesday, 17 April 2012

On the

Health Professions Registration
(Repeal) Bill 2012

Land (Revocation of Reservations)
Bill 2012

National Energy Retail Law (Victoria)
Bill 2012

Royal Women's Hospital Land Bill 2012

Transport (Compliance and
Miscellaneous) Amendment (Fares)
Bill 2012

Victorian Inspectorate Amendment
Bill 2012

The Committee



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Member for Eastern Victoria



Deputy Chairperson
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Member for Pascoe Vale



Mr Colin Brooks MLA
Member for Bundoora



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Member for Mount Waverley



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Terms of Reference - Scrutiny of Bills

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

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

Table of Contents

	Page Nos.
Alert Digest No. 6 of 2012	1
Health Professions Registration (Repeal) Bill 2012	1
Land (Revocation of Reservations) Bill 2012	2
National Energy Retail Law (Victoria) Bill 2012	3
Royal Women's Hospital Land Bill 2012	6
Transport (Compliance and Miscellaneous) Amendment (Fares) Bill 2012	7
Ministerial Correspondence	
Victorian Inspectorate Amendment Bill 2012	9
Appendices	
1 – Index of Acts and Bills in 2012	15
2 – Committee Comments classified by Terms of Reference	17
3 – Ministerial Correspondence 2012	19

Useful information

Role of the Committee

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

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

Interpretive use of Parliamentary Committee reports

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

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

When may human rights be limited

Section 7 of the *Charter* provides –

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

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

Glossary and Symbols

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

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

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

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

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

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

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

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

'*VCAT*' refers to the Victorian Civil and Administrative Tribunal;

[] denotes clause numbers in a Bill.

Alert Digest No. 6 of 2012

Health Professions Registration (Repeal) Bill 2012

Introduced	27 March 2012
Second Reading Speech	28 March 2012
House	Legislative Assembly
Member introducing Bill	Hon. Denis Napthine MLA
Portfolio responsibility	Minister for Health

Purpose

The Bill repeals the *Health Professions Registration Act 2005* (the 'Act').

Note: Until 1 July 2012 the Act and the Boards formed under it regulate the professions of Chinese Medicine and Medical Radiation Practice. As of that date, those professions will be regulated under the Health Practitioner Regulation National Law and there will be no further role for the Act. The Bill repeals the Act and abolishes the Boards operating under it. The provisions in the Bill replace references to the repealed Act and abolished boards in other Victorian Acts with references to the Health Practitioner Regulation National Law and the National Boards formed under it.

The Committee makes no further comment.

Land (Revocation of Reservations) Bill 2012

Introduced	27 March 2012
Second Reading Speech	28 March 2012
House	Legislative Assembly
Member introducing Bill	Hon. Ryan Smith MLA
Portfolio responsibility	Minister for Planning

Purpose

The purposes of the Bill are to revoke the permanent reservation:

- and related Crown grant of certain land next to the St Kilda Town Hall.
- of land at the former Fitzroy Gasworks site. Existing leases and licences are to be preserved for the period while the land remains Crown land.
- of part of the land occupied by the Toolangi Potato Research Farm and to provide that that land is taken to be reserved forest.
- of certain land at Werribee.
- of certain land no longer required by the Inglewood Hospital.
- of certain land at Barwon Heads.
- and related Crown grant of land occupied by the South Melbourne Temperance Hall.

The four Schedules describe the details of the land in respect of which the reservation is revoked.

Note: The Second Reading Speech provides an overview of the reasons for the revocation of each of the current permanent reservations.

The Committee makes no further comment.

National Energy Retail Law (Victoria) Bill 2012

Introduced	27 March 2012
Second Reading Speech	28 March 2012
House	Legislative Assembly
Member introducing Bill	Hon. Michael O'Brien MLA
Portfolio responsibility	Minister for Energy and Resources

Purpose

The purposes of the Bill are to:

- provide for the establishment of a national energy customer framework for the regulation of the retail supply of energy to customers.
- provide for the relationship between the distributors of energy and the consumers of energy.
- make consequential amendments to other Victorian Acts.
- repeal electricity and gas industry cross-ownership restrictions under other Victorian Acts.

Note: The Bill applies in Victoria the National Energy Retail Law that is set out in the schedule to the National Energy Retail Law (South Australia) Act 2011, together with the national energy retail rules and regulations, which the South Australian Minister will make on behalf of all participating jurisdictions. Currently electricity and gas retail markets are separately regulated by States and Territories.

Extracts from the Second Reading Speech:

... The law will facilitate retailers moving beyond State borders to operate nationally. National retailer authorisation will allow a retailer to obtain one authority to conduct business across all participating jurisdictions, rather than six separate retail licences. This will reduce costs for retailers and bring benefits to customers in increased competition.

... Best practice local initiatives, such as Victoria's customer hardship policies, will be extended to vulnerable customers in other jurisdictions.

... Part 5 of the Bill contains Victorian-specific provisions that will operate alongside the National Energy Retail Law, rules and regulations. In particular, clause 13 preserves and continues Victoria's wrongful disconnection compensation scheme, and clause 14 preserves and continues Victoria's prohibition on late payment fees.

... The energy and water ombudsman will continue to be Victoria's customer dispute resolution service. Clauses 71 and 117 of the Bill re-enact the relevant sections of the *Electricity Industry Act 2000* and *Gas Industry Act 2001* to directly require retailers and distributors to be members of a dispute resolution scheme (in place of the current licence condition) and to confirm minimum requirements for the scheme and the ongoing role of the Essential Services Commission.

Content

Commencement by proclamation

The Bill provides that the Act comes into operation on a day or days to be proclaimed. [2]

The explanatory material provides:

Explanatory memorandum – The intention is that the scheme will come into operation on the same day in all participating jurisdictions. The proposed common commencement date is 1 July 2012. The clause does not specify a default commencement date to ensure that, in the event of a delay, the Act does not come into operation before the Application Acts of other jurisdictions.

Second Reading Speech – The legislative scheme under the national energy market reform program is an applied laws model. This means that participating jurisdictions adopt the laws made by a lead legislator. In this case, South Australia has that role.

The Committee accepts that a commencement by proclamation provision in these circumstances is acceptable.

Property – Fixtures or personal property

The Bill amends the *Electricity Industry Act 2000* and the *Gas Industry Act 2001* and in each case inserts a new section which provides that a meter or associated infrastructure is not part of the land on which the meter or associated infrastructure is installed and is personal property. (Refer to *Charter report below*) [105 and 127]

As to the distinction between personal property and a fixture see footnote below.¹

Charter report

Property Meters and associated infrastructure not part of land Whether deprivation of property in accordance with law

Summary: Clauses 105 and 127 provide that a ‘meter or associated infrastructure’ is ‘not part of the land’ on which it is installed and is ‘personal property’. The Committee will write to the Minister seeking further information as to the meaning of ‘meter or associated infrastructure’ and as to the compatibility of these clauses with the Charter's right not to be deprived of property otherwise than in accordance with law.

The Committee notes that clauses 105 and 127, respectively inserting new sections 94A into the *Electricity Industry Act 2000* and 140A into the *Gas Industry Act 2001*, provide that a ‘meter or associated infrastructure’ is ‘not part of the land’ on which it is installed and is ‘personal property’. To the extent that these clauses change the ownership of a meter or associated infrastructure, their effect may be to deprive land owners of property rights with respect to these items and to give property rights in these items to others, e.g. an energy distributor or retailer, potentially exposing owners to criminal or civil liability for trespass or other property offences if they deal with those items without consent.

The Second Reading Speech remarks:

Clauses 105 and 127 of the bill insert new sections into the *Electricity Industry Act 2000* and *Gas Industry Act 2001* to confirm that meters are not part of the land on which they are installed. Codes made by the Essential Services Commission currently contain the same

¹ Fixture – an item of tangible personal property annexed to land in such a way as to become part of the land. Ownership of a fixture follows ownership of the land and an item which is a fixture thus ceases to be personal property of the person who attached it in the first place. Whether an item is a fixture depends on the degree and purpose of annexation as well as the rebuttable presumption that what is fixed to land is a fixture and that which is not remains a chattel: *Holland v Hodgson* (1872) LR 7 CP 328. Butterworths, *Concise Australian Legal Dictionary*, Second Edition, page 180.

provision but it is considered appropriate that this matter should, for the avoidance of doubt, be dealt with in the acts themselves.

The Committee notes that existing s. 2.2 of the Essential Services Commission's *Electricity Customer Metering Code*, which provides that customers do not have a proprietary interest in metering equipment² and that equipment left on a premises does not become the customer's property even if it is annexed to the customer's land,³ includes a definition of 'metering equipment'⁴ and only affects the customer's proprietary interests. By contrast, clause 105 does not define either 'meter' or 'associated infrastructure' and applies to anyone who has or will have a property interest in the land where the meter or infrastructure is installed.

The Committee observes that the Charter's right not to be deprived of property does not apply to deprivations that are 'in accordance with law'.⁵ Similarly to the common law's principle of legality, 'a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct; he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.'⁶ For example, a new land owner should be able to identify if he or she owns a box surrounding a meter.

The Committee will write to the Minister seeking further information as to the meaning of 'meter or associated infrastructure' in clauses 105 and 127 and as to the compatibility of these clauses with the Charter's right not to be deprived of property otherwise than in accordance with law. Pending the Minister's response, the Committee draws attention to clauses 105 and 127.

The Committee makes no further comment.

² Section 2.2(a) provides: *Subject to clause 2.5, a customer does not have a proprietary interest in metering equipment installed by a distributor, a responsible person, a metering provider or a retailer.* (Section 2.5 permits a customer to install 'check metering' e.g. for the purpose of checking metering data.)

³ Section 2.2(c) provides: (c) Any property or equipment left on the land or premises of a customer by a distributor, a responsible person, a metering provider or a retailer, regardless of whether such property or equipment is annexed to the land or premises of the customer, does not become the property of the customer who must:

- (1) not use the property or equipment for any purpose other than with the prior written consent of the owner of the property or equipment;
- (2) not create any mortgage, charge or lien on that property or equipment; and
- (3) upon reasonable notice, provide access to the owner of the property or equipment to permit the removal of the property or equipment.

⁴ Section 9 provides: *"metering equipment" means equipment installed or to be installed to safely measure, record, and, read records of the amounts of electricity in the nature of active energy and/or reactive energy supplied from a distributor's distribution system to an electrical installation of a customer including meters, current transformers and voltage transformers, wiring and any computing or communications equipment designed to facilitate electronic access, such equipment being accumulation metering equipment or interval metering equipment.*

⁵ Charter s. 20.

⁶ *Sunday Times v United Kingdom* [1979] ECHR 1, [49] and see *Coco v R* [1994] HCA 15; (1994) 179 CLR 427.

Royal Women's Hospital Land Bill 2012

Introduced	27 March 2012
Second Reading Speech	28 March 2012
House	Legislative Assembly
Member introducing Bill	Hon. Ryan Smith MLA
Portfolio responsibility	Minister for Planning

Purpose

The Bill revokes the permanent reservation over land in Carlton that was previously occupied in part by the former Royal Women's Hospital ('RWH') and part of which is currently occupied by the Royal Dental Hospital ('RDH').

The Bill returns the land to its original status as unalienated Crown land and revokes any regulations and the appointment of any committee of management in respect of the land.

The Bill preserves the continuing existence and operation of a 99 year lease under section 137AA(4) of the *Land Act 1958* entered into between the Minister for Planning and Dental Health Services Victoria (ABN 55264981997).

The Committee makes no further comment.

Transport (Compliance and Miscellaneous) Amendment (Fares) Bill 2012

Introduced	28 March 2012
Second Reading Speech	28 March 2012
House	Legislative Council
Member introducing Bill	Mr Greg Barber MLC
Private Member's Bill	

Purpose

The Bill proposes to insert a new section 220D(6) in the *Transport (Compliance and Miscellaneous) Act 1983* to make it unlawful to provide for an increase in public transport fares having effect before 1 January 2014.

The Committee makes no further comment.

Ministerial Correspondence

Victorian Inspectorate Amendment Bill 2012

The Bill was introduced into the Legislative Assembly on 13 March 2012 by the Hon. Andrew McIntosh MLA. The Committee considered the Bill on 26 March 2012 and made the following comments in Alert Digest No. 5 of 2012 tabled in the Parliament on 27 March 2012.

Committee comment

[Charter report]

Fair hearing – Prohibitions on disclosure – Evidence relevant to court proceedings

Summary: Clause 10 makes it an offence for the Victorian Inspectorate or his or her officers to disclose information obtained in the course of their duties, functions or powers, with exceptions that include disclosure of information for the purposes of prosecutions that were instituted as a result of a Victorian Inspectorate investigation. The Committee will write to the Minister seeking further information as whether clause 10 bars the Victorian Inspectorate from disclosing information that is relevant to other court proceedings (including other prosecutions.)

The Committee notes that clause 10, inserting new section 28A, makes it an offence for the Victorian Inspectorate or his or her officers to disclose information obtained in the course of their duties, functions or powers. New sections 28A and 28C provide for exceptions to this ban for disclosures:

- in the exercise of the Victorian Inspectorate's duties, functions or powers under any Act
- as authorised or required by the *Victorian Inspectorate Act 2011*
- to a person or body whom the Victorian Inspectorate may make a recommendation for the purpose of that person or body's duties, functions or powers
- for the purpose of prosecutions or disciplinary processes 'instituted as a result of an investigation conducted by the Victorian Inspectorate'

New section 28D bars an officer from being required or compelled by a court to disclose any information except for the last of these reasons. In addition, new sections 28B and 28F provide for further disclosure prohibitions for information obtained in the course of the Victorian Inspectorate's functions with respect to the Public Interest Monitor and information that is subject to a 'confidentiality notice', which do not include any express exception for disclosure for the purpose of prosecutions.

The Statement of Compatibility addresses the compatibility of clause 10 with the Charter's right to freedom of expression as follows:

All of these limitations on the right to free expression are direct, proportionate and balanced with the need to safeguard the confidentiality and integrity of VI operations (which may also involve the operations of IBAC, Victoria Police and other law enforcement agencies). The confidentiality provisions also serve the public interest in ensuring that investigations on foot are not affected, that trials are not prejudiced, and that personal safety or reputation are not compromised.

In light of the fact that the confidentiality provisions effectively operate to preserve rights protected by the charter, the limitations are reasonable and demonstrably justifiable.

I consider there are no less restrictive means reasonably available to achieve the intended purposes.

The Committee observes that clause 10 may also engage the Charter's right to a fair hearing. That is because the Victorian Inspectorate may obtain, as part of its functions overseeing IBAC or the Public Interest Monitors, information that is relevant to other litigation, e.g. the defence in a criminal proceeding. For example, the Victorian Inspectorate may learn of misconduct associated with an IBAC investigation that led to a past or ongoing prosecution for corrupt conduct or of a process overseen by a Public Interest Monitor that produced evidence used in a past or ongoing prosecution for any crime. **However, new sections 28A 28D only expressly permit the disclosure of information for the purposes of prosecutions that were instated as a resulted of a Victorian Inspectorate investigation (rather than prosecutions that preceded, were the subject of or were independent of that investigation.)**

The Committee notes that prohibitions on disclosure similar to clause 10 are common in Australian integrity commission statutes. However, other jurisdictions' statutes provide for further or wider exceptions that would appear to permit the disclosure of relevant information (e.g. to a criminal defendant) in a wider set of circumstances than may be permitted by clause 10.

The Committee will write to the Minister seeking further information as whether clause 10 bars the Victorian Inspectorate from disclosing information that is relevant to a court proceeding (including prosecutions that were not instituted as a result of a Victorian Inspectorate investigation.) Pending the Minister's response, the Committee draws attention to clause 10.

Fair hearing – Abrogation of privilege against self incrimination – use of evidence derived from compelled answers

Summary: Clause 12 provides that a person must comply with a request from the Victorian Inspectorate to answer a question or produce a document even if complying with that request may tend to incriminate him or her. The Committee will write to the Minister seeking further information as whether there are less restrictive alternatives reasonably available to achieve the clause's purpose of assisting the Victorian Inspectorate to undertake full and proper investigations.

The Committee notes that clause 12, inserting a new section 33T, provides that a person **must comply with a request from the Victorian Inspectorate to answer a question or produce a document even if complying with that request may tend to incriminate him or her.** The Committee observes that new section 33T engages the Charter's rights to a fair hearing and against compelled self-incrimination.

The Statement of Compatibility remarks:

The purpose of the provision is to assist the VI in its function as a truth-seeking body that is able to undertake full and proper investigations.

It is not intended that the VI will compel a person to answer a question in relation to a matter where the person has been charged with a criminal offence in relation to the same matter. Where the VI is satisfied that the conduct of any IBAC personnel requires further investigatory or enforcement action it is able to recommend such action to the appropriate agency including the Chief Commissioner of Police.

If a person has been charged in relation to a matter that the VI was investigating, it is likely to occur only after the VI has concluded its investigation, and further action is being undertaken by another agency. Accordingly it is not considered that the bill will engage the rights in criminal proceedings. In any event, clause 33T is limited by the operation of subclause 33T(2) which provides that any answer, information, document or thing is not admissible in evidence against the person before any court or person acting judicially, except in limited circumstances...

Further protection for persons the subject of criminal proceedings is provided by clauses 36(3) and 38(3) of the VI act. These provisions state that if the VI is aware of a criminal investigation or criminal proceedings in relation to a matter or person to be included in a special report or annual report the VI must not include in that report any information which would prejudice the criminal investigation or criminal proceedings.

The Committee observes that clauses 36(3) and 38(3) do not prevent the Victorian Inspectorate from revealing compelled answers from IBAC personnel to IBAC, Victoria Police or other agencies for the purpose of initiating a prosecution in the future and that, in common with similar provisions in other integrity commission statutes in Australia, new section 33T(2) does not prevent anyone from being prosecuted on the basis of information derived from self-incriminatory answers or documents they were compelled to provide. For example, an IBAC officer and a public servant may both be compelled to identify anyone who they received cash from or gave cash to. Those names could then be supplied to the police, who could offer those people immunity for prosecution in exchange for their testimony against the IBAC officer and the public servant in a bribery prosecution.

In its *Practice Note No. 3*, the Committee remarked:

Where a provision of any Bill either provides that a human being must answer questions or provide information or documents that may tend to incriminate that person, or creates new powers or extends existing ones that are subject to such a provision, the Statement of Compatibility should state whether and how that provision satisfies the test for reasonable limits on rights in Charter s. 7(2).

The Committee would prefer that the analysis of reasonable limits set out the demonstrable justification for: the coercive power itself; any removal of the privilege against self-incrimination; any permission to use the answers or information derived from them in later proceedings; and any preconditions on the availability of protections against self-incrimination. The Statement's discussion of less restrictive alternatives reasonably available to achieve the purpose of the provision may address whether the privilege against self-incrimination could be abrogated in a narrower way.

The Committee will write to the Minister seeking further information as whether there are less restrictive alternatives reasonably available to achieve new section 33T's purpose of assisting the Victorian Inspectorate to undertake full and proper investigations. Pending the Minister's response, the Committee draws attention to clause 12.

Minister's response

Thank you for your letter dated 27 March 2012 requesting my advice in relation to the Victorian Inspectorate Amendment Bill 2012.

As noted in the second reading speech, this Bill amends the *Victorian Inspectorate Act 2012* to give the Victorian Inspectorate (VI) powers, duties and functions to ensure that the Independent Broad-based Anti-corruption Commission's (IBAC) use of its powers is both appropriate and proportionate. Additionally, this Bill also gives the VI the power to monitor Public Interest Monitors' compliance with certain statutory obligations.

I now turn to the request for advice directed to me in the Committee's Report, as contained within Alert Digest No. 5 of 2012 and as tabled in Parliament on 27 March 2012.

Clause 10

Clause 10 contains an appropriate limitation on the disclosure of information to safeguard the confidentiality and integrity of the operations of the VI. The VI's role in overseeing the IBAC and the Public Interest Monitors means that it will be privy to sensitive information about the operations of IBAC, the police force and other law enforcement agencies. It is important to limit the disclosure of such information to ensure the integrity of the information and that unnecessary prejudice or harm is not caused to an investigation or a person as a result of any disclosure.

Provisions such as these are common in legislation applying to investigatory bodies, and have been designed to safeguard the confidentiality and integrity of the VI's operations. Disclosure of information by the VI for the purposes of a particular court proceeding will depend on the facts and circumstances of each case.

Clause 12

As the Committee identifies, the objective of providing the VI with this power is to facilitate its oversight of the IBAC, which will itself have significant powers. The VI will have an important role in ensuring the integrity and probity of the IBAC's operations. It is therefore appropriate that the VI have the necessary powers in order to fulfil this function. I further note that this provision is coupled with a limitation, known as a use immunity, stating that the answer or information obtained by these means cannot be used as evidence against the person in any proceedings, other than in the circumstances set out in section 33T(2). The exceptions to the use immunity enable the VI the flexibility to make recommendations for further investigation or enforcement action to the Chief Commissioner of Police or the Director of Public Prosecutions where warranted. Provisions such as these are standard in legislation relating to investigatory bodies in Australia and are important to ensure that the VI has the tools it needs to undertake full and proper investigations.

I further note that, assuming the information is lawfully obtained and disclosed, it would still remain open to a court, under the rules of evidence and procedure, and taking into account the Charter, to consider whether and in what circumstances any derivative use of information disclosed pursuant to new section 33T is admitted as evidence in any eventual proceeding.

I am of the view that the clause 12 is an appropriate and important provision to enable the VI to achieve its purpose, taking into account the explicit use immunity set out in the legislation, and am advised that there are no less restrictive means reasonably available to achieve the purpose of this clause.

Thank you for providing me with the opportunity to comment on clauses 10 and 12 of the Victorian Inspectorate Amendment Bill 2012.

Andrew McIntosh MP

13 April 2012

The Committee thanks the Minister for this response.

Committee's further comment

The Committee notes the Minister's remark that '[d]isclosure of information by the VI for the purpose of a particular court proceeding will depend on the facts and circumstances of each case.' However the Committee observes that it sought further information as to whether clause 10 itself may prevent the disclosure of information relevant to a court proceeding in some circumstances.

The Committee also notes the Minister's remark that he has been 'advised that there are no less restrictive means to achieve the purpose of' clause 12. The Committee refers to Parliament for its consideration the question of whether providing an express statutory derivative use immunity would be a less restrictive means available to achieve the purpose of clause 12.⁷

Committee Room

16 April 2012

⁷ In *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381, [78], the Supreme Court of Victoria rejected an argument that 'the residual discretion of a trial judge to exclude evidence is a sufficient mechanism for upholding the rights contemplated by the Charter.'

Appendix 1

Index of Acts and Bills in 2012

	Alert Digest Nos.
Accident Compensation Amendment (Repayments and Dividends) Bill 2012	5
Associations Incorporation Reform Bill 2011	1, 4
Australian Consumer Law and Fair Trading Bill 2011	1, 4
Building Amendment Bill 2012	2
Carers Recognition Bill 2012	2
City of Melbourne Amendment (Environmental Upgrade Agreement) Bill 2012	2
Control of Weapons and Firearms Acts Amendment Bill 2011	1, 4
Disability Amendment Bill 2012	4, 5
Drugs, Poisons and Controlled Substances Amendment (Supply by Midwives) Bill 2012	4
Emergency Services Legislation Amendment Bill 2011	1
Evidence (Miscellaneous Provisions) Amendment (Affidavits) Bill 2012	3
Freedom of Information Amendment (Freedom of Information Commissioner) Bill 2011	1
Health Professions Registration (Repeal) Bill 2012	6
Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Bill 2011	1
Justice Legislation Amendment Bill 2012	4
Land (Revocation of Reservations) Bill 2012	6
Legal Profession and Public Notaries Amendment Bill 2012	4
National Energy Retail Law (Victoria) Bill 2012	6
Port Bellarine Tourist Resort (Repeal) Bill 2012	5
Port Management Amendment (Port of Melbourne Corporation Licence Fee) Bill 2011	1
Road Safety Amendment (Car Doors) Bill 2102	2
Road Safety Amendment (Drinking While Driving) Act 2011	1
Royal Women's Hospital Land Bill 2012	6
Statute Law Repeals Bill 2012	4
Statute Law Revision Bill 2012	4
Transport (Compliance and Miscellaneous) Amendment (Fares) Bill 2012	6
Victorian Inspectorate Amendment Bill 2012	5, 6
Water Legislation Amendment (Water Infrastructure Charges) Bill 2011	5
Water Amendment (Governance and Other Reforms) Bill 2012	4, 5

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)

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

Associations Incorporation Reform Bill 2011	1
Australian Consumer Law and Fair Trading Bill 2011	1
Control of Weapons and Firearms Acts Amendment Bill 2011	1
National Energy Retail Law (Victoria) Bill 2012	6
Victorian Inspectorate Amendment Bill 2012	5
Water Amendment (Governance and Other Reforms) Bill 2012	4

Section 17(b)

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

Australian Consumer Law and Fair Trading Bill 2011	1
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Appendix 3

Ministerial Correspondence 2012

Table of correspondence between the Committee and Ministers during 2012

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Associations Incorporation Reform Bill 2011	Minister for Consumer Affairs	07-02-12 24-02-12	1 of 2012 4 of 2012
Australian Consumer Law and Fair Trading Bill 2011	Minister for Consumer Affairs	07-02-12 24-02-12	1 of 2012 4 of 2012
Control of Weapons and Firearms Acts Amendment Bill 2011	Minister for Police and Emergency Services	07-02-12 29-02-12	1 of 2012 4 of 2012
Water Legislation Amendment (Water Infrastructure Charges) Bill 2011	Minister for Water	28-02-12 14-03-12	12 of 2011 5 of 2012
Disability Amendment Bill 2012	Minister for Community Services	13-03-12 26-03-12	4 of 2012 5 of 2012
Water Amendment (Governance and Other Reforms) Bill 2012	Minister for Water	13-03-12 27-03-12	4 of 2012 5 of 2012
Victorian Inspectorate Amendment Bill 2012	Minister responsible for the establishment of an anti-corruption commission	27-03-12 16-04-12	5 of 2012 6 of 2012

Table of Ministers responses still pending

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
National Energy Retail Law (Victoria) Bill 2012		17-04-12	6 of 2012