The Committee

Chairperson
Hon. Richard Dalla-Riva MLA
Member for Eastern Metropolitan

Deputy Chairperson
Hon. Christine Campbell MLA
Member for Pascoe Vale

Ms Ann Barker MLA
Member for Oakleigh

Mr Michael Gidley MLA
Member for Mount Waverley

Mr Don Nardella MLA
Member for Melton

Dr Bill Sykes MLA
Member for Benella

Mr Graham Watt MLA
Member for Burwood

Committee Staff

Mr Andrew Homer, Executive Officer and Senior Legal Adviser
Ms Helen Mason, Legal Adviser - Regulations
Mr Simon Dinsbergs, Business Support Officer
Ms Sonya Caruana, Office Manager

Role of the Committee

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

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

Members
Hon Richard Dalla-Riva MLC (Chairperson)
Hon. Christine Campbell MLA (Deputy Chairperson)
Ms Ann Barker MLA
Mr Michael Gidley MLA
Mr Don Nardella MLA
Dr Bill Sykes MLA
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Terms of Reference

Section 17 of the Parliamentary Committees Act 2003 sets out the statutory functions of the Scrutiny of Acts and Regulations Committee. These functions 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 on rights or freedoms;
   (ii) makes rights, freedoms or obligations dependent on insufficiently defined administrative powers;
   (iii) makes rights, freedoms or obligations dependent on 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;

(c) to consider any Act that was not considered under paragraph (a) or (b) when it was a Bill –
   (i) within 30 days immediately after the first appointment of members of the Committee after the commencement of a Parliament; or
   (ii) within 10 sitting days after the Act receives Royal Assent — whichever is the later, and to report to the Parliament with respect to that Act on any matter referred to in those paragraphs;

(d) the functions conferred on the Committee by the Subordinate Legislation Act 1994;

(e) the functions conferred on the Committee by the Environment Protection Act 1970;

(f) the functions conferred on the Committee by the Co-operative Schemes (Administrative Actions) Act 2001;

(fa) the functions conferred on the Committee by the Charter of Human Rights and Responsibilities.

(g) to review any Act in accordance with the terms of reference under which the Act is referred to the Committee under this Act.
Chairperson’s Introduction

I am pleased to present the Scrutiny of Acts and Regulations Committee’s Annual Review covering the calendar year 2013. The report covers the activity of the Committee in the third year of the 57th Parliament.

The functions of the Committee are to review all Bills introduced into Parliament, to review regulations, to review and report on redundant or unclear Acts and to undertake specific inquiries that may be referred to the Committee either by a House of the Parliament or by a Minister.

The Committee thanks the secretariat staff for their dedicated on-going support over the year. The Committee also thanks Professor Jeremy Gans, the Committee’s human rights consultant for his timely advise during 2013.

I personally thank the secretariat and Parliamentary colleagues for their contributions and guidance during the year.

Hon Richard Dalla-Riva MLC
Chairperson

May 2014
Role of the Committee

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

The Charter of Human Rights and Responsibilities Act 2006 provides that the Committee must consider any Bill introduced into Parliament and must report to the Parliament whether the Bill is incompatible with human rights.
This report provides an overview of the activities and functions of the Victorian Parliament’s Scrutiny of Acts and Regulations Committee (the ‘Committee’) during the calendar year 2013. The Committee also intends to publish an Annual Review of subordinate legislation considered in 2013.

The Committee’s reports and other publications (including this review) are available on the Committee’s website: www.parliament.vic.gov.au/sarc

The Committee

The Committee is established under the Parliamentary Committees Act 2003 (the ‘Act’) as one of the 12 Joint House Committees of the Victorian Parliament. It is one of six Joint House Committees administered by the Department of the Legislative Assembly. The remaining six Joint House Committees are administered by the Department of the Legislative Council.

Membership of the Committee is drawn from Members of the Legislative Council (the ‘Council’) and the Legislative Assembly (the ‘Assembly’) and from both government and opposition members.

Brief history of the Committee

The Committee under its current name was established at the commencement of the 52nd Parliament in November 1992. Previous Chairs of the Committee were –

- Mr Victor Perton MLA (LP – Doncaster) – 52nd Parliament
- Mr Peter Ryan MLA (NP – Gippsland South) – 53rd Parliament
- Ms Mary Gillett MLA (ALP – Werribee) – 54th Parliament
- Ms Lily D’Ambrosio MLA (ALP – Mill Park) – 55th Parliament
- Mr Carlo Carli MLA (ALP – Brunswick) – 56th Parliament
- Mr Edward O’Donohue MLC (LP – Eastern Victoria) – 57th Parliament (to 19 March 2013)

The current Chairperson is Hon. Richard Dalla-Riva MLC (LP – Eastern Metropolitan Region) (from 21 March 2013)

Prior to the Committee in its present form, the Parliament performed a scrutiny of subordinate legislation (regulations) function through the now defunct Legal and Constitutional Committee. Statute law revision Bills were at one time considered by the Statute Law Revision Committee which was established by the Parliament as a specific purpose committee to consider periodic statute law revision Bills. Such Bills were far less frequent than in current times.

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1 To be published June-July 2014.
2 Parliamentary Committees Act 2003, s. 5(k).
The Parliaments of the Commonwealth, New South Wales, Queensland and the Australian Capital Territory have parliamentary committees that perform comparable scrutiny of bills functions. All Australian Parliaments have committees that perform scrutiny of regulations.

Committee composition and membership

The Act\(^3\) requires that a Parliamentary Committee comprise not less than 5 members and not more than 10 members with at least one Member representing each House.

During 2013 the Committee consisted of seven members, six from the Legislative Assembly and one from the Legislative Council. A quorum of the Committee consists of four members.

During the year the Committee was composed of four members from the government and three members from the Labor Party. The Chairperson and Deputy Chairperson of the Committee are held respectively by a government and opposition member.

Committee members during 2013

The Committee met on 18 occasions during the year. Of these 17 meeting were to consider draft Alert Digests and other related Committee business. The Committee also met on 21 March 2013 to elect a new Committee Chairperson.

The members of the Committee during 2013 were –

- Hon Richard Dalla-Riva MLC (Chairperson from 21 March 2013)
- Mr Edward O’Donohue MLC (Chairperson to 18 March 2013)
- Hon Christine Campbell MLA (Deputy Chairperson)
- Ms Ann Barker MLA (appointed 25 June 2013)
- Mr Colin Brooks MLA (resigned 25 June 2013)
- Mr Michael Gidley MLA
- Mr Don Nardella MLA
- Dr Bill Sykes MLA
- Mr Graham Watt MLA

The subcommittees

At the commencement of each newly elected Parliament it is the custom of the Committee to establish, by special resolution the Regulation Review Subcommittee and the Redundant Legislation Subcommittee. The Committee may also, from time to time, establish other subcommittees that may be necessary or desirable to undertake specialist inquiry work.

Regulation Review Subcommittee

The functions of this Subcommittee are to review statutory rules, as defined by the Subordinate Legislation Act 1994, against specified terms of reference prescribed in that Act.\(^4\) Pursuant to other statutory reporting responsibilities, the Subcommittee must also review other certain special subordinate instruments.

The members of the Regulation Review Subcommittee during 2013 were –

- Mr Michael Gidley MLA (Chairperson)

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\(^3\) Parliamentary Committees Act 2003, s. 21(1).

\(^4\) Subordinate Legislation Act 1994, s. 21.
• Mr Edward O’Donohue MLC (to 18 March 2013)
• Hon Christine Campbell MLA
• Hon Richard Dalla-Riva MLC (from 21 March 2013)
• Mr Don Nardella MLA
• Mr Graham Watt MLA

**Redundant Legislation Subcommittee**

The Subcommittee was first established as a consequence of a long-standing Governor in Council reference first given to the Committee in 1994. The reference, which had been renewed in previous Parliaments, required the Committee to review and make recommendations concerning certain Acts that may have been unclear, ambiguous or that may need redrafting. During 2013 the Committee did not have a redundant legislation inquiry to undertake.

**Proposed Subordinate Legislation Inquiry**

At its meeting of on 27 May 2013 the Committee resolved to undertake a ‘self-referenced’ inquiry pursuant to section 33(3) of the Parliamentary Committees Act 2003. The proposed inquiry concerned key provisions in the Subordinate Legislation Act 1994 relevant to the regulatory impact assessment requirements under that Act.

The proposed terms of reference were:

The Scrutiny of Acts and Regulations Committee inquire into, consider and report on best practice in Australian and overseas jurisdictions concerning regulatory impact assessment processes, procedures, innovations and promising practices, and make recommendations to the Parliament as to any necessary or desirable changes and improvements to processes and procedures that are currently practiced in Victoria.

The Committee notes that despite underutilisation of its annual budget in the previous year there was no ability to carry over those funds to enable it to commence the proposed inquiry. The Committee notes that the current ‘use it or lose it’ approach mandated by successive Appropriations (Parliament) Acts limit the capacity for Committees to be efficient in their on-going budget utilisation. The Committee is of the view that the carryover of unutilised funds from one year to the next should be permissible and would allow Committees to more effectively self-manage their inquiry functions and processes.

**Secretariat and consultants**

**Staffing**

The Committee employs a small secretariat staff comprising an Executive Officer (Senior Legal Adviser), a Legal Adviser, Regulations and two administrative support staff. The secretariat of the Committee during 2013 comprised of –

• Mr Andrew Homer, Executive Officer and Senior Legal Adviser
• Ms Helen Mason, Executive Officer and Senior Legal Adviser, Legal Adviser in the review of regulations
• Mr Simon Dinsbergs, Business Support Officer
• Ms Sonya Caruana, Committee Administrative Officer

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5 From 1 July 2013.
6 To 30 June 2013.
The Committee’s office is located at Level 3, 55 St Andrews Place, East Melbourne 3002.

Consultants

During 2013 the Parliament engaged the following consultant to assist the Committee with specialist advice or inquiry assignments –

- Professor Jeremy Gans, Human Rights Adviser (University of Melbourne)

The Committee’s work during 2013

The Committee’s work during the year fell into four main areas –

- Scrutiny of Bills introduced into Parliament;
- Scrutiny of subordinate legislation (regulations) and specified directives and other instruments;
- From 1 July 2011 the Committee commenced scrutiny of a new form of subordinate legislation referred to as ‘legislative instruments’ as defined by section 3 of the Subordinate Legislation Act 1994;
- Inquiries or the review of Acts that are referred to the Committee by a resolution of either the Council or the Assembly or by a Minister through an Order of the Governor in Council published in the Government Gazette.

Parliamentary Committees Act 2003

Section 17(a) – Scrutiny of Bills

The Committee considered 89 Bills during 2013. Pursuant to section 17(a) the Committee is required to consider any Bill introduced in the Council or the Assembly and report to the Parliament under eight separate heads of scrutiny, numbered sub-paragraphs (i) to (viii) –

(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;

7 Committee’s human rights adviser.
8 Parliamentary Committees Act 2003, ss. 17(a) and (b).
9 The scrutiny of statutory rules (regulations) predates the formation of the Committee and was performed by a number of predecessor parliamentary committees such as the Legal and Constitutional Committee (now defunct).
10 Section 3 of the Subordinate Legislation Act 1994, definition of ‘legislative instrument’
11 Parliamentary Committees Act 2003, ss. 33(1)(a) and (b).
12 Parliamentary Committees Act 2003, s. 33(1)(b).
A list of the Bills considered and the tabling dates of the 17 separate Alert Digests in which they are found is shown in Appendix 1. The Bills on which the Committee made a substantive comment based on the respective scrutiny principles is shown in Appendix 2.

The Committee’s reporting timetable on Bills

The Committee ordinarily has between two and three weeks to consider and report on a Bill after the Bills second reading in the House where the Bill is introduced. The usual practice of the Houses is to adjourn detailed consideration of a Bill for two weeks. However, this is only a general practice and not a mandatory procedural requirement. Where a Bill is adjourned for 2 weeks (or longer) the Committee will work towards finalising a report (Alert Digest) for tabling at the commencement of a parliamentary sitting week when the resumption of the debate may possibly occur.

On rare occasions an emergency or urgent Bill is introduced in the Parliament and the government indicates its intention to seek immediate passage of the measures after second reading without adjournment. Depending on the terms of reference likely to be engaged by the provisions in such a Bill and member availability, the Committee has previously tabled urgent Alert Digests for the immediate advice of members within its section 17(a) terms of reference. Immediate passage of a Bill does presents the Committee with unique challenges in reporting on Bills and in these circumstances the Committee has previously indicated that it may, within its terms of reference, report on a further occasion.

Section 17(a)(viii) & Charter s. 30 – is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities

In accordance with its usual practice, the Committee reported on whether or not Bills and Acts were incompatible with human rights in a separate ‘Charter report’ that appeared after the Committee’s commentary on its non-Charter terms of reference.

In 2013, 19 Bills were accompanied by Charter reports, principally in relation to the following human rights:

- **Equality** (Charter s. 8): Provisions limiting legal representation of children; contact between adopted children and natural parents; surviving partner pensions; and changes of name. 13
- **Non-consensual treatment** (Charter s. 10): A provision on disclosing information about gamete donors. 14
- **Movement** (Charter s. 12): A provision on court security powers. 15
- **Privacy** (Charter s.13): Provisions on disclosing information about adopted children; fortification removal; boarding and searching vessels; and DNA databases. 16
- **Freedom of conscience** (Charter s. 14): A provision on disclosing information about gamete donors. 17
- **Freedom of expression** (Charter s. 15(2)): Provisions on the use of the term ‘cooperative’; and the offence of insulting the Police Registration and Services Board. 18

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13 Alert Digests Nos. 2 of 2013 (Justice Legislation Amendment (Cancellation of Parole and Other Matters) Bill 2013); 4 of 2013 (Adoption Amendment Bill 2013); 5 of 2013 (Integrity Legislation Amendment Bill 2013); and 14 of 2013 (Courts and Other Justice Legislation Amendment Bill 2013).
14 Alert Digest No. 10 of 2013 (Assisted Reproductive Treatment Amendment (Access by Donor-Conceived People to Information About Donors) Bill 2013).
15 Alert Digest No. 14 of 2013 (Courts and Other Justice Legislation Amendment Bill 2013).
16 Alert Digests No. 4 of 2013 (Adoption Amendment Bill 2013); 6 of 2013 (Fortification Removal Bill 2013); 7 of 2013 (Marine (Domestic Commercial Vessel National Law Application) Bill 2013); and 14 of 2013 (Crimes Amendment (Investigation Powers) Bill 2013).
17 Alert Digest No. 10 of 2013 (Assisted Reproductive Treatment Amendment (Access by Donor-Conceived People to Information About Donors) Bill 2013).
- **Property** (Charter s. 20): A provision on charges for clearing land infestations. 19
- **Liberty** (Charter s. 21): A provision on detaining parolees. 20
- **Fair hearings** (Charter s. 24): Provisions on breath analysis certificates; directors’ liability for corporate fines; and the use of samples from police drug testing. 21
- **Rights in criminal proceedings** (Charter s. 25): Provisions on directors’ liability for corporate crimes; rail safety complaint victimisation and regulatory questioning; heavy vehicle emergencies; radiation compliance assessors; and on-the-spot penalty fares. 22
- **Double jeopardy** (Charter s. 26): A provision imposing fines for disciplinary breaches. 23

### Section 17(b) – Section 85, Constitution Act 1975 – Limitation on the jurisdiction of the Supreme Court

Pursuant to section 17(b) of the *Parliamentary Committees Act 2003*, the Committee has a statutory reporting responsibility in relation to Bills which include provisions that repeal, alter or vary the unlimited jurisdiction of the Supreme Court. This responsibility has a nexus to the unique ‘manner and form’ requirements found in section 85 of the *Constitution Act 1975*. 24 The Act requires the Committee to report to the Parliament as to whether such provisions are, in all the circumstances, appropriate and desirable.

Of the 89 Bills considered in 2013 only 3 Bills contained a section 85 *Constitution Act 1975* provision. In comparison in 2012 of the 96 Bills introduced three Bill (3) contained a section 85 provision. The Bills containing section 85 *Constitution Act 1975* provisions are listed in a section of Appendix 2.

### Section 17(c) – Jurisdiction to report to the Parliament where the Committee has not been able to report on an Act while it was a Bill

On rare occasions the Committee may not be able to report on a Bill because urgent legislation receives speedy passage through both Houses and becomes an Act before the Committee is able to table a report on the next sitting day of Parliament. In these circumstances section 17(c) allows the Committee to prepare and table a report in two situations –

1. Within 30 days immediately after the first appointment of members of the Committee after the commencement of each Parliament; and
2. Within 10 sitting days after the Act receives Royal Assent – which ever is the later.

In either of these cases the Committee report will note the use of the section 17(c) power at the commencement of the report on that Act.

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19 Alert Digest No. 11 of 2013 (Plant Biosecurity Amendment Bill 2013).
20 Alert Digest No. 10 of 2013 (Corrections Amendment (Breach of Parole) Bill 2013).
21 Alert Digests Nos. 4 of 2013 (Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Bill 2013); 6 of 2013 (Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Bill 2013); and 14 of 2013 (Victoria Police Bill 2013).
23 Alert Digest No. 14 of 2013 (Victoria Police Bill 2013).
24 The *Constitution Act 1975* requires provisions that engage section 85 to be passed by an absolute majority of both Houses of the Parliament and that a member introducing such a provision make a section 85 Statement either when the Bill is second read or before the third reading of the Bill. For the provision to be effective the Bill must specifically declare the intention of the provision to repeal, alter or vary the jurisdiction of the Supreme Court of Victoria.
The Committee did not report under this term of reference in 2013.

**Submissions on Bills during 2013**

Within the relevant terms of reference the Committee welcomes public submissions concerning Bills currently before the Parliament. The Committee is aware of the time constraints applying to such submissions. The strict timelines for making submissions arise from the necessity for the Committee to table a report on Bills for the assistance of Members prior to the resumption of the debate after the second reading speech is delivered. Notwithstanding this tight timetable may mean that as little as 2 weeks may be available for the receipt of written submissions from the time it is introduced in the Parliament.

Where need arises and time permits, the Committee reserves the right to invite evidence to be given before it at a private or public hearing. In special circumstances the Committee may delay making a report on a Bill in order to hold public hearings or receive written submissions. During 2013 the Committee received submissions in respect of the following Bills.  

- *Justice Legislation Amendment (Cancellation of Parole and Other Matters) Bill 2013*– Alert Digest No. 2 of 2013
- *Adoption Amendment Bill 2013* – Alert Digest No. 4 of 2013
- *Bail Amendment Bill 2013* – Alert Digest No. 6 of 2013

**Public hearings on Bills in 2013**

The Committee did not hold public hearings in respect to any Bills considered in 2013.

**Other public hearings and briefings**

The Committee did not hold any other public hearings or briefings in 2013.

**A selection of noteworthy Bills considered by the Committee in 2013**

1. **New principal Acts**
   
   - *Co-operatives National Law Application Bill 2013* to make provision for the application of a national law relating to the formation, registration and operation of co-operatives.
   
   - *Court Services Victoria Bill 2013* to establish Court Services Victoria as a statutory body to provide administrative services to Victorian courts and the VCAT.
   
   
   - *Fortification Removal Bill 2013* which provides for the Magistrates’ Court on application by the Chief Commissioner of Police to require the removal or modification of fortification on premises that are connected to criminal offences.
   
   - *Heavy Vehicle National Law Application Bill 2013* which provides for the application of the Heavy Vehicle National Law which has been enacted by the Queensland Parliament.
   
   - *Jury Directions Bill 2012* which sets out the guiding principles for a new simplified approach to jury directions.

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25 A list of persons and organisations making submissions relevant to these Bills is published under the heading ‘Committee Website’ at pp. 22-23.
Scrutiny of Acts and Regulations Committee

- **Marine (Domestic Commercial Vessel National Law Application) Bill 2013** which adopts in Victoria a national approach to the regulation of marine safety in relation to domestic commercial vessels and applies the Commonwealth domestic commercial vessel national law as a law of Victoria.
- **Open Courts Bill 2013** to reform and consolidate laws in respect to suppression orders made within a proceeding and the making of closed court orders.
- **Rail Safety National Law Application Bill 2013** which provides for a national rail safety regulation scheme including a national rail safety regulator and national rail safety investigator in Victoria.
- **Victoria Police Bill 2013** to provide for the governance and administration of the Victorian Police force and Protective Service officers. The Bill largely repeals the 1958 Act and the remaining provisions of the old Act are to be renamed the Police Regulation (Pensions) Act 1958.
- **Workplace Injury Rehabilitation and Compensation Bill 2013** to largely re-enact with improvements and modifications the Accident Compensation Act 1985 and the Accident Compensation (WorkCover Insurance) Act 1993 in one principal Act. The new Act will apply to injuries occurring after 1 July 2014.

2. **Amending Acts**

- **Adoption Amendment Bill 2013** which removes the requirement for obtaining an adult adopted person’s consent before giving identifying information to the adopted person’s natural parents. It also provides for adult adopted persons to make contact statements about their wishes for contact with their natural parents.
- **Alpine Resorts and National Parks Acts Amendment Bill 2013** which alters the boundaries of the Alpine National Park and the Falls Creek Resort.
- **Building and Planning Legislation Amendment (Governance and Other Matters) Bill 2013** which establishes the Victorian Building Authority and abolishes the Building Commission and the Plumbing Industry Commission.
- **Corrections Amendment (Breach of Parole) Bill 2013** to create an offence of breaching a prescribed term or condition of a parole order and to permit police to arrest and detain a prisoner on parole upon breach of a prescribed parole term or condition.
- **Corrections Amendment (Parole Reform) Bill 2013** to reform membership of and the functions of the Parole Board.
- **Courts and other Justice Legislation Amendment Bill 2013** amongst other matters, to provide an expanded definition of ‘court premises’ for the purposes of the Court Security Act 1980, amend the Births, Deaths and Marriages Registration Act 1996 to align Victorian change of name processes with national best practice recommendations, and amend the Terrorism (Community Protection) Act 2003 to extend the time in which a review must be undertaken of the Act by a further 12 months.
- **Crimes Amendment (Gross Violence Offences) Bill 2012** which creates two new indictable offences with a non-parole period of not less than four years.
- **Crimes Amendment (Investigative Powers) Bill 2013** in respect to forensic samples of DNA, clarify destruction requirements under the Act, allow all indictable offences to be subject to an application to a court for a sample to be taken, clarify that the compulsory sample regime also has extra-territorial operation, provide investigators authority to question a suspect who is already in custody with the persons informed consent and without need for a court order, and permit the indefinite retention of DNA samples and associated information without a court order (except in the case of children).
- **Domestic Animals Amendment Bill 2013** principally in respect to restricted breed dogs.
- **Gambling Legislation Amendment Bill 2013** which allows the keno licensee to develop linked jackpot arrangements for keno games with keno operators in other jurisdictions and extends by four years the
current arrangement of $45 million of gaming machine taxation being reserved from payment to the Community Support Fund to fund Victoria’s drug and alcohol strategy.

- **Justice Legislation Amendment (Cancellation of Parole And Other Matters) Bill 2013** which clarifies the circumstances in which a child may be legally represented and when a child is sufficiently mature to give instructions to a legal practitioner and provides for the cancellation of parole in circumstances where a prisoner is charged with or convicted or found guilty of certain offences whilst on parole.

- **Major Sporting Events Amendment Bill 2013** which extends the crowd management provisions to additional major sporting events and venues and makes further provision for the enforcement of offences against the sporting event ticketing provisions.

- **Major Transport Projects Facilitation Amendment (East West Link and Other Projects) Bill 2013** which facilitates the East West Link project and other major projects (the Melbourne Metro and the Port of Hastings) by reducing the procedural delays and red tape. It makes project assessments more efficient and effective by introducing a more risk-based assessment regime.

- **National Parks Amendment (Leasing Powers and Other Matters) Bill 2013** which provides that the Minister may grant leases (and associated licences) for terms of up to 99 years over specified land and extends from 50 years to 99 years the maximum term for which a lease may be granted over land in Point Nepean and Mount Buffalo national parks and Arthurs Seat State Park.

- **Open Courts Bill 2013** to consolidate the existing statutory powers of courts and the VCAT to make suppression orders and closed-court orders.

- **Parliamentary and Public Administration Legislation Amendment Bill 2013** which sets the basic salary for Members of Parliament from 1 July 2013 and provides a formula for the automatic annual adjustment of that amount. It also provides for other allowances payable to Members of Parliament.

- **Parliamentary Committees Amendment Bill 2013** which merges four existing Joint House Committees into two new Joint House Committees. It merges the Law Reform Committee and the Drugs and Crime Prevention Committee to form the Law Reform, Drugs and Crime Prevention Committee. It merges the Economic Development and Infrastructure Committee and the Outer Suburban/Interface Services and Development Committee to form the Economic Development, Infrastructure and Outer Suburban/Interface Services Committee.

- **Plant Biosecurity Amendment Bill 2013** to provide for certain debts due to the State to be a charge on land. The debts may arise from action taken by the State to address a plant pest or disease risk that poses a threat to neighbouring crops.

- **Professional Boxing and Combat Sports Amendment Bill 2013** providing new provisions for license approval, renewal, suspension and cancellation by introducing, fit and proper person and public interest tests for applicants and licence holders. The Bill also introduced a procedure for dealing with police ‘protected information’ and made provision for prohibiting certain persons from applying for a licence.

- **Radiation Amendment Bill 2013** to prohibit the commercial operation of tanning units and provide for the introduction of security plans for the possession and transport of high consequence sealed sources and the appointment of approved (security plans) assessors.

- **Road Legislation Amendment Bill 2013** amongst other reforms the Bill repealed and replaced the provisions relating to the demerit points scheme and applied the scheme to drivers who do not hold a Victorian licence.

- **Road Safety and Sentencing Acts Amendment Bill 2013** which consolidates into a single, simplified process, the statutory provisions relating to obtaining a driver licence or learner permit after disqualification. It also consolidates into a single, simplified process, the statutory provisions relating to imposing or removing alcohol interlock conditions from a driver licence or learn permit, regardless of their origin.
• **Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Bill 2013** which makes further provision for the abolition of suspended sentences and gives the Supreme Court of Victoria and the County Court of Victoria the power to order electronic monitoring of a curfew condition. It also introduces new sentencing powers in relation to unpaid court fines.

• **Statute Law Amendment (Directors’ Liability) Bill 2012** which amends a number of Acts in relation to the criminal liability of officers of body corporate as a result of national reform items agreed to by the Council of Australian Governments (COAG) with the aim of increasing consistency and reducing complexity.

• **Succession to the Crown (Request) Bill 2013** to facilitate national changes to the laws of succession, consistent with changes made in the United Kingdom.

• **Transport (Compliance and Miscellaneous) Amendment (On-the-Spot Penalty) Bill 2013** to introduce an on-the-spot penalty scheme for adult fare evasion on public transport.

• **Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Bill 2013** which reforms the licensing system for taxi-cabs and hire cars and amends the object, functions and powers of the Taxi Services Commission (TSC).

3. Private Members Bills

• **Accident Compensation Legislation (Fair Protection for Firefighters) Bill 2011** which simplifies compensation claims by career and volunteer firefighters by deeming certain prescribed cancers to be caused by their career or volunteer work.

• **Assisted Reproductive Treatment Amendment (Access by Donor- Conceived People to Information about Donors) Bill 2013** to provide access to certain donor information and provide for contact vetoes.

• **Residential Tenancies Amendment (Housing Standards) Bill 2013** to enable minimum housing standards to be prescribed by regulations, and for other purposes.

• **Residential Tenancies Amendment (Rooming House Standards) Bill 2013** to provide that rooming house owners cannot opt out of rooming house standards.

4. Statute Law Revision Bills

• **Statute Law Revision Bill 2013** amending Acts to correct minor errors and emissions, repealing spent and redundant Acts, re-enacting transitional and savings provisions, amending names of government Departments and, repealing an unproclaimed Act and Acts with unproclaimed provisions.

**Ministerial correspondence related to Bills**

During the year the turnaround time for Ministerial correspondence was prompt. In most cases Ministers provided there response to the Committee’s concerns in time for the tabling of the next available Alert Digest or the one immediately following the next Alert Digest. During 2013 the Committee did not need to issue courtesy reminders to Ministers on any occasion.

The Committee’s standard protocol on such matters is that the Committee considers that Ministerial responses should be received promptly, in order to inform the debate in Parliament on the matters of concern identified by the Committee. The Committee seeks to ensure that a response is received, where possible, prior to the Bill’s completed passage through both Houses.

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26 This Bill was referred to the Committee by the Legislative Assembly on 5 September 2013 for further inquiry, consideration and report.
The results of the Committee’s work

One of the main functions of the Committee is to review Bills introduced into a House of the Parliament and to report to the Parliament on the use of certain legislative practices in those Bills. The heads of legislative scrutiny are listed in sections 17(a)(i) to (viii) of the Act. The ongoing feedback the Committee receives suggests that Members are assisted by the information provided in Alert Digests, which often include important extracts from the second reading speech and the explanatory memorandum.

Section 17(d) – Statutory rules and legislative instruments

The Committee has functions conferred upon it by the Subordinate Legislation Act 1994. The Regulation Review Subcommittee undertakes this role on behalf of the Committee.

The Subcommittee reviews statutory rules and legislative instruments pursuant to sections 3 and 21 of the Subordinate Legislation Act 1994.

The Subcommittee held fifteen meetings during 2013 where it considered both regulations and legislative instruments. All regulations and legislative instruments reviewed by the Subcommittee are shown at Appendix 5.

The Subcommittee:
- considered 182 regulations. Thirteen regulations were accompanied by Regulatory Impact Statements.
- considered 62 legislative instruments. Two legislative instruments were accompanied by Regulatory Impact Statements.

The Committee intends to publish its Annual Review of Regulations and Legislative Instruments 2013 in mid-2014.

Section 17(e) – Environment protection policies and waste management policies

In 2013 the Regulation Review Subcommittee did not consider any State environment protection policies or waste management policies pursuant to the Environment Protection Act 1970 under this term of reference.

Section 17(f) – Reports pursuant to the Co-operative Schemes (Administrative Actions) Act 2001

The Committee was not required to report to the Parliament during 2013 on any Act sought to be declared pursuant to the Co-operative Schemes (Administrative Actions) Act 2001.

Section 17(g) – Review of Acts referred to the Committee

The Committee was not required to report to the Parliament during 2013 on any Act under this subsection of the Act.

Section 33 – Referrals to Joint Investigatory Committees

The Committee was not referred any matter to investigate during 2013.
Committee budget and expenditure

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Committee reports tabled during 2013

The Committee has published the following reports and papers in print and also on its website during 2013 –

- Alert Digests Nos. 1 to 17, February to December 2013
- Annual Review 2012, March 2013
- Annual Review Regulations 2012, August 2013

A chronological list of all Committee reports and publications dating from the inception of the Committee in 1992 to the present day is provided in Appendix 4.

Reports anticipated for publication in 2014

- Alert Digests of 2014, from February to October 2014
- Annual Review of Regulations and Legislative Instruments 2013, mid-2014

Committee website

The Committee continues to maintain a comprehensive and frequently updated website. Committee reports, including Alert Digests, are posted on the Committee website on the day they are tabled.

Notification of all tabled Committee documents are sent through Parliamentary Committees Twitter account.

Submissions received by the Committee are also published on the website.

The following submissions were received and published on the Committee website during 2013 –

- Justice Legislation Amendment (Cancellation of Parole and Other Matters) Bill 2013, contained in Alert Digest No 2 of 2013
  Law Institute of Victoria
  Victorian Council of Social Service
  Victorian Equal Opportunity and Human Rights Commission
  Youthlaw

- Adoption Amendment Bill 2013, contained in Alert Digest No 4 of 2013
  Adoption Origins Victoria Inc
  Woodend Women’s Group
  Independent Regional Mothers
  Vanish Inc

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27 Budgets and expenditure include current inquiry budgets, staff salaries, superannuation and training, office expenses, Members allowances and interstate and overseas travel.
28 Six months to 31 December 2013 actual expenditure of $211,728 or 39% of Budget.
• **Bail Amendment Bill 2013**, contained in *Alert Digest No 6 of 2013*

Victorian Equal Opportunity and Human Rights Commission

Committee website
## Appendix 1
### Index of Acts and Bills in 2013

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Subdivision (Fees) Further Interim Regulations 2013 (SR No. 128 / 13) 17

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Alert Digest No. 2 19 February 2013
Alert Digest No. 3 5 March 2013
Alert Digest No. 4 19 March 2013
Alert Digest No. 5 16 April 2013
Alert Digest No. 6 7 May 2013
Alert Digest No. 7 28 May 2013
Alert Digest No. 8 11 June 2013
Alert Digest No. 9 25 June 2013
Alert Digest No. 10 20 August 2013
Alert Digest No. 11 3 September 2013
Alert Digest No. 12 17 September 2013
Alert Digest No. 13 15 October 2013
Alert Digest No. 14 29 October 2013
Alert Digest No. 15 12 November 2013
Alert Digest No. 16 26 November 2013
Alert Digest No. 17 10 December 2013
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 No.

Section 17(a)
(i) Rights or freedoms
Plant Biosecurity Amendment Bill 2013 11
Workplace Injury Rehabilitation and Compensation Bill 2013 13

(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities Act 2006
Adoption Amendment Bill 2013 4
Co-operatives National Law Application Bill 2013 2
Courts and Other Justice Legislation Amendment Bill 2013 14
Fortification Removal Bill 2013 6
Heavy Vehicles National Law Application Bill 2013 6
Justice Legislation Amendment Act 2013 8
Marine (Domestic Commercial Vessel National Law Application) Bill 2013 7
Plant Biosecurity Amendment Bill 2013 11
Radiation Amendment Bill 2013 11
Rail Safety National Law Application Bill 2013 4
Statute Law Amendment (Directors’ Liability) Bill 2012 1
Transport (Compliance and Miscellaneous) Amendment (On-the-Spot Penalty Fares) Bill 2013 15
Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Bill 2013 4
Victoria Police Bill 2013 14

Section 17(b)
(i) and (ii) repeals, alters or varies the jurisdiction of the Supreme Court
Company Titles (Home Units) Bill 2013 3
Transport Accident Further Amendment Bill 2013 14
Workplace Injury Rehabilitation and Compensation Bill 2013 13

Section 17(d) of the Parliamentary Committees Act 2003 and Section 21(1)(i) of the Subordinate Legislation Act 1994
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## Appendix 3
Ministerial Correspondence 2013

### Table of correspondence between the Committee and Ministers during 2013

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29 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.

30 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.
### Scrutiny of Acts and Regulations Committee

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### Appendix 4
Committee Reports and Other Papers

**Chronological Listing of Committee Reports and Other Papers**

Reports to Parliament
Alert Digest Nos. 1 to 10; Cumulative Report Nos. 1 and 2
March to May 1993
March 1993
Second Report on Subordinate Legislation, Port of Melbourne Authority (Transport, Handling and Storage of Dangerous Substances and Oils) Regulations 1992
March 1993
Operation of the Subordinate Legislation Act 1962
March 1993
Commencement by Proclamation
April 1993
May 1993
Report by the Honourable B.A.E. Skeggs, MLC
Discussions with the Select Committee on the Scrutiny of Delegated Powers, House of Lords, Westminster
October 1993
October 1993
October 1993
Report upon an Inquiry into the Operation of the Subordinate Legislation Act 1962
November 1993
November 1993
November 1993
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April 1994
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Annual Review 2012, Regulations 2012
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Annual Review 2012, Regulations and Legislative Instruments
Appendix 5
Subordinate Legislation considered – 2013

The Subcommittee’s review of subordinate legislation includes both statutory rules and legislative instruments.

Statutory Rule Series 2012

S. 8(1)(a) – No Economic or Social Burden
SR No. 117 – Local Government (Long Service Leave) Amendment Regulations 2012
SR No. 123 – Magistrates’ Court (Fees) Amendment Regulations 2012
SR No. 127 – Crimes (DNA Database) Regulations 2012
SR No. 129 – Livestock Disease Control Amendment Regulations 2012
SR No. 130 – Livestock Disease Control Further Amendment Regulations 2012
SR No. 131 – Freedom of Information Further Amendment Regulations 2012
SR No. 133 – Offshore Petroleum and Greenhouse Gas Storage Amendment Regulations 2012
SR No. 134 – Gambling Regulation (Pre-Commitment) Regulations 2012
SR No. 136 – Drugs, Poisons and Controlled Substances Amendment Regulations 2012
SR No. 137 – Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Amendment Regulations 2012
SR No. 144 – Whistleblowers Protection Regulations 2012
SR No. 150 – Infringements (General)(Lodgeable Infringement (Offences) Amendment Regulations 2012
SR No. 151 – Adoption (Intercountry Fees) Regulations 2012
SR No. 155 – Road Safety (Drivers) Amendment (Demerit Points and Peer Passenger Exemption) Regulations 2012
SR No. 156 – Road Safety (Vehicles) Amendment Regulations 2012
SR No. 157 – Road Safety Rules Amendment (Fire Services Commissioner) Rules 2012
SR No. 159 – Magistrates’ Court ( Arbitration) (Professional Costs) Amendment Regulations 2012
SR No. 162 – Road Safety (Traffic Management) Amendment (Peninsula Link) Regulations 2012
SR No. 163 – Accident Towing Services Amendment (Peninsula Link) Regulations 2012

S. 8(1)(a) and (c) – No Economic or Social Burden and of Fundamentally Declaratory or Machinery Nature
SR No. 122 – Evidence (Affidavits and Statutory Declarations) Amendment Regulations 2012
SR No. 161 – Wildlife (Game) Amendment Regulations 2012

S. 8(1)(b) – Court Rules
SR No. 118 – Magistrates’ Court Criminal Procedure (Amendment No.3) Rules 2012
SR No. 119 – Magistrates’ Court (Judicial Registrars) Amendment Rules 2012
SR No. 120 – Supreme Court Library Fund (Investment) Rules 2012
SR No. 121 – Supreme Court (Associate Judges Appeals Amendment) Rules 2012
SR No. 140 – Supreme Court (Chapter I Amendment No.35) Rules 2012
SR No. 141 – Supreme Court (Chapter I Appendices A and B Amendment) Rules 2012
SR No. 142 – Supreme Court (Chapter I New Scale of Costs and Other Costs Amendments) Rules 2012
SR No. 158 – Magistrates’ Court General Civil Procedure and Miscellaneous Civil Proceedings (Scale of Costs and Other Amendments) Rules 2012
SR No. 166 – County Court (Chapter 1 Amendment No.5) Rules 2012
SR No. 167 – County Court (Chapter I Scale of Costs Amendment) Rules 2012

S. 8(1)(c) – Of a Fundamentally Declaratory or Machinery Nature
SR No. 116 – Ambulance Services (Exemption) Revocation Regulations 2012
SR No. 124 – Port Management (Prescribed Bodies) Regulations 2012
SR No. 125 – Port Management (Port of Melbourne Safety and Property) Amendment Regulations 2012
SR No. 135 – Tobacco Amendment Regulations 2012
SR No. 138 – Marine (Drug, Alcohol and Pollution Control) Amendment Regulations 2012
SR No. 139 – Transport (Infringements) Amendment Regulations 2012
SR No. 148 – Bail Regulations 2012
SR No. 149 – Evidence Amendment Regulations
SR No. 152 – Electricity Safety (Equipment Efficiency) Revocation Regulations 2012

S. 8(1)(e)(iii) Extension of Time

S. 8(1)(e)(vi) Only Exempts under Section 4A(1)(c) an Instrument or a Class of Instrument from the Operation of this Act or any Specified Provision of this Act
SR No. 126 – Subordinate Legislation (Legislative Instruments) Amendment Regulations 2012

S. 9(1) – Premier’s Exemption
SR No. 147 – Victorian Civil and Administrative Tribunal (Fees) Interim Regulations 2012

S. 10, 11 and 12 – Regulation Impact Statements
SR No. 115 – Environment Protection (Fees) Regulations 2012
SR No. 128 – Associations Incorporation Reform Regulations 2012
SR No. 132 – Dangerous Goods (Storage and Handling) Regulations 2012
SR No. 143 – Working with Children Amendment (Fees) Regulations 2012
SR No. 145 – Supreme Court (Fees) Regulations 2012
SR No. 146 – County Court (Fees) Regulations 2012

Legislative Instruments
Adoption of Amendments to National Rules of Harness Racing
By Law No.9 Recreational Areas – Gippsland and Southern Rural Water Corporation
Consent for Tow Trucks to use Emergency Stopping Lanes on Freeways
Declaration of Discount Factor under the Victorian Energy Efficiency Target Act 2007
Designation of Tow Away Areas in the Chapel Street Precinct
Direction to Boards of Adult Education Institutions on Executive Remuneration (Adult Multicultural Education Services and the Centre for Adult Education)
Direction to Boards of TAFE Institutes on Executive Remuneration
Exemption – Persons from Primary Production and Processing Requirements
Exemption – Retail and Catering
Extension of Interim Ban – Small, Separable or Loose Permanent Magnetic Objects
Gazettal of Specification of Railway Stations as Designated Areas for Ticketing Compliance
Greyhound Racing Victoria – Club Bookmakers’ Licence Levy Rules
Greyhound Racing Victoria – Rule Amendments
Livestock Exemption
Ministerial Order 615 – Fees for Vocational Education and Training
Ministerial Order No. 632 (Made pursuant to the Education and Training Reform Act 2006)
Notice – Lord Mayoral, Deputy Lord Mayoral and Councillor Allowances – Melbourne City Council
Notice – Mayoral and Councillor Allowances Adjustment
Notice – Mayoral and Deputy Mayoral Allowances – Greater Geelong City Council
Revocation of Tow Away Areas
Victorian Curriculum and Assessment Authority (VCAA) Fees

**Statutory Rules Series 2013**

**S. 8(1)(a) – No Economic or Social Burden**

SR No. 1 – Supreme Court (Fees) Amendment Regulations 2013
SR No. 3 – Land Conservation (Vehicle Control) Regulations 2013
SR No. 4 – Members of Parliament (Register of Interests) Regulations 2013
SR No. 7 – Protected Forests (Protection) Regulations 2013
SR No. 8 – Fisheries Amendment Regulations 2013
SR No. 9 – Conservation, Forests and Lands (Infringement Notice) Amendment (Wildlife (Game) and Other Matters) Regulations 2013
SR No. 10 – Conservation, Forests and Lands (Infringement Notice) Amendment (Prescribed Activities) Regulations 2013
SR No. 11 – Conservation, Forests and Lands (Primary Industries Infringement Notices) Regulations 2013
SR No. 12 – Substitution (Registrar’s Fees) Amendment Regulations 2013
SR No. 13 – Architects Amendment (Fees) Regulations 2013
SR No. 14 – Prevention of Cruelty to Animals Amendment Regulations 2013
SR No. 15 – Conservation, Forests and Lands (Infringement Notice) Amendment Regulations 2013
SR No. 16 – Conservation, Forests and Lands (Protection of Catchment Areas) Regulations 2013
SR No. 17 – Conservation, Forests and Lands (Infringement Notice) Amendment Regulations 2013
SR No. 18 – Adoption Amendment Regulations 2013
SR No. 19 – Partnership (Fees) Regulations 2013
SR No. 20 – Parliamentary Salaries and Superannuation (Allowances) Regulations 2013
SR No. 21 – Parliamentary Salaries and Superannuation (Provision of Motor Vehicles) Regulations 2013
SR No. 22 – Road Safety (Drivers) Amendment (Heavy Combination Vehicle Licences) Regulations 2013
SR No. 23 – Victorian Energy Efficiency Target Amendment (Relevant Entity and Other Matters) Regulations 2013
SR No. 24 – Building Amendment (Places of Public Entertainment) Regulations 2013
SR No. 25 – Conservation, Forests and Lands (Infringement Notice) Amendment (Catchment and Land Protection) Regulations 2013
SR No. 26 – Eastlink Project Amendment (Prescribed Administrative Costs) Regulations 2013
SR No. 27 – Legal Profession (Admission) Amendment Rules 2013
SR No. 28 – Drugs, Poisons and Controlled Substances Amendment (Continued Dispensing) Regulations 2013
SR No. 29 – Drugs, Poisons and Controlled Substances Amendment (Schedule 8 Permit) Regulations 2013
SR No. 30 – Infringements (General) Amendment (Lodgeable Infringement Offences) Regulations 2013
SR No. 116 – Conservation, Forests and Lands (Infringement Notice) Further Amendment Regulations 2013
SR No. 117 – Supreme Court (Fees) Further Amendment Regulations 2013
SR No. 125 – Dangerous Goods (Explosives) and (Transport by Road or Rail) Amendment Regulations 2013
SR No. 129 – Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2013
SR No. 131 – Electricity Safety (Management) Amendment Regulations 2013

S. 8(1)(a) and (c) – No Economic or Social Burden and of Fundamentally Declaratory or Machinery Nature
SR No. 26 – Road Safety (Vehicles) Amendment Regulations 2013
SR No. 88 – Road Safety Road Rules Amendment Rules 2013
SR No. 102 – Marine Safety Amendment (Domestic Commercial Vessel National Law Application) Regulations 2013

S. 8(1)(b) – Court Rules
SR No. 16 – Victorian Civil and Administrative Tribunal (Amendment No.4) Rules 2013
SR No. 17 – Victorian Civil and Administrative Tribunal (Trans-Tasman Proceedings Amendment) Rules 2013
SR No. 27 – Supreme Court (Chapter 1 Certification Amendments) Rules 2013
SR No. 35 – Magistrates’ Court General Civil Procedure (Certification Amendments) Rules 2013
SR No. 36 – County Court (Chapter 1 Amendment No.6) Rules 2013
SR No. 38 – Victorian Civil and Administrative (Amendment No.5) Rules 2013
SR No. 45 – Victorian Civil and Administrative Tribunal (Oath and Affirmation of Office) Regulations 2013
SR No. 48 – Supreme Court (Miscellaneous Amendments) Rules 2013
SR No. 51 – Children, Youth and Families (Children’s Court Family Division)(Amendment No.3) Rules 2013
SR No. 69 – County Court (Chapter 1 Amendment No.7) Rules 2013
SR No. 71 – Victorian Civil and Administrative Tribunal (Amendment No.6) Rules 2013
SR No. 89 – Magistrates’ Court General Civil Procedure (Costs and Other Amendments) Rules 2013
SR No. 90 – Supreme Court (Chapter I Offers of Compromise Amendments) Rules 2013
SR No. 105 – Victorian Civil and Administrative Tribunal (Amendment No.7) Rules 2013
SR No. 110 – County Court (Chapter III Amendment No.2) Rules 2013
SR No. 111 – Supreme Court (Chapter III Amendment No.2) Rules 2013
SR No. 112 – Supreme Court (Corporations) Rules 2013
SR No. 119 – Supreme Court (Chapter I Trans-Tasman Proceedings Amendment) Rules 2013
SR No. 120 – Magistrates’ Court (Judicial Registrars) Amendment Rules 2013
SR No. 122 – County Court (Chapter I Amendment No.8) Rules 2013
SR No. 124 – Victorian Civil and Administrative Tribunal (Amendment No.8) Rules 2013

S. 8(1)(b) and (c) – A Rule which relates only to the Procedure of a Court and is of a Fundamentally Declaratory or Machinery Nature
SR No. 73 – Sentencing Amendment Regulations 2013
SR No. 121 – Magistrates’ Court (Fees) Amendment Regulations 2013

S. 8(1)(c) – Of a Fundamentally Declaratory or Machinery Nature
SR No. 2 – Sex Work Amendment Regulations 2013
SR No. 5 – Independent Broad-Based Anti-Corruption Commission Regulations 2013
SR No. 6 – Victorian Inspectorate Regulations 2013
SR No. 8 – Public Interest Monitor Regulations 2013
SR No. 9 – Surveillance Devices Amendment Regulations 2013
SR No. 10 – Crimes (Assumed Identities) Amendment Regulations 2013
SR No. 11 – Crimes (Controlled Operations) Amendment Regulations 2013
SR No. 12 – Major Crime (Investigative Powers) Amendment Regulations 2013
SR No. 13 – Court Security Amendment Regulations 2013
SR No. 14 – Australian Consumer Law and Fair Trading Amendment Regulations 2013
SR No. 15 – Corrections Amendment Regulations 2013
SR No. 20 – Climate Change Amendment Regulations 2013
SR No. 22 – Cancer (Breastscreen Victoria Registry) Regulations 2013
SR No. 31 – Business Licensing Authority Regulations 2013
SR No. 34 – Criminal Organisations Control Regulations 2013
SR No. 39 – Bail Amendment Regulations 2013
SR No. 40 – Family Violence Protection Amendment Regulations 2013
SR No. 44 – Road Safety (Drivers) Amendment (Application of Fees) Regulations 2013
SR No. 46 – Evidence Amendment Regulations 2013
SR No. 47 – Tobacco Amendment Regulations 2013
SR No. 49 – Residential Tenancies Amendment Regulations 2013
SR No. 50 – Drugs, Poisons and Controlled Substances Amendment (Cultivation of a Narcotic Plant) Regulations 2013
SR No. 52 – Assisted Reproductive Treatment Amendment Regulations 2013
SR No. 56 – Building and Construction Industry Security of Payment Regulations 2013
SR No. 57 – Domestic Animals Amendment Regulations 2013
SR No. 78 – Community Based Sentences (Transfer) Regulations 2013
SR No. 79 – Tobacco (Victorian Health Promotion Foundation) Amendment Regulations 2013
SR No. 85 – Parliamentary Committees Revocation Regulations 2013
SR No. 87 – Road Safety (Vehicles) Amendment (Taxi Services Commission) Regulations 2013
SR No. 91 – Crimes (Controlled Operations) Amendment (Corresponding Laws) Regulations 2013
SR No. 93 – Crimes (Assumed Identities) Amendment (Corresponding Laws) Regulations 2013
SR No. 94 – Surveillance Devices Amendment (Corresponding Laws) Regulations 2013
SR No. 95 – Transport (Ticketing) Amendment Regulations 2013
SR No. 99 – Marine (Drug, Alcohol and Pollution Control) Amendment Regulations 2013
SR No. 100 – Marine (Domestic Commercial Vessel National Law Application) (Prescribed Information on Forms) Regulations 2013
SR No. 101 – Marine (Drug, Alcohol and Pollution Control) Amendment (Domestic Commercial Vessel National Law Application) Regulations 2013
SR No. 103 – Transport (Infringements) Amendment (Domestic Commercial Vessel National Law Application) Regulations 2013
SR No. 109 – Public Health and Wellbeing Amendment Regulations 2013
SR No. 118 – Road Safety (General) Amendment Regulations 2013
SR No. 123 – Crimes (Controlled Operations) Further Amendment Regulations 2013
SR No. 130 – Major Transport Projects Facilitation (Notification) Regulations 2013

S. 8(1)(d) – Fee Increase of 2.25 percent – Treasurer’s Rate
SR No. 54 – Transfer of Land (Fees) Amendment Regulations 2013
SR No. 58 – Road Safety (Drivers) and (Vehicles) Amendment (Fees) Regulations 2013
SR No. 80 – Building Amendment (Fees) Regulations 2013
SR No. 81 – Plumbing Amendment (Fees) Regulations 2013

S. 8(1)(e)(iii) – Extension of Time – Section 5A(3) Premier’s Certificate

S. 8(1)(e)(iv) – Only prescribes under section 4A(1)(a) and instrument or class of instrument for the purposes of paragraph (h) of the definition of legislative instrument
SR No. 82 – Subordinate Legislation (Legislative Instruments) Amendment Regulations 2013

S. 8(1)(f) – National Uniform Legislation Scheme
SR No. 29 – Livestock Management Amendment Regulations 2013
S. 9(1) – Premier’s Exemption
SR No. 23 – Road Safety (Drivers) Amendment (Fees) Interim Regulations 2013
SR No. 42 – Planning and Environment (Fees) Interim Regulations 2013
SR No. 43 – Subdivision (Fees) Interim Regulations 2013
SR No. 59 – Road Safety (Drivers) Amendment (Renewal Fees) Interim Regulations 2013
SR No. 127 – Planning and Environment (Fees) Further Interim Regulations 2013
SR No. 128 – Subdivision (Fees) Further Interim Regulations 2013

S. 10, 11 and 12 – Regulation Impact Statements
SR No. 41 – Retail Leases Regulations 2013
SR No. 53 – Victorian Civil and Administrative Tribunal (Fees) Regulations 2013
SR No. 60 – Water (Lake Eldon Recreational Area)(Houseboats) Regulations 2013
SR No. 62 – Electricity Safety (Bushfire Mitigation) Regulations 2013
SR No. 64 – Wildlife Regulations 2013
SR No. 113 – Health Services (Private Hospitals and Day Procedure Centres) Regulations 2013
SR No. 115 – National Parks Regulations 2013

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SR No. 70 – Health Practitioner Regulation National Law Amendment (Midwife Insurance Exemption) Regulation 2013
Education and Care Services National Amendment Regulations 2013

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Amendment of Racing Victoria Bookmakers’ Licence Levy Rules 2012
Appointment of Busy Inc as an Approved Training Agent – Ministerial Order 700
By-Law No.1/2013 – Recreational Areas – Goulburn-Murray Rural Water Corporation
Constitution of Adult Multicultural Education Services Order 2013
Cost Recovery Fee for the Safe Driving Program
Declaration of Discount Factor under the Victorian Energy Efficiency Target (VEET) Scheme
Designation of Certain Areas as Tow-Away Areas on Wurundjeri Way, Docklands
Determination of Conditions and Times for Firewood Collection in Barmah National Park
Determination of Levy Rates – Fire Services Levy
Electronic Conveyancing – Participation Rules
Electronic Conveyancing – Operating Requirements
Greyhound Racing Victoria – Rule Amendment
Greyhound Racing Victoria – Rule Amendment
Greyhound Racing Victoria – Rule Amendments to Plumpton Coursing Rules
Ministerial Directions to TAFE Institutes on the Employment of Staff
Ministerial Order under section 16BA of the National Electricity (Victoria) Act 2005
Notice of Declared Area pursuant to Section 18 of the Summary Offences Act 1966
Order – Declaration of Wildlife as Unprotected Wildlife on Private Property
Order – Harness Racing Amendment
Order – Rating Authority – Metropolitan Rate (Parks Charge)
Order in Council – Amendment of the Declaration of the Dingo to be Unprotected Wildlife
Order in Council – Association Making the Municipal Association of Victoria Rules
Order in Council – Exemption for Guide Dog Organisations from the Requirements of a Domestic Animal Business
Order in Council – Livestock Disease Control Act 1994
Order in Council – Revocation of Codes of Practice
Order Revocation and Declaration of Part of a Port that has been declared a Commercial Trading Port to be a Local Port
Orders in Council – Constitutions of Various TAFE Institutions
Prohibition of Differential Rates Inconsistent with Ministerial Guidelines – All Councils
Prohibition of Differential Rates Inconsistent with Ministerial Guidelines – Monash City Council
Prohibition of Differential Rates Inconsistent with Ministerial Guidelines – Moonee Valley City Council
Prohibition of Differential Rates Inconsistent with Ministerial Guidelines – Moreland City Council
Rate to be paid in Respect of any Land
School Council Employees (Employment Conditions, Salaries, Allowances and Selection)(Amendment) Order 2013 No.691
Specification of Courts Pursuant to Family Violence Protection Act 2008
TAFE Institutes – Commercial Guidelines
TAFE Strategic Planning Guidelines
Teaching Service (Employment Conditions, Salaries, Allowances, Selection and Conduct)(Amendment) Order 2013. No 685
Victorian Institute of Teaching Schedule of Registration Fees 2013-2014 – Ministerial Order 684
Appendix 6
Practice Notes

Practice Note No. 1

The Practice Note advises legal and legislation officers of the Committee’s expectations in respect to information that should be provided to the Parliament concerning provisions in Bills that test or invoke the Committee’s terms of reference.

In its scrutiny of Bills the Committee may initially make an adverse report to Parliament in its Alert Digest in respect to a number of legislative practices included in a Bill that appear to test or invoke the Committee’s terms of reference in section 17 of the Parliamentary Committees Act 2003 (the ‘Act’).

Where the Committee makes an initial adverse comment it will draw the provision to the attention of Parliament and will note that further advice will be sought from the responsible Minister. The Minister’s response is published in the next Alert Digest upon receipt. To avoid needless Ministerial correspondence the Committee strongly prefers that explanatory material be provided at the time a Bill is introduced in Parliament in either the Second Reading Speech and or the explanatory memorandum.

Provisions frequently of concern to the Committee include –

1.1 Unexplained Retrospective Provisions

Where a Bill contains a provision that has retrospective operation (deeming, validating or backdated to the time of an announcement or ‘press release’) the Committee would expect that the Parliament will be provided with an explanation why it is desirable or necessary for the provision to be retrospective. The explanation should include the reason why a specific retrospective date is chosen, and provide sufficient information whether the retrospection may detrimentally affect any person. Where there is insufficient information provided to the Parliament, the grounds for an initial adverse report by the Committee will be that such a provision may constitute an undue trespass to rights and freedoms within the meaning of section 17(a)(i) of the Act.

1.2 Unexplained Wide Delegation of Powers and Functions Provisions

Where a Bill provides for a delegation of powers or functions in wide or unlimited terms, such as a delegation to ‘any person’, the Committee expects that Parliament will be informed as to the reasons why it is desirable or necessary to employ such a wide or unlimited delegation of powers. Where there is insufficient information provided to the Parliament the grounds for an initial adverse report by the Committee will be that such a provision may make rights, freedoms or obligations dependent upon insufficiently defined administrative powers within the meaning of section 17(a)(ii) of the Act.

\[\text{The Committee intends to release a consolidated Practice Note encompassing all current Practice Notes (with revisions) in 2014.}\]
1.3 Unexplained Commencement by Proclamation or Delayed Commencement in excess of 12 months

Where a Bill provides for the commencement of an Act by proclamation and no forced commencement provision is provided OR where the commencement is more than 12 months from Royal Assent, the Committee expects that Parliament will be informed as to the reasons why it is desirable or necessary to employ such a commencement provision. Where there is insufficient information provided to the Parliament, the grounds for any initial adverse report by the Committee will be that such a provision may constitute an inappropriate delegation of legislative power within the meaning of section 17(a)(vi) of the Act.

1.4 Insufficient or Unhelpful Explanatory Material

The Committee will write to Ministers where, in the Committee’s opinion, explanatory material (clause notes and/or the Second Reading Speech) are unhelpful in describing the purpose or effect of a key provision. On one occasion the Committee noted a clause note concerning professional disciplinary matters stated that ‘Clause 3 amends section 23’. The Committee considers that there would be very few, if any, circumstances where such brevity could be appropriately characterised as ‘explanatory’. The Committee considers that clause notes are critical, particularly where the provision deletes or substitutes certain words in a section where it would be problematic comprehending the amendment in its full context without some aide memoir as to its purpose and intent.

The Committee endorses the following remarks from a recent report of the Senate Standing Committee for the Scrutiny of Bills –

*The committee relies on the explanatory memorandum to explain the purpose and effect of the associated bill and the operation of its individual provisions. In particular, the committee expects that an explanation will be given for any provision within a bill that appears to test or infringe the committee’s terms of reference and provide reasons or justification for this.*

*Senate Standing Committee for the Scrutiny of Bills – “The Quality of Explanatory Memoranda Accompanying Bills, 24 March 2004”*

In particular the Committee will comment on deficient or inaccurate explanatory material provided in respect to the following types of legislative provisions –

- Powers of arrest, detention and deprivation of liberty
- Search and seizure powers without judicial warrant
- Creation of strict or absolute liability offences
- Reversal of onus of proof in criminal (or civil penalty) offences
- Abridgment of the right to silence or the privilege against self-incrimination
- Freedom of communication, assembly, movement, association, religion or conscience
- Infringement of the right to vote
- Denial of or failure to advise of, judicial or merits review of administrative decisions
- Denial or abridgment of the principle of ‘fair trial’ or the principles of natural justice
- Acquisition of property without adequate compensation
- Privacy of information and health records
- Inappropriately delegates legislative power (ie. allow regulations to alter the provisions of an Act, or allow regulations to establish a tax (as distinct from a fee for service or penalty)).

The grounds for an adverse report where an explanatory memorandum is plainly deficient or inadequate is that such a provision may test or invoke one or more of the Committee’s terms of reference.

Committee Room
17 October 2005
Practice Note No. 2

The Practice Note advises Victorian Government legislation officers of the Committee’s expectations in respect to information that should be provided to the Parliament concerning provisions in Bills that engage the Committee’s terms of reference.

In its scrutiny of Bills the Committee may initially make an adverse report to Parliament in its Alert Digest in respect to a number of legislative practices included in a Bill that appear to engage or infringe the Committee’s terms of reference in section 17 of the Parliamentary Committees Act 2003.

Where the Committee makes an initial adverse comment it will draw the provision to the attention of Parliament and will note that further advice will be sought from the responsible Minister. The Minister’s response is published in the next Alert Digest. To avoid needless Ministerial correspondence the Committee strongly prefers that explanatory material be provided at the time a Bill is introduced in Parliament.

The Committee notes the following matters –

2.1 Statement of Compatibility – section 28 of the Charter

The Committee will write to Ministers where, in the Committee’s opinion, a Statement of Compatibility is inadequate or unhelpful in describing the purpose or effect of provisions in a Bill that may engage or infringe a Charter right.

The Committee has determined that it will characterise a Statement of Compatibility as a form of explanatory memoranda equivalent in status to an explanatory memorandum accompanying a Bill.

The Committee considers that the provision to Parliament of reasonable explanatory material is critical to the Parliament’s exercise of legislative power in an informed manner.

The Committee once again endorses the following remarks from a report of the Senate Standing Committee for the Scrutiny of Bills –

"The committee relies on the explanatory memorandum to explain the purpose and effect of the associated bill and the operation of its individual provisions. In particular, the committee expects that an explanation will be given for any provision within a bill that appears to test or infringe the committee’s terms of reference and provide reasons or justification for this."

** Senate Standing Committee for the Scrutiny of Bills – “The Quality of Explanatory Memoranda Accompanying Bills, 24 March 2004’

2.2 Statute law revision type amendments and their explanatory notes

The Committee frequently encounters provisions in Bills that include one or more house keeping amendments in the form of statute law revision amendments. These amendments typically correct minor spelling, grammatical or cross-reference errors. On other occasions they may repeal spent or redundant provisions in Acts.

The Committee observes that often the explanatory memorandum in respect to such amendments will simply provide ‘Clause 27 – makes statute law revision amendments’. The Committee does not consider this a useful explanation of the purpose of the statute law revision. By way of contrast, when the

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i Explanatory material includes: (1) a Statement of Compatibility made under section 28 of the Charter of Rights and Responsibilities Act 2006; (2) an explanatory memorandum (clause notes) and (3) Ministerial correspondence.

Committee deals with Statute Law Revision Bills an explanation is always provided for each item sought to be amended. Some examples found in a recent statute law revision Bill will demonstrate this point –

Item 26 – Firearms Act 1996 – amends section 3 to repeal the definition of airgun as it is not in the correct alphabetical order.¹

Item 75 – Water Act 1989 – amends section 33U(1)(e) to remove an unnecessary full stop; section 64GB(8) to remove an unnecessary hyphen; section 259(1)(c) to remove an unnecessary comma, and section 306(1)(b) to remove an unnecessary word.²

In the future scrutiny of Bills the Committee will seek reasoned explanatory material which succinctly characterises the revision or correction sought to be made.

Example:

Clause 13 makes statute law revision amendments. – Unhelpful

Clause 13 removes an unnecessary word/punctuation/corrects a cross reference in section 128 or repeals section 128 as the provision is now spent and any remaining transitional or savings effect is preserved by the operation of section 14 of the Interpretation of Legislation Act 1984. – Acceptable

Committee Room,
6 August 2007

Practice Note No. 3

The Committee adopted the following Practice Note on 26 July 2010.

The Committee’s Practice Notes advise Victorian Government legislation officers of the Committee’s expectations in respect to information that should be provided to the Parliament concerning provisions in Bills that engage the Committee’s terms of reference. To avoid needless Ministerial correspondence the Committee strongly prefers that this information should be set out in explanatory material³ provided at the time a Bill is introduced in Parliament.

This Practice Note addresses matters arising under the Charter that repeatedly arise in Bills and that, in some cases, have been the subject of recent rulings by Victorian courts:

Bills applying non-Victorian laws – Compatibility with human rights – Impact on the operation on the Charter – Adequacy of explanatory material

The Victorian Parliament often considers Bills that apply non-Victorian laws or refer powers to non-Victorian bodies. Such Bills raise a number of concerns for scrutiny, including that the non-Victorian laws or powers may not be subject to the protections in the Charter. While the passage of national co-operative laws is a matter for Parliament, the Committee considers that the explanatory material to Bills creating or enhancing such schemes should fully explain their human rights impact.

The Committee would prefer that the explanation have two components: First, the Statement of Compatibility may assess the human rights compatibility of all existing non-Victorian laws that are to be applied in Victoria. Second, the explanatory material may set out whether, and to what extent, the Charter’s operative provisions (including its provisions for scrutiny, interpretation, declarations of

¹ Statute Law Revision Bill 2006, Schedule.
³ Explanatory material includes – (1) a Statement of Compatibility made under section 28 of the Charter of Rights and Responsibilities Act 2006, (2) an explanatory memorandum (clause notes), and (3) Ministerial correspondence.
inconsistent interpretation and obligations of public authorities) will apply under the national cooperative scheme.

Privilege against self-incrimination – Removal of the privilege – Whether reasonable limit

The Victorian Supreme Court recently considered whether a Victorian statute thatabolished the common law privilege against self-incrimination was compatible with the Charter. This Note sets out the Committee’s views on the requirements of statements of compatibility in light of that decision.

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

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

Presumption of innocence – Reverse onus – Whether reasonable limit

The Victorian Court of Appeal recently declared that it cannot interpret the ‘deemed possession’ provision of the Drugs, Poisons and Controlled Substances Act 1985 in a way that is consistent with the Charter’s right to be presumed innocent until proved guilty according to law. This Note sets out the Committee’s views on the requirements of statements of compatibility in light of the decision.

The Statement of Compatibility for any Bill that creates (or extends the operation of or increases the applicable penalty in respect of) a provision that reduces the prosecution’s burden to prove the accused’s guilt or requires an accused to offer evidence of their innocence should state whether and how that provision satisfies the Charter’s test for reasonable limits on rights. Examples of such provisions include ones that place the legal onus of proof on an accused with respect to any issue in a criminal proceeding; deem a fact to be proved in any circumstance; provide that proof of any fact is ‘prima facie evidence’ of a different fact; or place an evidential onus on an accused with respect to an essential element of an offence.

The Committee would prefer that the analysis of reasonable limits assess the risk that the provision may allow an innocent person to be convicted of the offence and set out the demonstrable justification for allowing such a risk. In the case of a provision that places a legal onus on an accused, the analysis may address whether an evidential onus would be a less restrictive alternative reasonably available to achieve the provision’s purpose.

Committee Room,
26 July 2010

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\(^{ii}\) R v Momcilovic [2010] VSCA 50
Practice Note No. 4

The Committee’s Practice Notes provide information to Victorian Government legislation officers. In relation to Bills or provisions of Bills which engage its terms of reference, the Committee prefers that information is set out in explanatory material provided at the time a Bill is introduced in Parliament.

This Practice Note addresses provisions which create exceptions to criminal offences where such exceptions may place a legal onus on an accused without express words to that effect.

Keywords – Presumption of innocence – Exceptions to criminal offences – Whether legal onus on the accused

Victorian legislation often sets out exceptions to criminal offences, using language such as ‘It is a defence to a prosecution for an offence if…’ or ‘A person is not liable to be prosecuted for an offence if…’ or ‘A person is not guilty of an offence if…’ or a particular offence provision ‘does not apply if…’.

The Committee notes that any provision that places a legal onus of proof on a person accused of a criminal offence may engage the Charter right of an accused person to be presumed innocent until proved guilty according to law. The Committee may write to Ministers where the explanatory material for a Bill that introduces or significantly alters such an exception does not state whether or not the exception places a legal onus on the accused.

For exceptions to summary offences, the explanatory material may address the effect of s.72 of the Criminal Procedure Act 2009.

For exceptions that impose a legal onus on the accused without express words to that effect, the statement of compatibility may address whether or not the inclusion of express words would be a less restrictive alternative reasonably available to achieve the exception’s purpose.

Committee room
10 December 2012

[The Committee’s Practice Notes are available from – www.parliament.vic.gov.au/sarc]