58th Parliament
Alert Digest

No. 9 of 2017

Tuesday, 20 June 2017
on the following Bills

Bail Amendment (Stage One) Bill 2017
Children and Justice Legislation Amendment
(Youth Justice Reform) Bill 2017
Environment Protection Bill 2017
Firefighters’ Presumptive Rights
Compensation and Fire Services Legislation
Amendment (Reform) Bill 2017
Justice Legislation Amendment (Court
Security, Juries and Other Matters) Bill 2017
Justice Legislation Amendment (Protective
Services Officers and Other Matters) Bill 2017
Oaths and Affirmations Bill 2017
Parks and Crown Land Legislation
Amendment Bill 2017
Racing Amendment (Modernisation) Bill 2017
Sentencing Amendment
(Sentencing Standards) Bill 2017
State Taxation Acts Amendment Bill 2017

and Subordinate Legislation
SR No. 133 – Australian Grands Prix (Formula One)
Regulations 2016
The functions of the Scrutiny of Acts and Regulations Committee are –

(a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly –

   (i) trespasses unduly upon rights or freedoms;
   (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;
   (iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions;
   (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the Privacy and Data Protection Act 2014;
   (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the Health Records Act 2001;
   (vi) inappropriately delegates legislative power;
   (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
   (viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;

(b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament –

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

The Scrutiny of Acts and Regulations Committee is an all-party Joint House Committee, which examines all Bills and subordinate legislation (regulations) introduced or tabled in the Parliament. The Committee does not make any comments on the policy merits of the legislation. The Committee’s terms of reference contain principles of scrutiny that enable it to operate in the best traditions of non-partisan legislative scrutiny. These traditions have 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


‘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 (as at 1 July 2016 one penalty unit equals $155.46)

‘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
Environment Protection Bill 2017

Introduced 6 June 2017
Second Reading Speech 7 June 2017
House Legislative Assembly
Member introducing Bill Hon Lily D’Ambrosio MLA
Minister responsible Hon Lily D’Ambrosio MLA
Portfolio responsibility Energy, Environment and Climate Change

Purpose

The Bill would:

• provide for the continuation of the Environment Protection Authority (EPA) [5]
• specify a new objective of the EPA (to protect human health and the environment by reducing the harmful effects of pollution and waste) [6]
• provide a new governance structure for the continued EPA — the Environment Protection Authority Governing Board [9 to 22]

The Explanatory Memorandum states:

The Government Response [to the Independent Inquiry into the EPA, released on 17 January 2017] committed to 2 legislative packages—an EPA Establishment Act, intended to implement the Authority's new objectives, decision making principles and a new governance structure; and a complete rewrite of the remainder of the EP Act [Environment Protection Act 1970].

The Bill gives effect to certain commitments announced in the Government Response... The Bill will form the basis for the new principal Environment Protection Act.

The Bill will primarily repeal parts of the EP Act, but will make some consequential amendments to that Act, which are necessary to ensure both the EP Act and Bill can be read together until the EP Act is repealed in its entirety.

Content

Delegation of legislative power – Delayed commencement — Whether justified

Clause 2 provides that the Bill will come into operation on a day or days to be proclaimed, with a default commencement date of 1 July 2018, which is more than 12 months after the Bill’s introduction.

There is no explanation for the delayed commencement in the Explanatory Memorandum or Second Reading Speech.

Paragraph A (iii) of the Committee’s Practice Note provides that where a Bill (or part of a Bill) is subject to delayed commencement (i.e., more than 12 months after the Bill’s introduction) or to commencement by proclamation, the Committee expects Parliament to be provided with an explanation as to why this is necessary or desirable.
The Committee will write to the Minister to bring paragraph A (iii) of the Practice Note to the Minister’s attention and to request further information as to the reasons for the possible delayed commencement date of 1 July 2018.

**Charter report**

The Environment Protection Bill 2017 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment.
Oaths and Affirmations Bill 2017

Introduced: 6 June 2017
Second Reading Speech: 7 June 2017
House: Legislative Assembly
Member introducing Bill: Hon Martin Pakula MLA
Minister responsible: Hon Martin Pakula MLA
Portfolio responsibility: Attorney-General

Purpose

The Bill would:

- re-enact and modernise the law relating to oaths, affirmations, affidavits and statutory declarations (Parts 2, 3 and 4)
- establish a scheme for the certification of copies of documents (Part 5)
- repeal Divisions 1 to 11 of Part IV, Part V and other provisions of the Evidence (Miscellaneous Provisions) Act 1958

Content

Delegation of legislative power — Delayed commencement — Whether justified

Clause 2 provides that the Bill will commence on a day or days to be proclaimed, with a default commencement date of 1 September 2018, which is more than 12 months from the date of the Bill’s introduction.

The Explanatory Memorandum provides the following explanation:

The default commencement period is longer than usual as some stakeholders will require at least 12 months after the Bill's passage to make necessary changes to the forms they use and to undertake extensive training of staff. New regulations will also be required to be made and all changes will need to be widely publicised throughout the community.

The Minister’s Second Reading Speech also states:

The bill will have a long commencement period to ensure sufficient time to make any necessary changes to forms, administrative processes, procedures and regulations or legislative amendments.

The delayed commencement provision appears justified.

Charter report

The Oaths and Affirmations Bill 2017 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment.
Parks and Crown Land Legislation Amendment Bill 2017

Introduced
6 June 2017
Second Reading Speech
7 June 2017
House
Legislative Assembly
Member introducing Bill
Hon Lily D’Ambrosio MLA
Minister responsible
Hon Lily D’Ambrosio MLA
Portfolio responsibility
Energy, Environment and Climate Change

Purpose
The Bill would:

- amend the National Parks Act 1975 and the Crown Land (Reserves) Act 1978 to add the Anglesea Heath to the Great Otway National Park and make additions, excisions and corrections to several parks and reserves, including amending the names of two parks (Parts 3 and 7)
- streamline the process for making, amending and revoking codes of practice under the Conservation, Forests and Lands Act 1987. This would include removing the consultation, parliamentary tabling and disallowance provisions in the Act — the nearly identical requirements under the Subordinate Legislation Act 1994 would continue to apply (Part 2)
- remove government representatives from the memberships of the National Parks Advisory Council (NPAC), the Royal Botanic Gardens Board (RBG Board) and the Zoological Parks and Gardens Board (Zoos Board), and enable the two boards to appoint their chief executives
- enable the minister to prescribe sitting fees and other expenses for various advisory committees, and remove the prohibition on public sector employees receiving payments for their services on the Victorian Environmental Assessment Council (VEAC) and the Zoos Board
- enable the minister to consent to a reasonable right of access across a park to a person whose land is surrounded by the park
- make other amendments to several acts, including in relation to:
  - appointing litter enforcement officers for Crown land
  - the definition of 'central plan office' [9], [14]
  - the preparation of reports and corporate planning documents
  - the granting of certain leases and licences
  - allowing the Royal Botanic Gardens board to carry on a business of selling plants.

Charter report
The Parks and Crown Land Legislation Amendment Bill 2017 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment.
Racing Amendment (Modernisation) Bill 2017

Purpose

The Bill would amend the Racing Act 1958:

- to provide that Racing Victoria is not a public entity for the purposes of the Public Administration Act 2004 or the Financial Management Act 1994 and will continue to operate under the Corporations (Victoria) Act 1990 [6]
- specify that the minister may perform any functions, exercise any powers and carry out any duties conferred on the minister by the constitution of Racing Victoria in relation to the selection, appointment, resignation and removal of directors of Racing Victoria [6]
- repeal Schedule 1 of the Act (Schedule 1 sets out the requirements for the establishing constitution of Racing Victoria and is a spent provision) [8].

Charter report

The Racing Amendment (Modernisation) Bill 2017 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment.
SR No. 133 – Australian Grands Prix (Formula One) Regulations 2016

The Committee wrote to the Minister for Tourism and Major Events in relation to the above regulation.

The Committee thanks the Minister for the attached response.

19 June 2017
Committee Room

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1 The Committee reports on this regulation pursuant to section 17(fa) of the Parliamentary Committees Act 2003 and section 21(1)(ha) of the Subordinate Legislation Act 1994.
10 May 2017

The Honourable John Eren MP
Minister for Tourism and Major Events
Level 36, 121 Exhibition Street
Melbourne Vic 3000

By email: colleen.thompson@ecodev.vic.gov.au

Dear Minister,

SR No. 133 – Australian Grands Prix (Formula One) Regulations 2016

The Regulation Review Subcommittee (the Subcommittee) considered the above Regulations at a meeting on 8 May 2016.

The Subcommittee would appreciate further information in relation to Regulation 29 which provides: ‘During the race period and within the declared area or a designated access area, a person must not erect or display any sign or banner without the written authorisation of the Corporation. Penalty: 20 penalty units.’

The Subcommittee notes that there is no definition of ‘erect’, ‘display’, ‘sign’ or ‘banner’ in the Regulations or the primary legislation. The Subcommittee seeks your advice as to whether the effect of Regulation 29 is to require the following to obtain written permission:

- Spectators holding or waving signs or flags (less than 1 metre square – see Regulation 18) in support of a driver or a team at the Grand Prix
- Political protestors holding signs or banners

The Subcommittee also seeks further information as to how the Australian Grand Prix Corporation decides whether or not to provide written authority pursuant to Regulation 29.

The Subcommittee observes that Regulation 29 may engage the Charter’s right to freedom of expression. It notes the Human Rights Certificate provides that the provision is ‘necessary to protect public order.’ The Subcommittee notes that other regulations prohibit large signs or banners (Regulation 18), erecting structures (Regulation 31), posting bills (Regulation 39(1)) and commercial advertising (Regulation 39(4)) without the permission of the Australian Grand Prix Corporation.
The Subcommittee seeks reasons as to why Regulation 29 (and in particular the requirement for prior written authorisation) is necessary to protect public order. The Subcommittee also seeks information as to whether or not there are less reasonably restrictive alternatives to achieve the purpose of Regulation 29.

Yours sincerely,

Ms Lizzie Blandthorn MP
Chairperson
Regulation Review Subcommittee
Dear Ms Blandthorn,

SR NO 133 – AUSTRALIAN GRAND PRIX (FORMULA ONE) REGULATIONS 2016

Thank you for your letter as Chairperson of the Scrutiny of Acts and Regulations Committee dated 10 May 2017 about SR No. 133.

In your correspondence you seek further information about Regulation 29 of SR No. 133 (the Regulations) which states:

During the race period and within the declared area or a designated access area, a person must not erect or display any sign or banner without the written authorisation of the Corporation.

Spectators Waving Signs or Flags

The Regulation Review Subcommittee (the Subcommittee) has sought advice on whether the effect of Regulation 29 is to require the following to obtain written permission:

- Spectators holding or waving signs or flags (less than 1 metre square – see Regulation 18) in support of a driver or a team at the Grand Prix.

Spectators are able to hold or wave signs or flags in support of a driver or a team at the Grand Prix. Such merchandise is sold on-course and crowd participation and driver engagement adds to the atmosphere of the event. The Australian Grand Prix Corporation (the Corporation) does not require written permission for such items to be held or waved.

As stipulated in section 3(f) of the Regulations, a flag or banner larger than one metre by one metre or with a handle longer than one metre is defined as a prohibited item and would require the authorisation of the Corporation. The Corporation is conscious that spectators should be able to enjoy the event in comfort and not be obstructed by other patrons with large signs or banners.

Regulation 29 should be read in conjunction with the 2017 Formula 1 Rolex Australian Grand Prix Attendance Conditions (see attached).

In particular, condition 12 (u) which reads:

12. At the event, Patrons must not, without the prior written consent of AGPC:..
(u) deliberately obstruct the view of any Patron seated in a seat in the immediate vicinity, or cause unreasonable inconvenience to any Patron, official or employee or contractor of AGPC, or interfere with the comfort of any Patron or their enjoyment of the Event.

Condition 12 (i) is also relevant:

12. At the event, Patrons must not, without the prior written consent of AGPC:
   (i) post, stick or place any poster, placard, bill, banner, print, paper or any advertising material on any building, structure, fence or tree.

As is pointed out in your letter, ‘erect’, ‘display’, ‘sign’ or ‘banner’ are not defined in the Regulations or the Primary legislation. Condition 12(i) indicates they should be read in a context where such items are posted, stuck or placed on an object such as a building, structure, fence or tree. Regulation 29 is not intended to prevent spectators from holding or waving, signs and flags.

Political Protestors

The Subcommittee has also sought advice on whether the effect of Regulation 29 is to require the following to obtain written permission:

- Political protestors holding signs or banners.

A political protester holding a sign or banner may be considered to have breached Regulation 29, depending on the circumstances.

Again, this should be read in conjunction with the Attendance Conditions.

Condition 12 (v) reads:

12. At the event, Patrons must not, without the prior written consent of AGPC:
   (v) use racist, indecent or obscene language or threatening or insulting words or otherwise behave in a threatening, abusive, riotous, indecent or insulting manner.

If a sign or banner was deemed to have used threatening or insulting words, or if the Patron was considered to have behaved in a threatening, abusive, riotous, indecent or insulting manner, then this may be deemed to have breached Regulation 29.

Decision on Whether or Not to Provide Written Authority

The Corporation would decide whether or not to provide written authority pursuant to Regulation 29 under a case by case basis.

The factors involved in assessing whether to grant an authority would be adherence to the attendance conditions which could include:

- Likelihood of disruption to other patrons;
- Safety of all racegoers;
- Promotion of advertising material which could be considered to be ambush marketing.
The Committee refers to the Charter of Human Rights and Responsibilities Act 2006 (the Charter) and in particular section 15 which refers to Freedom of Expression.

We note that section 15(3) of the Charter reads...

(3) Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary—
   (a) to respect the rights and reputations of other persons; or
   (b) for the protection of national security, public order, public health or public morality.

As above, the protection of public order can be a factor that overrides the right of freedom of expression.

Protection of Public Order

The Subcommittee is seeking reasons as to why Regulation 29 is necessary to protect public order.

The objectives of the Regulations are to prevent patrons from erecting or displaying signs or banners which may interfere with the view of other patrons, or disrupt their ability to enjoy the event. It is also to prevent insulting or threatening banners which may incite other patrons. The Grand Prix is a heavily attended and widely broadcast event. Patron safety and enjoyment is considered paramount. Disruptive behaviour or actions which may incite others are certainly considered to be a threat to public order.

It is not considered that any less reasonably restrictive alternatives are required to achieve the purpose of Regulation 29.

Thank you for bringing this matter to my attention.

If you require further information, please contact John Schuller, Legislation Officer, of the Department of Economic Development, Jobs, Transport and Resources on telephone (03) 9653 9759.

Yours sincerely

THE HON JOHN EREN MP
Minister for Tourism and Major Events
Minister for Sport
Minister for Veterans
State Member for Lara

Date: 27/06/17

Enc 2017 Formula 1 Rolex Australian Grand Prix Attendance Conditions

cc Mr Andrew Westacott, CEO, Australian Grand Prix Corporation
Appendix 1
Ministerial responses to Committee correspondence

The Committee received Ministerial responses in relation to its correspondence on the Bills listed below.

The responses are reproduced in this appendix – please refer to Appendix 4 for additional information.

i. Bail Amendment (Stage One) Bill 2017

ii. Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017

iii. Firefighters’ Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017

iv. Justice Legislation Amendment (Court Security, Juries and Other Matters) Bill 2017

v. Justice Legislation Amendment (Protective Services Officers and Other Matters) Bill 2017

vi. Sentencing Amendment (Sentencing Standards) Bill 2017

vii. State Taxation Acts Amendment Bill 2017
16 JUN 2017

Ms Lizzie Blandthorn MLA
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

By email: nathan.bunt@parliament.vic.gov.au

Dear Ms Blandthorn,

Thank you for your letter of 6 June 2017 in relation to the Bail Amendment (Stage One) Bill 2017. I understand that the Committee is seeking further information regarding commencement of the Bill and on the operation of the amendments to the Bail Act 1977 that place additional offences in the ‘exceptional circumstances’ category and their compatibility with the Charter of Human Rights and Responsibilities Act (Vic) 2008 (the Victorian Charter).

Commencement

As noted by the Committee, the Bill is subject to a default commencement date of 1 July 2018.

The Bill makes significant changes to Victoria’s bail system, which will have impacts for a variety of stakeholders, particularly Corrections Victoria, Victoria Police and the courts. This will potentially increase the number of people who are held in remand. A commencement date of 1 July 2018 allows time to plan the impact of this increase and measures to be introduced to manage this. As noted in my second reading speech, however, it is the intention of government that the amendments will commence as soon as possible.

Exceptional circumstances scheme proposed under clause 5(2) and 13 of the Bill

As noted by the Committee, the Bill places the onus on an accused who has committed an offence listed in Schedule 1 or Schedule 2 to the Act to demonstrate why he or she should not be held on remand until his or her trial. For Schedule 1 offences, an accused is required to demonstrate exceptional circumstances, and for Schedule 2 offences an accused is required to show compelling reason as to why their detention is not justified. All offenders will continue to be subject to the ‘unacceptable risk’ test; and so may be denied bail if the prosecution satisfies the court that they are an unacceptable risk to community safety or of failing to appear on bail.

The Committee has raised some concerns with respect to the compatibility of the amendments in clause 5(2) and 13 of the Bill and the requirement under section 21(6) of the Victorian Charter that ‘a person awaiting trial must not be automatically detained in custody’.
The Bail Act currently requires an accused charged with a very serious offence (such as murder) to show exceptional circumstances why bail ought to be granted. These offences will now be listed in Schedule 1 to the Act. Clauses 5(2) and 13 of the Bill will expand this category of most serious offences to include additional drug offences, aggravated home invasion and aggravated carjacking and an offence of conspiracy to commit, incitement to commit or attempting to commit any Schedule 1 offence.

The Committee is concerned with the expanded category of offences under the exceptional circumstances scheme, particularly the addition of ‘an offence of conspiracy to commit, incitement to commit or attempting to commit’ any Schedule 1 offence. It was noted that only the ACT and NSW have an equivalent to the latter, applying a presumption against bail to offences of attempt, including attempted murder, and only the ACT applies an exceptional circumstances test similar to clause 5(2) under the Bill.

The Committee noted that there have been no rulings on the meaning of 21(6) in the Victorian Charter. However, similar provisions to clauses 5(2) and 13 that are in the Bail Act 1992 (ACT) have been found to be incompatible with 18(5) Human Rights Act 2004 (ACT) (the HRA).

In 2010, the ACT Supreme Court (in the matter of an application for bail by Isa Islam [2010] ACTSC 147) declared that the exceptional circumstances test in the Bail Act 1992 (ACT) was incompatible with the HRA. Mr Islam had applied for bail after being charged with attempted murder and his bail was refused given the presumption against bail set out in s 9C of the Bail Act 1992 [ACT]. This provision was found to be incompatible with section 18(5) of the HRA which states ‘anyone who is awaiting trial must not be detained in custody as a general rule’.

The reasons for finding section 9C of the Bail Act 1992 (ACT) was incompatible with the HRA included that:

- section 9C makes it very difficult for a person charged with murder to obtain bail and the underlying purpose for this is not apparent from either the text of the provision or the explanatory material; and
- section 9C with its focus on murder to the exclusion of other serious offences of violence is not necessarily a rational response to the need for community protection, and thus this purpose cannot necessarily be assumed in the absence of a clear indication of such a purpose.

I consider that the reasoning in the ACT decision is not transferable to the Victorian Bail Act for these reasons:

- The proposed amendments to the exceptional circumstances provisions in Victoria, by contrast to the ACT, apply the provisions to a number of very serious crimes, and the purpose of these provisions is made clear in the legislation. The Bill will insert a new purposes section and guiding principles to inform the community about the purposes of bail and remind decision makers of some important considerations relevant to bail, in particular balancing the presumption of innocence and the protection of the community.
- The wording in the HRA and the Victorian Charter is very different. Section 18(5) of the HRA provides that ‘anyone who is awaiting trial must not be detained in custody as a general rule’ whereas the Victorian Charter provides under section 21(6) that ‘a person awaiting trial must not be automatically detained in custody’. This distinction was noted by the ACT Supreme Court in its finding that the ACT provisions were incompatible. Under the proposed Bill Victorian bail decision makers will retain a discretion to allow bail which means that there is no automatic detention of accused persons.

Accordingly I do not consider that it follows that because similar provisions in the ACT were found to be incompatible with the ACT Charter, that the Bill is incompatible with the Victorian Charter. As the Committee has noted, this was my view in relation to similar amendments to the ‘exceptional circumstances’ provisions contained in the Bail Amendment Bill 2015.
As noted in the statement of compatibility for this Bill, I consider that the list of offences subject to the exceptional circumstances test strikes the right balance between protecting community safety and recognising and preserving the presumption of innocence.

I trust this information is of assistance to the committee.

Yours sincerely,

[Signature]

THE HON MARTIN PAKULA MP
Attorney-General
Ms Lizzie Blandthorn MLA  
Chairperson  
Scrutiny of Acts and Regulations Committee  
Parliament House  
Spring Street  
EAST MELBOURNE VIC 3002

Also by email: nathan.bunt@parliament.vic.gov.au

Dear Ms Blandthorn

Thank you for your letter of 6 June 2017 in relation to the Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017. I understand that the Committee is seeking further information regarding commencement of the Bill and on the operation of amendments to sections 497 and 501 of the Children, Youth and Families Act 2005.

The Bill contains a range of measures to address community concerns about crimes committed by young people, and to improve safety and security in youth justice facilities. The Bill also provides for a legislative scheme allowing children who have committed low-level offences to be diverted from the criminal justice system and address their offending behaviour before it escalates into persistent offending.

Commencement of the Bill

As noted by the Committee, the Bill is subject to a default commencement date of 1 June 2018.

A delayed commencement date is necessary for the Youth Control Order provisions in Part 3 of the Bill, due to the extensive implementation work that must be completed by Victoria Police, the Children’s Court and other stakeholders before these provisions can commence. Other clauses in the Bill will require less time for implementation and will likely be proclaimed well in advance of 1 June 2018.

Power of the Secretary to issue an instruction that a person must not communicate with a child

As noted by the Committee, the Bill empowers the Secretary to issue an instruction to a person directing them not to communicate with or attempt to communicate with a child in out of home care or detention. These provisions are designed to clarify existing offences under sections 497 and 501 of the Children, Youth and Families Act 2005 and support prosecutions to protect children at risk of sexual exploitation.

I understand that the Committee is seeking further information as to whether or not expressly identifying the purpose of the Secretary’s instructions against contact or communication with children, or expressly providing for when and to whom they can be made, would be a less
restrictive alternative reasonably available to achieve the clauses' purpose of promoting the rights of children under the Charter.

The provisions in sections 497 and 501 of the Children, Youth and Families Act 2005 are located in Part 6.1 of the Act, which specifies offences relating to the protection of children and in my second reading speech on this Bill, I explained that these amendments will support prosecutions to protect children at risk of sexual exploitation.

There will be limits placed on the use of the power of the Secretary to issue directions by operation of section 38 of the Charter of Human Rights and Responsibilities Act 2006. This provision will continue to require the Secretary to give proper consideration to relevant Charter rights when deciding whether to direct a person not to communicate with a child in out of home care or detention. Further, the provision imposes obligations on the Secretary to observe Charter rights and act in accordance with the intention of Parliament for the Charter to have a normative effect on administrative practice. If a recipient of a direction by the Secretary considered that proper consideration of Charter rights did not occur, or the decision to make a direction was otherwise improperly made, that person will continue to enjoy the right to seek administrative review of the decision.

I can assure the Committee that these amendments do not broaden the scope of when and to whom the Secretary may issue these instructions. Instead, the provisions clarify that instructions may be issued in writing and specify the requirements for service of written instructions. This will address concerns about the ambiguity of current notice requirements providing a potential barrier to successful prosecutions. Providing express limitations about when and to whom the Secretary may issue instructions may impose further barriers to disrupting the sexual exploitation of already vulnerable children and the subsequent prosecution of offenders.

For the reasons I have outlined, I do not consider that imposing express limitations on the Secretary’s use of this power to issue instructions to be a less restrictive alternative reasonably available.

I trust this information is of assistance to the Committee.

Yours sincerely

THE HON MARTIN PAKULA MP
Attorney-General
Lizzie Blandthorn MLA  
Chairperson  
Scrutiny of Acts and Regulations Committee  
Parliament of Victoria  
Spring Street  
EAST MELBOURNE VIC 3002

Dear Chairperson

I refer to the matters raised by the Scrutiny of Acts and Regulations Committee (the Committee) in your letter dated 6 June 2017 in relation to the Firefighters’ Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017 (the Bill).

The Committee has requested further information regarding the reasons for the Bill (other than Parts 1 and 2) commencing by proclamation, rather than by default commencement date.

Commencement by proclamation is necessary to allow certain preparatory steps to be undertaken before the reforms relating to the establishment of Fire Rescue Victoria and proposed changes to the Fire Rescue Victoria fire district commence operation. These steps include the preparation and approval of an allocation statement under Part 6 of the Bill to effect the transfer of property, rights, liabilities and obligations from the Country Fire Authority to Fire Rescue Victoria. It may also be necessary to transfer additional staff of the Country Fire Authority to Fire Rescue Victoria before the reforms commence.

The Committee has also requested further information as to whether the new section 4C in clause 44 of the Bill is compatible with the right of equality set out in section 8(3) of the Charter of Human Rights and Responsibilities Act 2006 (the Charter). The new section 4C precludes officers or employees of an industrial body that are responsible for an enterprise agreement applying to a fire services agency from being appointed to the Fire District Review Panel (the Panel).

The new section 4C may limit the right to equality under the Charter by excluding certain persons from being members of the Panel. However, these limitations are considered minor, and are reasonable and demonstrably justified, as the provisions are necessary to ensure the independence of the Panel by removing any real, potential or perceived conflicts of interest of members eligible for appointment.
I trust this information is of assistance to the Committee.

Yours sincerely

[Signature]

16.6.17

The Hon James Merlino MP
Deputy Premier
Minister for Education
Minister for Emergency Services
The Hon Lizzie Blandthorn MLA  
Chairperson  
Scrutiny of Acts and Regulations Committee  
Parliament House  
Spring Street  
EAST MELBOURNE VIC 3002

By email: nathan.bunt@parliament.vic.gov.au

Dear Ms Blandthorn,

**Justice Legislation Amendment (Court Security, Juries and Other Matters) Bill 2017**

I refer to your letter of 6 June 2017 attaching the extract of the Scrutiny of Acts and Regulations Committee’s (Committee) consideration of the Justice Legislation Amendment (Court Security, Juries and Other Matters) Bill 2017 (Bill) in Alert Digest no. 8 of 2017.

I provide the following information to assist the Committee in its consideration of the Bill.

**Committee query:**

The Committee has queried whether or not the directions power of an ‘authorized officer’ in new section 3(2A) of the **Court Security Act 1980** (inserted by clause 49 of the Bill) can be used to enforce restrictions on recordings imposed under a court’s inherent or general powers, for example, the restrictions on recordings, photography and mobile phones currently described on the website of the Supreme Court of Victoria.

**Response:**

The proposed section 3(2A)(d) empowers authorized officers to make directions in the terms set out in that clause, if an officer reasonably suspects that a recording of a ‘proceeding’ is not permitted by the Court Security Act or ‘any other law’.

The reference to a matter not being permitted under ‘any other law’ in proposed section 3(2A)(d) encompasses restrictions imposed under a court’s inherent or general powers, as well as restrictions under other Acts or subordinate instruments. Accordingly, the section would enable an authorized officer to direct a person to cease recording a proceeding, if the officer reasonably suspects that the recording contravenes orders made by a court in the exercise of the court’s inherent power.
Some of the photography and recording restrictions listed on the Supreme Court website apply to ‘court premises’, and extend beyond a ‘proceeding’. The new directions power in proposed section 3(2A)(d) of the Bill could not be used to give directions, if the recording is not of a proceeding.

However, authorized officers may be able to exercise one of the other powers in the Bill, such as proposed section 3(2A)(a), which empowers authorized officers to give a reasonable direction to a person who wishes to enter, or is on, court premises to do or not do a thing for the purpose of maintaining security, good order or management or the court premises. If, for example, a person was on court premises taking photographs of jurors outside a proceeding as a means of intimidation, the officer could give a direction to cease that photography in order to maintain the security of the court premises.

Committee query:

The Committee has also queried whether procedures will be put in place to ensure that a person who is subject to the directions power in new section 3(2A) is made aware of, and can effectively raise, new section 3(2C) at the time he or she is dealing with the authorized officer.

Response:

As stated in the Second Reading Speech for the Bill, the proposed court security amendments support the increased use of private court security officers, appointed as authorized officers, as part of the new court security model. Court Services Victoria (CSV) is implementing the new court security model.

I have been advised by CSV that these officers will be trained on the provisions of the Court Security Act and the questions they would need to ask before determining whether to make a direction under new section 3(2A)(d). Training will place a significant emphasis on communication and respect. For example, where an officer observes a person engaging in behaviour that causes a concern, officers will be trained to remind that person of any restrictions which apply and make relevant inquiries. These inquiries would enable the authorized officer to determine whether there is a basis for reasonable suspicion of unlawful activity, including whether there is a basis on which the recording might be lawful. Authorized officers will use plain language to alert the person that a recording may be unlawful and query whether they have permission to make that recording.

I am also advised by CSV that compliance with the Victorian Charter of Human Rights and Responsibilities will be a component of officer training.

I hope this information is of assistance.

Yours sincerely

THE HON MARTIN PAKULA MP
Attorney-General
Ms Lizzie Blandthorn MLA
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

BY EMAIL: nathan.bunt@parliament.vic.gov.au

Dear Ms Blandthorn,

Justice Legislation Amendment (Protective Services Officers and Other Matters) Bill 2017

Thank you for your letter dated 6 June 2017 seeking further information on the Justice Legislation Amendment (Protective Services Officers and Other Matters) Bill 2017 (the Bill).

I have sought advice from my department in response to the matters raised by the Scrutiny of Acts and Regulations Committee and provide the response set out below.

Reasons for the possible delayed commencement date of 30 May 2018, given paragraph A (iii) of the Committee’s Practice Note

The 12 month commencement timeframe is calculated from the date that a bill is introduced into Parliament. The planned date of introduction can be subject to change, particularly where the bill is an omnibus bill such as this one. The intention was not to exceed the 12 month timeframe for delayed commencement. As it happens, the period of time by which the default commencement date exceeds the 12 month timeframe is less than a week. In addition, the intention is that the reforms in the Bill that do not commence on Royal Assent will commence by proclamation much earlier than May 2018.

The Committee considers that, despite any Charter incompatibility of ss10G and 10H of the Control of Weapons Act, clauses 7 and 8 of the Bill are compatible with the Charter

I note the Committee’s view.

I thank the Committee for its comments and trust the above response assists in the consideration of this important legislation.

Yours sincerely,

Hon Lisa Neville MP
Minister for Police
16 JUN 2017

Ms Lizzie Blandthorn MLA
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Ms Blandthorn

Thank you for your letter dated 6 June 2017 regarding the consideration of the Sentencing Amendment (Sentencing Standards) Bill 2017 by the Scrutiny of Acts and Regulations Committee.

The Committee has queried whether the retrospective application of clause 43 would adversely impact any person. As outlined below, it is expected that very few, if any, people will be affected by the retrospective operation of clause 43.

Clause 43 inserts provisions relating to historical arson offences into clause 5 of Schedule 1 to the Sentencing Act 1991. Clause 5 lists a number of offences which are included in the definition of arson offence in section 6B of the Sentencing Act. Clause 43(2) will extend the definition of serious arson offence in Part 2A to include 'any other offence, whether committed in Victoria or elsewhere, the necessary elements of which consist of elements that constitute any of the offences referred to in paragraphs (a) to (c) of clause 5 of Schedule 1. This is for the purposes of Part 2A of the Sentencing Act which in essence will allow courts to impose a longer sentence for any subsequent arson offences committed by a serious arson offender. This amendment merely ensures that any person convicted of an old arson offence that has since been repealed may still be considered to be a serious arson offender when they re-offend.

As the Committee pointed out, the operation of existing section 6C(3) of the Sentencing Act allows a court to treat previous convictions committed outside of Victoria as relevant offences for the purposes of Part 2A where the offence was substantially similar to an offence contained in Schedule 1, and the offender was sentenced to imprisonment or detention in a youth justice centre. The addition made by clause 43 will therefore only apply to similar offences committed within Victoria that have since been repealed.

At the time of its commencement in 1997, clause 5 in Schedule 1 included the arson offences in sections 197 and 197A of the Crimes Act 1958 and in the common law. In 2003, the offence of intentionally or recklessly causing a bushfire (section 201A of the Crimes Act) was created and added to clause 5 of Schedule 1. In 2014, an arson offence contained in the Forests Act 1958 (section 66) and an offence contained in the County Fire Authority Act 1958 (section 39C) were added to clause 5 of Schedule 1. These offences had been in operation since 1959 and 1983 respectively. Also added in 2014 was an offence of conspiracy, incitement or attempt to commit the other offences listed in clause 5.
The only offenders who were not previously caught by the provisions and will as a result of clause 43(2) now be captured by Part 2A of the Sentencing Act are those offenders who:
- committed, in Victoria, an offence the necessary elements of which constitute an offence:
  o against section 197 of the Crimes Act (charged as arson), before 1979;
  o against section 197A of the Crimes Act, before 1997;
  o against section 201A of the Crimes Act, before 2003;
  o against section 66 of the Forests Act, before 1959;
  o against section 39C of the County Fire Authority Act, before 1983; or
  o of conspiring, inciting or attempting to commit one of the offences above in the relevant time frame; and
- were sentenced to a term of imprisonment or detention in a youth justice centre for that offence; and
- are sentenced for a subsequent arson offence after the commencement of the new clause.

The gap that is covered by clause 43 applies only to historical arson-like offences committed within Victoria before the commencement of various arson offences. It is unlikely that there are many active arsonists who have convictions for historical arson offences. Serious recidivist arsonists would have largely already been convicted and sentenced to a term of imprisonment and detention for an existing clause 5 offence.

The number of people who will be sentenced as serious arson offenders because of the operation of clause 43(2) is expected to be minimal. The adverse impact that it has on this small group of people is appropriate given the high level of risk that serious arson offenders pose to the community.

I trust this information is of assistance to the committee.

Yours sincerely

THE HON MARTIN PAKULA MP
Attorney-General
Ms Lizzie Blandthorn MLA
Chairperson, Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
MELBOURNE VIC 3002

Dear Ms Blandthorn,

State Taxation Acts Amendment Bill 2017

I refer to your letter of 24 May 2017, in which you sought further information in relation to Clause 2 of the State Taxation Acts Amendment Bill 2017 (the Bill), which provides that Part 9 of the Bill would come into operation on 1 July 2018, which is more than 12 months after the Bill’s introduction.

Part 9 of the Bill amends the Valuation of Land Act 1960 to centralise the valuation function under the management of the valuer-general, who will conduct annual general valuations of all lands in Victoria.

The delayed commencement date of 1 July 2018 is required to ensure the current 2018 general valuation cycle is not impacted by the proposed amendments. The 2018 general valuation cycle has already commenced and the valuations returned from this valuation cycle will become effective and used by rating authorities on 1 July 2018. Accordingly, this date also reflects a natural transition into the new annual valuation process. The delayed commencement is also intended to provide sufficient time in which to make all necessary administrative changes to enable a centralised annual revaluation to take place.

Thank you for the opportunity to provide background on clause 2 of the Bill.

Yours sincerely,

TIM PALLAS MP
Treasurer
2 /6 /2017
Appendix 2
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Committee Comments classified by Terms of Reference

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

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Section 17(a)

(i) trespases unduly upon rights or freedoms

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Sentencing Amendment (Sentencing Standards) Bill 2017 8, 9

(vi) inappropriately delegates legislative power

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Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017 8, 9
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State Taxation Acts Amendment Bill 2017 7, 9

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

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**Current Ministerial Correspondence**

**Table of correspondence between the Committee and Ministers or Members**

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

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\textsuperscript{ii} The Committee first wrote to the Attorney-General who introduced this Bill on the 2 May 2016. However, the Committee now understands that this Bill is the responsibility of the Special Minister of State and has readdressed its correspondence accordingly.