

No. 7 of 2012

Tuesday, 1 May 2012

On the

Courts and Sentencing Legislation
Amendment Bill 2012

Forests Amendment Bill 2012

Gambling Legislation Amendment
(Transition) Bill 2012

Independent Broad-based Anti-
corruption Commission Amendment
(Examinations) Bill 2012

Port Management Further
Amendment Bill 2012

Primary Industries Legislation
Amendment Bill 2012

The Committee



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Terms of Reference - Scrutiny of Bills

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

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

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Useful information

Role of the Committee

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

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

Interpretive use of Parliamentary Committee reports

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

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

When may human rights be limited

Section 7 of the *Charter* provides –

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

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

Glossary and Symbols

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

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

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

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

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

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

'*penalty units*' refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (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.

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Courts and Sentencing Legislation Amendment Bill 2012

Introduced	17 April 2012
Second Reading Speech	18 April 2012
House	Legislative Assembly
Member introducing Bill	Hon. Robert Clark MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill makes amendments to the:

1. *Children, Youth and Families Act 2005*, the *County Court Act 1958*, the *Magistrates' Court Act 1989* and the *Supreme Court Act 1986* to:
 - improve Children's Court processes including empowering a magistrate other than the magistrate who originally imposed the sentence to constitute the court
 - clarify the jurisdiction of Koori Courts (the 'court') and to clarify that a guilty pleas and the offender's consent are prerequisites for the court to deal with offences
 - provide immunity for assessors in the County and Supreme Courts on the same terms as judges of those courts
2. *Judicial College of Victoria Act 2001* to allow the Judicial College of Victoria to provide education to judicial registrars.
3. *Juries Act 2000* to improve the processes for empanelling juries including further provision allowing jurors to be identified by number and occupation and improving processes for excusing jurors.
4. *Sentencing Act 1991* relating to community-based corrections:
 - streamlining the process for charging offenders with contravention of a sentencing order
 - modernising orders for converting unpaid fines to community work
 - clarifying how money will be held and repaid under a community correction order bond condition
 - a number of other technical and minor amendments.
5. *Justice Legislation Amendment (Infringement Offences) Act 2011* to provide for the continued use of infringement notices for the following offences on a trial basis for a further two years, until 30 June 2014: [76]
 - shop theft of goods valued at up to \$600: section 74A, *Crimes Act 1958*
 - wilful damage of property valued at less than \$500: section 9(1)(c), *Summary Offences Act 1966*.

The Committee makes no further comment.

Forests Amendment Bill 2012

Introduced	17 April 2012
Second Reading Speech	19 April 2012
House	Legislative Assembly
Member introducing Bill	Hon. Ryan Smith MLA
Portfolio responsibility	Minister for Agriculture and Food Security and Minister for Environment and Climate Change

Purpose

The purposes of the Bill are to:

- amend the *Forests Act 1958* to create a new scheme for the collection of firewood from areas of State forest for domestic use without a licence or permit
- amend the *Crown Land (Reserves) Act 1978* to provide for cutting and taking away fallen or felled trees in certain parks for domestic use as firewood without a permit
- consequentially amend the *Land Act 1958*, the *National Parks Act 1975* and the *Wildlife Act 1975*.

Extract from the Second Reading Speech:

Overview of the legislative scheme

The new legislative scheme will apply to the collection of firewood in state forest and in those regional parks where firewood collection for domestic use is currently allowed. The scheme will apply to fallen or felled trees – or parts of those trees – collected in designated firewood collection areas during firewood collection seasons.

In summary:

- the Bill will abolish the need for a domestic firewood permit
- it will establish two firewood collection seasons in each financial year
- it will establish a process for designating firewood collection areas in state forest and those regional parks where firewood collection is currently allowed
- it will provide the flexibility to ensure that firewood supply can be managed over the long-term and local needs and unforeseen circumstances are able to be dealt with
- it will create a series of offences aimed at encouraging appropriate collecting behaviour; deterring illegal commercial firewood collection activity; and providing checks and balances to ensure that firewood collection is sustainable into the future and is undertaken in a socially and environmentally responsible manner
- it will enable a person who is unable to collect firewood for themselves to nominate another person to do so on their behalf.

The Committee makes no further comment.

Gambling Legislation Amendment (Transition) Bill 2012

Introduced	17 April 2012
Second Reading Speech	18 April 2012
House	Legislative Assembly
Member introducing Bill	Hon. Michael O'Brien MLA
Portfolio responsibility	Minister for Gaming

Purpose

The Bill amends the *Gambling Regulation Act 2003* (the 'Act') and the *Gambling Regulation Amendment (Licensing) Act 2009* to:

- extend the types of cash facilities that are captured by the proposed prohibition on automatic teller machines (ATMs) in approved venues. [20 to 27] Insert a definition of *alternative cash access facility* in the Act. [3]
- provide that no compensation is payable by the State to any person because of the operation of the prohibition on ATMs in gaming venues. [26]
- extend the existing power of the Treasurer to exempt, in special circumstances, a venue operator from paying the 75 per cent tax on the profit generated by the sale of gaming machines. [8]
- make amended provision for the payment of the Health Benefit Levy in the financial year beginning 1 July 2012. [11]
- ensure that a person who provides services to a venue operator or the monitoring licensee for the installation, service, repair or maintenance of gaming machines is to be listed on the Roll of Manufacturers, Suppliers and Testers [12]
- provide that any money remaining in the jackpot prize pools at the end of the gaming operator's licences be directed to the Victorian Responsible Gambling Foundation. [9]
- make it an offence for the monitoring licensee or a third party service provider to employ or engage a person to install, service, repair or maintain gaming machines or monitoring equipment unless the person holds a gaming industry employee's licence. [14]
- make further transitional and consequential amendments in relation to the expiry of the gaming operator's licences and the wagering licence in August 2012. [19]

The Bill also amends the *Casino Control Act 1991* to extend the types of cash facilities that are captured by the proposed prohibition on automatic teller machines in the casino. [28]

The Bill further makes minor amendments to the *Gambling Regulation Act 2003* and the *Gambling Regulation Further Amendment Act 2009*. [29 to 32]

The Committee makes no further comment.

Independent Broad-based Anti-corruption Commission Amendment (Examinations) Bill 2012

Introduced	18 April 2012
Second Reading Speech	19 April 2012
House	Legislative Assembly
Member introducing Bill	Hon. Andrew McIntosh MLA
Portfolio responsibility	Minister responsible for the establishment of an anti-corruption commission

Purpose

The Bill amends the *Independent Broad-based Anti-corruption Commission Act 2011* (the 'Act') to provide the Independent Broad-based Anti-corruption Commission (IBAC) with examination powers, referral powers and for other powers and functions relating to its operation. [3 to 31]

The Bill makes an amendment to the *Victorian Inspectorate Act 2011* requiring IBAC, when requested to do so by the Victorian Inspectorate, to provide a written report in relation to the exercise of coercive questioning powers by the IBAC at an examination of a person. [32 to 34]

The Bill amends the *Evidence (Miscellaneous Provisions) Act 1958* to allow IBAC officers to witness statutory declarations. [35]

Content and Committee comment

Commencement by proclamation

The Bill provides that the amendments come into operation on proclamation. [2]

The explanatory memorandum provides:

The date of proclamation is dependent on the passage of Commonwealth legislation to allow for telecommunication interception powers for IBAC and access to telecommunication interception powers for the IBAC so there is no fixed commencement date.

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

Right to legal representation – Practitioner of choice – Possible limitation – Charter section 25(2)(d) and ICCPR article 14(3)(d)

- *Legal representation* – new section 82M provides that a witness may be represented at an examination by an Australian legal practitioner. However, the IBAC may direct a witness not to seek legal advice or representation in relation to a witness summons from a specified Australian legal practitioner if the IBAC considers on reasonable grounds that the inquiry would be prejudiced because the Australian legal practitioner is:
 - (a) a witness in the examination or another examination; or
 - (b) the representative of another witness in the examination or another examination; or
 - (c) a person involved, or suspected of being involved, in a matter being investigated by the IBAC or the Victorian Inspectorate; or

- (d) the representative of a person involved, or suspected of being involved, in a matter being investigated by the IBAC or the Victorian Inspectorate.

The Committee notes that the proposed section may in some circumstances limit a person's right to choose their legal practitioner. The circumstances where that right may be limited are prescribed in new section 82M (a) to (d) and appear to the Committee to be justifiable in all the circumstances. [21]

Rights and freedoms – Privilege against self incrimination – Witness summons – Abrogated but use immunity provided

The Committee draws attention to new section 82ZC providing that the privilege against self-incrimination is abrogated for persons summonsed by the IBAC. The Bill provides a 'use immunity' preventing self-incriminating evidence acquired through coercive IBAC questioning being used against a person in civil or criminal proceedings except for an offence under the Act, the *Victorian Inspectorate Act 2011*, perjury or a disciplinary process or action if the person is a public sector employee or a member of police personnel. [21]

The Committee reports on this provision in the Charter report below

Offences – Where disclosure of information is prohibited and where it is permitted

Prohibited and authorised disclosures – new section 33A inserts offence provisions for unauthorised disclosure by IBAC officers or former officers of information acquired by them in the course of their official duties and functions. The purpose of the prohibition is to protect the confidentiality of IBAC investigations and the safety of persons involved in those investigations. The section provides for exceptions to the general prohibition where the IBAC is performing its powers and functions and where there are relevant proceedings or disciplinary proceedings involved. New section 33B further provides for circumstances where IBAC may disclose information acquired by it to other law enforcement bodies [13]

The Committee reports on this provision in the Charter report below.

Rights and freedoms – Liberty of the subject – Arrest warrants – Person may be detained in prison – Failure to appear at examination when summoned – Contempt of the IBAC

The Bill provides for the arrest and detention of a person in a prison or police gaol in two circumstances:

A person may be arrested and detained in a prison or police gaol:

- where they have been served with a summons to appear at an examination and have failed to appear before the IBAC. The person may be detained where there are reasonable grounds to believe that detention is necessary to prevent the person from escaping from police custody or to ensure the safety of the person. (new sections 82X and 82Z)
- pending appearance before the Supreme Court on a charge of contempt. Detention may occur to ensure their appearance before the Supreme Court where there are reasonable grounds to believe that a person may escape from police custody or to ensure the safety of the person. (new sections 82ZK to 82ZN)

In both circumstances, if it is not practicable for the person to be brought respectively before the IBAC or the Supreme Court within a reasonable time, the person may apply for bail in accordance with the *Bail Act 1977*.

The Committee draws attention to the provisions in the Bill that allow for the arrest and detention of a person in these two circumstances.

In brief the Bill also includes the following key provisions:

- *Investigation of conduct occurring prior to commencement of the Act* – IBAC will have jurisdiction to investigate serious corrupt conduct or police personnel conduct occurring prior to the commencement of the Act (new section 5B). The Bill provides that before initiating an investigation into corrupt conduct occurring entirely before the commencement of section 5B of the Act, IBAC must consider whether: it is in the public interest for the IBAC to investigate that conduct; in all the circumstances it is appropriate for the IBAC to investigate, having regard to the IBAC's functions of identifying and exposing serious corrupt conduct.

In the case of corrupt conduct that another investigatory body has already investigated or decided not to investigate, that there is reliable, substantial and highly probative evidence that was not considered in the original investigation or that there is reliable, substantial and highly probative evidence that the original investigation or decision not to investigate was materially affected by error. [5 and 15]

- *Examinations ordinarily to be conducted in private* – new sections 82A to 82E deal with the power to hold examinations. The Bill provides that generally, examinations will be conducted in private unless the IBAC considers on reasonable grounds that there are: exceptional circumstances; and it is in the public interest to conduct a public examination; and a public examination can be held without causing unreasonable damage to a person's reputation, safety or well being. [21]
- *Witness summons* – new sections 82F to 82L provides IBAC the power to issue a witness summons to attend an examination to provide evidence, produce documents or other things or both. A summons may be issued to a person already held in custody. IBAC must report to the Victorian Inspectorate on the issue of summonses. A summons cannot be issued to a person under the age of 16 years. [21]
- *Offences* – new sections 82T to 82W create offences for a duly summoned person to fail to attend an examination; refuse or fail to answer a question, fail to produce a document or; fail to take an oath or make an affirmation. [21]
- *Special provisions in respect to certain witnesses* – new section 82O of the Bill provides for special provisions relevant to witnesses who are aged 16 to 18 and for persons with inadequate understanding of English. The Bill provides a prohibition on examining persons under 16. [21]
- *Evidence taken during examination to be recorded* – new section 82R provides that evidence obtained during an examination is to be inadmissible as evidence against the person before a court or tribunal unless the attendance was video recorded and the videorecording is available to be tendered in evidence or the court is satisfied that there are exceptional circumstances that justify the admission of the evidence. [21]
- *Confidentiality notices* – new section 33C and 33E provides that the IBAC may issue a confidentiality notice so as to prevent a person (such as a witness) from disclosing specified restricted matters that may prejudice an investigation, the safety or reputation of a person, or the fair trial of a person. Confidentiality obligations may be for up to 5 years but may be extended beyond that on application by the IBAC to the Supreme Court. The Bill allows disclosure for specified purposes (such as for the purpose of seeking legal advice). [13]
- *Protection of persons and documents* – the Bill inserts new sections 33F to 33K providing that current and former IBAC officers are exempt from any legal requirement to produce information, documents or things in a court, tribunal or another authority having power to

require the production of documents or answers to questions. The Bill provides that the exception to this exemption is that an IBAC officer may produce information, documents or things for the purposes of a prosecution or disciplinary process or action or other proceeding instituted as a result of an IBAC investigation. [13]

- *Referral of complaints to other bodies* – new section 49C to 49J of the Bill provide IBAC with powers and a duty to refer matters to other bodies and coordinate investigations. If the IBAC considers the subject matter of a complaint or notification is relevant to the performance of the duties and functions or the exercise of powers of a specified list of persons and bodies and the IBAC considers that it would be more appropriate for the complaint or notification to be investigate by that person or body the IBAC must refer a complaint or notification to that person or body. The IBAC will have the power to conduct an investigation in co-ordination with specified integrity bodies or law enforcement agencies. Any such investigation must be conducted by the IBAC in accordance with the IBAC's duties, functions and powers under its legislation. Further, the IBAC may refer a relevant matter to prosecutorial bodies. [20]
- *Privileges and secrecy* – new section 82ZB provides that in respect to police personnel the privileges and statutory obligations to maintain secrecy are overridden, except where claimed in their personal, not official, capacity nor may the Crown claim assert any such privilege. The Bill provides that for other persons privileges may be asserted and requirements to maintain secrecy are preserved and new sections 82ZD to 82ZF provides for procedures that must be observed in determining such claims of secrecy or privilege. [21]
- *Warrant to arrest witness* – new section 82X provides IBAC a power to apply to a Judge of the Supreme Court for a warrant to arrest a duly summoned witness who fails to attend in accordance with the summons. New sections 82Y and 82Z make provision for bail and for witnesses to be held in custody in special circumstances pending appearance before the IBAC. [21]
- *Contempt of the IBAC* – new sections 82ZJ to 82ZO of the Bill provides a power to charge a person with contempt of the IBAC where a person served with a witness summons, without reasonable excuse, fails to attend for examination or produce required documents or other things. Contempt may also occur where a person called as a witness refuses or fails to answer any questions relevant to the subject matter of the examination or engages in threatening or obstructive behaviour. The IBAC may charge a person with contempt and issue a warrant to arrest the person. A person arrested for contempt may be held in custody and may apply for bail. Contempt of the IBAC is to be dealt with by the Supreme Court. [21]
- *Double jeopardy – Punishment for either offence or contempt* – new section 82ZP provides that if an act or omission constitutes both contempt of the IBAC and an offence under the Act, proceedings can be brought for the offence or contempt or both, but a person cannot be punished more than once for the same act or omission. [21]
- *Acting appointments and Deputy Commissioner* – the Bill provides clarification in respect to the circumstances in which acting appointments can be made and the terms of those appointments. The Bill provides that if more than one Deputy Commissioner is appointed to the IBAC, at least one must be an Australian legal practitioner. [9 and 10]

Charter report

Fair hearing – Disclosure of information to defendants in criminal proceedings – Compelled disclosure of protected documents or things

Summary: The Committee will write to the Minister seeking further information as to whether new section 33A permits the IBAC to disclose relevant information to defendants in criminal prosecutions that preceded, were the subject of or were independent of an IBAC investigation and whether new sections 33H(2) and 33I(6) bar a court from permitting parties to see the non-protected parts of otherwise protected documents or things.

The Committee notes that clause 13, inserting new section 33A, makes it an offence for an IBAC officer to disclose information obtained in the course of their or the IBAC's duties, functions or powers. New sections 33A and 33B provide for exceptions to this ban for disclosures:

- in the exercise of the officer's or the IBAC's duties, functions or powers under any Act
- as authorised or required by the *Independent Broad-based Anti-corruption Commission Act 2011*
- if the IBAC considers it appropriate, to an integrity body, law enforcement body, prosecutorial body or relevant principal officer if the IBAC considers that the information is relevant to the duties, functions or powers of that body
- for the purpose of prosecutions or disciplinary processes 'instituted as a result of an investigation conducted by the IBAC or by the Victorian Inspectorate'

In addition, new sections 33H, 33I and 33K bar IBAC officers, consultants or employees from being compelled in legal proceedings to:

- produce documents or things they have come to possess in the course of their or the IBAC's duties, functions or powers if the proceeding is non-criminal and the IBAC certifies that disclosure of the document is likely to reveal certain sensitive information or be contrary to the public interest
- produce documents or things they object to disclosing if the proceeding is criminal unless a court finds that disclosure is either unlikely to reveal certain sensitive information or be contrary to the public interest or that exceptional circumstances exist that require disclosure
- disclose information obtained in the course of their duties, functions or powers in any proceeding unless the IBAC certifies that the giving of the information is in the public interest.

The Statement of Compatibility addresses the compatibility of the latter three provisions with the Charter's right to a fair hearing¹ as follows:

New Division 4 of Part 2 may also engage the right to a fair hearing. New section 33H limits the circumstances in which a protected person, including IBAC officers, can be compelled to produce any document or other thing in a legal proceeding or a disciplinary process or action. New section 33I provides for a protected person to object to the production of documents or information that have come into his or her possession or control in the performance of the duties and functions or the exercise of powers under the IBAC act, and for the Court to determine that application. Accordingly, there may be instances where the IBAC does not disclose information, and as a consequence that information is not available for a person charged with a criminal offence or a party to a civil proceeding. The IBAC or the Court (whoever is required by the bill to determine the matter) will need to balance factors for disclosure, such as a defendant having access to information that may be relevant to their

¹ Charter s. 24(1)

defence against factors that might count against disclosure, such as needing to ensure the safety of an informant.

The purpose of the right to a fair hearing is to ensure procedural fairness. It includes the principle of equality of arms: everyone who is a party to a proceeding must have a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis his or her opponent. The right guarantees no more than a reasonable opportunity to present one's case. It does not grant a right to seek information, evidence or documents that may be useful in advancing one's own case in every circumstance.

However, the Committee notes that the substantial difference between the state and criminal defendants has invariably led courts, whether applying the common law or human rights law, to rule that the timely disclosure of exculpatory information held by the state to criminal defendants is usually essential to ensure fair hearings in criminal matters.

The Committee observes that new sections 33A and 33B therefore may also engage the Charter's right to a fair hearing because new section 33A only expressly permits the IBAC to choose to disclose information to criminal defendants in prosecutions that were instated as a result of an IBAC or Victorian Inspectorate investigation (rather than prosecutions that preceded, were the subject of or were independent of such investigations.) This differs from otherwise similar disclosure regimes in integrity statutes elsewhere in Australia² and the rules on courtroom disclosure in new sections 33H, 33I and 33K.

The Committee also observes that new sections 33H(2) and 33I(6), which bar a court from compelling the disclosure of 'protected documents or things' in some circumstances, lack an equivalent to a provision in the existing regime for protected documents or things in the *Police Integrity Act 2008* that specifies that the regime only applies to a protected 'part' of a document or thing.³

The Committee will write to the Minister seeking further information as to whether:

- new section 33A permits the IBAC to disclose relevant information to defendants in criminal prosecutions that preceded, were the subject of or were independent of an IBAC investigation; and
- new sections 33H(2) and 33I(6) bar a court from permitting parties to see the non protected parts of otherwise protected documents or things.

Pending the Minister's response, the Committee draws attention to clause 13.

² *Law Enforcement Integrity Commissioner Act 2006* (Cth), s. 209 (permitting disclosure 'to the public or a section of the public' if 'it is in the public interest to do so'); *Independent Commission Against Corruption Act 1988* (NSW), s. 111(4)(c) (disclosure 'in accordance with a direction of the Commissioner or Inspector, if the Commissioner or Inspector certifies that it is necessary to do so in the public interest') & 113 (disclosure of information to any criminal defendant if 'the court considers that it is desirable in the interests of justice'); *Integrity Commission Act 2009* (Tas), ss. 94(2)(b) (permitting disclosure 'as may be required in connection with any proceedings under this Act, any other written law or the Criminal Code') and 94(2)(c) (permitting disclosure 'as authorised by the Board, the chief executive officer or an Integrity Tribunal'); *Corruption and Crime Commission Act 2003* (WA), ss. 152(4)(b) (disclosure for the purposes of 'any... prosecution or disciplinary action in relation to misconduct') and 152(4)(c) ('when the Commission has certified that disclosure is necessary in the public interest'). By contrast, the secrecy provisions and exceptions in the *Crime and Misconduct Act 2001* (Qld), ss. 201 and 213 resemble those in new sections 33A and 33H.

³ *Police Integrity Act 2008* (Vic), ss. 106(3) & 107(8), providing that 'a reference to a document or other thing includes a reference to part of a document or other thing'. See also *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth), ss. 26(2)(a), 31(2)(d)-(f), 38F(2)(a), 38L(2)(d)-(f).

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

Summary: Clause 21 provides that a person must comply with a request from the IBAC 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 the provision of a statutory derivative use immunity is a less restrictive alternative reasonably available to achieve the clause’s purpose of assisting the IBAC to undertake full and proper investigations.

The Committee notes that clause 21, inserting a new section 82ZC, provides that a person must comply with a request from the IBAC 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 82ZC engages the Charter’s rights to a fair hearing and against compelled self-incrimination.⁴

The Statement of Compatibility remarks:

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

Where, in the course of an investigation, the IBAC discovers evidence of criminal conduct and the IBAC is of the opinion that the evidence is of sufficient probative force to permit prosecution, the IBAC may refer a matter to a prosecutorial body. Accordingly, it is not considered that the bill will engage the rights in criminal proceedings...

If it were the case that self-incrimination information obtained from a person was disclosed in accordance with the Act, for example to the Chief Commissioner of Police, it would be a matter for the police to determine what use is made of the information. The Bill makes it clear that the answer or information itself cannot be used in proceedings other than those listed at new section 82ZC(2). It would be a matter for a court to determine whether other evidence derived from that information is admissible.

However, the Committee notes that the Supreme Court of Victoria has held that the Charter’s rights with respect to self-incrimination ‘should not be limited simply to persons who have already been charged’ and rejected the argument that ‘that the residual discretion of a trial judge to exclude evidence is a sufficient mechanism for upholding the rights contemplated by the Charter’.⁵

The Committee observes that new section 82ZC(2), like similar provisions in most other integrity commission statutes in Australia, does not expressly bar anyone from being prosecuted on the basis of information derived from self-incriminatory answers or documents they were compelled to provide.⁶ However, the Supreme Court of Victoria has applied Charter s. 32’s interpretation rule to read a similar Victorian provision as providing an implied derivative use immunity to people who are questioned and later charged.⁷

The Committee will write to the Minister seeking further information as whether the provision of a statutory derivative use immunity would be a less restrictive alternative reasonably available to achieve new section 82ZC(2)’s purpose of assisting the IBAC to undertake full and proper investigations. Pending the Minister’s response, the Committee draws attention to clause 21.

The Committee makes no further comment.

⁴ Charter ss. 24(1) & 25(2)(k).

⁵ *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381, [78], [162].

⁶ See *Law Enforcement Integrity Commissioner Act 2006* (Cth), s. 96(3); *Independent Commission Against Corruption Act 1988* (NSW), s. 26(2); *Crime and Misconduct Act 2001* (Qld), s. 197(2); *Corruption and Crime Commission 2003* (WA), s. 145. The exception is the *Integrity Commission Act 2009* (Tas), s. 92, which does not abrogate the privilege against self-incrimination. (Tasmania’s scheme lacks an equivalent to the Victorian Inspectorate, whose powers with respect to compelled self-incrimination were addressed in *Alert Digest No. 7 of 2012* (reporting on the Victorian Inspectorate Amendment Bill 2012) at pp. 8-9.)

⁷ *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381, [177].

Port Management Further Amendment Bill 2012

Introduced	17 April 2012
Second Reading Speech	18 April 2012
House	Legislative Assembly
Member introducing Bill	Hon. Denis Napthine MLA
Portfolio responsibility	Minister for Ports

Purpose

The purposes of the Bill are to:

- further provide for requirements for safety and environment management plans for ports
- provide for planning and coordination at the port of Geelong
- further regulate hazardous port activities to include the transfer of liquid fuel and other non-cargo liquids at the port of Melbourne.

Extract from the Statement of Compatibility:

Overview of Bill

The Bill improves the Safety and Environmental Management Plan (SEMP) scheme in the *Port Management Act 1995* through a number of means including establishing a statement of objectives for SEMPs and requiring three-yearly audits to be undertaken of all port managers. The proposal also establishes the Victorian Regional Channels Authority as the responsible authority for the port development strategy required under the *Port Management Act 1995* for the port of Geelong. Finally, the Bill clarifies the regulation of hazardous activities at the port of Melbourne.

The Committee makes no further comment.

Primary Industries Legislation Amendment Bill 2012

Introduced	17 April 2012
Second Reading Speech	19 April 2012
House	Legislative Assembly
Member introducing Bill	Mr Peter Walsh MLA
Portfolio responsibility	Minister for Agriculture and Food Security

Purpose

The purposes of the Bill are to amend the:

Agricultural and Veterinary Chemicals (Control of Use) Act 1992 (the 'Act') to—

- provide for a further prohibition on selling certain stock or agricultural produce unless the seller has disclosed to the buyer certain information about the stock or produce
- insert a new offence where a person fails to return a cancelled or suspended authority to the chief administrator
- increase the maximum penalty for an infringement offence from two to five penalty units
- clarify that the two year time limit for commencing prosecutions also applies to offences under regulations
- enable authorised officers to require the production of documents to ascertain compliance with the regulations and orders under the Act
- make other miscellaneous amendments to the Act. [3 to 9]

Domestic Animals Act 1994 (the 'Act') to—

- to provide for an age limit of 18 years for minors to be the legally responsible as an owner of a dog or cat under the Act.
Note: Changing the age at which a person is responsible as an owner for the purposes of the Act from 17 to 18 years will ensure that all charges brought under the Act may be heard in the Magistrates' Court.
- to remove the reduced registration fee for permanently identified dogs and cats. The change will only apply to new registrations on or after the commencement of this provision.
- to make other miscellaneous amendments to the Act. [10 to 18]

Livestock Management Act 2010 to make miscellaneous minor drafting, cross-referencing and spelling amendments. [19 to 21]

The Committee makes no further comment.

Appendix 1

Index of Acts and Bills in 2012

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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
Courts and Sentencing Legislation Amendment Bill 2012	7
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
Forests Amendment Bill 2012	7
Freedom of Information Amendment (Freedom of Information Commissioner) Bill 2011	1
Gambling Legislation Amendment (Transition) Bill 2012	7
Health Professions Registration (Repeal) Bill 2012	6
Independent Broad-based Anti-corruption Commission Amendment (Examinations) Bill 2012	7
Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Bill 2011	1
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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
Port Management Further Amendment Bill 2012	7
Primary Industries Legislation Amendment Bill 2012	7
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
Independent Broad-based Anti-corruption Commission Amendment (Examinations) Bill 2012	7
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	Minister for Energy and Resources	17-04-12	6 of 2012
Independent Broad-based Anti-corruption Commission Amendment (Examinations) Bill 2012	Minister responsible for the establishment of an anti-corruption commission	01-05-12	7 of 2012