

# **No. 8 of 2013**

**Tuesday, 11 June 2013**

## **On the**

Borrowing and Investment Powers  
Amendment Bill 2013

Catchment and Land Protection  
Amendment Bill 2013

Justice Legislation Amendment  
Act 2013

National Parks Amendment (Leasing  
Powers and Other Matters) Bill 2013

Transport Legislation Amendment  
(Foundation Taxi and Hire Car  
Reforms) Bill 2013



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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 \$140.84)

'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. 8 of 2013

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## Borrowing and Investment Powers Amendment Bill 2013

|                                 |                          |
|---------------------------------|--------------------------|
| <b>Introduced</b>               | 28 May 2013              |
| <b>Second Reading Speech</b>    | 29 May 2013              |
| <b>House</b>                    | Legislative Assembly     |
| <b>Member introducing Bill</b>  | Hon. Michael O'Brien MLA |
| <b>Portfolio responsibility</b> | Treasurer                |

### Purpose

The Bill amends the *Borrowing and Investment Powers Act 1987*.

- It removes the limits on financial accommodation which may be obtained by the Melbourne Water Corporation and the State Electricity Commission of Victoria.[3]
- The Second Reading Speech extract: - '*The Borrowing and Investment Powers Act 1987 does not impose limits on the amount of financial accommodation that may be obtained by any other Government Business enterprise. Control of financial accommodation is delegated to the Treasurer and is now governed through a number of frameworks including annual borrowing approvals for Government Business Enterprises exercised by the Treasurer under the Borrowing and Investment Powers Act 1987; corporate planning and performance reporting requirements and the High Value/Risk assurance process, where high value and/or high risk projects are subject to more rigorous scrutiny and approval processes.*'

### Charter report

The Borrowing and Investment Powers Amendment Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Catchment and Land Protection Amendment Bill 2013

|                                 |                      |
|---------------------------------|----------------------|
| <b>Introduced</b>               | 28 May 2013          |
| <b>Second Reading Speech</b>    | 29 May 2013          |
| <b>House</b>                    | Legislative Assembly |
| <b>Member introducing Bill</b>  | Hon. Peter Walsh MLA |
| <b>Portfolio responsibility</b> | Minister for Water   |

### Purpose

The purposes of the Bill are to amend the *Catchment and Land Protection Act 1994* to: -

- Clarify responsibility for management of noxious weeds and pest animals on roadsides;
- Provide for the introduction of a roadside weed and pest animal management council to be prepared by municipal councils.

### Amendment of *Catchment and Land Protection Act 1994*

- It clarifies that the land owner is the municipal council if the land is a municipal road in the municipal district of that municipal council.[4] Note the Second Reading Speech extract: - *'The Catchment and Land Protection Act 1994 has been generally understood to make the landowners adjoining local roads responsible for managing most noxious weeds and established pest animals on roadsides. Uncertainty about this interpretation following questions raised by the Road Management Act 2004 on the definition of roads and roadsides and councils' responsibilities ... Since 2004 the Government has not enforced any requirement to manage roadside weeds or rabbits on adjoining land-holders. Instead, the Department of Primary Industries has provided funding as grants for councils to voluntarily undertake weed and rabbit control activity on municipal roadsides ... The Bill makes municipal councils the landowner of municipal roadsides for the purposes of the Catchment and Land Protection Act 1994 but allows for their responsibility to be limited to the preparation and delivery of a Plan for the management of regionally prohibited weeds, regionally controlled weeds and established pest animals on rural municipal roads.'*
- New Part 3A provides that the Minister may declare by notice in the Government Gazette a municipal district to be a municipal district for which a roadside weed and pest animal management plan must be prepared. A municipal council must prepare a roadside weed and pest animal management plan and the measures to be taken by the municipal council. The plan must be published on the council's website after it has been approved by the Minister. The Minister may suspend the approval of a roadside weed and pest animal management plan if he or she is satisfied that the municipal council is not implementing the measures set out in the plan. An authorised officer may examine and enter a roadside for the purposes of monitoring compliance with an approved plan.[7]

### Charter report

The Catchment Land and Protection Amendment Bill is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Justice Legislation Amendment Act 2013

|                                 |                       |
|---------------------------------|-----------------------|
| <b>Introduced</b>               | 16 April 2013         |
| <b>Second Reading Speech</b>    | 17 April 2013         |
| <b>House</b>                    | Legislative Assembly  |
| <b>Member introducing Bill</b>  | Hon. Robert Clark MLA |
| <b>Portfolio responsibility</b> | Attorney-General      |

### Preamble

The Justice Legislation Amendment Bill 2013 reported on in *Alert Digest No 6 of 2013* was a miscellaneous amendment bill. The House amendments do not amend the existing substantive provisions.

They amend a separate Act, the *Magistrates' Court Amendment (Assessment and Referral Court List) Act 2010*.

**Note:** The Committee previously reported on the Bill in *Alert Digest No. 6 of 2013*. The Committee reports on this Act pursuant to section 17(c)(ii) of the *Parliamentary Committees Act 2003*.

### House Amendments

The amendments extend the current trial of an assessment and referral court list in the Magistrates' Court for an additional two years from 1 August 2013 to 1 August 2015.

### Charter report

#### *Extension of assessment and referral court list trial in the Magistrates' Court*

**Summary:** The effect of s. 7 was to extend the current trial of an assessment and referral court list in the Magistrates' Court for an additional two years. The Committee will write to the Attorney-General seeking supplementary information as to the compatibility of s. 7 with the rights set out in the Charter.

The Committee notes that s. 7 of the Act, amending existing s. 2 of the *Magistrates' Court Amendment (Assessment and Referral Court List) Act 2010*, changed the default commencement date of sunset provisions in the latter Act from 1 August 2013 to 1 August 2015. **The Committee observes that the effect of s. 7 was to extend the current trial of an assessment and referral court list in the Magistrates' Court for an additional two years.**

As s. 7 was the result of a house amendment, its effect was not addressed in the Statement of Compatibility for the Bill. The Committee notes, in the Statement of Compatibility for the Bill that became the *Magistrates' Court Amendment (Assessment and Referral Court List) Act 2010*, the then Attorney-General discussed the compatibility of the assessment and referral court list with the Charter's rights to equality, privacy and the presumption of innocence and against double punishment.<sup>1</sup>

<sup>1</sup> Statement of Compatibility for the Magistrates' Court Amendment (Mental Health List) Bill 2009, 10 December 2009, referring to Charter ss. 8(3), 13, 25(1) & 26.

This Committee has previously remarked:<sup>2</sup>

While Charter s. 28 only requires a statement of compatibility for Bills, not amendments, the Committee considers that a supplementary statement should be given where, as here, amendments are proposed that are unrelated to the purposes of the Bill as introduced. The Committee is concerned that, unless such a practice is adopted henceforth, the Charter's requirement of parliamentary human rights scrutiny of all new legislation may be significantly undermined in the future.

In previous correspondence to the Committee in relation to other house amendments, the Attorney-General remarked:<sup>3</sup>

I understand that there are procedural difficulties with the proposal for supplementary Statements of Compatibility. However, I will endeavour to ensure that supplementary information is provided to the Parliament for future house amendments to Bills within my portfolio where amendments are proposed that are unrelated to the original purpose of the Bill.

The Committee observes that the house amendments amended clause 1(d) of the Bill, which provided that one of the Bill's purposes was to amend the *Magistrates' Court Act 1989* in relation to the appointment of an Acting Chief Magistrate, to add the purpose of 'amend[ing] the *Magistrates' Court Amendment (Assessment and Referral Court List) Act 2010* to extend the trial period under the Act'.

**The Committee will write to the Attorney-General seeking supplementary information as to the compatibility of s. 7 with the rights set out in the Charter. Pending the Attorney-General's response, the Committee draws attention to s. 7.**

**The Committee makes no further comment**

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<sup>2</sup> Scrutiny of Acts and Regulations Committee, *Alert Digest No. 7 of 2011* (reporting on the *Justice Legislation Amendment (Infringement Offences) Act 2011*), p. 7, citing Scrutiny of Acts and Regulations Committee, *Alert Digest No. 4 of 2010* (reporting on the *Crimes Legislation Amendment Act 2010*), p. 7. See also Scrutiny of Acts and Regulations Committee, *Review of the Charter of Human Rights and Responsibilities Act 2006* (September 2011), [409]-[410].

<sup>3</sup> Scrutiny of Acts and Regulations Committee, *Alert Digest No. 8 of 2011* (reporting on the *Justice Legislation Amendment (Infringement Offences) Act 2011*), p. 13.

# National Parks Amendment (Leasing Powers and Other Matters) Bill 2013

|                          |   |
|--------------------------|---|
| Introduced               | 28 May 2013                                 |
| Second Reading Speech    | 29 May 2013                                 |
| House                    | Legislative Assembly                        |
| Member introducing Bill  | Hon. Ryan Smith MLA                         |
| Portfolio responsibility | Minister for Environment and Climate Change |

## Purpose

The Bill amends the *National Parks Act 1975* (the Act) to: -

- Provide that the Minister may grant leases (and associated licences) for terms of up to 99 years over specified land for purposes consistent with the Act;
- Extend from 50 years to 99 years the maximum term for which a lease (and, where relevant, an associated licence) may be granted over certain land in Point Nepean and Mount Buffalo national parks and Arthurs Seat State Park.

## Amendments

- It enables the Minister to grant a lease of certain land for a term of not more than 21 years, to give an in-principle approval to the granting of a lease for a term of not more than 21 years but not exceeding 99 years, to enter into an agreement to lease and to grant a licence associated with leased land. The Minister must consult with the National Parks Advisory Council. An agreement to lease land must be subject to conditions that prevent or minimise any adverse impact on the park (including its natural, indigenous, historic, cultural, landscape and recreational values) by the development or use of the land that is permitted under the agreement. [8] Note the Second Reading Speech: - *'The National Parks Amendment (Leasing Powers and Other Matters) Bill 2013 has its genesis in September 2010 when the former Government directed the Victorian Competition and Efficiency Commission (VCEC) to inquire into Victoria's tourism industry ... VCEC recommended that the government remove the prohibition on private sector investment in tourism infrastructure in Victoria's national parks and allow sensible and sensitive developments in national parks ... It also recommended increasing the maximum duration of leases on land managed under the National Parks Act ...*

*The Bill will replace the existing general leasing and associated licensing powers in section 19 of the National Parks Act with power to enable the Minister to grant a lease for an appropriate use or development for a term of up to 99 years. This will be accompanied by provisions which enable the Minister to enter into agreements to lease and to grant licences associated with leases. Before granting a lease with a term exceeding 21 years, the Minister must be satisfied that the proposed use, development, improvements or works are substantial and are of a value which justifies the granting of a longer term lease, and the granting of the lease is in the public interest.'*

- It amends the general regulation making power. It provides that offences may be set out in the regulations for which the owner of an animal or person having care or control of an animal is guilty of an offence, if the animal is found in the park in contravention of the regulations. [19]

## **Charter report**

The National Parks Amendment (Leasing Powers and Other Matters) Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

# Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Bill 2013

|                                 |   |
|---------------------------------|---|
| <b>Introduced</b>               | 28 May 2013   |
| <b>Second Reading Speech</b>    | 29 May 2013   |
| <b>House</b>                    | Legislative Assembly                                |
| <b>Member introducing Bill</b>  | Hon. Terry Mulder MLA                               |
| <b>Portfolio responsibility</b> | Minister for Public Transport<br>Minister for Roads |

## Purpose

The purposes of the Bill are:-

- To reform the licensing system for taxi-cabs and hire cars;
- To amend the object, functions and powers of the Taxi Services Commission (TSC) and provide for the appointment of a chief executive officer and change how its members are appointed;
- To move from the Minister having the power to determine taxi fares to the Essential Services Commission (ESC) having the power to determine the maximum charges for services provided by taxi-cabs;
- To enable the TSC to specify conditions that are to be implied in agreements between taxi-cab operators and taxi-cab drivers; and
- Empower the ESC to determine the maximum amount of a surcharge that may be imposed where payment of a taxi fare is made by using a debit, credit or charge card and provide various remedies to deal with excess surcharges.

## Part 2 – Taxi and hire car licensing

- Part 2 amends Part VI of the *Transport (Compliance and Miscellaneous) Act 1983* to give effect to the proposed reforms to the licensing system for taxi-cabs and hire cars. Note the Second Reading Speech extract: - *'The Bill provides for the reform of taxi and hire care licensing and zoning as recommended by the Inquiry, including new taxi licences being available at any time, as of right, to approved applicants at a set price. For example, the annual licence fee in metropolitan Melbourne will be \$22,000 for a normal taxi licence, \$8000 less than the current average licence lease cost of \$30,000 per annum. Annual fees will increase over time but by 0.5% less than the consumer price index. ... The Bill provides for improvements to taxi driver engagement and payment through the introduction of new taxi driver agreements.*

*This ensures a fairer go for drivers by requiring that they receive at least 55% of the fare revenue they generate ... The Taxi Services Commission is not required to mandate all the terms and conditions of driver agreements. On the contrary, it is expected that the Commission will intervene to the minimum extent required, leaving scope for flexibility and innovation. Nevertheless it is recognised that disputes between taxi operators and drivers may arise from time to time ... The Bill therefore provides for dispute resolution through the Small Business Commissioner and review by the Victorian Civil and Administrative Tribunal.'*

- It establishes two hire car zones – the Metropolitan Hire Car Zone and the Country Hire Car Zone. The Metropolitan Hire Car Zone comprises all area covered by the taxi-cab zones known as the Melbourne Metropolitan Zone and the Urban and Large Regional Zone. The Country Hire Car Zone comprises all areas covered by the taxi-cab zones known as the

Regional Zone and the Country Zone.[7, 11] The fee for a hire car licence in the Metropolitan Hire Car Zone is \$40,000. The fee for a Country Hire Car Zone is \$20,000.[6] It removes the numerical restrictions for the issue of licences under the current licensing scheme.[8] It specifies the nature of a new taxi-cab licence.[9] It specifies the conditions of operation for taxi-cab licences and the power of the Governor in Council to make Regulations.[13] A right of review to VCAT in respect of a decision by the licensing authority to alter a taxi-cab licence by specifying a taxi-cab zone is set out.[16] Annual licence fees are set out.[17]

#### Part 3 – Taxi fares and taxi non-cash payment surcharges – Part 4 – Taxi -drivers

- Part 3 provides for the regulation of taxi fares and taxi non-cash payment (defined in clause 26) surcharges. It provides for the surcharge on fares to reduce from 10 per cent to 5 per cent.[23] It is the responsibility of the Essential Services Commission (ESC) to determine fares (eg: holiday surcharge etc) instead of the Minister.[24, 28] Penalties which may be applied by the Supreme Court for breaches of new section 144C relating to the cap on tax non-cash payment surcharges are set out in new section 144E.[26] The ESC is responsible for the regulation of fares.[28] It sets out the criminal liability of officers of bodies corporate and the matters to which the court may have regard in whether an officer of a body corporate has exercised due diligence.[30]
- Part 4 provides for the regulation of the conditions of agreement between taxi-cab operators and taxi-cab drivers. It provides for the resolution of disputes over conditions through the Small Business Commissioner or the VCAT. A regulation making power of the Governor in Council with respect to fees and expenses payable to the Small Business Commissioner is set out.[32]

#### Part 5 – Taxi Services Commission

- Part 5 provides for a new object, functions and powers for the TSC and the appointment of a Chief Executive Officer. The TSC is to report annually to Parliament for a period of five years.[39] It sets out a standard delegation power for the TSC to undertake its powers, duties and functions.[40] It provides the TSC with a power to conduct investigations and inquiries into any aspect of taxi and hire care services.[48] It sets out provisions relating to the power of the TSC to obtain and the sharing of information with a relevant agency The information which may be shared is limited pursuant to new section 191YD(2). Gathering powers may be used to require taxi-operators to provide data on trips, shifts and fares.[49] The issuing of infringement notices is done by the TSC.[50]

## **Charter report**

The Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## **Committee Room**

**7 June 2013**

# Appendix 1

## Index of Acts and Bills in 2013

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## **Appendix 2**

### Committee Comments classified by Terms of Reference

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*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***

|  |   |
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#### **Section 17(b)**



## Appendix 3

### Ministerial Correspondence 2013

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**Table of correspondence between the Committee and Ministers and members during 2012-13**

| <b>Bill Title</b>  | <b>Minister/ Member</b> | <b>Date of Committee Letter / Minister's Response</b> | <b>Alert Digest No. Issue raised / Response Published</b> |
|--|-------------------------|---|---|
| Tobacco Amendment (Smoking in Outdoor Areas) Bill 2012                                     | Ms Colleen Hartland MLC | 11-12-12<br>06-02-13                                  | 18 of 2012<br>2 of 2013                                   |
| Statute Law Amendment (Directors' Liability) Bill  | Attorney-General        | 05-02-13<br>18-02-13                                  | 1 of 2013<br>2 of 2013                                    |
| Co-operatives National Law Application Bill 2013   | Consumer Affairs        | 19-02-13<br>28-02-13                                  | 2 of 2013<br>3 of 2013                                    |
| Justice Legislation Amendment (Cancellation of Parole and Other Matters) Bill 2013         | Corrections             | 04-03-13  | [i]<br>4 of 2013  |
| Adoption Amendment Bill 2013   | Community Services      | 19-03-13<br>04-04-13                                  | 4 of 2013<br>5 of 2013                                    |
| Rail Safety National Law Application Bill 2013   | Public Transport        | 19-03-13<br>01-04-13                                  | 4 of 2013<br>5 of 2013                                    |
| Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Bill 2013 | Public Transport        | 19-03-13<br>01-04-13                                  | 4 of 2013<br>5 of 2013                                    |
| Fortification Removal Bill 2013  | Attorney-General        | 07-05-13<br>24-05-13                                  | 6 of 2013<br>7 of 2013                                    |
| Heavy Vehicles National Law Application Bill 2013  | Roads                   | 07-05-13<br>27-05-13                                  | 6 of 2013<br>7 of 2013                                    |
| Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Bill 2013        | Attorney-General        | 17-05-13  | [ii]<br>7 of 2013   |
| Marine (Domestic Commercial Vessel National Law Application) Bill 2013                     | Ports                   | 28-05-13  | 7 of 2013   |

<sup>i</sup> The Committee's report on the Justice Legislation Amendment (Cancellation of Parole and Other Matters) Bill 2013 appeared in Alert Digest No. 2 of 2013.

<sup>ii</sup> The Committee's report on the Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Bill 2013 appeared in Alert Digest No. 6 of 2013.