



Scrutiny of Acts and Regulations Committee

Annual Review 2021 and 2022 Statutory Rules and Legislative Instruments

August 2023





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Annual Review 2021 and 2022 Statutory Rules and Legislative Instruments

Parliament of Victoria, Australia
Scrutiny of Acts and Regulations Committee
Subordinate Legislation
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SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

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Terms of Reference

The statutory functions of the Scrutiny of Acts and Regulations Committee as set out in section 17 of the *Parliamentary Committees Act 2003* are:-

17. Scrutiny of Acts and Regulations Committee

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 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 *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 Act;
- (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 each 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 or 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 Act;
- (g) to review any Act in accordance with the terms of reference under which the Act is referred to the Committee under this Act.

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Chairperson's Foreword

I am pleased to present the Annual Review of the operations of the Regulation Review Subcommittee (the Subcommittee) to the Parliament of Victoria. The report examines major issues arising out of the scrutiny of subordinate legislation during 2021 and 2022. It covers the work undertaken by the Subcommittee in both the 59th and 60th Parliaments.

I wish to thank the Members of the Subcommittee, including the Hon. David Davis MP (Deputy Chairperson), Ms Rachel Payne MP, Ms Sheena Watt MP, and Mr Dylan Wight MP. The Members' attendance and active engagement at meetings has enabled the Subcommittee to perform its important scrutiny functions within strict legislative timeframes.

I also thank the Members of the Subcommittee during the 59th Parliament, including Mr Mark Gepp MP, Ms Kat Theophanous MP, Mr Neale Burgess MP, Ms Sarah Connolly MP, Ms Nina Taylor MP, Ms Sonja Terpstra MP, and Mr David Morris MP.

The Subcommittee worked diligently and carefully through the 2021 and 2022 series. Each statutory rule and legislative instrument was considered in accordance with the requirements of the *Subordinate Legislation Act 1994* and in the context of the *Charter of Human Rights and Responsibilities Act 2006*.

The Subcommittee extends its appreciation to responsible Ministers and departmental officers who provided information and assistance in relation to the 2021 and 2022 series. The Subcommittee will continue to work collaboratively with Ministers and their Departments to ensure the timely resolution of scrutiny issues.

I acknowledge with gratitude the excellent work of the Subcommittee's secretariat staff through the 2021 and 2022 statutory rule and legislative instrument series. Ms Katie Helme performs the legal scrutiny of the statutory rules and legislative instruments with great diligence and professionalism. Ms Lauren Cook previously performed this role during the 59th Parliament. I thank them for the provision of timely and informative legal advice. I also thank Ms Sonya Caruana for her efficient administrative support. I thank Mr Simon Dinsbergs for his additional administrative support when required and Dr Jeremy Gans for the provision of human rights advice.

The Subcommittee will continue to use its best endeavours to perform its role on behalf of the Parliament.

Mr Iwan Walters MP
Chairperson
Regulation Review Subcommittee

July 2023

Chapter 1

Introduction

1.1 Overview

This report examines the major issues arising out of the scrutiny of subordinate legislation in Victoria by the Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee. The work outlined in the report was undertaken by the Subcommittee during the 59th and 60th Parliaments. In particular, the report examines:

- 181 statutory rules in the 2021 Series (see Chapter 2);
- 137 statutory rules in the 2022 Series (see Chapter 3);
- 45 legislative instruments published in the Government Gazette during the 2021 calendar year (see Chapter 4); and
- 44 legislative instruments published in the Government Gazette during the 2022 calendar year (see Chapter 5).¹

The 2021 statutory rules series and legislative instruments were considered by the Subcommittee during the 59th Parliament in seven meetings held between 3 May 2021 and 23 May 2022. The 2022 statutory rules series and legislative instruments were considered during both the 59th and 60th Parliaments in seven meetings held between 23 May 2022 to 10 May 2023.

1.2 Background

The power to enact laws is a fundamental function of the Parliament. However, the Parliament may also delegate legislative power to the Executive. These laws are generally referred to as ‘subordinate legislation’.² Subordinate legislation is intended to cover administrative matters and detail, rather than matters of substantive policy. In this regard, the delegation of legislative powers to the Executive is necessary as it ensures that lawmakers possess appropriate expertise, laws may be quickly changed, and the Parliament is not over-burdened with administrative matters.

The delegation of legislative powers to the Executive is a long-standing and widely accepted feature of Westminster-style parliamentary democracies. While subordinate legislation is sometimes considered to be of lesser importance than primary legislation, it may also control and prohibit the conduct of citizens in much the same way as Acts of Parliament.³ Accordingly, as this mode of law-making is subject to less public debate than an Act of Parliament, subordinate legislation may have significant impacts on personal rights and liberties.

As the Parliament has delegated its power to the Executive, the exercise of this power must also be safeguarded and monitored by the Parliament. Parliamentary scrutiny committees, with power to examine subordinate legislation made by the Executive, are one of the most important safeguards against the misuse of Executive power. Since the 1930s most Westminster-style Parliaments have kept control over subordinate legislation through the use of legislative scrutiny committees. Scrutiny committees exist in all Australian

1 The report examines legislative instruments published in the Victorian Government Gazette during the 2021 and 2022 calendar years. This includes legislative instruments published between 1 January 2021 and 31 December 2022.

2 Subordinate legislation is a broad term which refers to laws which are made by a person or body other than the Parliament. This may include a range of different instruments, including regulations, rules, determinations or directions. In the context of the Subcommittee, subordinate legislation is taken to include ‘statutory rules’ and ‘legislative instruments’ as defined in section 3 of the *Subordinate Legislation Act 1994*. See section 1.4 below for further details about defining these instruments.

3 *Watson v. Lee* [1979] 155 CLR 374 at 394.

states and territories. Some of these scrutiny committees examine bills and subordinate legislation, while others examine only subordinate legislation.⁴

Parliamentary committees in Victoria have scrutinised subordinate legislation since 1956. From 1982 to 1992 the Legal and Constitutional Committee was responsible for scrutinising subordinate legislation. In 1992, the Scrutiny of Acts and Regulations Committee was created by the *Parliamentary Committees (Amendment) Act 1992*.

1.3 Regulation Review Subcommittee

The Scrutiny of Acts and Regulations Committee (the Committee) is a joint investigatory Committee of the Parliament of Victoria. It has members from the Upper and Lower Houses.

The Regulation Review Subcommittee is a subcommittee of the Committee responsible for scrutinising subordinate legislation. In particular, the Subcommittee scrutinises statutory rules and legislative instruments as defined in section 3 of the *Subordinate Legislation Act 1994* (Subordinate Legislation Act). It may also conduct inquiries in relation to statutory rules and legislative instruments.

The Subcommittee's work can be broadly described as technical legislative scrutiny. The Subcommittee does not directly consider the policy merits of subordinate legislation. However, the policy content of an instrument may provide context for the Subcommittee's scrutiny.

1.3.1 Subcommittee Membership

The Committee was formed on 19 December 2018 for the 59th Parliament. During the Parliament, the following members were appointed to serve on the Subcommittee:

- Mr Mark Gepp MLC (Chair from 9 February 2019 to 13 October 2021, 4 April 2022 to 1 November 2022)
- Ms Kat Theophanous MLA (Chair from 25 October 2021 to 24 March 2022)
- Mr Neale Burgess MLA (Deputy Chair)
- Ms Sarah Connolly MLA
- Ms Nina Taylor MLC
- Ms Sonja Terpstra MLC
- Mr David Morris MLC.

Following the dissolution of the 59th Parliament on 1 November 2022, the Committee was dissolved. The Committee was reformed for the 60th Parliament on 8 February 2023. On 24 February 2023, the following Members were appointed to the Subcommittee:

- Mr Iwan Walters MLA (Chair)
- Hon David Davis MLC (Deputy Chair)
- Ms Rachel Payne MLC
- Ms Sheena Watt MLC
- Mr Dylan Wight MLA.

⁴ Australian jurisdictions which examine both subordinate legislation and bills include the Australian Capital Territory, the Commonwealth, New South Wales, Queensland, Victoria and Western Australia.

1.4 Role of the Subcommittee

In Victoria, the Subordinate Legislation Act sets out the procedures for making subordinate legislation and sets out the Subcommittee's powers for scrutinising subordinate legislation. Pursuant to the Subordinate Legislation Act, the Subcommittee scrutinises:

- statutory rules within the meaning of 'statutory rule' contained in section 3 of the Subordinate Legislation Act;
- legislative instruments within the meaning of section 3 of the Subordinate Legislation Act; and
- State Environment Protection Policies and Waste Management Policies made under the *Environment Protection Act 1970* (EP Act).⁵

1.4.1 Scrutiny of statutory rules

Pursuant to section 3 of the Subordinate Legislation Act, statutory rules are:

- a regulation (other than one made by a local authority or by a person or body with jurisdiction limited to a district or locality) that has been made by the Governor in Council;
- a rule relating to a court or tribunal or the procedure, practice or costs of a court or tribunal; or
- an instrument or class of instrument that is deemed to be a statutory rule or rules by section 4(1)(a) of the Subordinate Legislation Act or by the authorising Act.

The Subcommittee scrutinises statutory rules to determine whether they comply with the legislative principles specified in the Subordinate Legislation Act. These principles require the Subcommittee to ensure that statutory rules do not unduly trespass on rights and freedoms and comply with the procedural and practical requirements of the Subordinate Legislation Act. As noted above, the Subcommittee does not comment on matters involving policy and its review focuses on the technical criteria contained in the Subordinate Legislation Act.

Under section 21 of the Subordinate Legislation Act, the Subcommittee scrutinises statutory rules to ensure that they:

- are within the powers of the authorising Act;
- do not, without clear and express authority have a retrospective effect, impose a tax, fee, fine, imprisonment or other penalty, purport to shift the onus of proof to a person accused of an offence, or provide for the sub-delegation of powers delegated by the authorising Act;
- are consistent with the general objectives of the authorising Act;
- do not make unusual or unexpected use of the powers conferred by the authorising Act having regard to the general objectives of the authorising Act;
- do not contain any matters which should be contained in an Act of Parliament rather than subordinate legislation;
- do not unduly trespass on rights and liberties of the person previously established by law;
- do not make rights and liberties of the person unduly dependent on administrative rather than judicial decisions;
- do not authorise or require any acts or practices which may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000*;

⁵ The Subcommittee also has responsibility for reviewing policies made under Part 3 of the EP Act. These policies include State Environment Protection Policies and Waste Management Policies. The Committee may report to Parliament where these policies are beyond power or do not comply with the provisions of the EP Act. Section 18D(3) provides that the Committee may report to Parliament where a policy: does not appear to be within the powers conferred by the EP Act; has been prepared in contravention of the EP Act, or contains any matter in contravention of the EP Act. The Subcommittee did not consider or report on any such policies during 2021 or 2022.

- do not authorise or require any acts or practices which may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2000*;
- are consistent with principles of justice and fairness;
- are not incompatible with the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006* (Charter of Human Rights and Responsibilities);
- do not require explanation as to form or intention;
- do not substantially or materially contravene the practical requirements of the Subordinate Legislation Act or the Subordinate Legislation Act 1994 Guidelines; and
- are not likely to result in administration and compliance costs which outweigh the benefits sought to be achieved.

The Subcommittee also ensures compliance with the procedural requirements of the Subordinate Legislation Act, including whether:

- all appropriate certificates have been received by the Subcommittee
- consultation is adequate and in particular whether appropriate organisations and individuals have been consulted
- certificates are dated and signed by the responsible Minister
- certificates contain all the required information
- the Regulatory Impact Statement (RIS) is adequate
- the statutory rule is exempted from the requirement to create a RIS under the appropriate category in the Subordinate Legislation Act and the exemption certificate is adequate
- all notice, gazettal and tabling requirements of the Subordinate Legislation Act have been complied with.

Detail about the Subcommittee's scrutiny of 2021 and 2022 statutory rules are set out in Chapter 2 and Chapter 3 respectively.

1.4.2 Scrutiny of legislative instruments

Since 2011, the Subcommittee has scrutinised legislative instruments.⁶ Legislative instruments are instruments that are legislative in character and made under an Act or statutory rule. Legislative instruments may encompass a range of types of instruments, including orders, guidelines, and standards. The Subordinate Legislation Act 1994 Guidelines (the Guidelines) state that 'an instrument will generally be considered to have 'legislative character' if it contains mandatory requirements with general application to undertake certain action(s), often accompanied by penalties or sanctions for non-compliance'.

The definition of 'legislative instrument' in section 3 of the Subordinate Legislation Act provides examples of instruments that are not legislative instruments, including:

- a statutory rule;
- a local law made under Part 5 of the *Local Government Act 1989*;
- a proclamation of commencement of an Act or any provision of an Act;
- a planning scheme or an amendment to a planning scheme under the *Planning and Environment Act 1987*;

6 The Subordinate Legislation Amendment Bill 2010 was introduced in August 2010. Amendments to the Subordinate Legislation Act came into effect on 1 January and 1 July 2011. The amendments relate to the scrutiny of legislative instruments and specifically inserted a new Part 3 into the Subordinate Legislation Act. The amendments essentially duplicate and extend the arrangements relating to the scrutiny of statutory rules to legislative instruments.

- an instrument of purely administrative character;⁷ or
- a prescribed instrument or prescribed class of instruments.

The power to prescribe an instrument to be a legislative instrument, not to be a legislative instrument, or to be exempt from provisions of the Subordinate Legislation Act is set out in section 4A of the Subordinate Legislation Act. Pursuant to section 4A, the Subordinate Legislation (Legislative Instruments) Regulations 2021 defines prescribed legislative instruments, instruments prescribed to not be legislative instruments and exempt legislative instruments.

The Committee's power to review legislative instruments is set out in section 25A of the Subordinate Legislation Act. Under section 25A, the Subcommittee scrutinises legislative instruments to ensure that they:

- appear to be within the powers conferred by the authorising Act or the statutory rule under which it is made
- do not, without clear and express authority being conferred by the authorising Act or the statutory rule under which it is made, have a retrospective effect, impose any tax, fee, fine, imprisonment or other penalty, purport to shift the legal burden of proof to a person accused of an offence, or provide for the subdelegation of powers delegated by the authorising Act or the statutory rule under which it is made
- are not incompatible with the human rights set out in the Charter of Human Rights and Responsibilities
- have not been prepared in contravention of any of the provisions of Subordinate Legislation Act or of the Guidelines with respect to legislative instruments and the contravention is of a substantial or material nature.

The Subcommittee also ensures compliance with the procedural requirements of the Subordinate Legislation Act, such as the preparation of a Regulatory Impact Statement (if required) and tabling within required timeframes.

Detail about the Subcommittee's scrutiny of 2021 and 2022 legislative instruments are set out in Chapter 4 and Chapter 5 respectively.

1.5 Operation of the Subcommittee

1.5.1 Meetings of the Subcommittee

The Subcommittee meets regularly to examine and review subordinate legislation. Meetings of the Subcommittee are not open to the public. However, the Subcommittee may invite members of the public or representatives from various organisations or government departments and agencies to address it at meetings. At the meetings, the Senior Research Officer presents the Subcommittee with written and verbal advice in respect of each statutory rule or legislative instrument. The Subcommittee members discuss each statutory rule and legislative instrument and address any issues or concerns. The Subcommittee assesses whether there has been compliance with the Subordinate Legislation Act in respect of a statutory rule or legislative instrument.

1.5.2 Reporting to the Parliament

Where the Subcommittee is dissatisfied with any matters or requires clarification, the Subcommittee corresponds with the responsible Minister to highlight its concerns. In the first instance, the Subcommittee will seek an explanation or amendment of the statutory rule or legislative instrument. When its concerns are satisfied and it has concluded its examination of the statutory rule or legislative instrument, the

⁷ Section 3(2) of the Subordinate Legislation Act provides examples of instruments of purely administrative character, including an instrument of delegation, an evidentiary certificate, or an instrument which has the sole purpose of giving notice of the making of another instrument. The Subordinate Legislation Act 1994 Guidelines provide additional guidance in relation to the threshold decision as to whether an instrument is of a legislative or administrative character.

Subcommittee makes a recommendation to the full Committee to publish its correspondence in the *Alert Digest*.⁸

If the Subcommittee does not receive a satisfactory explanation, it may prepare a report to Parliament. This report is submitted to all Members of the Committee for formal approval and adoption. The Subcommittee has all the powers and privileges of the full Committee. However, it cannot report directly to Parliament. The Committee may adopt or reject the Subcommittee's report or part of it or make any changes it deems necessary.

A report to Parliament may include a recommendation that a statutory rule or legislative instrument be amended or disallowed in whole or in part. Alternately a report provided by way of information to the Parliament may simply outline the Committee's concerns. As a statutory rule or legislative instrument has already commenced operation by the time it is scrutinised by the Subcommittee, the power to recommend disallowance is only used in exceptional circumstances. Generally, such a power would be used where all other efforts to resolve the issue have failed.

Where the Committee decides to report to Parliament it may also recommend that a statutory rule or legislative instrument be suspended whilst Parliament considers the issues contained in the report. Such a course may be undertaken in the interests of justice and fairness. When statutory rules or legislative instruments are suspended in this manner they are deemed not to have been made. People are not required to comply with them during the period of suspension.

1.5.3 Use of the disallowance procedure

Disallowance is the primary procedural mechanism through which the Parliament may exercise control over subordinate legislation. Disallowance has the effect of revoking the statutory rule or legislative instrument.

Pursuant to sections 23 and 25C of the Subordinate Legislation Act, any Member of either House of Parliament may give notice of a disallowance motion within 18 sitting days of the tabling of the statutory rule or legislative instrument in that House if:

- the authorising Act under which the statutory rule or legislative instrument is made states that it is subject to disallowance; or
- the Committee has tabled a report under section 21 or 25A of the Subordinate Legislation Act recommending that the statutory rule or legislative instrument be disallowed in whole or in part; or
- there was a failure to comply with section 15(1), 15(1A) or 16B(1) of the Subordinate Legislation Act and the Committee has reported that failure to each House of the Parliament.

Disallowance motions may relate to a statutory rule or legislative instrument in whole or in part. Disallowance will not be effective until that House passes a disallowance resolution within 12 sitting days of the disallowance notice.

The Committee must also comply with the 18 sitting day requirement if it is to make a report to Parliament recommending disallowance. This means that the Subcommittee must review and consider all statutory rules and legislative instruments within strict time limits.

The Subcommittee did not make any recommendations for disallowance in relation to the 2021 and 2022 subordinate legislation.

⁸ For a full list of copies of the *Alert Digest* see the Committee's website at: <<https://www.parliament.vic.gov.au/sarc/article/4124>>.

Chapter 2

Review of Statutory Rules in 2021

2.1 Overview

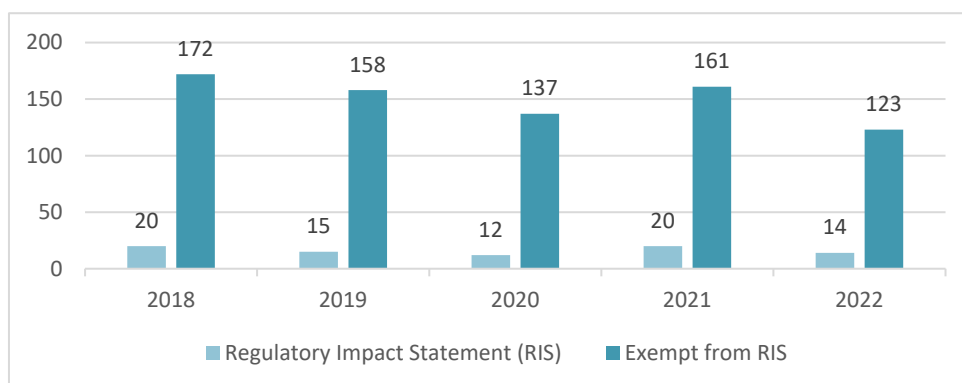
The Subcommittee scrutinises statutory rules to determine whether they comply with the legislative principles specified in the *Subordinate Legislation Act 1994* (the Subordinate Legislation Act). These principles are set out in full in Chapter 1.⁹ During 2021, the Subcommittee scrutinised 181 statutory rules.

This chapter provides an overview of the Subcommittee’s scrutiny of statutory rules during 2021 and outlines the key issues arising from these statutory rules.

2.2 Statistics

The 2021 Statutory Rule Series comprised of 181 statutory rules. Of those statutory rules, 20 were accompanied by a Regulatory Impact Statement (RIS) and 161 were exempt from the RIS process. Additionally, the Subcommittee considered one National Law Regulation, and two Occupational Health and Safety Regulations. The number of statutory rules in the 2021 Series was broadly consistent with recent years. Figure 1 below outlines the proportion of statutory rules accompanied by RISs or exempt from the RIS process between 2018 and 2022.¹⁰

Figure 1: Proportion of statutory rules exempt from Regulatory Impact Statement process 2018-2022



2.2.1 Regulatory Impact Statements

Unless an exemption applies,¹¹ section 7 of the Subordinate Legislation Act requires all statutory rules to undergo the RIS process. As outlined in the Victorian Guide to Regulation, the primary objectives of a RIS are to ensure:

- the regulation is only implemented where there is a justified need;
- only the most efficient forms of regulation are adopted; and
- there is an adequate level of public consultation in the development of subordinate legislation.

Where a RIS has been prepared, the Subcommittee examines certain procedural issues, including whether:

- all appropriate certificates have been received by the Subcommittee;

⁹ See section 1.4.1 of Chapter 1.

¹⁰ Note information relating to the 2022 statutory rules is included in Chapter 3.

¹¹ Exemptions apply under sections 8 and 9 of the *Subordinate Legislation Act 1994*.

- consultation is adequate and in particular whether appropriate organisations and individuals have been consulted;
- certificates are dated and signed by the responsible Minister;
- certificates contain all the required information; and
- the RIS is adequate, including:
 - whether it properly explains the nature and extent of the problem to be dealt with by the new regulation;
 - the extent to which alternatives have been considered and the appropriateness of those alternatives; and
 - the costs and benefits of the proposed statutory rule and whether the benefits outweigh the costs.

In the 2021 Series, 20 statutory rules were accompanied by RISs. One statutory rule was accompanied by a RIS which only addressed certain provisions. In addition, it was accompanied by a section 8(1)(a) exemption certificate on the basis that one provision would not impose a significant economic or social burden on a sector of the public.¹²

The RISs for the 2021 statutory rule series were drafted in plain English, and clearly set out any new regulatory requirements to be created by the statutory rule (including any alternative options). The Subcommittee appreciates the work undertaken by the Departments to complete this process in a comprehensive and timely manner.

2.2.2 Exemptions from the Regulatory Impact Statement process

As noted above, all statutory rules must be prepared with a RIS, unless they are exempted from doing so under section 8 or 9 of the Subordinate Legislation Act.¹³ Where a statutory rule has been exempted from the RIS process, some of the procedural requirements the Subcommittee examines include whether:

- the statutory rule is correctly exempted or whether it should have been made with a RIS;
- the statutory rule is exempted under the appropriate category in the Subordinate Legislation Act;
- the exemption or exception certificate specifies the section under which the exemption was granted;
- the exemption certificate is signed and dated by the responsible Minister;
- the exemption certificate contains reasons for granting the exemption as required by section 9(2) of the Subordinate Legislation Act; and
- a statutory rule exempted by a Premier's certificate sunsets within twelve months.

In the 2021 Statutory Rule Series, 151 statutory rules were accompanied by a certificate exempting them from the requirement to prepare a RIS. Ten statutory rules were exempt from the requirement by their enabling legislation. Table 1 below outlines the spread of exemptions from the RIS process in the 2021 Series.

¹² SR No. 137 – Occupational Health and Safety Amendment (Crystalline Silica) Regulations 2021.

¹³ *Subordinate Legislation Act 1994*, section 7.

Table 1: Exemptions from the Regulatory Impact Statement process in the 2021 series

| Section | Exemption | Number Exempt |
|---------------------------|---|---------------|
| 8(1)(a) and RIS | Would not impose significant economic or social burden and Regulatory Impact Statement | 1 |
| 8(1)(a) | Would not impose significant economic or social burden | 78 |
| 8(1)(a) and 8(1)(b) | Would not impose significant economic or social burden and is a rule which relates only to a court or tribunal | 1 |
| 8(1)(a) and 8(1)(c) | Would not impose significant economic or social burden and fundamentally declaratory or machinery in nature | 7 |
| 8(1)(a), (c), (d) and (f) | Would not impose a significant economic or social burden; and is fundamentally declaratory or machinery in nature; and only increase fees in respect of a financial year by an amount not exceeding the annual rate approved by the Treasurer; and are required under a national uniform legislation scheme and an assessment of costs and benefits has been undertaken under that scheme | 1 |
| 8(1)(b) | Is a rule which relates only to a court or tribunal | 28 |
| 8(1)(c) | Fundamentally declaratory or machinery in nature | 19 |
| 8(1)(d) | Only increase Fees in Respect of a Financial Year by an Amount not Exceeding the Annual Rate Approved by the Treasurer | 7 |
| 8(1)(e)(iii) | Extension of time regulation | 1 |
| 8(1)(f) | Part of national uniform legislation scheme | 1 |
| 9 | Premier's certificate – Special circumstances | 7 |
| N/A | Exempt by enabling legislation | 9 |
| N/A | National Law Regulations | 1 |
| Total | | 161 |

2.3 Ministerial correspondence

The Subcommittee did not make any reports to Parliament in relation to statutory rules from the 2021 Series. However, the Subcommittee sought further clarification in relation to four statutory rules. In each instance, the Subcommittee wrote to the responsible Minister or relevant entity and received satisfactory responses. The Subcommittee appreciates these responses. The Subcommittee sought responses in relation to the following statutory rules:

- SR No. 25 – Education and Training Reform Amendment Regulations 2021
- SR No. 43 – Public Health and Wellbeing Amendment (QR Reporting Infringement) Regulations 2021
- SR No. 47 – Environment Protection Regulations 2021
- SR No. 92 – Environment Protection Amendment (Wind Turbine Noise) Regulations 2021.

Generally, the Subcommittee considers that this area of regulation review is working well. The Subcommittee wishes to thank department officers and ministerial advisers for the prompt and friendly manner with which they have aided the Subcommittee with its queries.

However, the Subcommittee noted some increased delays in providing responses to its queries during 2021. The Subcommittee notes that delays to provided responses may limit its ability to finalise consideration of the statutory rule within the disallowance period. The Subcommittee will continue to collaborate with Ministers and Departments to ensure the timely resolution of technical scrutiny issues in the future.

2.4 Key scrutiny issues

Overall, the Subcommittee observed fewer technical scrutiny issues arising from statutory rules from the 2021 Series compared with previous years. The following section provides an overview of the key issues arising from the 2021 Series. The Subcommittee will continue to monitor these issues in the future.

2.4.1 Timeliness of documentation

Section 15A of the Subordinate Legislation Act requires the responsible Minister to ensure that a copy of required documentation be given to the Subcommittee within 10 working days after the making of the statutory rule.¹⁴ While failure to comply with this requirement does not affect the validity of the statutory rule,¹⁵ the Subcommittee notes that this failure undermines its ability to consider the statutory rules within the disallowance timeframe. The Subcommittee considers that timely delivery of these documents is an important factor in facilitating effective parliamentary oversight of subordinate legislation.

Documentation relating to 14 statutory rules from the 2021 Series were provided to the Subcommittee outside the legislative timeframe.¹⁶

In March 2021, the Subcommittee wrote to departmental Secretaries to note a delay in the reception of statutory rules and associated documentation. The Subcommittee requested that all documentation be provided electronically. The Subcommittee received responses from two Departments.¹⁷ The Subcommittee thanks these Departments for their responses.

In general, the Subcommittee observed increased promptness in providing documentation within the legislative timeframes compared to the previous year.¹⁸ The Subcommittee thanks Departments for their responsiveness to the Subcommittee's requests.

2.4.2 Compliance with publishing requirements

Section 11(1) of the Subordinate Legislation Act requires that, if a RIS has been prepared, the responsible Minister must ensure that a notice is published in the Government Gazette and a daily newspaper circulating throughout Victoria.¹⁹ The notice must invite public comment or submissions no less than 28 days after the notice is published.

Section 12(1) of the Subordinate Legislation Act requires the responsible Minister to ensure that a notice advising of the decision to make or not to make the proposed statutory rule is published in the Government Gazette and a daily newspaper circulating generally throughout Victoria. Failure to comply with this requirement does not affect the operation or effect of the statutory rule; however, the Committee may report the failure to the Parliament.

¹⁴ *Subordinate Legislation Act 1994*, section 15A(2).

¹⁵ *Subordinate Legislation Act 1994*, section 15A(3).

¹⁶ These included: SR No. 7 – Subordinate Legislation (Severe Substance Dependence Treatment Regulations 2011) Extension Regulations 2021; SR No. 10 – COVID-19 Omnibus (Emergency Measures)(Commercial Leases and Licences) Amendment Regulations 2021; SR No. 15 – Public Health and Wellbeing Further Amendment (Infringement Penalties) Regulations 2021; SR No. 21 – Dangerous Goods Amendment (Transport by Road or Rail) Regulations 2021; SR No. 31 – First Home Owner Grant Regulations 2021; SR No. 76 – Zero and Low Emission Vehicle Distance-based Charge Regulations 2021; SR No. 88 – Occupational Health and Safety Amendment (Infringements and Miscellaneous Matters) Regulations 2021; SR No. 93 – Occupational Health and Safety (COVID-19 Incident Notification) Regulations 2021; SR No. 129 – Public Health and Wellbeing Amendment (Tiered Infringement Offences) Regulations 2021; SR No. 154 – Service Victoria (Transfer of Births, Deaths and Marriages Identity Verification Functions) Further Amendment Regulations 2021; SR No. 156 – Public Health and Wellbeing Amendment (Pandemic Infringement Offences) Regulations 2021; SR No. 157 – National Law - Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021; SR No. 175 – Public Health and Wellbeing Amendment (Service Victoria) Regulations 2021; SR No. 177 – Gender Equality Amendment Regulations 2021.

¹⁷ The Subcommittee received response from the Department of Jobs, Precincts and Regions and the Department of Premier and Cabinet.

¹⁸ In 2020, documentation regarding 21 statutory rules was provided to the Subcommittee outside of the legislative timelines.

¹⁹ Note that in 2022 this requirement was updated. The *Regulatory Legislation Amendment (Reform) Act 2022* inserted new Part 11 into the *Interpretation of Legislation Act 1984*. New section 38M(1)(a) provides that if an Act, a statutory rule or any other subordinate instrument requires notice (however described) to be published in a print newspaper circulating generally in Victoria that requirement is taken to have been met, for all purposes, if the notice is published on an approved alternative publication Internet site. On 31 July 2022, the Assistant Treasurer declared <www.publicnotices.vic.gov.au> to be an approved alternative publication Internet site from 31 July 2022.

While a failure to comply with section 12(1) of the Subordinate Legislation Act does not affect the operation or effect of a statutory rule, the Subcommittee notes that there is no similar exception for the failure to comply with section 11(1). Accordingly, the Subcommittee notes that the failure to comply with section 11 may affect the operation or effect of a statutory rule.

Example: SR No. 92 – Environment Protection Amendment (Wind Turbine Noise) Regulations 2021

SR No. 92 – Environment Protection Amendment (Wind Turbine Noise) Regulations 2021 (the Wind Turbine Regulations) amend the Environment Protection Regulations 2021 to specify matters in relation to wind turbine noise from wind energy facilities.

Subcommittee consideration

The Subcommittee considered the Wind Turbine Regulations at a meeting on 11 October 2021. The Subcommittee noted that notices were not published in the Government Gazette or a daily newspaper circulating throughout Victoria, as required by sections 11 and 12 of the Subordinate Legislation Act.

Minister’s response

The Minister for Energy, Environment and Climate Change wrote to the Subcommittee on 6 October 2021 to inform the Subcommittee that, due to an oversight, the notices were not issued. The Minister noted:

- To avoid doubt about the validity of the Wind Turbine Regulations, they would be repealed and remade.
- First, the Wind Turbine Regulations would be remade for a period of 12 months (and accompanied by a section 9 Premier’s exemption certificate) and then fully remade with a RIS at the end of that period.
- A review had been undertaken and controls would be put in place within the Department of Environment, Land, Water and Planning to ensure that the error would not occur again.

The Regulations were repealed and remade in October 2021 by SR No. 132 – Environment Protection Amendment (Interim) Regulations 2021. As indicated in the Minister’s response, these Regulations were made as an interim measure for a 12-month period, whilst new regulations and an accompanying RIS could be prepared again with the correct notices and documentation. The Wind Turbine Regulations were fully remade in October 2022 by SR No. 120 – Environment Protection Amendment (Wind Turbine Noise) Regulations 2022. The Subcommittee considered and approved these new Regulations at a meeting on 10 May 2022.²⁰

The Subcommittee thanks the Minister for her correspondence and for her initiative in ensuring the Regulations were remade with the correct documentation.

2.4.3 Consultation

Section 6 of the Subordinate Legislation Act sets out the requirements relating to consultation regarding statutory rules. The section provides that the responsible Minister must ensure that where the Subordinate Legislation Act 1994 Guidelines (the Guidelines) require consultation:

- a) there is consultation in accordance with the Guidelines with any other Minister whose area of responsibility may be affected by a proposed statutory rule so as to avoid any overlap or conflict with any other existing or proposed statutory rule or legislation;
- b) there is consultation in accordance with the Guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed statutory rule so that the need for, and the scope of, the proposed statutory rule is considered;
- c) a certificate of consultation in accordance with the Guidelines is issued for that statutory rule.

²⁰ Note the Subcommittee sought some advice in relation to the new Regulations, SR No. 120 – Environment Protection Amendment (Wind Turbine Noise) Regulations 2022 regarding an unrelated scrutiny issue. See section 3.4.4 in Chapter 3 for further information.

Pursuant to sections 15 and 15A of the Subordinate Legislation Act, consultation certificates made for the purposes of section 6(c) are required to be tabled in the Parliament and provided to the Committee. However, failure to comply with these requirements does not affect the operation or effect of the statutory rule (though the Committee may report the failure to each House of the Parliament).²¹

Paragraph 135 the Guidelines states the following in relation to the consultation requirements for statutory rules exempt from making a RIS under section 8(1)(a) of the Subordinate Legislation Act:

Initial consultation should be undertaken under section 6(b) for the responsible Minister to obtain sufficient evidence to form a view as to whether the proposed statutory rule imposes a significant burden.

The Guidelines states that initial consultation ‘occurs in the early stages of policy development. This ensures the responsible Minister identifies other Ministers, agencies and stakeholders who may be affected by the proposed changes and considers the impact the proposed statutory rule or legislative instrument is likely to have on those groups...’.²²

Paragraph 85 of the Guidelines states that ‘[t]he responsible Minister should determine the level of initial consultation required depending on the nature of the proposed statutory rule or legislative instrument’. In addition, paragraph 89 of the Guidelines states the following:

The responsible Minister must ensure that where these Guidelines require initial consultation, a certificate of consultation is issued (see sections 6(c) and 12C(c) of the SL Act). A consultation certificate should provide details of who was consulted.

The appropriate level of consultation will depend on the nature of the statutory rule. However, in all cases, the responsible Minister must comply with the consultation requirements under the Subordinate Legislation Act. This places the final responsibility on the responsible Minister to ensure that appropriate consultation takes place and includes all those affected by a proposed statutory rule.

The Guidelines provide assistance with the requirements of the consultation process. However, on occasions it may be difficult for departmental and agency officers to determine the type of consultation which should take place. It is the view of the Subcommittee that consultation take place with all those affected by a statutory rule.

The Subcommittee considers it is important for consultation certificates to provide details of all those consulted. The Subcommittee’s experience is that the consultation process in relation to statutory rules has been thorough and appropriate during 2021.

Example: SR No. 43 – Public Health and Wellbeing Amendment (QR Reporting Infringement) Regulations 2021

SR No. 43 – Public Health and Wellbeing Amendment (QR Reporting Infringement) Regulations 2021 (the QR Reporting Regulations) prescribed an infringement penalty for businesses that fail to comply with mandatory electronic record keeping requirements and set the penalty at 10 penalty units.

Subcommittee consideration

The Subcommittee considered the QR Reporting Regulations at a meeting on 16 August 2021. While it approved the Regulations, the Subcommittee noted some technical scrutiny concerns regarding the adequacy of the consultation certificate, which did not provide information about whether consultation had been undertaken with a sector of the public on which a significant economic or social burden may be imposed. In light of this omission, the Subcommittee wrote to the Minister for Health on 17 August 2021 to request information relating to the application of section 6(b) of the Subordinate Legislation Act and the Guidelines.

Minister’s response

The Minister for Health responded on 28 July 2022. The Minister’s response drew the Subcommittee’s attention to paragraph 130 of the Guidelines which states that ‘statutory rules or legislative instruments which reduce

²¹ See *Subordinate Legislation Act 1994*, sections 15(2) and 15A(3).

²² *Subordinate Legislation Act 1994 Guidelines*, p. 20.

existing fees or charges payable usually do not impose a significant burden on a sector of the public'. Noting this, the Minister stated the QR Reporting Regulations prescribed a penalty of 10 penalty units (\$1,652) for businesses that do not comply with mandatory electronic record-keeping requirements, against a backdrop of an existing penalty of 60 penalty units (\$9,913) for businesses that do not comply with any other requirement in a direction. The Minister noted that the imposition of a penalty is not considered to impose any burden, particularly noting that it had the effect of reducing the fees payable.

Accordingly, the Minister stated that it was considered that no significant burden was imposed. On this basis, no specific statement referring to public consultation was included in the consultation certificate. The Minister considered that, noting this consideration, all relevant sections of the Subordinate Legislation Act and Guidelines had been complied with.

The Subcommittee thanks the Minister and relevant departmental officers for the detailed and comprehensive response.

2.4.4 Human rights scrutiny

The Subcommittee scrutinises statutory rules against section 21(ha) of the Subordinate Legislation Act to ensure that it is compatible with the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006* (the Charter of Human Rights and Responsibilities). Human rights are set out in Part 2 of the Charter of Human Rights and Responsibilities and include the following rights:

- recognition and equality before the law;
- right to life;
- protection from torture and cruel, inhuman or degrading treatment;
- freedom from forced work;
- freedom of movement;
- privacy and reputation;
- freedom of thought, conscience, religion and belief;
- freedom of expression;
- peaceful assembly and freedom of association;
- protection of families and children; and
- taking part in public life.

In performing this function, the Subcommittee must consider the human rights certificate provided by the responsible Minister under section 12A of the Subordinate Legislation Act in respect of each statutory rule. Section 12A provides:

- (1) The responsible Minister must ensure that a human rights certificate is prepared in respect of a proposed statutory rule, unless the proposed statutory rules is exempted under sub-section (3).
- (2) A human rights certificate must—
 - (a) certify whether, in the opinion of the responsible Minister, the proposed statutory rule does or does not limit any human right set out in the Charter of Human Rights and Responsibilities; and
 - (b) if it certifies that, in the opinion of the responsible Minister, the proposed statutory rule does limit a human right set out in the Charter of Human Rights and Responsibilities, set out—
 - (i) the nature of the human right limited; and
 - (ii) the importance of the purpose of the limitation; and
 - (iii) the nature and extent of the limitation; and
 - (iv) the relationship between the limitations and its purpose; and
 - (v) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

- (3) Subsection (1) does not apply if the responsible Minister certifies in writing that in his or her opinion–
- (a) The proposed statutory rule is a rule which relates only to a court or tribunal or the procedure, practice or costs of a court or tribunal; or
 - (b) The proposed statutory rule only –
 - (i) prescribes under section 4(1)(a) an instrument or class of instrument to be a statutory rule; or
 - (ii) exempts under section 4(1)(b) an instrument or class of instrument from the operation of this Act; or
 - (iia) prescribes under section 4A(1)(a) an instrument or a class of instrument for the purposes of paragraph (h) of the definition of legislative instrument; or
 - (iib) prescribes under section 4A(1)(b) an instrument or a class of instrument to be, or not to be, a legislative instrument or class of legislative instrument for the purposes of this Act or any specified provision or provisions of this Act; or
 - (c) the proposed statutory rule is an extension regulation.

When assessing the adequacy of a human rights certificate, the Subcommittee must consider whether there is any limitation on any human right set out in the Charter of Human Rights and Responsibilities and, if so:

- the nature of the human right limited
- the importance of the purpose of the limitation
- the nature and extent of the limitation
- the relationship between the limitation and its purpose; and
- any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

Example: SR No. 25 – Education and Training Reform Amendment Regulations 2021

SR No. 25 – Education and Training Reform Amendment Regulations 2021 (ETRA Regulations) amended the Education and Training Reform Regulations 2017 (the Principal Regulations) to prescribe minimum standards for the registration of school boarding premises, and to prescribe the procedures and requirements for the registration of school boarding premises.

Subcommittee consideration

The Subcommittee considered the ETRA Regulations at a meeting on 21 June 2021. The Subcommittee was concerned that the ETRA Regulations may limit the right to freedom from discrimination under section 8 of the Charter of Human Rights and Responsibilities. Accordingly, the Subcommittee wrote to the Minister for Education on 24 June 2021. The Subcommittee noted that:

- Regulation 15 requires that, in a non-Government school boarding premises, every responsible person must be a ‘fit and proper person’. New clause 7(5)(b) provides that a ‘fit and proper person’ is, among other things, a responsible person who ‘has not been found guilty of an offence which is, or which would if committed in Victoria be, an indictable offence’.
- New regulation 13 gives the Victorian Registration and Qualifications Authority (the Authority) the ability to exempt a person from the requirement in clause 7(5)(b) if the Authority is of the opinion that it would not be appropriate to exclude that person from being involved in the conduct of the school boarding premises.
- Section 8 of the Charter of Human Rights and Responsibilities provides for protection against discrimination and the *Equal Opportunity Act 2010* sets out certain protected attributes.
- Regulations 13 and 15 may limit section 8 rights in two ways:
 - 1) Discriminating on the basis of a criminal record (especially a non-serious criminal record), which may indirectly discriminate on the basis of protected Charter attributes; and

- 2) On or before 1 December 2021, the list of protected attributes would expand to include ‘a spent conviction’ under the *Spent Convictions Act 2021* (Spent Convictions Act). The Spent Convictions Act is ambiguous about whether agencies required by statute to consider past convictions are permitted to consider spent convictions or not.

The Subcommittee sought clarification about whether clause 7(5)(b) applied to spent convictions, and whether there were less restrictive alternatives reasonably available to ensure the probity of the management of the provision of non-government school boarding services.

Minister’s response

The Minister responded to the Subcommittee’s query in a letter on 21 July 2021. The Minister stated that the ETRA Regulations would not result in any direct or indirect discrimination on the basis of spent convictions. The Minister stated:

- The ETRA Regulations do not indirectly discriminate against any person on the basis of an existing protected attribute.
- Clause 7(5)(b) would not apply to spent convictions as defined in the Spent Convictions Act and, as such, persons with spent convictions will not be treated unfavourably because of that attribute and therefore no discrimination will occur.
- Any potential limitation to section 8 Charter of Human Rights and Responsibilities rights would be reasonably justified, noting the importance, nature and extent of the fitness and propriety requirements in clause 7(2) of Schedule 4A.
- A less restrictive means is better achieved through the availability of the exemption, as that provides the VRQA with the ability to adopt a less restrictive requirement, on a case by case basis. This provides more flexibility.
- The ETRA Regulations are less restrictive than some existing eligibility requirements in other legislative schemes for appointments to institutions or organisations.

The Subcommittee thanks the Minister for this comprehensive and detailed response.

Example: SR No. 47 – Environment Protection Regulations 2021

SR No. 47 – Environment Protection Regulations 2021 (the EP Regulations) prescribe information that must be included in an application for a permission (which means a licence, permit or registration) for the purposes of section 50(1)(e) of the *Environment Protection Act 2017*. Regulation 17(2)(a)(i) prescribed a declaration as to whether or not the applicant and, if the applicant is a body corporate, any officer of the applicant or of another body corporate that has or had one or more officers in common with the applicant or any family member of the applicant has ever been found guilty of any offence, or entered into an undertaking, under any relevant environment protection legislation and, if so, details of the findings of guilt.

Subcommittee’s consideration

The Subcommittee considered the EP Regulations at a meeting on 16 August 2021. The Subcommittee noted that that the explanatory memorandum and certificates issued under the Subordinate Legislation Act in relation to the EP Regulations did not discuss spent convictions.

Accordingly, on 17 August 2021, the Subcommittee wrote to the Minister for Energy, Environment and Climate Change to request additional information in relation to whether or not regulation 17(2)(a)(i) would apply to spent convictions when the Spent Convictions Act commenced.

Minister’s response

The Minister responded in a letter dated 30 September 2021. The Minister’s response clarified that regulation 17(1)(a)(i) did not apply to spent convictions and a licence or permit applicant would not be required to disclose the existence of, or information relating to, a spent conviction in a licence or permit application. The Environment Protection Agency would also not be permitted to request this information.

The Subcommittee thanks the Minister for this response.

Chapter 3

Review of Statutory Rules in 2022

3.1 Overview

The Subcommittee scrutinises statutory rules to determine whether they comply with the legislative principles specified in the *Subordinate Legislation Act 1994* (the Subordinate Legislation Act). These principles are set out in full in Chapter 1.²³ During 2022, the Subcommittee scrutinised 137 statutory rules.

This chapter provides an overview of the Subcommittee's scrutiny of statutory rules during 2022 and outlines the key issues arising from these statutory rules.

3.2 Statistics

The 2022 Statutory Rule Series comprised of 137 statutory rules. Of those statutory rules, 14 were accompanied by a Regulatory Impact Statement (RIS) and 123 were exempt from the RIS process. Additionally, the Subcommittee considered two National Law Regulations, and one Occupational Health and Safety Regulations. The number of statutory rules in the 2022 Series was slightly less than 2021. However, the number was broadly consistent with previous years.²⁴

3.2.1 Regulatory Impact Statements

Unless an exemption applies,²⁵ section 7 of the Subordinate Legislation Act requires all statutory rules to undergo the RIS process. See Chapter 2 for a detailed overview of the Subcommittee's general expectations regarding RISs.

In the 2022 Series, 14 statutory rules were accompanied by RISs.²⁶ The RISs for the 2022 statutory rule series were drafted in plain English, and clearly set out any new regulatory requirements to be created by the statutory rule (including any alternative options). The Subcommittee appreciates the work undertaken by the Departments to complete this process in a comprehensive and timely manner.

3.2.2 Exemptions from the Regulatory Impact Statement process

As noted above, all statutory rules must be prepared with a RIS, unless they are exempted from doing so under section 8 or 9 of the Subordinate Legislation Act.²⁷ See Chapter 2 for some of the procedural requirements the Subcommittee examines in relation to statutory rules exempt from the RIS process.

In the 2022 Statutory Rule Series, 118 statutory rules were accompanied by a certificate exempting them from the requirement to prepare a RIS. Five statutory rules were exempt from the requirement by their enabling legislation. Table 2 below outlines the spread of exemptions from the RIS process in the 2022 Series.

²³ See section 1.4.1 of Chapter 1.

²⁴ See Figure 1 section 2.2 of Chapter 2 for more information about statistics from 2018 to 2022.

²⁵ Exemptions apply under sections 8 and 9 of the *Subordinate Legislation Act 1994*.

²⁶ The following statutory rules were accompanied by Regulatory Impact Statements: SR No. 9 – Births, Deaths and Marriages Registration (Fees) Amendment Regulations 2022; SR No. 15 – Guardianship and Administration (Fees) Regulations 2022; SR No. 29 – Gas Safety (Gas Installation) Amendment (Type A Appliances) Regulations 2022; SR No. 41 – Dangerous Goods (Explosives) Regulations 2022; SR No. 64 – Gas Safety (Gas Installation) Amendment Regulations 2022; SR No. 78 – Juries (Fees) Regulations 2022; SR No. 79 – Magistrates' Court (Fees) Regulations 2022; SR No. 85 – Environment Protection Amendment (Banning Single-Use Plastic Items) Regulations 2022; SR No. 86 – Environment Protection Amendment (Waste Tyres-Silage Production) Regulations 2022; SR No. 94 – Circular Economy (Waste Reduction and Recycling)(Container Deposit Scheme) Regulations 2022; SR No. 97 – Mineral Resources (Sustainable Development)(Mineral Industries) Amendment Regulations 2022; SR No. 103 – Electricity Safety (Registration and Licensing) Amendment Regulations 2022; SR No. 115 – Dangerous Good (Storage and Handling) Regulations 2022; and SR No. 120 – Environment Protection Amendment (Wind Turbine Noise) Regulations 2022.

²⁷ *Subordinate Legislation Act 1994*, section 7.

Table 2: Exemptions from the Regulatory Impact Statement process in the 2022 series

| Section | Exemption | Number Exempt |
|---------------------------|---|---------------|
| 8(1)(a) | Would not impose significant economic or social burden | 74 |
| 8(1)(a) and 8(1)(c) | Would not impose significant economic or social burden and fundamentally declaratory or machinery in nature | 8 |
| 8(1)(a) and 8(1)(f) | Would not impose significant economic or social burden and part of national uniform legislation scheme | 1 |
| 8(1)(b) | Is a rule which relates only to a court or tribunal | 14 |
| 8(1)(c) | Fundamentally declaratory or machinery in nature | 11 |
| 8(1)(d) and 8(1)(f) | Only increases Fees in respect of a Financial Year by an amount not exceeding the Annual Rate Approved by the Treasurer and part of National Uniform Legislation Scheme | 1 |
| 8(1)(e)(iii) | Extension of time regulation | 6 |
| 8(1)(e)(iv), (v) and (vi) | Prescribes under section 4A(1)(a), 4A(1)(b) or 4A(1)(c) an instrument to be a legislative instrument, to not be a legislative instrument, or to be exempt | 1 |
| 9 | Premier's certificate – Special circumstances | 2 |
| N/A | Exempt by enabling legislation | 3 |
| N/A | National Law Regulations | 2 |
| Total | | 123 |

3.3 Ministerial correspondence

The Subcommittee did not make any reports to Parliament in relation to statutory rules from the 2022 Series. However, the Subcommittee sought further clarification in relation to five statutory rules. In each instance, the Subcommittee wrote to the responsible Minister or relevant entity and received satisfactory responses to most of the issues. The Subcommittee appreciates these responses. The Subcommittee sought responses in relation to the following statutory rules:

- SR No. 11 – Relationships (Fees) Amendment Regulations 2022
- SR No. 41 – Dangerous Goods (Explosives) Regulations 2022
- SR No. 76 – Forests (Forest Firefighters Presumptive Rights Compensation) Regulations 2022
- SR No. 115 – Dangerous Good (Storage and Handling) Regulations 2022
- SR No. 120 – Environment Protection Amendment (Wind Turbine Noise) Regulations 2022.

Additionally, the Subcommittee wrote to the responsible Minister to draw attention to one statutory rule, SR No. 70 – Livestock Management Amendment (Animal Activism) Regulations 2022. However, the Subcommittee did not request a response.

Generally, the Subcommittee considers that this area of regulation review is working well. The Subcommittee wishes to thank department officers and ministerial advisers for the prompt and friendly manner with which they have aided the Subcommittee with its queries.

3.4 Key scrutiny issues

Similar to 2021, the Subcommittee continued to observe a decline in technical scrutiny issues arising from statutory rules from the 2022 Series compared to previous years. The following section provides an overview of the key issues arising from the 2022 Series. The Subcommittee will continue to monitor these issues in the future.

3.4.1 Timeliness of documentation

As noted in Chapter 2, section 15A of the Subordinate Legislation Act requires the responsible Minister to ensure that a copy of required documentation be given to the Subcommittee within 10 working days after the making of the statutory rule.²⁸ The Subcommittee considers that timely delivery of these documents is an important factor in facilitating effective parliamentary oversight of subordinate legislation.

Documentation relating to eight statutory rules from the 2022 series were provided to the Subcommittee outside the legislative timeframe.²⁹

In general, the Subcommittee observed increased promptness in providing documentation within the legislative timeframes from previous years, including 2021. The Subcommittee thanks Departments for their responsiveness to the Subcommittee's requests.

Example: SR No. 70 – Livestock Management Amendment (Animal Activism) Regulations 2022

SR No. 70 – Livestock Management Amendment (Animal Activism) Regulations 2022 (Animal Activism Regulations) amend the Livestock Management Regulations 2021 to provide for matters consequential to the commencement of the *Livestock Management Amendment (Animal Activism) Act 2022*.

The Subcommittee considered the Animal Activism Regulations at a meeting on 15 March 2023. The Subcommittee noted that the Animal Activism Regulations were made on 30 August 2022. Accordingly, the associated documentation was required by the Subcommittee on 13 September 2022. However, the Animal Activism Regulations and the accompanying material were received 20 working days after the material was due on 27 September 2022.

Pursuant to section 15A(2) of the Subordinate Legislation Act, failure to provide the documentation within 10 working days does not affect the operation or effect of the statutory rule. However, the Committee may report the failure to each House of the Parliament.

In this instance, the Subcommittee resolved not to report the failure to each House of the Parliament. Instead, the Subcommittee resolved to write to the Minister for Agriculture to draw her attention to the matter and reiterate the requirements of the Subordinate Legislation Act. The Subcommittee did not request a response.

3.4.2 Consultation

In 2022, the Subcommittee continued to observe issues relating to consultation. This particularly related to statutory rules exempt from preparing a RIS under section 8(1)(a) of the Subordinate Legislation Act. See Chapter 2 for full details in relation to the requirements of the Subordinate Legislation Act and Subordinate Legislation Act 1994 Guidelines (the Guidelines).

Example: SR No. 11 – Relationships (Fees) Amendment Regulations 2022

SR No. 11 – Relationships (Fees) Amendment Regulations 2022 (Fees Regulations) amend the Relationships (Fees) Regulations 2019 to increase fees for the issue of legal relationship certificates by the Registrar of Births, Deaths and Marriages (the Registrar).

Subcommittee consideration

The Subcommittee considered the Fees Regulations at a meeting on 6 June 2022. The Subcommittee noted that a consultation certificate had not been issued in relation to the Fees Regulations. The Subcommittee resolved to write to the Attorney-General on 8 June 2022 to request her advice as to the application of the Subordinate Legislation Act and Guidelines.

²⁸ See Chapter 2 for more detail in relation to the requirements of the *Subordinate Legislation Act 1994*.

²⁹ These included: SR No. 49 – Spent Convictions (Court Applications) Amendment Regulations 2022; SR No. 54 – Magistrates' Court General Civil Procedure Amendment Rules 2022; SR No. 57 – Criminal Procedure Amendment (Disclosure Certificates) Regulations 2022; SR No. 68 – Electoral Regulations 2022; SR No. 70 – Livestock Management Amendment (Animal Activism) Regulations 2022; SR No. 108 – Trans-Tasman Mutual Recognition (Victoria)(Temporary Exemption)(Single-Use Plastic Items) Regulations 2022; SR No. 112 – Drugs, Poisons and Controlled Substances Amendment (Continued Dispensing) Regulations 2022; SR No. 123 – Family Violence Protection (Information Sharing and Risk Management) Amendment Regulations 2022.

Minister’s response

The Attorney-General responded in a letter dated 3 August 2022. In summary, the Attorney-General stated that:

- Prior to consultation, the Department was confident that the Fees Regulations would not impose a significant economic or social burden. This was reflected in the RIS accompanying SR No. 9 – Births, Deaths and Marriages Registration (Fees) Amendment Regulations 2022 (BDMR Regulations), which made concurrent amendments to increase fees for other certificates issued by the Registrar.
- Initial consultation for the Fees Regulations was considered to have been undertaken through the Engage Victoria process for the concurrent amendments made by the BDMR Regulations, as the sector affected by these changes was the same (i.e., the general public).
- As no feedback from the consultation related to relationship certificate fee changes, the Department’s view that the Fees Regulations imposed no significant burden was confirmed. As a result, no consultation certificate was prepared.
- The Department stated that this rationale for not preparing a consultation certificate was incorrect and arose from the misunderstanding of the distinction between ‘consultation’ and ‘initial consultation’ (as defined in the Guidelines).
- The Attorney-General acknowledged that a consultation certificate should have been issued in this instance.

The Subcommittee thanks the Attorney-General and relevant departmental officers for the detailed and comprehensive response.

3.4.3 Adequacy of exemption certificates

Section 21(1)(j) of the Subordinate Legislation Act provides that the Committee may report to the Parliament if a statutory rule has been prepared in contravention of any of the provisions of that Act or of the Guidelines with respect to the statutory rule and the contravention is of a substantial or material nature. This includes the requirements relating to the issuing of exemption certificates under section 8 of the Subordinate Legislation Act.

Pursuant to section 8(3) of the Subordinate Legislation Act, certificates of exemption ‘must specify the reason for the exemption’. Accordingly, the Subcommittee expects all exemption certificates to contain adequate explanations of the reasons for granting the exemption, including detailed reasons for why it would not impose a significant economic or social burden on a sector of the public.

Example: SR No. 11 – Relationships (Fees) Amendment Regulations 2022

Subcommittee consideration

During the course of the Subcommittee’s consideration of the Fees Regulations (see detail above at section 3.4.2) the Subcommittee noted an issue with the section 8 exemption certificate.

A section 8(1)(a) exemption certificate was issued under the Subordinate Legislation Act on the basis that the Regulations would not impose a significant economic or social burden on a sector of the public. The certificate stated that the reason for forming this opinion is that the Fees Regulations’ measurable social and/or economic costs to any sector of the public ‘are significantly less than \$2 million per year’. The certificate did not provide additional information including exact figures which would demonstrate the measurable impact of the Regulations.

The Subcommittee noted that detailed information relating to the estimated impact of the Regulations is available in other public documents, including the RIS accompanying SR No. 9 – Births, Deaths and Marriages Registration (Fees) Amendment Regulations 2022. The RIS states in relation to the Fees Regulations:

The increases in the fee for legal certificates will also apply to certificates issued under the Relationships Act 2008, for which the fee is prescribed under the Relationships (Fees) Regulations 2019. However, the increase in revenue attributable to the amendment to those

Regulations is very small (around \$100,000 per year based on the number of applications), and hence no RIS is required to support the amendment to those Regulations.

The Subcommittee considered that additional information in the exemption certificate would have assisted its consideration of the Regulations.

In this instance, the Subcommittee resolved to draw the matter to the attention of the Attorney-General and included this in its letter to the Attorney-General on 8 June 2022.

Minister's response

The Attorney-General responded in a letter dated 3 August 2022. The Attorney-General stated she had understood that the statement within the exemption certificate, asserting that the social and/or economic costs were significantly less than \$2 million per year, would be sufficient in the context of other detailed information relating to the estimated impact of the Fees Regulations being publicly available. The Attorney-General noted that this statement was insufficient and acknowledged that content within the exemption certificate should have been more detailed.

The Attorney-General also noted that she asked her Department to ensure that a detailed explanation is provided within an exemption certificate for her approval in future.

The Subcommittee thanks the Attorney-General for her response and appreciates her commitment to working collaboratively with the Subcommittee in the future.

3.4.4 Clarity of form or intention

Section 21(1)(i) of the Subordinate Legislation Act provides that the Committee may report to the Parliament if it considers that a statutory rule laid before the Parliament requires explanation as to its form or intention. This may include whether the statutory rule is clear and easy to enable those affected by it to understand its terms and comply with its requirements.

Example: SR No. 76 – Forests (Forest Firefighters Presumptive Rights Compensation) Regulations 2022

Sections 72A to 72R of the *Forests Act 1958* (the *Forests Act*) establish the forest firefighters presumptive rights compensation scheme (the Scheme). The Scheme provides forest firefighters with a presumptive right to compensation if they are diagnosed with a specified form of cancer and they meet certain criteria.

SR No. 76 – Forests (Forest Firefighters Presumptive Rights Compensation) Regulations 2022 (Firefighters Regulations) prescribe various matters for the purpose of supporting the forest firefighters presumptive rights compensation scheme in the *Forests Act*.

Subcommittee consideration

The Subcommittee considered the Firefighters Regulations in a meeting on 15 March 2023. The Subcommittee noted that section 72N of the *Forests Act* provides that an application may be made to the Victorian WorkCover Authority (the Authority) for special consideration to be granted to a forest firefighter in circumstances where they would not otherwise qualify for the Scheme. Sections 72N(1)(a) and (b) require that such applications are required to be in the 'prescribed manner and form' and made to the Authority or a self-insurer.

The Firefighters Regulations prescribe a range of matters for the purposes of supporting the Scheme. In particular, Regulation 5 provides that, for the purposes of section 72N(1)(a) of the *Forests Act*, an application for special consideration is in the prescribed manner and form if it is made in writing and 'it includes any relevant supporting information'.

The Subcommittee noted that the section 12 human rights certificate accompanying the Firefighters Regulations stated that information obtained under the Scheme could include 'personal information' within the meaning of the *Privacy and Data Protection Act 2014* and its Information Privacy Principles, and 'health information' within the meaning of the *Health Records Act 2001* and its Health Privacy Principles. However, the certificate did not set out specific detail as to what information may be required under Regulation 5.

The Subcommittee considered that it is unclear what information may be required under Regulation 5. Without this detail, the Subcommittee noted that it may be unclear for applicants for special consideration what information may be required to be provided in order to qualify for the Scheme. The Subcommittee was concerned that this may affect an applicant's ability to understand their rights and obligations when making an application for special consideration.

In light of this, the Subcommittee wrote to Minister for Workplace Safety to request her advice as to the type of information that it is envisaged will be collected under Regulation 5.

Minister's response

The Minister responded in a letter dated 29 May 2023. The Minister stated that relevant supporting information for an application for special consideration is needed to determine whether an applicant attended an 'exceptional exposure event' in accordance with the requirements of the Scheme. The type of information envisioned to be collected under Regulation 5 is only necessary for the advisory committee to provide an expert opinion and for the authority or self-insurer to make a determination on the application for special consideration, having regard to the matters required by section 72M. This information includes the details of the exceptional exposure event, duties performed at the exposure event and records and employer data proving that the firefighter attended the exceptional exposure event. The Minister drew the Subcommittee's attention to the application form for the Scheme and noted the relevant guidance provided to applicants.

The Subcommittee thanks the Minister for this response.

Example: SR No. 120 – Environment Protection Amendment (Wind Turbine Noise) Regulations 2022

SR No. 120 – Environment Protection Amendment (Wind Turbine Noise) Regulations 2022 (Wind Turbine Noise Regulations) amend the Environment Protection Regulations 2021 (Principal Regulations) and provide for matters relating to the management of wind energy facility (WEF) wind turbine noise emissions.

Subcommittee consideration

The Subcommittee considered the Wind Turbine Noise Regulations at a meeting on 10 May 2023. The Subcommittee noted that a Statement of Reasons, published on Engage Victoria's website, stated that significant consultation had been undertaken in relation to the Wind Turbine Regulations. It also stated that many submitters had noted that the recently delivered Victorian Supreme Court judgement in the case *Uren v Bald Hills Wind Farm Pty Ltd [2022] VSC 145* (*Bald Hills* judgement) would have implications on the development of the Wind Turbine Noise Regulations.

The Statement of Reasons stated that the *Wind Energy Turbine Noise Regulation Guidelines*, which provide guidance on the wind turbine noise emissions under the Principal Regulations, would be updated 'as appropriate to support compliance'. However, it was unclear to the Subcommittee whether this may include information about the *Bald Hills* judgement.

The Subcommittee resolved to seek further information from the Minister for Environment as to whether the Wind Energy Turbine Noise Regulation Guidelines will be updated to provide additional guidance to industry on the impact of the *Bald Hills* judgement on obligations under the Regulations.

Minister's response

At the time of publication, the Minister has not yet provided a response to the Subcommittee.

3.4.5 Consideration of submissions

Section 21(1)(j) of the Subordinate Legislation Act provides that the Committee may report to the Parliament if it considers that a statutory rule laid before the Parliament has been prepared in contravention of any of the provisions of the Subordinate Legislation Act or of the Guidelines with respect to the statutory rule, and the contravention is of a substantial or material nature.

Section 11(3) of the Subordinate Legislation Act provides that the responsible Minister must ensure that all comments and submissions received in relation to a regulatory impact statement (RIS) accompanying a statutory rule are considered before the statutory rule is made.

The Subcommittee considers that appropriate consultation is essential for the effectiveness of the regulatory system and, as such, it expects submissions to be appropriately considered in the development of a statutory rule.

Example: SR No. 115 – Dangerous Good (Storage and Handling) Regulations 2022

SR No. 115 – Dangerous Good (Storage and Handling) Regulations 2022 (Storage and Handling Regulations) provide for matters relating to the health and safety of people, property and the environment in the manufacture, storage, transfer, use, handling, sale and disposal of dangerous goods.

Subcommittee consideration

The Subcommittee considered the Storage and Handling Regulations at a meeting on 10 May 2023. The Subcommittee noted that the Storage and Handling Regulations had the effect of extending the operation of the existing arrangements until November 2032, when the Storage and Handling Regulations will automatically sunset. Whilst during the consultation process many submitters suggested changes to the regulatory framework, it was considered to be outside of the scope of the Storage and Handling Regulations. This was because the Government had not yet finalised the implementation of its response to a recent review of the *Dangerous Goods Act 1985* and associated regulations (the Review). Accordingly, minimal changes were made to prevent unnecessary burden on industry caused by multiple regulatory changes within a short period of time. However, the recommendations from submitters would be considered to inform future work in implementing the response to the Review.

The Subcommittee approved the Storage and Handling Regulations and resolved to seek the Minister for Workplace Safety's advice as to the timeframe for the implementation of the Government's response to the Review and how the public consultation undertaken in relation to the Storage and Handling Regulations will be considered within this broader process.

Minister's response

The Minister responded in a letter dated 1 June 2023. The Minister advised that WorkSafe was in the process of implementing the Government's response to the Review and it is anticipated that the policy analysis and regulatory reform to support the new primary legislation will occur in 2024-2025. Accordingly, the Minister noted that the Storage and Handling Regulations will be substantially reviewed to account for the feedback received, the findings of the Review, and any subsequent consultation. The response stated that this would occur well before the sun-setting of the current Storage and Handling Regulations.

The Subcommittee thanks the Minister for this response.

3.4.6 Human rights scrutiny

The Subcommittee scrutinises statutory rules against section 21(ha) of the Subordinate Legislation Act to ensure that it is compatible with the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006* (the Charter of Human Rights and Responsibilities). See Chapter 2 for more information about the Subcommittee's expectations and requirements regarding human rights scrutiny.³⁰

³⁰ See section 2.4.4 in Chapter 2.

Example: SR No. 41 – Dangerous Goods (Explosives) Regulations 2022

SR No. 41 – Dangerous Goods (Explosives) Regulations 2022 (Explosives Regulations) establish a framework to ensure the safety of people and property in the context of the manufacture, transport, storage, sale, use, disposal and import of explosives for the purposes of the *Dangerous Goods Act 1985* (Dangerous Goods Act).

Subcommittee consideration

The Subcommittee considered the Explosives Regulations at a meeting on 19 September 2022. The Subcommittee noted that for the purposes of section 21A(3)(e) of Dangerous Goods Act, regulation 206(b) prescribes a search of other known information about the person has been made and the Victorian WorkCover Authority (the Authority) is satisfied that the person has not been convicted or found guilty of, and does not have a charge pending for, an offence relating to an act of violence, weapons, terrorism, damage to property, illegal drugs or dishonesty within the last 10 years that in the opinion of the Authority would pose a security risk in relation to that person.

The Subcommittee also noted that the effect of regulation 206(b), when read with section 21A(3) of the Dangerous Goods Act, may be that applicants for high consequence dangerous goods licenses and explosives licenses must consent to the Authority obtaining such information with respect to applicants who are natural persons and for all managers and security personnel of corporate applicants. As well, the Authority must refuse a license if satisfied that any such offending 'would pose a security risk'.

However, the Subcommittee further noted that the terms of regulation 206(b) may relevantly cover some spent convictions under the *Spent Convictions Act 2021* (Spent Convictions Act). These may include infringement offences, offences where no conviction was entered, offences committed when the offender was under 15, offences where only a children's court fine was levied or other offences committed when the offender was a child, and where a magistrate has declared the conviction spent. Such a spent conviction is ordinarily subject to section 20 of that Act (which prevents anyone from asking for such information) and also to the prohibitions on discrimination in the *Equal Opportunity Act 2010* (Equal Opportunity Act).

The Subcommittee noted that there appears to be no specific exception for dangerous goods licensing or for the Authority in the Spent Convictions Act or Spent Convictions Regulations 2021. However, the Subcommittee noted that it was unclear to whether or not the scheme in section 21A(3) and regulation 206(b) is covered by one or more of the general exemptions in section 21 of the Spent Convictions Act, regulation 5A of the Spent Convictions Regulations 2021, or section 75 of the Equal Opportunity Act.

The Subcommittee also observed that, while the human rights certificate discussed the compatibility of regulation 206(b) with section 13(a) of the Charter of Human Rights and Responsibilities, it does not address rights against discrimination (including discrimination on the basis of a spent conviction) in section 8 of the Charter of Human Rights and Responsibilities.

Subcommittee resolved to seek further information from the Minister. The Chair, on behalf of the Subcommittee, wrote to the Minister for Workplace Safety on 20 September 2022 to request information as to:

- whether or not the scheme in section 21A(3) and regulation 206(1)(b) is covered by one or more of the general exemptions in section 21 of the Spent Convictions Act, regulation 5A of the Spent Convictions Regulations 2021, or section 75 of the Equal Opportunity Act; and
- whether and how regulation 206(1)(b) is compatible with the Charter of Human Rights and Responsibilities' rights against discrimination with respect to spent convictions.

Minister's response

The Minister responded to the Subcommittee's query in a letter on 20 October 2022. The Minister advised:

- The use of spent convictions information under regulation 206(1)(b) limits an applicant's right to equality and recognition before the law under section 8 of the Charter of Human Rights and Responsibilities and this consideration should have been discussed in the human rights certificate.
- WorkSafe (the agency responsible for administering the Explosives Regulations) considers itself a 'law enforcement agency' for the purposes of section 21 of the Spent Convictions Act and is therefore covered by the general exemption under that provision.

- Regulation 206(1)(b) is compatible with the Charter of Human Rights and Responsibilities' rights against discrimination with respect to spent convictions. Any limitation is justified as:
 - The limitation is discrete: Restrictions in the Regulations mean that WorkSafe can only consider spent convictions that occurred in the last 10 years. This may disproportionately impact young offenders; however, the conviction will only be considered if it is a relevant type of offence (i.e., relating to violence, weapons, terrorism, damage of property, illegal drugs or dishonesty).
 - The limitation is not absolute: Regulation 206(1)(b) provides WorkSafe with the discretion to assess each licence application on an individual basis and the identification of a spent conviction does not automatically result in a licence application being rejected.
 - The limitation aims to ensure public safety: Discrimination on the basis of spent convictions under regulation 206(1)(b) is justified due to the significant risks associated with the handling of explosives and the potential for serious harm to person, property and environment is accessed by persons who pose a potential security risk. Discrimination on the basis of spent convictions is justified under similar legislation.

The Subcommittee thanks the Minister for this comprehensive and detailed response.

Chapter 4

Review of Legislative Instruments in 2021

4.1 Overview

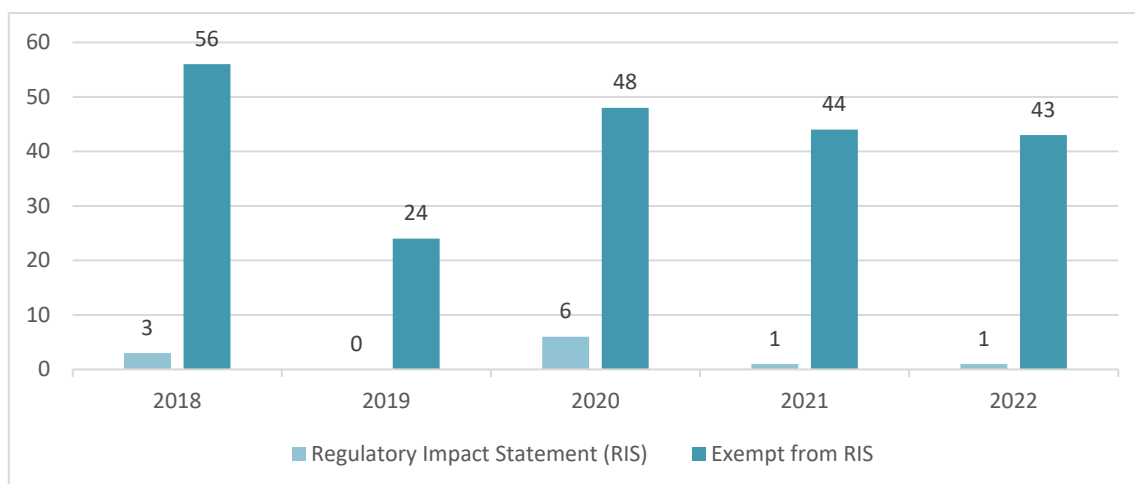
The Subcommittee scrutinises legislative instruments to determine whether they comply with the legislative principles specified in the *Subordinate Legislation Act 1994* (Subordinate Legislation Act). These principles are set out in full in Chapter 1.³¹ During 2021, the Subcommittee scrutinised 45 legislative instruments.

This chapter provides an overview of the Subcommittee’s scrutiny of legislative instruments published in the Victorian Government Gazette during the 2021 calendar year.

4.2 Statistics

This report examines the 45 legislative instruments published in the Government Gazette during the 2021 calendar year. Of those instruments, one was accompanied by a Regulatory Impact Statement (RIS). While this marked a slight decrease from the previous calendar year, the number of legislative instruments published in 2021 was broadly consistent with previous years. Figure 2 below provides an overview of the proportion of legislative instruments accompanied by RISs or exempt from the RIS process from 2018 to 2022.

Figure 2: Proportion of legislative instruments exempt from Regulatory Impact Statement process 2018-2022



4.2.1 Regulatory Impact Statements

Unless an exemption applies, section 12E of Subordinate Legislation Act requires all legislative instruments to undergo the RIS process.³²

The Subcommittee’s scrutiny of RISs accompanying legislative instruments mirrors the scrutiny of statutory rules. In this regard, where a RIS has been prepared, the Subcommittee examines the same procedural issues. These include assessing whether:

- all appropriate certificates have been received by the Subcommittee;

³¹ See section 1.4.2 of Chapter 1.

³² As noted in Chapter 2 the *Victorian Guide to Regulation* sets out the objectives of a Regulatory Impact Statement. These include ensuring that: the regulation is only implemented where there is a justified need; only the most efficient forms of regulation are adopted; and there is an adequate level of public consultation in the development of subordinate legislation.

- consultation is adequate and in particular whether appropriate organisations and individuals have been consulted;
- certificates are dated and signed by the responsible Minister;
- certificates contain all the required information; and
- the RIS is adequate and, in particular:
 - whether it properly explains the nature and extent of the problem to be dealt with by the new regulation;
 - the extent to which alternatives have been considered and the appropriateness of those alternatives; and
 - the costs and benefits of the proposed regulations and whether the benefits outweigh the costs.

In 2021, one legislative instrument was accompanied by a RIS.³³ The Subcommittee did not observe any significant issues with this legislative instrument. The Subcommittee appreciates the work undertaken by the Departments to complete this process in a comprehensive and timely manner.

4.2.2 Exemptions from the Regulatory Impact Statement process

As noted above, all legislative instruments must be prepared with a RIS, unless they are exempted from doing so under section 12F of Subordinate Legislation Act.³⁴ Where a legislative instrument has been exempted from the RIS process, some of the procedural requirements the Subcommittee examines include whether:

- it is correctly exempted or whether it should have been made with a RIS;
- it is exempted under the appropriate category in the Subordinate Legislation Act;
- the exemption or exception certificate specifies the section under which the exemption was granted;
- the exemption certificate is signed and dated by the responsible Minister.

Forty-two legislative instruments were accompanied by a certificate exempting them from the requirement to prepare a RIS. Two legislative instruments were exempt from the requirement in their enabling legislation. Table 3 below displays the sections of Subordinate Legislation Act under which exemptions were made.

³³ Note the Environment Reference Standard was accompanied by an 'Impact Assessment'. Section 94 of the *Environment Protection Act 2017* (EP Act) sets out the application of the Subordinate Legislation Act to environment reference standards. Section 94 provides that the Subordinate Legislation Act applies to an environment reference standard as if a reference to a regulatory impact statement (RIS) were a reference to an impact assessment prepared under section 95(1) of the EP Act. There are some differences between the RIS and impact assessment processes, but they are broadly similar. As many of the same requirements apply, the Subcommittee considered the Environment Reference Standard to be accompanied by a RIS.

³⁴ *Subordinate Legislation Act 1994*, section 7.

Table 3: Legislative instruments exempt from the Regulatory Impact Statement process in 2021

| Section | Exemption | Number exempt |
|---------------|---|---------------|
| 12F(1)(a) | Would not impose significant economic or social burden | 32 |
| 12F(1)(b) | Fundamentally declaratory or machinery in nature | 3 |
| 12F(1)(f) | Part of National Uniform Legislation Scheme | 1 |
| 12F(1)(h)(ii) | Is of not more than 12 months duration and is necessary to respond to an urgent public health issue or urgent public safety issue | 6 |
| N/A | Exempt legislative instrument | 2 |
| Total | | 44 |

4.3 Ministerial correspondence

The Subcommittee did not make any reports to Parliament in relation to legislative instruments published in 2021. However, the Subcommittee sought further clarification in relation one legislative instrument.³⁵ In this instance, the Subcommittee wrote to the responsible Minister and received a satisfactory response to the issues. The Subcommittee appreciates this response.

Generally, the Subcommittee considers that this area of regulation review is working well. The Subcommittee wishes to thank department officers and ministerial advisers for the prompt and friendly manner with which they have aided the Subcommittee with its queries.

4.4 Key scrutiny issues

The Subcommittee did not observe any significant scrutiny issues regarding legislative instruments published in 2021. The following section provides an overview of the key issues encountered by the Subcommittee during the 2021 calendar year.

4.4.1 Timeliness of documentation

Section 16C of the Subordinate Legislation Act requires the responsible Minister to ensure a copy of the legislative instrument and associated required documentation is given to the Subcommittee within 10 working days after the making of the legislative instrument. While failure to comply with this requirement does not affect the validity of the legislative instrument,³⁶ the Subcommittees notes that this failure undermines its ability to consider the legislative instruments within the disallowance timeframe. The Subcommittee considers that timely delivery of these documents is an important factor in facilitating effective parliamentary oversight of subordinate legislation.

The Subcommittee noted a marked improvement in the timeliness with which documentation was provided to the Subcommittee. In 2021, only three legislative instrument was provided outside of the legislative timeframe.³⁷ The Subcommittee thanks Ministers and Departments for their promptness in providing documentation to the Subcommittee.

³⁵ The Subcommittee sought further information from the Minister regarding Order to Declare a Class of Entities as Specified Entities. See section 4.4.2 below.

³⁶ *Subordinate Legislation Act 1994*, section 16C(3).

³⁷ These included: Secretary Approval: Pharmacist Immuniser - SARS-CoV-2 (COVID-19) Vaccine; Authorisation and Publication Pursuant to Section 14 – The Institute of Public Accountants Professional Standards Scheme; and Classes of Food Premises and Requirements under the *Food Act 1984*.

4.4.2 Consultation

Section 12C of Subordinate Legislation Act sets out the requirements relating to consultation regarding legislative instruments. The section provides that the responsible Minister must ensure that where the Subordinate Legislation Act 1994 Guidelines (the Guidelines) require consultation:

- a) there is consultation in accordance with the Guidelines with any other Minister whose area of responsibility may be affected by a proposed legislative instrument so as to avoid any overlap or conflict with any other existing or proposed statutory rule, legislative instrument or other legislation;
- b) there is consultation in accordance with the Guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed legislative instrument so that the need for, and the scope of, the proposed legislative instrument is considered;
- c) a certificate of consultation in accordance with the Guidelines is issued for the proposed legislative instrument.

Pursuant to sections 16B and 16C of Subordinate Legislation Act, consultation certificates made for the purposes of section 12C are required to be tabled in the Parliament and provided to the Committee. However, failure to comply with these requirements does not affect the operation or effect of the legislative instrument (though the Committee may report the failure to each House of the Parliament).³⁸

Paragraph 135 the Guidelines states that the consultation requirements for legislative instruments exempt from making a RIS under section 12F(1)(a) of Subordinate Legislation Act (on the basis that they would not impose a significant economic or social burden on a sector of the public) mirror the consultation requirements for statutory rules exempt under section 8(1)(a) of Subordinate Legislation Act. These include:

Initial consultation should be undertaken under [section 12C] for the responsible Minister to obtain sufficient evidence to form a view as to whether the proposed statutory rule imposes a significant burden.

The Guidelines states that initial consultation ‘occurs in the early stages of policy development. This ensures the responsible Minister identifies other Ministers, agencies and stakeholders who may be affected by the proposed changes and considers the impact the proposed statutory rule or legislative instrument is likely to have on those groups...’.³⁹

Paragraph 85 of the Guidelines states that ‘[t]he responsible Minister should determine the level of initial consultation required depending on the nature of the proposed statutory rule or legislative instrument’.

Paragraph 89 of the Guidelines states the following:

The responsible Minister must ensure that where these Guidelines require initial consultation, a certificate of consultation is issued (see sections 6(c) and 12C(c) of Subordinate Legislation Act). A consultation certificate should provide details of who was consulted.

The appropriate level of consultation will depend on the nature of the legislative instrument. However, in all cases, the responsible Minister must comply with the consultation requirements under the Subordinate Legislation Act. This places the final responsibility on the responsible Minister to ensure that appropriate consultation takes place and includes all those affected by a proposed legislative instrument.

The Guidelines provide assistance with the requirements of the consultation process. However, on occasions it may be difficult for departmental and agency officers to determine the type of consultation which should take place. It is the view of the Subcommittee that consultation take place with all those affected by a legislative instrument.

The Subcommittee considers it is important for consultation certificates to provide details of all those consulted. The Subcommittee’s experience is that the consultation process in relation to legislative instruments has been thorough and appropriate during 2021.

³⁸ Subordinate Legislation Act 1994, sections 16B(3) and 16C(3).

³⁹ Subordinate Legislation Act 1994 Guidelines, p. 20.

Example: Order to Declare a Class of Entities as Specified Entities

The Order to Declare a Class of Entities as Specified Entities (the Order) declared a class of entities to be specified entities for the purposes of Part 7A of the *Financial Management Act 1994*.

Subcommittee consideration

The Subcommittee considered the Order at a meeting on 21 June 2021. Whilst it approved the Order, the Subcommittee noted some technical scrutiny concerns regarding the adequacy of the consultation certificate, which did not provide information about whether consultation had been undertaken with a sector of the public on which a significant economic or social burden may be imposed. In light of this omission, the Subcommittee wrote to the Assistant Treasurer on 24 June 2021 to request further information about the consultation undertaken.

Minister's response

The Assistant Treasurer responded in a letter dated 18 August 2021. The Assistant Treasurer outlined the consultation that had been undertaken by the Department of Treasury and Finance (DTF) with a range of stakeholders, including:

- DTF's Asset Management, Legal, Financial Frameworks and Construction Policy teams
- The Victorian Managed Insurance Authority
- Accountable Officers of lead departments, Departmental Chief Procurement Officers and the Standing Directions Community of Practice
- Victorian Auditor-General's Office
- The Office of the Commissioner for Better Regulation.

The Subcommittee thanks the Assistant Treasurer and relevant departmental officers for the detailed and comprehensive response.

4.4.3 Human rights scrutiny

The Subcommittee scrutinises legislative instruments against section 25A(1)(c) of Subordinate Legislation Act to ensure that it is compatible with the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006* (the Charter of Human Rights and Responsibilities). See Chapter 2 of the report for a full list of human rights set out in Part 2 of the Charter of Human Rights and Responsibilities.⁴⁰

In performing this function, the Subcommittee must consider the human rights certificate provided by the responsible Minister under section 12D of Subordinate Legislation Act in respect of each legislative instrument. Section 12D provides:

- (1) The responsible Minister must ensure that a human rights certificate is prepared in respect of a proposed legislative instrument unless the proposed legislative instrument is exempted under subsection (3).
- (2) A human rights certificate for a legislative instrument must—
 - (a) certify whether, in the opinion of the responsible Minister, the proposed legislative instrument does or does not limit any human right set out in the Charter of Human Rights and Responsibilities; and
 - (b) if it certifies that, in the opinion of the responsible Minister, the proposed legislative instrument does limit a human right set out in the Charter of Human Rights and Responsibilities, set out—
 - (i) the nature of the human right limited; and
 - (ii) the importance of the purpose of the limitation; and
 - (iii) the nature and extent of the limitation; and
 - (iv) the relationship between the limitation and its purpose; and

⁴⁰ See section 2.4.4 in Chapter 2.

- (v) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.
- (3) Subsection (1) does not apply if the responsible Minister certifies in writing that, in the Minister's opinion, the proposed legislative instrument is of not more than 12 months duration and is necessary to respond to—
 - (a) a public emergency; or
 - (b) an urgent public health issue or an urgent public safety issue; or
 - (c) likely or actual significant damage to the environment, resource sustainability or the economy.

When assessing the adequacy of a human rights certificate, the Subcommittee must consider whether there is any limitation on any human right set out in the Charter of Human Rights and Responsibilities and, if so:

- the nature of the human right limited
- the importance of the purpose of the limitation
- the nature and extent of the limitation
- the relationship between the limitation and its purpose; and
- any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

In relation to the 2021 legislative instruments, the Subcommittee considered all legislative instruments were compatible with human rights set out in the Charter of Human Rights and Responsibilities. The Subcommittee did not correspond with any Ministers in relation to the legislative instruments. Broadly, the human rights certificates issued for 2021 legislative instruments were clear and well drafted.

Chapter 5

Review of Legislative Instruments in 2022

5.1 Overview

The Subcommittee scrutinises legislative instruments to determine whether they comply with the legislative principles specified in the *Subordinate Legislation Act 1994* (Subordinate Legislation Act). These principles are set out in full in Chapter 1.⁴¹ During 2022, the Subcommittee scrutinised 44 legislative instruments.

This chapter provides an overview of the Subcommittee's scrutiny of legislative instruments published in the Victorian Government Gazette during the 2022 calendar year.

5.2 Statistics

This report examines the 44 legislative instruments published in the Government Gazette during the 2022 calendar year. Of those instruments, one was accompanied by a Regulatory Impact Statement (RIS). This was the same as 2021 and remained broadly consistent with previous years.⁴²

5.2.1 Regulatory Impact Statements

Unless an exemption applies, section 12E of Subordinate Legislation Act requires all legislative instruments to undergo the RIS process.⁴³

The Subcommittee's scrutiny of RISs accompanying legislative instruments mirrors the scrutiny of statutory rules. See Chapter 4 for an overview of the Subcommittee's approach to scrutinising legislative instruments accompanied by RISs.

In 2022, one legislative instrument was accompanied by a RIS.⁴⁴ The Subcommittee did not observe any significant issues with this legislative instrument. The Subcommittee appreciates the work undertaken by the Departments to complete this process in a comprehensive and timely manner.

5.2.2 Exemptions from the Regulatory Impact Statement process

As noted above, all legislative instruments must be prepared with a RIS, unless they are exempted from doing so under section 12F of Subordinate Legislation Act.⁴⁵ Where a legislative instrument has been exempted from the RIS process, the Subcommittee considers certain procedural requirements. These are set out in Chapter 4.⁴⁶

Forty-three legislative instruments were exempt from the requirement to make a RIS. Of these, two legislative instruments were exempt from the requirement in their enabling legislation. Additionally, three legislative instruments were 'exempt legislative instruments' for the purpose of section 4A(1)(c) of the Subordinate Legislation Act.⁴⁷ Table 4 below displays the sections of Subordinate Legislation Act under which exemptions were made.

41 See section 1.4.2 of Chapter 1.

42 See Figure 2 on in section 4.2 of Chapter 4 for more information about statistics from 2018 to 2022.

43 As noted in Chapter 2 the Victorian Guide to Regulation sets out the objectives of a Regulatory Impact Statement. These include ensuring that: the regulation is only implemented where there is a justified need; only the most efficient forms of regulation are adopted; and there is an adequate level of public consultation in the development of subordinate legislation.

44 Order for Amendment of the Trading Rules for Declared Water Systems (Revised Goulburn to Murray Trade Rule).

45 *Subordinate Legislation Act 1994*, section 7.

46 See section 4.2.1 of Chapter 4.

47 'Exempt legislative instruments' are set out in Schedule 3 of Subordinate Legislation (Legislative Instruments) Regulations 2021. Such instruments are exempt from the operation of Parts 2A and 5A and sections 16B, 16C, 16E and 16F of the Subordinate Legislation Act.

Table 4: Legislative instruments exempt from the Regulatory Impact Statement process in 2022

| Section | Exemption | Number exempt |
|-------------------------|---|---------------|
| 12F(1)(a) | Would not impose significant economic or social burden | 25 |
| 12F(1)(a) and 12F(1)(c) | Would not impose significant economic or social burden and only increases fees in respect of a financial year by an amount not exceeding the annual rate approved by the Treasurer | 1 |
| 12F(1)(a) and 12F(1)(j) | Would not impose significant economic or social burden and notice of the proposed legislative instrument would render the proposed legislative instrument ineffective or would unfairly advantage or disadvantage any person likely to be affected by the proposed legislative instrument | 1 |
| 12F(1)(b) | Fundamentally declaratory or machinery in nature | 3 |
| 12F(1)(d) | Would only impose a burden on a public sector body | 1 |
| 12F(1)(f) | Part of National Uniform Legislation Scheme | 4 |
| 12F(1)(h)(ii) | Is of not more than 12 months duration and is necessary to respond to an urgent public health issue or urgent public safety issue | 2 |
| 12G | Premier's certificate – Special circumstances | 1 |
| N/A | Exempt legislative instrument | 3 |
| N/A | Exempt by enabling Act | 2 |
| Total | | 43 |

5.3 Ministerial correspondence

The Subcommittee did not make any reports to Parliament in relation to legislative instruments published in 2022. However, the Subcommittee wrote to the responsible Minister regarding two legislative instruments:

- Order in Council – Declaration of Surf Coast as A Distinctive Area and Landscape, published in the Victorian Government Gazette on 16 September 2022; and
- Order in Council – Extension of Period of Declaration of Bellarine Peninsula and Bass Coast as Distinctive Areas and Landscapes, published in the Victorian Government Gazette on 29 September 2022.

Generally, the Subcommittee considers that this area of regulation review is working well. The Subcommittee wishes to thank department officers and ministerial advisers for the prompt and friendly manner with which they have aided the Subcommittee with its queries.

5.4 Key scrutiny issues

The Subcommittee did not observe any significant scrutiny issues regarding legislative instruments published in 2022. The following section provides an overview of the key issues encountered by the Subcommittee during the 2022 calendar year.

5.4.1 Timeliness of documentation

Section 16C of the Subordinate Legislation Act requires the responsible Minister to ensure a copy of the legislative instrument and associated required documentation is given to the Subcommittee within 10 working days after the making of the legislative instrument. While failure to comply with this requirement

does not affect the validity of the legislative instrument,⁴⁸ the Subcommittees notes that this failure undermines its ability to consider the legislative instruments within the disallowance timeframe. The Subcommittee considers that timely delivery of these documents is an important factor in facilitating effective parliamentary oversight of subordinate legislation.

The Subcommittee noted a marked improvement in the timeliness with which documentation was provided to the Subcommittee. In 2022, six legislative instruments were provided to the Subcommittee outside the legislative timeframe.⁴⁹ Whilst a larger number of documents were received late compared to 2021, the total number remained lower than previous years.

The Subcommittee thanks Departments for the promptness in providing the relevant documentation.

5.4.2 Tabling

Section 16B(1) of the Subordinate Legislation Act requires that, on or before the sixth sitting day after a legislative instrument has been published in the Government Gazette, a copy of the legislative instrument must be laid before each House of the Parliament. Failure to comply with this requirement does not affect the operation or effect of the legislative instrument. However, the Committee may report the failure to each House of Parliament.⁵⁰

The Subcommittee considers that tabling plays an important role in ensuring parliamentary oversight of subordinate legislation and notes that legislative instruments are not disallowable until they have been tabled.

Example: Orders in Council – Declarations as A Distinctive Area and Landscape

The Order in Council – Declaration of Surf Coast as A Distinctive Area and Landscape and the Order in Council – Extension of Period of Declaration of Bellarine Peninsula and Bass Coast as Distinctive Areas (collectively, ‘the Orders’) extended the period of declaration for the preparation, endorsement and approval of a Statement of Planning Policy as a distinctive area and landscape for the purposes of section 46AT(3) of the *Planning and Environment Act 1987* (PE Act).

Committee consideration

The Subcommittee considered the Orders on 10 May 2023. The Subcommittee noted that the Orders were accompanied by explanatory memoranda which stated that they are each ‘a legislative instrument as defined in the [Subordinate Legislation Act]’. The Orders were published in the Government Gazette on 16 September and 29 September 2022, respectively. However, at the time of the Subcommittee’s meeting, the Orders had not yet been tabled. Accordingly, the Subcommittee resolved to write to the Minister for Environment and the Minister for Planning to request advice as to why the Orders had not yet been tabled.

Ministers’ responses

The Minister for Planning responded on behalf of herself and the Minister for Environment in a letter dated 12 June 2023. The Minister stated that the delay in tabling was due to the Department not being informed about the requirement for tabling of orders under Part 3AAB of the PE Act as it is ‘relatively new legislation’.⁵¹ The response notes that the Department did not receive this advice for previous extension orders made under this Part of the PE Act.

The Minister noted that, in response to the Subcommittee’s request, she had written to the Clerks of the Legislative Assembly and the Legislative Council requesting that they table the Orders.

The Subcommittee thanks the Minister for this response and thanks her for undertaking to table the Orders.

48 *Subordinate Legislation Act 1994*, section 16C(3).

49 Documentation regarding the following legislative instruments was received late: Law Institute of Victoria Limited Professional Standards Scheme; The Queensland Law Society Professional Standards Scheme; South Australian Bar Association Professional Standards Scheme; Law Society of South Australia Professional Standards Scheme; Ministerial Direction Pursuant to Section 6A.7.2 of the *Gambling Regulation Act 2003*; and Order to Declare a Class of Entities as Specified Entities.

50 *Subordinate Legislation Act 1994*, section 16B(3).

51 The Subcommittee notes that Part 3AAB of the *Planning and Environment Act 1987* commenced in May 2018.

5.4.3 Human rights scrutiny

The Subcommittee scrutinises legislative instruments against section 25A(1)(c) of Subordinate Legislation Act to ensure that it is compatible with the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006* (the Charter of Human Rights and Responsibilities). See Chapter 4 of the report for a detailed overview of the Subcommittee’s human rights scrutiny of legislative instruments.⁵²

In relation to the 2022 legislative instruments, the Subcommittee considered all legislative instruments were compatible with human rights set out in the Charter of Human Rights and Responsibilities. The Subcommittee did not correspond with any Ministers in relation to the legislative instruments. Broadly, the human rights certificates issued for 2022 legislative instruments were clear and well drafted.

**Adopted by the Scrutiny of Acts and Regulations Committee
Teams Meeting
31 July 2023**

⁵² See section 4.4.3 of Chapter 4.

Appendix A

Statutory Rules Series 2021 and 2022

2021

S. 8(1)(a) – Would not Impose Significant Economic or Social Burden

- SR No. 1 – Public Health and Wellbeing Amendment (Infringement Offences) Regulations 2021
- SR No. 4 – Owner Drivers and Forestry Contractors Amendment Regulations 2021
- SR No. 5 – Professional Engineers Registration (General, Exemption and Assessment Scheme Fees) Regulations 2021
- SR No. 6 – Conservation, Forests and Lands (Infringement Notice) Amendment (Alpine Resorts (Management) and Crown Land (Reserves)) Regulations 2021
- SR No. 11 – Service Victoria (Transfer of Births, Deaths and Marriages Identity Verification Functions) Regulations 2021
- SR No. 12 – Service Victoria (Transfer of WorkSafe Victoria Functions) Regulations 2021
- SR No. 13 – Drugs, Poisons and Controlled Substances Amendment (Nurses and Midwives) Regulations 2021
- SR No. 15 – Public Health and Wellbeing Further Amendment (Infringement Penalties) Regulations 2021
- SR No. 18 – Victorian Civil and Administrative Tribunal (Fees) Amendment Regulations 2021
- SR No. 24 – Education and Training Reform Amendment (COVID-19 Emergency Measures Extension) Regulations 2021
- SR No. 29 – Public Interest Monitor Amendment Regulations 2021
- SR No. 31 – First Home Owner Grant Regulations 2021
- SR No. 33 – Local Government (Electoral) Amendment Regulations 2021
- SR No. 34 – City of Melbourne (Electoral) Amendment Regulations 2021
- SR No. 35 – Road Safety Road Rules Amendment Rules 2021
- SR No. 37 – Powers of Attorney Amendment Regulations 2021
- SR No. 38 – Electronic Transactions (Victoria) Amendment Regulations 2021
- SR No. 40 – Disability Service Safeguards Amendment Regulations 2021
- SR No. 43 – Public Health and Wellbeing Amendment (QR Reporting Infringement) Regulations 2021
- SR No. 44 – Forests (Recreation) (Temporary) Regulations 2021
- SR No. 46 – Transport Accident (Administration of Charges) Regulations 2021
- SR No. 49 – Dangerous Goods (Storage and Handling) Amendment (Notification) Regulations 2021
- SR No. 51 – Public Health and Wellbeing (Prescribed Accommodation) Amendment Regulations 2021
- SR No. 57 – Agricultural Industry Development (Polls) Regulations 2021
- SR No. 60 – Environment Protection Transitional Amendment Regulations 2021
- SR No. 63 – Domestic Building Contracts Amendment Regulations 2021
- SR No. 70 – Local Government (Long Service Leave) Regulations 2021
- SR No. 72 – Building (Building Amendment (Enforcement and Other Measures) Act 2017) Transitional Regulations 2021
- SR No. 73 – Building Amendment Regulations 2021
- SR No. 76 – Zero and Low Emission Vehicle Distance-based Charge Regulations 2021
- SR No. 80 – Corporations (Ancillary Provisions) Regulations 2021
- SR No. 82 – Environment Protection Amendment Regulations 2021
- SR No. 83 – Environment Protection Transitional Further Amendment Regulations 2021
- SR No. 86 – Country Fire Authority Amendment Regulations 2021
- SR No. 88 – Occupational Health and Safety Amendment (Infringements and Miscellaneous) Regulations 2021
- SR No. 91 – Conservation, Forests and Lands (Infringement Notice) Amendment (Forests) Regulations 2021
- SR No. 93 – Occupational Health and Safety (COVID-19 Incident Notification) Regulations 2021
- SR No. 94 – Gene Technology Regulations 2021
- SR No. 95 – Long Service Benefits Portability Amendment Regulations 2021
- SR No. 97 – Victorian Energy Efficiency Target Amendment (Cold room) Regulations 2021

- SR No. 99 – Personal Safety Intervention Orders Regulations 2021
- SR No. 106 – Professional Engineers Registration (General, Exemption and Assessment Scheme Fees) Amendment Regulations 2021
- SR No. 107 – Land Amendment Regulations 2021
- SR No. 108 – Forests (Recreation)(Temporary) Amendment Regulations 2021
- SR No. 109 – Land (Regulated Watercourse Land) Regulations 2021
- SR No. 110 – Conservation, Forests and Lands (Infringement Notice) Amendment (Flora and Fauna Guarantee) Regulations 2021
- SR No. 111 – Road Safety Road Rules Further Amendment Rules 2021
- SR No. 112 – Occupational Health and Safety Amendment (Major Hazard Facilities) Regulations 2021
- SR No. 117 – Sheriff Amendment Regulations 2021
- SR No. 118 – Conveyancers (Qualifications and Experience) Amendment Regulations 2021
- SR No. 120 – Tourist and Heritage Railways Regulations 2021
- SR No. 122 – Status of Children Amendment (Counselling) Regulations 2021
- SR No. 123 – Environment Protection Further Amendment Regulations 2021
- SR No. 124 – Subdivision (Procedures)Regulations 2021
- SR No. 128 – Building Amendment (Building Product Accreditation and Other Matters) Regulations 2021
- SR No. 129 – Public Health and Wellbeing Amendment (Tiered Infringement Offences) Regulations 2021
- SR No. 134 – Subdivision (Registrar’s Requirements) Regulations 2021
- SR No. 135 – Road Safety Road Rules Amendment (Electric Scooter Trial) Rules 2021
- SR No. 136 – Road Safety (General) Amendment Regulations 2021
- SR No. 145 – Essential Services Commission Regulations 2021
- SR No. 146 – Spent Convictions Regulations 2021
- SR No. 147 – Owners Corporations Amendment Regulations 2021
- SR No. 149 – Non-Emergency Patient Transport and First Aid Services (First Aid Services) Regulations 2021
- SR No. 151 – Victims of Crime Assistance (Special Financial Assistance) Regulations 2021
- SR No. 155 – Offshore Petroleum and Greenhouse Gas Storage Regulations 2021
- SR No. 156 – Public Health and Wellbeing Amendment (Pandemic Infringement Offences) Regulations 2021
- SR No. 159 – Livestock Management Regulations 2021
- SR No. 160 – Education and Training Reform (School Safety) Regulations 2021
- SR No. 161 – Fisheries Amendment Regulations 2021
- SR No. 162 – Conservation, Forests and Lands (Fisheries Infringement Notices) Amendment Regulations 2021
- SR No. 164 – Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards (Prescribed Public Entities) Regulations 2021
- SR No. 170 – Sentencing Regulations 2021
- SR No. 171 – Victorian Energy Efficiency Target Amendment (Commercial and Industrial Air Source Heat Pump Water Heater) Regulations 2021
- SR No. 172 – Wildlife Amendment (Noisy Pitta) Regulations 2021
- SR No. 173 – Subordinate Legislation Amendment Regulations 2021
- SR No. 174 – Drugs, Poisons and Controlled Substances Amendment (Non-Emergency Patient Transport and First Aid Services) Regulations 2021
- SR No. 176 – First Home Owner Grant and Home Buyer Schemes Regulations 2021
- SR No. 177 – Gender Equality Amendment Regulations 2021

S. 8(1)(a) and (b) – No Economic or Social Burden and Is a Rule which relates only to a Court or Tribunal

- SR No. 30 – Child Wellbeing and Safety (Information Sharing) Amendment Regulations 2021

S. 8(1)(a) and (c) – No Economic or Social Burden and of Fundamentally Declaratory or Machinery Nature

- SR No. 26 – Service Victoria (Transfer of Worker Screening Functions) Regulations 2021
- SR No. 36 – Road Safety (Drivers) and (General) Amendment Regulations 2021

SR No. 84 – Service Victoria (Transfer of Births, Deaths and Marriages Identity Verification Functions) Amendment Regulations 2021

SR No. 133 – Service Victoria (Transfer of Professional Engineers Registration Functions) Regulations 2021

SR No. 142 – Child Wellbeing and Safety (Child Link) Regulations 2021

SR No. 154 – Service Victoria (Transfer of Births, Deaths and Marriages Identity Verification Functions) Further Amendment Regulations 2021

SR No. 169 – Surveillance Devices Amendment (Body-worn Cameras) Regulations 2021

S. 8(1)(a), (c), (d) and (f) – Would not impose Significant Economic or Social Burden; is of a Fundamentally Declaratory or Machinery Nature; only increase Fees in Respect of a Financial Year by an Amount not Exceeding the Annual Rate Approved by the Treasurer; and are required under a National Uniform Legislation Scheme and an Assessment of Costs and Benefits has been undertaken under that Scheme

SR No. 75 – Road Safety (Drivers) and (Vehicles) Interim Amendment Regulations 2021

S. 8(1)(b) – Is a Rule which relates only to a Court or Tribunal

SR No. 9 – Victims of Crime Assistance Amendment Rules 2021

SR No. 16 – Supreme Court (Chapter I Appendices A and B Amendments) Rules 2021

SR No. 17 – Supreme Court (Chapters I and VI Suppression Orders Amendment) Rules 2021

SR No. 22 – Children, Youth and Families (Children’s Court Judicial Registrars) Rules 2021

SR No. 23 – Magistrates’ Court General Civil Procedure and Miscellaneous Civil Proceedings (Costs Amendment) Rules 2021

SR No. 28 – County Court (Chapter I Circuit Fees, Expenses and Allowances Amendment) Rules 2021

SR No. 39 – Evidence (Examination of Witnesses Outside the State) Regulations 2021

SR No. 41 – Magistrates’ Court (Judicial Registrars) Amendment Rules 2021

SR No. 52 – Magistrates’ Court Authentication and Electronic Transmission Rules 2021

SR No. 54 – Victorian Civil and Administrative Tribunal (Schedule 1 Amendments) Rules 2021

SR No. 81 – Juries Regulations 2021

SR No. 89 – Magistrates’ Court Miscellaneous Civil Proceedings and General Civil Procedure (Costs Amendment) Rules 2021

SR No. 90 – Children, Youth and Families (Children’s Court Judicial Registrars) Amendment Rules 2021

SR No. 98 – County Court (Chapter III Judicial Registrars and Subpoenas Amendment) Rules 2021

SR No. 101 – Magistrates’ Court (Personal Safety Intervention Orders) Rules 2021

SR No. 102 – Magistrates’ Court Criminal Procedure Amendment Rules 2021

SR No. 104 – Supreme Court Library Fund Investment Rules 2021

SR No. 105 – Supreme Court (Chapter I (Inspection and Affidavits) Amendment) Rules 2021

SR No. 113 – Children’s Court (Personal Safety Intervention Orders) Rules 2021

SR No. 114 – Victorian Civil and Administrative Tribunal (Residential Tenancies and Other Acts Amendment) Rules 2021

SR No. 115 – Courts (Case Transfer) Rules 2021

SR No. 141 – Victorian Civil and Administrative Tribunal (Federal Jurisdiction Matters) Regulations 2021

SR No. 143 – Magistrates’ Court Chapter II and Judicial Registrars Amendment (Federal Jurisdiction Matters) Rules 2021

SR No. 144 – Supreme Court (Chapter I Appendices A and B) Amendment Rules 2021

SR No. 152 – Crown Proceedings Regulations 2021

SR No. 158 – County Court (Chapter I Miscellaneous Amendments) Rules 2021

SR No. 167 – Magistrates’ Court Miscellaneous Civil Proceedings and General Civil Procedure (Costs) Amendment Rules 2021

SR No. 168 – Magistrates’ Court (Judicial Registrars) Further Amendment Rules 2021

S. 8(1)(c) – Fundamentally Declaratory or Machinery Nature

SR No. 20 – Residential Tenancies (Residential Tenancies Amendment Act 2018) Transitional Regulations 2021

SR No. 21 – Residential Tenancies Amendment Regulations 2021

SR No. 32 – Conservation, Forests and Lands (Contracts) Regulations 2021

- SR No. 42 – Surveillance Devices Amendment (Corresponding Laws) Regulations 2021
- SR No. 53 – Victoria Police Amendment Regulations 2021
- SR No. 59 – Environment Protection Revocation Regulations 2021
- SR No. 62 – Child Wellbeing and Safety (Wage Inspectorate) Regulations 2021
- SR No. 71 – Local Government Revocation Regulations 2021
- SR No. 77 – Funerals (Infringements) Regulations 2021
- SR No. 79 – Marine Safety Amendment Regulations 2021
- SR No. 85 – Tobacco (Victorian Health Promotion Foundation) Amendment Regulations 2021
- SR No. 87 – Transport (Compliance and Miscellaneous) (Ticketing) Amendment (Prescribed Processes) Regulations 2021
- SR No. 119 – Bus Safety Amendment Regulations 2021
- SR No. 121 – Road Safety (Drivers) and (General) Further Amendment Regulations 2021
- SR No. 126 – Tobacco (Victorian Health Promotion Foundation) Further Amendment Regulations 2021
- SR No. 131 – Environment Protection Further Revocation Regulations 2021
- SR No. 150 – Major Transport Projects Facilitation (Notification) Regulations 2021
- SR No. 163 – Fisheries (Fees, Royalties and Levies) Amendment Regulations 2021
- SR No. 166 – Transport Accident (Administration of Charges) Amendment Regulations 2021

S. 8(1)(d) – Only increase Fees in Respect of a Financial Year by an Amount not Exceeding the Annual Rate Approved by the Treasurer

- SR No. 64 – Crown Land (Reserves) (Tour Operator Licence Fee) Regulations 2021
- SR No. 65 – Forests (Tour Operator Licence Fee) Regulations 2021
- SR No. 66 – Land (Tour Operator Licence Fee) Regulations 2021
- SR No. 67 – National Parks (Tour Operator Licence Fee) Regulations 2021
- SR No. 68 – Wildlife (Tour Operator Licence Fee) Regulations 2021
- SR No. 74 – Transfer of Land (Fees) Amendment Regulations 2021
- SR No. 100 – Planning and Environment (Fees) Amendment Regulations 2021

S. 8(1)(e)(iii) – Extension Regulation

- SR No. 7 – Subordinate Legislation (Severe Substance Dependence Treatment Regulations 2011) Extension Regulations 2021

S. 8(1)(f) – National Uniform Legislation Scheme

- SR No. 27 – Dangerous Goods Amendment (Transport by Road or Rail) Regulations 2021

S. 9(1) – Premier’s Certificate

- SR No. 8 – Occupational Health and Safety Amendment (Crystalline Silica) Interim Regulations 2021
- SR No. 45 – Petroleum Interim Regulations 2021
- SR No. 56 – Dangerous Goods (Explosives) Interim Regulations 2021
- SR No. 125 – Commercial Passenger Vehicle Industry Further Amendment (Amendment) Regulations 2021
- SR No. 130 – Liquor Control Reform Interim Regulations 2021
- SR No. 132 – Environment Protection Amendment (Interim) Regulations 2021
- SR No. 175 – Public Health and Wellbeing Amendment (Service Victoria) Regulations 2021

S. 10 – Regulatory Impact Statements

- SR No. 2 – Worker Screening Regulations 2021
- SR No. 3 – Residential Tenancies Regulations 2021
- SR No. 14 – Water (General) Regulations 2021
- SR No. 25 – Education and Training Reform Amendment Regulations 2021
- SR No. 47 – Environment Protection Regulations 2021
- SR No. 48 – Environment Protection Transitional Regulations 2021
- SR No. 50 – Land Acquisition and Compensation Regulations 2021

- SR No. 55 – Professional Engineers Registration (Fees) Regulations 2021
- SR No. 61 – Subordinate Legislation (Legislative Instruments) Regulations 2021
- SR No. 69 – Local Government (Land Information) Regulations 2021
- SR No. 78 – Marine Safety (Fees) Regulations 2021
- SR No. 92 – Environment Protection Amendment (Wind Turbine Noise) Regulations 2021
- SR No. 116 – Road Safety (Vehicles) Regulations 2021
- SR No. 127 – Drugs, Poisons and Controlled Substances (Precursor Supply) Regulations 2021
- SR No. 138 – Control of Weapons Regulations 2021
- SR No. 139 – Petroleum Regulations 2021
- SR No. 140 – Water (Tagged Water Allocation) Regulations 2021
- SR No. 148 – Non-Emergency Patient Transport Amendment Regulations 2021
- SR No. 153 – Victorian Energy Efficiency Target Amendment (Targets) Regulations 2021

S. 10 – Regulatory Impact Statement and S. 8(1)(a) – Would Not Impose Significant Economic or Social Burden

- SR No. 137 – Occupational Health and Safety Amendment (Crystalline Silica) Regulations 2021

Exempt by Enabling Legislation

- SR No. 10 – COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Amendment Regulations 2021
- SR No. 19 – COVID-19 Omnibus (Emergency Measures) Transitional Regulations 2021
- SR No. 58 – Professional Engineers Registration Transitional Regulations 2021
- SR No. 96 – Public Health and Wellbeing (Quarantine Fees) Amendment Regulations 2021
- SR No. 103 – Commercial Tenancy Relief Scheme Regulations 2021
- SR No. 165 – Public Health and Wellbeing (Quarantine Fees) Further Amendment Regulations 2021
- Education and Care Services National Amendment Regulations 2021
- OH&S Regulation – Order Approving the First Aid in the Workplace Compliance Code
- OH&S Regulation – Order Revoking the First Aid in the Workplace Compliance Code

National Law

- SR No. 157 – National Law - Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021

2022

S. 8(1)(a) – Would not Impose Significant Economic or Social Burden

- SR No. 1 – Occupational Health and Safety (COVID-19 Incident Notification) Revocation Regulations 2022
- SR No. 2 – Transport (Compliance and Miscellaneous)(Conduct on Public Transport) and (Infringements) (COVID-19 Response) Amendment Regulations 2022
- SR No. 3 – Subordinate Legislation Amendment (Prescribed Bookshop) Regulations 2022
- SR No. 6 – Education and Training Reform Amendment Regulations 2022
- SR No. 7 – Pollution of Waters by Oil and Noxious Substances Regulations 2022
- SR No. 8 – Severe Substance Dependence Treatment Regulations 2022
- SR No. 10 – County Court (Fees) Amendment Regulations 2022
- SR No. 11 – Relationships (Fees) Amendment Regulations 2022
- SR No. 13 – Drugs, Poisons and Controlled Substances Amendment (Schedule 8 Cannabis and Schedule 8 Tetrahydrocannabinol) Regulations 2022
- SR No. 14 – Public Health and Wellbeing Amendment Regulations 2022
- SR No. 16 – Drugs, Poisons and Controlled Substances Amendment (Registered Aboriginal and Torres Strait Islander Health Practitioners) Regulations 2022
- SR No. 17 – Bus Safety Amendment Regulations 2022
- SR No. 19 – Road Safety (Drivers) and (General) Amendment Regulations 2022

- SR No. 22 – Sex Work Amendment Regulations 2022
- SR No. 23 – Sex Work (Fees) Amendment Regulations 2022
- SR No. 24 – City of Melbourne (Electoral) Regulations 2022
- SR No. 25 – Child Wellbeing and Safety Amendment (Child Safe Standards Sector Regulators and Infringements) Regulations 2022
- SR No. 26 – Long Service Benefits Portability Amendment (Schedules) Regulations 2022
- SR No. 27 – Service Victoria (Transfer of Miscellaneous Licensing and Registration Identity Verification Functions) Regulations 2022
- SR No. 28 – Summary Offence Regulations 2022
- SR No. 30 – Road Safety Road Rules Amendment (Animal-Drawn Vehicles) Rules 2022
- SR No. 35 – Residential Tenancies Amendment Regulations 2022
- SR No. 36 – Conservation Forests and Lands (Infringement Notice) Miscellaneous Amendment Regulations 2022
- SR No. 37 – Victorian Energy Efficiency Target Amendment (Code of Conduct) Regulations 2022
- SR No. 38 – Road Safety Road Rules Amendment (Speed-Limit) Rules 2022
- SR No. 40 – Marine (Drug, Alcohol and Pollution Control) Regulations 2022
- SR No. 42 – Australian Consumer Law and Fair Trading Regulations 2022
- SR No. 43 – Education and Training Reform Amendment (School Community Safety Orders) Regulations 2022
- SR No. 48 – Water (Drillers' Licences) Regulations 2022
- SR No. 49 – Spent Convictions (Court Applications) Amendment Regulations 2022
- SR No. 53 – Occupational Health and Safety Amendment (COVID-19 Vaccination Information) Regulations 2022
- SR No. 55 – Electricity Industry (Penalty Regime) Regulations 2022
- SR No. 56 – Gas Industry (Penalty Regime) Regulations 2022
- SR No. 58 – Firearms Amendment Regulations 2022
- SR No. 59 – Catchment and Land Protection Regulations 2022
- SR No. 60 – Assisted Reproductive Treatment Amendment Regulations 2022
- SR No. 61 – Building Amendment (Accreditation Requirements for Building Products) Regulations 2022
- SR No. 62 – Crown Land (Reserves)(Domestic Firewood) Regulations 2022
- SR No. 63 – Forests (Domestic Firewood) Regulations 2022
- SR No. 66 – Commercial Passenger Vehicle Industry and Commercial Passenger Vehicle Industry (Infringements) Amendment Regulations 2022
- SR No. 67 – Alpine Resorts (Management) Amendment Regulations 2022
- SR No. 68 – Electoral Regulations 2022
- SR No. 70 – Livestock Management Amendment (Animal Activism) Regulations 2022
- SR No. 71 – Firefighters' Presumptive Rights Compensation Amendment Regulations 2022
- SR No. 72 – Public Health and Wellbeing Amendment (Concessional Infringement Scheme) Regulations 2022
- SR No. 73 – Public Health and Wellbeing Amendment (Notifiable Conditions) Regulations 2022
- SR No. 74 – Domestic Animals Amendment Regulations 2022
- SR No. 76 – Forests (Forest Firefighters Presumptive Rights Compensation) Regulations 2022
- SR No. 77 – Domestic Animals Further Amendment Regulations 2022
- SR No. 81 – Liquor Control Reform Transitional Regulations 2022
- SR No. 83 – Crown Land (Reserves)(Domestic Firewood) Amendment Regulations 2022
- SR No. 84 – Forests (Domestic Firewood) Amendment Regulations 2022
- SR No. 87 – Wildlife (Marine Mammals) Amendment Regulations 2022
- SR No. 88 – Public Health and Wellbeing Further Amendment Regulations 2022
- SR No. 89 – Public Health and Wellbeing (Prescribed Accommodation) Amendment Regulations 2022
- SR No. 91 – Terrorism (Community Protection) Amendment Regulations 2022
- SR No. 93 – Victorian Energy Efficiency Target Amendment (Revocation of Incandescent Lighting Provisions) Regulations 2022
- SR No. 96 – Drugs, Poisons and Controlled Substances Amendment (Schedule 9 Poisons) Regulations 2022
- SR No. 98 – Road Safety (Drivers) Amendment (Fees) Regulations 2022
- SR No. 99 – Retail Leases Amendment Regulations 2022

- SR No. 104 – Local Government (Electoral) Amendment Regulations 2022
- SR No. 105 – Port Management (Prescribed Bodies) Regulations 2022
- SR No. 109 – Coroners Amendment Regulations 2022
- SR No. 112 – Drugs, Poisons and Controlled Substances Amendment (Continued Dispensing) Regulations 2022
- SR No. 113 – Drugs, Poisons and Controlled Substances Amendment (Naloxone) Regulations 2022
- SR No. 116 – Bail Regulations 2022
- SR No. 118 – Child Wellbeing and Safety Amendment (Child Safe Standards Sector Regulators) Regulations 2022
- SR No. 121 – Health Services (Quality and Safety) Amendment Regulations 2022
- SR No. 123 – Family Violence Protection (Information Sharing and Risk Management) Amendment Regulations 2022
- SR No. 124 – Liquor Control Reform Amendment Regulations 2022
- SR No. 125 – Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Amendment Regulations 2022
- SR No. 126 – Local Government (Planning and Reporting) Amendment Regulations 2022
- SR No. 128 – Accident Towing Services Amendment Regulations 2022
- SR No. 130 – Road Safety (Vehicles) Amendment (Apprentice) Regulations 2022

S. 8(1)(a) and (c) – Would not impose significant economic or social burden and is of a fundamentally declaratory or machinery nature

- SR No. 32 – Service Victoria (Transfer of Registration of Building Practitioners Functions) Regulations 2022
- SR No. 92 – Community Based Sentences (Transfer) Amendment Regulations 2022
- SR No. 106 – Road Safety (General) Further Amendment Regulations 2022
- SR No. 110 – Crimes (DNA Database) Regulations 2022
- SR No. 117 – Surveillance Devices Amendment (Body-worn Cameras) Regulations 2022
- SR No. 119 – Child Wellbeing and Safety (Information Sharing) Amendment Regulations 2022
- SR No. 127 – Electoral Amendment Regulations 2022
- SR No. 129 – Road Safety (Drivers) and (Vehicles) Further Amendment Regulations 2022

S. 8(1)(a) and (f) – No Economic or Social Burden and Is Required under a National Uniform Legislation Scheme and an Assessment of Costs and Benefits has been Undertaken under that Scheme

- SR No. 122 – Plumbing Amendment Regulations 2022

S. 8(1)(b) – Is a Rule which relates only to a Court or Tribunal

- SR No. 5 – Magistrates' Court Criminal Procedure Amendment Rules 2022
- SR No. 20 – Magistrates' Court (Miscellaneous Civil Proceedings)(Industrial Division Amendment) Rules 2022
- SR No. 33 – Magistrates' Court (Judicial Registrars) Amendment Rules 2022
- SR No. 34 – Supreme Court (Chapters I and VI Dual Commission Holder and Joinder Amendments) Rules 2022
- SR No. 54 – Magistrates' Court General Civil Procedure Amendment Rules 2022
- SR No. 69 – Supreme Court (Chapter IV Adoption Amendment) Rules 2022
- SR No. 90 – County Court (Chapters I, II and III Miscellaneous Amendments) Rules 2022
- SR No. 100 – Children, Youth and Families (Children's Court Family Division) and Children's Court Criminal Procedure Amendment Rules 2022
- SR No. 101 – Magistrates' Court Criminal Procedure Further Amendment Rules 2022
- SR No. 102 – Magistrates' Court General Civil Procedure and Authentication Amendment Rules 2022
- SR No. 131 – County Court (Chapter I Circuit Fees, Expenses and Allowances Amendment) Rules 2022
- SR No. 132 – Supreme Court (Chapter I Substituted Service Amendment) Rules 2022
- SR No. 133 – Supreme Court (Chapter I Appendices A and B Amendment) Rules 2022
- SR No. 134 – Magistrates' Court Miscellaneous Civil Proceedings and General Civil Procedure (Costs) Amendment Rules 2022

S. 8(1)(c) – Fundamentally Declaratory or Machinery Nature

- SR No. 18 – Transport (Safety Schemes Compliance and Enforcement) (Infringements) Amendment Regulations 2022
- SR No. 21 – Confiscation Amendment (Australian Capital Territory Unexplained Wealth Orders) Regulations 2022
- SR No. 31 – Road Safety (General) Amendment Regulations 2022
- SR No. 44 – Tobacco (Victorian Health Promotion Foundation) Amendment Regulations 2022
- SR No. 46 – Mental Health Amendment Regulations 2022
- SR No. 47 – Road Safety (General) and (Vehicles) Amendment Regulations 2022
- SR No. 52 – Borrowing and Investment Powers (Authority) Regulations 2022
- SR No. 57 – Criminal Procedure Amendment (Disclosure Certificates) Regulations 2022
- SR No. 107 – Mutual Recognition (Victoria)(Temporary Exemption)(Single-Use Plastic Items) Regulations 2022
- SR No. 108 – Trans-Tasman Mutual Recognition (Victoria)(Temporary Exemption)(Single-Use Plastic Items) Regulations 2022
- SR No. 114 – Planning and Environment Amendment Regulations 2022

S. 8(1)(d) and (f) – Only increases Fees in respect of a Financial Year by an amount not exceeding the Annual Rate Approved by the Treasurer and National Uniform Legislation Scheme

- SR No. 51 – Road Safety (Drivers) and (Vehicles) Amendment Regulations 2022

S. 8(1)(e)(iii) – Extension of time

- SR No. 12 – Subordinate Legislation (Residential Tenancies (Rooming House Standards) Regulations 2012) Extension Regulations 2022
- SR No. 39 – Subordinate Legislation (Marine Safety Regulations 2012) Extension Regulations 2022
- SR No. 45 – Subordinate Legislation (Supported Residential Services (Private Proprietors) Regulations 2012) Extension Regulations 2022
- SR No. 65 – Subordinate Legislation (Health Records Regulations 2012) Extension Regulations 2022
- SR No. 75 – Subordinate Legislation (Wildlife (Game) Regulations 2012) Extension Regulations 2022
- SR No. 80 – Subordinate Legislation (Associations Incorporation Reform Regulations 2012) Extension Regulations 2022

S. 8(1)(e)(iv), (v) and (vi) – Prescribes under section 4A(1)(a), 4A(1)(b) or 4A(1)(c) an instrument to be a legislative instrument, to not be a legislative instrument, or to be exempt

- SR No. 95 – Subordinate Legislation (Legislative Instruments) Amendment Regulations 2022

S. 9(1) – Premier’s Certificate

- SR No. 50 – Building Amendment (Fees Expiry Date) Interim Regulations 2022
- SR No. 111 – Liquor Control Reform Interim Regulations 2022

S. 10 – Regulatory Impact Statements

- SR No. 9 – Births, Deaths and Marriages Registration (Fees) Amendment Regulations 2022
- SR No. 15 – Guardianship and Administration (Fees) Regulations 2022
- SR No. 29 – Gas Safety (Gas Installation) Amendment (Type A Appliances) Regulations 2022
- SR No. 41 – Dangerous Goods (Explosives) Regulations 2022
- SR No. 64 – Gas Safety (Gas Installation) Amendment Regulations 2022
- SR No. 78 – Juries (Fees) Regulations 2022
- SR No. 79 – Magistrates’ Court (Fees) Regulations 2022
- SR No. 85 – Environment Protection Amendment (Banning Single-Use Plastic Items) Regulations 2022
- SR No. 86 – Environment Protection Amendment (Waste Tyres-Silage Production) Regulations 2022
- SR No. 94 – Circular Economy (Waste Reduction and Recycling)(Container Deposit Scheme) Regulations 2022
- SR No. 97 – Mineral Resources (Sustainable Development)(Mineral Industries) Amendment Regulations 2022
- SR No. 103 – Electricity Safety (Registration and Licensing) Amendment Regulations 2022
- SR No. 115 – Dangerous Good (Storage and Handling) Regulations 2022

SR No. 120 – Environment Protection Amendment (Wind Turbine Noise) Regulations 2022

Exempt by Enabling Legislation

SR No. 4 – Commercial Tenancy Relief Scheme Regulations 2022

SR No. 82 – Fire Rescue Victoria (Firefighters Registration Board) Regulations 2022

OH&S Regulation – Order Approving the Lead Compliance Code

National Law

Rail Safety National Law National Regulations (Fees and FOI) Amendment Regulations 2022

Rail Safety National Law National Regulations (Reporting Requirements) Amendment Regulations 2022

Appendix B

Legislative Instruments 2021 and 2022

2021

S. 12F(1)(a) – Would not Impose Significant Economic or Social Burden

2021 Ministerial Order Under Section 16BA

Class Exemption for Sand Filter Treatment Plants granted under Section 459 of the Environment Protection Act 2017

Classes of Food Premises and Requirements under the Food Act 1984

Classification of Agricultural and Veterinary Chemical Waste for the Purposes of the ChemClear Program

Classification of Architectural and Decorative Waste Paint for the Purposes of the Paintback Stewardship Scheme

Classification of Arsenic-Contaminated Waste from the City of Greater Bendigo

Code of Conduct for Professional Engineers

EPA Designation: Classification of Pharmaceutical Waste for the Purposes of the RUM Project

EPA Determination – Specifications Acceptable to the Authority for Receiving Recycled Aggregates

EPA Determination – Specifications Acceptable to the Authority for Receiving Fill Material

EPA Determination – Specifications Acceptable to the Authority for Receiving Livestock Manures and Effluent

EPA Determination – Specifications Acceptable to the Authority for Receiving Processed Organics

EPA Determination – Specifications Acceptable to the Authority for Receiving Processed Organics Granted under Regulation 5(3)(a) of the Environment Protection Regulations 2021

Exemption from Requirement to hold Permission – Discharges or Emissions to the Atmosphere from Prescribed Activities

Exemption from Requirement to hold Permission – Discharges to Land or Surface Water from Prescribed Activities

Exemption from Requirement to hold Permission – Modifications to a Sewage Treatment Plant

Exemption from Requirement to hold Permission – Temporary Storage and Containment of Waste Oils, Paints and Chemicals Generated at Another Site at a Council Transfer Station

Guidelines under Section 55 of the Duties Act 2000

Home Buying Scheme Declaration (Victorian Homebuyer Fund)

Ministerial Direction No. 1 – Potentially Contaminated Land

Ministerial Order 1316 - Order Amending Ministerial Order (Constitution of Government School Councils) 2020

Ministerial Order No. 1324 – Order Amending Ministerial Order 870: Child Safe Standards – Managing the Risk of Abuse in Schools

Ministerial Order No. 1325 - Order Amending Ministerial Order No. 706: Anaphylaxis Management in Victorian Schools

Ministerial Order No. 1328 - Order Amending Ministerial Order No. 1038 - Teaching Service (Employment Conditions, Salaries, Allowances, Selection and Conduct) Order 2017 and Ministerial Order No. 1039 - School Council Employees (Employment Conditions, Salaries, Allowances and Selection) Order 2017

Ministerial Order No. 1337: Order Amending Ministerial Order No. 615 – Amendment to Order Fixing of Fees Administered by the Victorian Registration and Qualifications Authority

Notice under section 96A – Suspension of regulation 13(1)(a) of the Road Safety (Drivers) Regulations 2019

Order Modifying the National Gas Law and National Gas Rules

Order Setting Requirements for Modifications and Variations to Instruments

Order to Declare a Class of Entities as Specified Entities

Remaking of the Child Safe Standards

Service Victoria Identity Verification Standards

Variation of the Code of Practice for Timber Production 2014 (No. 1/2021)

S. 12F(1)(b) – Fundamentally Declaratory or Machinery Nature

Declaration of Great Ocean Road Coast and Parks

Revocation of Notifiable Chemicals Order (Arsenic and Arsenic Compounds) under Section 30

Revocation of Notifiable Chemicals Order (Chlorine Compounds) under Section 30D

S. 12F(1)(f) – National Uniform Legislation Scheme

The Institute of Public Accountants Professional Standards Scheme

S. 12F(1)(h)(ii) – Exemption – Is of not more than 12 months duration and is necessary to respond to an urgent public health issue or urgent public safety issue

Secretary Approval Nurse Immuniser – SARS-CoV-2 (COVID-19) Vaccine

Secretary Approval Nurse Immunisers – SARS-CoV-2 (COVID-19) Vaccine

Secretary Approval Pharmacist Immuniser – SARS-CoV-2 (COVID-19) Vaccine

S. 12F(1)(h)(iii) – Exemption – LI is of not more than 12 months Duration and is Necessary to Respond to Likely or Actual Significant Damage to the Environment, Resource Sustainability or the Economy

Interim Order for Amendment of the Trading Rules for Declared Water Systems (Revised Goulburn to Murray Trade Rule)

S. 12H – Regulatory Impact Statements

Environment Reference Standard

Exempt by Subordinate Legislation (Legislative Instruments) Regulations 2021

Order in Council to Amend the Order in Council Declaring Certain Motor Vehicles Not to be Motor Vehicles – Electric Scooter Trial

Remaking the Victorian List of Proclaimed Diseases with the Inclusion of Lung Cancer with Silicosis and Scleroderma with Silicosis

2022

S. 12F(1)(a) – Would not Impose Significant Economic or Social Burden

Amendments to the Environment Reference Standard No. S 158 29 March 2022

Classification of PFAS-impacted Soil

Declaration Classes of Food Premises and Requirements under S19C of Food Act 1984

Declaration of Minimum Records Keeping Section 19CB of the Food Act 1984

Determination of Gaming Machine Entitlement Allocation and Transfer Rules

Determination of Gaming Machine Entitlement Allocation and Transfer Rules – 14 July 2022

Guidelines for Rooming House Exemption under Section 75 of the Land Tax Act 2005

Keno Technical Standard – Version 3.3

Ministerial Direction Pursuant to Section 6A.7.2 of the Gambling Regulation Act 2003

Ministerial Order 1358 – Order Amending Ministerial Order No. 1125 - Procedures for Suspension and Expulsion of Students in Government Schools

Ministerial Order No. 1365 – Order Amendment Ministerial Order No. 1228 – Victorian Institute of Teaching Registration Fees

Ministerial Order No. 1387 – Order Amendment Ministerial Orders No. 1038 and 1039 – School Council Employees and Teaching Service (Vaccination Requirements for Specialist School Facilities) 2022

Ministerial Order No. 1388 – Teaching Service (Employment Conditions, Salaries, Allowances, Selection and Conduct) Order 2022

Ministerial Order under Section 18D - Licensee Record Keeping

Notice of Declaration of Excluded Zones Under Section 3(2)

Notice under Section 35A(1) of the Drugs, Poisons and Controlled Substances Act 1981

Order in Council – Exemption under Section 120W of the Electricity Safety Act 1998

Order in Council - General Exemption Order 2022

Order to Approve the Making of the Municipal Association of Victoria Rules 2022

Order to Declare a Class of Entities as Specified Entities

Section 3.5.23(3) – Victorian Gambling and Casino Control Commission Gaming Machine Rules (Casino)

Service Victoria Identity Verification Standards

Variation of the Code of Practice for Timber Production 2014 (No.1/2022)

Victorian Duty of Candour Guidelines

S. 12F(1)(a) and (c) – Would not Impose Significant Economic or Social Burden and Only increases fees in respect of a financial year by an amount not exceeding the annual rate approved by the Treasurer

Dairy Food Safety Victoria Determination of Licence Classes and Fees for Dairy Businesses

S. 12F(1)(a) and (j) – Would not Impose Significant Economic or Social Burden and Notice of the Proposed Legislative Instrument would Render the Proposed Legislative Instrument Ineffective or would Unfairly Advantage or Disadvantage any person likely to be Affected by the Proposed Legislative Instrument

Notice of Declaration of a Discount Factor

S. 12F(1)(b) – Fundamentally Declaratory or Machinery Nature

Order in Council – Declaration of Surf Coast as A Distinctive Area and Landscape

Order in Council – Extension of Period of Declaration of Bellarine Peninsula and Bass Coast as Distinctive Areas and Landscapes

Order in Council Declaration of the Great Ocean Road Coast and Parks

S. 12F(1)(d) – Would Only Impose a Burden on a Public Sector Body

Variation of the Code of Practice for Bushfire Management on Public Land (2012)

S. 12F(1)(f) – National Uniform Legislation Scheme

Law Institute of Victoria Limited Professional Standards Scheme

Law Society of South Australia Professional Standards Scheme

South Australian Bar Association Professional Standards Scheme

The Queensland Law Society Professional Standards Scheme

S. 12F(1)(h)(ii) – Is of not more than 12 months Duration and is Necessary to Respond to an Urgent Public Health Issue or Urgent Public Safety Issue

Secretary Approval Nurse Immunisers – SARS-COV-2 (COVID-19) Vaccine

Secretary Approval Pharmacist Immunisers – SARS-CoV-2 (COVID-19) Vaccine

S. 12G – Premier’s Certificate

Notice of Additional Public Holiday

S. 12H – Regulatory Impact Statements

Order for Amendment of the Trading Rules for Declared Water Systems (Revised Goulburn to Murray Trade Rule)

Exempt by Subordinate Legislation (Legislative Instruments) Regulations 2021

Declaration of Crown Land as Protected Public Land

Guidelines for Assessing Fitness to Drive

Order in Council Declaring Certain Motor Vehicles not to be Motor Vehicles

Exempt by Enabling Act

Notice of Making of Order Revoking the Approval of the Managing Exposure to Crystalline Silica: Engineered Stone Compliance Code

Notice of Order Approving the Managing Exposure to Crystalline Silica: Engineered Stone Compliance Code

Appendix C

Ministerial Correspondence

This Appendix contains a list of correspondence sent to responsible Ministers by the Subcommittee regarding 2021 and 2022 regulations and legislative instruments. The Appendix categorises correspondence in accordance with the nature of the issue raised by the Subcommittee. The letters to the relevant Ministers and responses are published in the Alert Digest throughout the year and have also been reproduced below.

2021

| Statutory Rule/ Legislative Instrument | Minister | Issue | Date of Correspondence |
|--|---|---|--|
| Order to Declare a Class of Entities as Specified Entities | Assistant Treasurer | Seeking information about the consultation undertaken in the development of the legislative instrument | Sent 24 June 2021 Response received 19 August 2022 |
| SR No. 25 – Education and Training Reform Amendment Regulations 2021 | Minister for Education | Seeking advice as to the compatibility with human rights | Sent 24 June 2021 Response received 21 July 2022 |
| SR No. 43 – Public Health and Wellbeing Amendment (QR Reporting Infringement) Regulations 2021 | Minister for Health | Seeking advice about the application of section 6(b) of the Subordinate Legislation Act and the Guidelines to the Regulations | Sent 17 August 2021 Response received 30 July 2022 |
| SR No. 47 – Environment Protection Regulations 2021 | Minister for Energy, Environment and Climate Change | Seeking advice as to the compatibility with human rights | Sent 17 August 2021 Response received 7 April 2022 |
| SR No. 92 – Environment Protection Amendment (Wind Turbine Noise) Regulations 2021 | Minister for Energy, Environment and Climate Change | Minister wrote to the Subcommittee noting an omission in making notices under sections 11 and 12 of the Subordinate Legislation Act | No initial letter sent Response received 7 October 2021 |

2022

| Statutory Rule/ Legislative Instrument | Minister | Issue | Date of Correspondence |
|--|-------------------------------|--|---|
| SR No. 11 – Relationships (Fees) Amendment Regulations 2022 | Attorney-General | Seeking further detail regarding the application of section 6(b) of Subordinate Legislation Act 1994 and the Guidelines and reiterating the Committee's expectation regarding section 8(1)(a) exemption certificates | Sent 8 June 2022 Response received 3 August 2022 |
| SR No. 41 – Dangerous Goods (Explosives) Regulations 2022 | Minister for Workplace Safety | Seeking advice as to the compatibility of the Regulations with the human rights | Sent 20 September 2022 Response received 20 October 2022 |
| SR No. 70 – Livestock Management Amendment (Animal Activism) Regulations 2022 | Minister for Agriculture | Reiterating the Subcommittee requirements regarding the timeliness of documentation being sent | Sent 20 March 2023 No response requested |
| SR No. 76 – Forests (Forest Firefighters Presumptive Rights Compensation) Regulations 2022 | Minister for Environment | Seeking further advice as to the type of information that is envisaged will be collected under the Regulations | Sent 20 March 2023 Response received 29 May 2023 |
| SR No. 115 – Dangerous Goods (Storage and Handling) Regulations 2022 | Minister for Workplace Safety | Seeking further advice regarding the timeframes of a concurrent review of the Act and Regulations | Sent 12 May 2023 Response received 1 June 2023 |
| Order in Council – Declaration of Surf Coast as A Distinctive Area and Landscape | Minister for Environment | Seeking advice as to why the legislative instrument was not tabled | Sent 12 May 2023 Response received 14 June 2023 |
| Order in Council – Extension of Period of Declaration of Bellarine Peninsula and Bass Coast as Distinctive Areas | Minister for Planning | Seeking advice as to why the legislative instrument was not tabled | Sent 12 May 2023 Response received 14 June 2023 |
| SR No. 120 – Environment Protection Amendment (Wind Turbine Noise) Regulations 2022 | Minister for Environment | Seeking advice about whether additional guidance will be given to industry on the impact of a Supreme Court judgement on obligations under the Regulations | Sent 17 May 2023 No response received at time of publication |

PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee



24 June 2021

The Hon. Danny Pearson
Assistant Treasurer
Level 5
1 Macarthur Street
East Melbourne VIC 3002

By email: danny.pearson@parliament.vic.gov.au

Dear Minister

Order to Declare a Class of Entities as Specified Entities

The Regulation Review Subcommittee (the Subcommittee) considered the above Order at a meeting on 21 June 2021. The Order has been approved by the Subcommittee.

Consultation certificate

Section 12C of the *Subordinate Legislation Act 1994* (the **Act**) states that the responsible Minister must ensure that where the guidelines require consultation:

- (a) there is consultation in accordance with the guidelines with any other Minister whose area of responsibility may be affected by a proposed legislative instrument so as to avoid any overlap or conflict with any other existing or proposed statutory rule, legislative instrument or other legislation;
- (b) there is consultation in accordance with the guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed legislative instrument so that the need for, and the scope of, the proposed legislative instrument is considered;
- (c) a certificate of consultation in accordance with the guidelines is issued for the proposed legislative instrument.

The Order was exempted under section 12F(1)(a) of the Act.

The Subordinate Legislation Act Guidelines provide that, where a legislative instrument has been exempted under section 12F(1)(a) of the Act, initial consultation should be undertaken under to enable the responsible Minister to obtain sufficient evidence to form a view as to whether the proposed statutory rule imposes a significant burden.

The Order was accompanied by a section 12C consultation certificate, which stated that every other Minister whose area of responsibility may be affected by the proposed class of specified entities and there is no overlap nor conflict with any other existing or proposed legislative instrument, other legislation or stated government policy.

Request for information

The Subcommittee requests further information about the consultation undertaken in the development of the Order.

The Subcommittee would appreciate your response by no later than **22 July 2021**.

Please contact Ms Lauren Cook, the Subcommittee's senior research officer, in the first instance if you require any further information.

Yours sincerely

A handwritten signature in black ink that reads "Mark Gepp". The signature is written in a cursive style with a large initial 'M'.

Mr Mark Gepp MP
Chairperson
Regulation Review Subcommittee



The Hon. Danny Pearson MP

Assistant Treasurer
Minister for Regulatory Reform
Minister for Government Services
Minister for Creative Industries

Level 5, 1 Macarthur Street
East Melbourne Victoria 3002
Telephone: +61 3 7005 8911
DX210759

D21/158679

Mr Mark Gepp MP
Chairperson
Regulation Review Subcommittee
Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

Dear Mr Gepp

ORDER TO DECLARE A CLASS OF ENTITIES AS SPECIFIED ENTITIES

I refer to your letter of 24 June 2021 regarding the Regulation Review Subcommittee's (Subcommittee) request for further information about the consultation undertaken in the development of the Order to declare a class of entities as specified entities for the purposes of the Victorian Government Purchasing Board (VGPB) expansion initiative.

The information provided below provides further background to the VGPB expansion initiative and stakeholder consultations when developing the Order.

The VGPB expansion initiative is a key deliverable of the 2018 Cabinet endorsed procurement reform program. This initiative will expand the scope of applicable agencies that must comply with the VGPB supply policies under the *Financial Management Act 1994* (FMA) to include approximately another 150 agencies.

In 2018-19, the Department of Treasury and Finance (DTF), acting in its secretariat function for the VGPB, consulted with DTF's Asset Management, Legal, Financial Frameworks and Construction Policy teams and the Victorian Managed Insurance Authority to discuss the expansion initiative, risk management, and appropriate mechanisms to bring the additional agencies into the VGPB's scope.

As a result of the above stakeholder consultations, it was determined that a Governor in Council Order to declare a class of specified entities would be the most appropriate legal mechanism to effect the scope expansion. The VGPB approved this approach at its meeting of 11 April 2019.

Subsequently, Accountable Officers of lead departments, Departmental Chief Procurement Officers and the Standing Directions Community of Practice were informed by DTF of the proposed VGPB expansion.

In February 2020, the former Assistant Treasurer consulted with other Ministers on the VGPB expansion initiative and the proposed Governor in Council Order to ensure there was no overlap or conflict with any other existing or proposed statutory rule or legislation, as



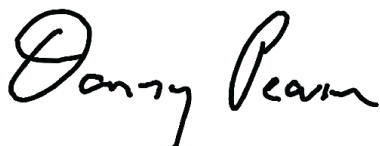
required under the *Subordinate Legislation Act 1994 Section 6(a)* and the guidelines issued under that Act. DTF was assured that there was no overlap or conflict with any other existing or proposed statutory rule or legislation.

Other stakeholders consulted through the development of the Governor in Council Order included the Victorian Auditor-General's Office and the Office of the Commissioner for Better Regulation.

The Subcommittee considered and approved the Order to declare a class of entities as specified entities for the purposes of Part 7A of the FMA at a meeting on 21 June 2021.

Thank you for your interest in this important initiative. Should you have any further queries on the initiative or consultation undertaken, please contact Mr Michael Golsworthy, VGPB Governance Manager, DTF on 0479 142 476 or via email at michael.golsworthy@df.vic.gov.au

Yours sincerely

A handwritten signature in black ink that reads "Danny Pearson". The signature is written in a cursive, flowing style.

The Hon. Danny Pearson MP
Assistant Treasurer

18/08/2021

PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee



24 June 2021

The Hon. James Merlino
Minister for Education
Level 3
1 Treasury Place
East Melbourne VIC 3002

By email: james.merlino@parliament.vic.gov.au

Attention: ilsa.colson@minstaff.vic.gov.au

Dear Minister

SR No. 25/2021 – Education and Training Reform Amendment Regulations 2021

The Regulation Review Subcommittee (the **Subcommittee**) considered SR No. 25/2021 – Education and Training Reform Amendment Regulations 2021 (the **Amendment Regulations**) at a meeting on 21 June 2021. The Regulations have been approved by the Subcommittee.

‘Fit and proper person’ requirement

Regulation 15 of the Amendment Regulations inserted new Schedule 4A into the Education and Training Reform Regulations 2017 (the **Principal Regulations**), including new clause 7(2), which states that ‘In a non-Government school boarding premises, every responsible person must be a fit and proper person’. New clause 7(5)(b) provides that a ‘fit and proper person’ is, among other things, a responsible person who ‘has not been found guilty of an offence which is, or which would if committed in Victoria be, an indictable offence’. This aspect has not been addressed in the Human Rights Certificate to the Amendment Regulations.

Regulation 13 of the Amendment Regulations inserted new Part 5A of the Regulations, including new Regulation 71B, which gives the Victorian Registration and Qualifications Authority (the **Authority**) the ability to exempt a person from the requirement in clause 7(5)(b) or (f) of Schedule 4A if the Authority is of the opinion that it would not be appropriate to exclude that person from being involved in the conduct of the school boarding premises.

Human rights issue

Charter section 8 provides: ‘Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.’ ‘Discrimination’ means ‘means discrimination (within the meaning of the *Equal Opportunity Act 2010*) on the basis of an attribute set out in section 6 of that Act’.

The Subcommittee is of the view that regulations 13 and 15 may limit Charter section 8(3) in two ways.

Scrutiny of Acts and Regulations Committee

Parliament of Victoria, Spring Street, East Melbourne, VIC 3002
03 8682 2836, sarc@parliament.vic.gov.au

First, discriminating on the basis of a criminal record (especially a non-serious criminal record), which may indirectly discriminate on the basis of protected Charter attributes. As stated in the Statement of Compatibility for the Spent Convictions Bill 2020:

A criminal record can also compound existing challenges and result in entrenchment of poverty and disadvantage. These issues also disproportionately impact some groups, in particular Aboriginal people, women and other cohorts such as people with an intellectual disability or who experience homelessness, which represents a further, albeit indirect, limitation on a person's right to equality and non-discrimination on the basis of Aboriginality, gender and disability (section 8).

Second, on or before 1 December 2021, the list of protected attributes will expand to include 'a spent conviction' under the *Spent Convictions Act 2021*. The *Spent Convictions Act 2021* is ambiguous about whether agencies required by statute to consider past convictions are permitted to consider spent convictions or not.

Compatibility with human rights

To the extent that there is a limitation on Charter section 8(3), the Subcommittee questions whether regulations 13 and 15 are reasonable limitations. While the presumptive ban on involvement in the management in the provision of school boarding premises is very broad, the Subcommittee does however note that exemptions are available.

Request for information

The Subcommittee requests information as to whether clause 7(5)(b) of new Schedule 4A applies to spent convictions. Further, the Subcommittee requests information as to whether there are less restrictive alternatives reasonably available to ensure the probity of the management of the provision of non-government school boarding services, including, for example, limiting the presumptive ban to offences in the last 10 years and/or to offences involving fraud, dishonesty, drug trafficking or violence.

The Subcommittee would appreciate your response by no later than **22 July 2021**.

Please contact Ms Lauren Cook, the Subcommittee's senior research officer, in the first instance if you require any further information.

Yours sincerely



Mr Mark Gepp MP
Chairperson
Regulation Review Subcommittee



The Hon James Merlino MP

Deputy Premier
Minister for Education
Minister for Mental Health

1 Treasury Place
East Melbourne Victoria 3002
Telephone: +61 3 9651 1222

COR 2180356

Mr Mark Gepp MP
Chairperson
Regulation Review Subcommittee
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
sarc@parliament.vic.gov.au

Dear Mr Gepp

Thank you for your correspondence of 24 June 2021 confirming that the Education and Training Reform Amendment Regulations 2021 (SR No. 25/2021) (Amendment Regulations) have been approved by the subcommittee.

The subcommittee has requested information as to:

- whether clause 7(5)(b) of Schedule 4A to the Education and Training Reform Regulations 2017 (the Principal Regulations), as amended by the Amendment Regulations, applies to spent convictions, thereby potentially limiting the right to equality before the law in section 8 of the *Charter of Human Rights and Responsibilities Act 2006* (the Charter); and
- whether less restrictive alternatives are reasonably available to ensure the probity of the management of the provision of non-government school boarding services.

Regulations 13 and 15 of the Amendment Regulations

Regulation 13 inserts Part 5A into the Principal Regulations.

Under regulation 71A, the prescribed minimum standards for the registration of school boarding premises are set out in Schedule 4A to the Principal Regulations (as inserted by regulation 15 of the Amendment Regulations). Where possible, these minimum standards have been drafted to align with the prescribed minimum standards for school registration found in Schedule 4 to the Principal Regulations.

The principal purpose of aligning the school and school boarding premises registration schemes is to reduce regulatory burden on persons who provide both of those services. For example, the Department of Education and Training advises me that, currently, all registered school boarding premises are part of a registered school¹ and many of the actions needed to comply with the minimum standards for school

¹ Under section 6.1.44 of the *Education and Training Reform Act 2006*, existing school boarding premises are deemed to be registered school boarding premises.

registration would also lead to compliance with the equivalent minimum standards for registration of a school boarding premises.

The purpose of clause 7 of Schedule 4A is to ensure that providers of school boarding services at school boarding premises structure their governance arrangements to ensure, among other things:

- the quality of the school boarding services the provider offers;
- the effective development of the strategic direction of the school boarding premises;
- the effective and sustainable management of the finances and property of the provider; and
- the provider fulfils its legal obligations, including in relation to the wellbeing and safety of children.²

More specifically, the requirement in clause 7(2) of Schedule 4A that every responsible person in a non-government school boarding premises be a fit and proper person ensures that persons involved in the governance of the provider of school boarding services at those premises have the appropriate skills, experience, knowledge and character to ensure proper and effective governance.³

As the subcommittee noted, clause 7(5)(b) of Schedule 4A provides that a “fit and proper person” must be a person who “has not been found guilty of an offence which is, or which would if committed in Victoria be, an indictable offence”.

As the subcommittee also noted, regulation 71B(1) of the Principal Regulations, as inserted by the Amendment Regulations, provides that the Victorian Registration and Qualifications Authority (VRQA) may exempt a person from the requirement in clause 7(5)(b) if it is of the opinion that it would not be appropriate to exclude that person from being involved in the conduct of the school boarding premises. Importantly, in considering whether to grant such an exemption, the VRQA is required to have regard to:

- the nature and gravity of the particular offence or misconduct, and its relevance to conducting a school boarding premises;
- the period of time since the person committed the offence or engaged in the misconduct;
- the punishment imposed for the offence or misconduct;
- whether or not the offence has been decriminalised or the standards of conduct have materially changed since the person engaged in the conduct that constituted the offence or misconduct;

² See, for example, the obligations a responsible person may have in relation to the conduct of the school boarding premises, including in relation to the governance of the provider of the school boarding services, under the Child Safe Standards made pursuant to the *Child Wellbeing and Safety Act 2005* and Ministerial Order – Child Safe Standards – Managing the Risk of Child Abuse in Schools - Ministerial Order No. 870.

³ Clause 7(5)(a) provides that a “fit and proper person means a responsible person who is able to carry out the person’s responsibilities in relation to the conduct of a registered school boarding premises in compliance with the laws of Victoria, the Commonwealth, another State or a Territory relating to the provision of school boarding services”.

- the person's behaviour since the person committed the offence or engaged in the misconduct;
- any information given by the person to the VRQA concerning the person's conduct in relation to the registration of the school boarding premises;
- any other matter that the VRQA considers relevant.

Right to equality before the law not limited

The subcommittee has queried whether the amendments to the Principal Regulations may limit a person's right to equal protection of the law without discrimination under section 8(3) of the Charter on the basis that:

- a criminal record (particularly a "non-serious criminal record") may indirectly discriminate against a person on the basis of one or more "protected Charter attributes" (including race, gender identity and disability);
- the *Spent Convictions Act 2021* (the SC Act) will, on commencement, amend the *Equal Opportunity Act 2010* (the EO Act) to expand the list of protected attributes to include spent convictions.

Sections 8(2) and 8(3) of the Charter provide that every person:

- has the right to enjoy his or her human rights without discrimination; and
- is equal before the law and is entitled to equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

The Charter adopts the same meaning of "discrimination" as the EO Act.

Indirect discrimination on the basis of an existing protected attribute

In my view, the Amendment Regulations do not indirectly discriminate against any person on the basis of an existing protected attribute. It is reasonable to expect all persons in positions of responsibility in relation to the administration and provision of school boarding services to be fit and proper,⁴ particularly where the aim is to protect:

- the wellbeing and safety of children in a school boarding premises;⁵ and
- the interests of families as consumers of those services.

⁴ See section 9(1)(b) of the EO Act, which requires a requirement that has, or is likely to have, the effect of disadvantaging persons with an attribute *to be unreasonable* for indirect discrimination to occur.

⁵ See in particular:

- the Statement of Compatibility for the Education and Training Reform Amendment (Regulation of Student Accommodation) Bill 2020;
- recommendation 13.3 of the Royal Commission into Institutional Responses to Child Sexual Abuse, and the findings of the Royal Commission in support of Recommendation 13.

The consideration of whether a person has been convicted of an indictable offence is reasonable, particularly where the offence relates to:

- the wellbeing and safety of children;
- dishonesty;
- violence; and
- drugs.

Further, the availability of the exemption under regulation 71B(1) and the requirement for the VRQA to have regard to the matters set out in regulation 71B(2) when considering whether to grant the exemption:

- reduces the risk that the requirement in clause 7(5)(b) has, or is likely to have, the effect of disadvantaging persons with a protected attribute;⁶ and
- increases the reasonableness of the requirement.⁷

Direct discrimination on the basis of spent convictions (when it becomes a protected attribute)

In my view, the rights relating to equality before the law in section 8 of the Charter will not be limited on the commencement of the SC Act. For the purposes of determining whether a person is fit and proper under clause 7(2) of Schedule 4A to the Principal Regulations, section 20 of the SC Act will have the effect of, among other things:

- permitting a person to refuse to disclose to the VRQA a spent conviction, which includes a finding of guilt; and
- prohibiting the VRQA from requesting a person disclose to the VRQA a spent conviction.⁸

Further, the definition of “conviction” in section 5 of the SC Act includes a “finding of guilt by a court” for either a summary or indictable offence. Section 6 provides that the SC Act applies to both past and future convictions from the day on which the Act comes into operation. This means that the SC Act would apply to past findings of guilt for indictable offences against persons seeking to be part of the management of a provider of school boarding services at a non-government school boarding premises after the SC Act commences.

⁶ See meaning of “indirect discrimination” in section 9(1) of the EO Act.

⁷ See meaning of “indirect discrimination” in section 9(1) of the EO Act.

⁸ Under section 20(1)(c) of the SC Act, the VRQA as a body corporate (being a “person” pursuant to section 38 of the *Interpretation of Legislation Act 1984*) would not be able to request any other person disclose the existence of a spent conviction or information in relation to a spent conviction.

For these reasons, and in response to the subcommittee’s specific query, in my view, clause 7(5)(b) of Schedule 4A to the Principal Regulations will not apply to spent convictions as defined in the SC Act and, as such, persons with spent convictions will not be treated unfavourably because of that attribute and therefore no discrimination will occur.⁹

Any potential limitation is reasonable

In the alternative, any potential limitation would be reasonably justified under section 7(2) of the Charter for reasons already mentioned above, including the importance, nature and extent of the fitness and propriety requirements in clause 7(2) of Schedule 4A, the purpose of which is to protect:

- the wellbeing and safety of children in a school boarding premises; and
- the interests of families as consumers of those services, bearing in mind the generally high cost of accessing school boarding services provided at non-government school boarding premises.

I note the subcommittee’s suggestion of adopting a less restrictive requirement by limiting the types of offences captured by clause 7(5)(b) to those offences which relate to the purposes and aims of clause 7(2). However, in my view, a “less restrictive means” is better achieved through the availability of the exemption in regulation 71B(1), as that provides the VRQA with the ability to adopt a less restrictive requirement, on a case by case basis and taking into account the unique circumstances of each individual responsible person. This provides more flexibility and avoids unintended outcomes that may arise by attempting to cover the field in the Amendment Regulations themselves.

Further, and for completeness, we note that the requirement in clause 7(2) is less restrictive than some existing eligibility requirements in other legislative schemes for appointments to institutions or organisations (such as other regulated entities or statutory authorities), which neither limit the types or categories of indictable offences which would deem a person unfit or unsuitable to be in a position of responsibility, nor contain a similar exemption to that in regulation 71B(1).

If you would like further information, please contact Melanie Hodge, Director, Commercial and Legislation Branch, Legal Division, Department of Education and Training, on 03 7022 1900 or by email: Melanie.Hodge@education.vic.gov.au.

Yours sincerely



The Hon James Merlino MP
Deputy Premier
Minister for Education
Minister for Mental Health

21 / 07 / 2021

⁹ See meaning of “discrimination” and “direct discrimination” in the EO Act.

PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee



17 August 2021

The Hon. Martin Foley
Minister for Health
Level 22, 50 Lonsdale Street
Melbourne VIC 3000

By email: martin.foley@parliament.vic.gov.au

Dear Minister

SR No. 43/2021 – Public Health and Wellbeing Amendment (QR Reporting Infringement) Regulations 2021

The Regulation Review Subcommittee (the **Subcommittee**) considered SR No. 43/2021 – Public Health and Wellbeing Amendment (QR Reporting Infringement) Regulations 2021 (the **Regulations**) at a meeting on 16 August 2021. The Regulations have been approved by the Subcommittee.

Consultation certificate

Section 6 of the *Subordinate Legislation Act 1994* (the **Act**) states that the responsible Minister must ensure that where the guidelines require consultation:

- (a) there is consultation in accordance with the guidelines with any other Minister whose area of responsibility may be affected by a proposed statutory rule so as to avoid any overlap or conflict with any other existing or proposed statutory rule or legislation;
- (b) there is consultation in accordance with the guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed statutory rule so that the need for, and the scope of, the proposed statutory rule is considered;
- (c) a certificate of consultation in accordance with the guidelines is issued for that statutory rule.

Paragraph 97 of the Premier's Guidelines states the following in relation to the consultation requirements for statutory rules exempt under section 8(1)(a) of the Act:

Section 8(1)(a) allows exemption of a proposed statutory rule if the statutory rule would not impose a significant economic or social burden on a sector of the public. Initial consultation should be undertaken under section 6(b) for the responsible Minister to obtain sufficient evidence to form a view as to whether the proposed statutory rule imposes a significant burden.

The Subcommittee noted that a certificate was not issued in relation to section 6(b) for the Regulations.

Scrutiny of Acts and Regulations Committee

Parliament of Victoria, Spring Street, East Melbourne, VIC 3002
03 8682 2836, sarc@parliament.vic.gov.au

Request for information

The Subcommittee requests further information about the application of section 6(b) of the Act and the Premier's Guidelines to the Regulations.

The Subcommittee would appreciate your response by no later than **14 September 2021**.

Yours sincerely

A handwritten signature in black ink that reads "Mark Gepp". The signature is written in a cursive style with a small flourish at the end.

Mr Mark Gepp MP
Chairperson
Regulation Review Subcommittee



The Hon. Mary-Anne Thomas MP

Minister for Health
Minister for Ambulance Services

GPO Box 4057
Melbourne Victoria 3001
Telephone: +61 3 9096 8561
www.health.vic.gov.au

BAC-CO-29026

Mr Mark Gepp MP, Chairperson
Regulation Review Subcommittee
Scrutiny of Acts and Regulations Committee
Parliament of Victoria, Spring Street
EAST MELBOURNE VIC 3002

Dear Mr Gepp

SR No. 43/2021 – Public Health and Wellbeing Amendment (QR Reporting Infringement) Regulations 2021

Thank you for your letter regarding the *Public Health and Wellbeing Amendment (QR Reporting Infringement Regulations) 2021 (Regulations)*, which were approved by the Regulation Review Subcommittee (**Subcommittee**) on 17 August 2021.

I understand that the Subcommittee requests further information as to why a certificate of public consultation was not issued in accordance with section 6(b) of the *Subordinate Legislation Act 1994 (Vic) (SLA)* and paragraph 97 of the *Premier's Guidelines* (now the *Subordinate Legislation Act 1994 Guidelines (Guidelines)*).

Background

The purpose of the Regulations was to allow authorised officers to issue infringement notices in respect of any non-compliance with mandatory electronic record-keeping requirements in any public health direction issued by the Chief Health Officer (or other officer authorised by the Chief Health Officer with powers to do so) (**Directions**). The Directions were made by the Chief Health Officer in accordance with section 200(1) of the *Public Health and Wellbeing Act 2008 (Vic) (PHW Act)*. At the time, the only mandatory electronic record-keeping was for venues captured by the (now revoked) Restricted Activity Directions who were also required to keep records in accordance with the (now revoked) Workplace Directions.

The Composite Certificate that accompanied the draft Regulations comprised a consultation certificate and infringement offence consultation certificate (together, the **Consultation Certificate**) and an Exemption Certificate. I note that the Exemption Certificate states:

(c) under section 8(1)(a) of [the SLA] in my opinion the proposed statutory rule would not impose a significant economic or social burden on a sector of the public.

The reasons for forming this opinion are that the proposed statutory rule amends the Public Health and Wellbeing Regulations 2019 to prescribe a penalty of 10 penalty



units (\$1,652) for businesses that do not comply with mandatory electronic record-keeping requirements, against a backdrop of an existing penalty of 60 penalty units (\$9,913) for businesses that do not comply with any other requirement in a direction. This is the same number of penalty units (10 penalty units) for adults who do not comply with another requirement in a direction. The imposition of a penalty for an infringement offence in relation to limited specific offending is not considered to place a burden on society, especially where the penalty is now to be lower and therefore less onerous than it would otherwise be if the offence was prosecuted in court.

Accordingly, a Regulatory Impact Statement is not required for these Regulations.

Regulatory requirements

Section 8(1)(a) of the SLA provides that:

The responsible Minister may issue an exemption certificate in writing certifying that, in the opinion of the Minister... the proposed statutory rule would not impose a significant economic or social burden on a sector of the public.

Section 6(b) of the SLA provides that '*[t]he responsible Minister must ensure that where the guidelines require consultation – there is consultation in accordance with the guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed statutory rule so that the need for, and the scope of, the proposed statutory rule is considered.*' Paragraph 135 of the Guidelines states that for a responsible Minister to issue an exemption certificate under section 8(1)(a), '*[i]nitial consultation should be undertaken under section 6(b) [of the SLA] to enable the responsible Minister to obtain sufficient evidence to form a view as to whether the proposed statutory rule imposes a significant burden*'.

Paragraph 76 of the Guidelines provides that '*[t]he responsible Minister must ensure that consultation is carried out, in accordance with these Guidelines, with any sector of the public on which a significant economic or social burden may be imposed by a proposed statutory rule or legislative instrument. This may include, for example, business groups, community groups, special interest groups and local government.*' (Emphasis added)

Relevantly, paragraph 130 of the Guidelines notes that '*[s]tatutory rules or legislative instruments which reduce existing fees or charges payable usually do not impose a significant burden on a sector of the public*'.

Paragraph 136 of the Guidelines then states that '*[i]f the responsible Minister considers that an exemption ground in section 8(1) or section 12E(1) of the SL Act applies to a proposed statutory rule or legislative instrument, the responsible Minister must specify the reasons for that opinion in their certificate (see sections 8(3) and 12F(3) of the SL Act). An exemption certificate should contain detailed reasons justifying the exemption (ss sections 8(3) and 12E(3) of the SL Act). An assertion that the exemption ground applies is not sufficient.*'

Paragraph 138 of the Guidelines provides that '*Where a Ministerial exemption certificate is issued in relation to a statutory rule or legislative instrument, the initial consultation requirements may also be affected*'.

Additional information

The threshold question for the then responsible Minister under section 6(b) of the SLA was to determine whether there was 'any sector of the public on which a significant economic or social burden may be imposed by' the Regulations. If there was any such 'significant economic or social burden' then both section 6(b) of the SLA and paragraph 76 of the Guidelines require that consultation be undertaken with that sector of the public.

Paragraph 109 of the Guidelines states that '*Whether a significant burden may be imposed should be assessed initially with reference only to the costs or negative impacts on a sector of the public.*' As noted above, paragraph 130 of the Guidelines notes that '*[s]tatutory rules or legislative instruments which reduce existing fees or charges payable usually do not impose a significant burden on a sector of the public.*'

Relevantly, the Consultation Certificate, states that the Regulations amend '*the Public Health and Wellbeing Regulations 2019 to prescribe a penalty of 10 penalty units (\$1,652) for businesses that do not comply with mandatory electronic record-keeping requirements, against a backdrop of an existing penalty of 60 penalty units (\$9,913) for businesses that do not comply with any other requirement in a direction. This is the same number of penalty units (10 penalty units) for adults who do not comply with another requirement in a direction. The imposition of a penalty for an infringement offence in relation to limited specific offending is not considered to place a burden on society, especially where the penalty is now to be lower and therefore less onerous than it would otherwise be if the offence was prosecuted in court.*' (Emphasis added)

The then responsible Minister's conclusion that the Regulations would not impose a significant economic or social burden on a sector of the public evidences that:

- (a) consideration was given to the impact of the introduction of the new infringement penalty on members/sections of the public; and
- (b) it was reasonable to rely on paragraph 130 of the Guidelines without further consultation with members or groups of the public,

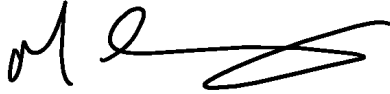
given that the Exemption Certificate states that the penalty for non-compliance with mandatory electronic record-keeping requirements introduced by the Regulations was lower than the existing penalty for non-compliance with the requirements of a Direction.

On these bases – while there is no specific statement referring to public consultation – taken as a whole, the Consultation Certificate does evidence consideration of all relevant sections of the SLA and Guidelines.

Should you wish to discuss this matter further, please contact Jennifer DeJong, Executive Director, Regulatory, Risk, Integrity and Legal Division at the Department of Health on jennifer.dejong@health.vic.gov.au.

I trust this information has been of assistance to you and the Subcommittee and thank you again for taking the time to write to me about this matter.

Yours sincerely



The Hon. Mary-Anne Thomas MP
Minister for Health
Minister for Ambulance Services

28/07/2022

PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee



17 August 2021

The Hon. Lily D'Ambrosio
Minister for Energy, Environment and Climate Change
Level 16, 8 Nicholson Street
East Melbourne VIC 3002

By email: lily.dambrosio@parliament.vic.gov.au

Dear Minister

SR No. 47/2021 – Environment Protection Regulations 2021

The Regulation Review Subcommittee (the **Subcommittee**) considered SR No. 47/2021 – Environment Protection Regulations 2021 (the **Regulations**) at a meeting on 16 August 2021. The Regulations have been approved by the Subcommittee.

Requirement to provide prescribed information

Section 50(1)(e) of the *Environment Protection Act 2017* (the **Act**) provides that an application for a permission (which means a licence, permit or registration) must 'include any prescribed information.'

Regulation 17(2) provides for that prescribed information as follows:

For the purposes of section 50(1)(e) of the Act, the following information is prescribed in the case of an application made to the Authority for a licence or a permit—

- (a) a declaration as to whether or not the applicant and, if the applicant is a body corporate, any officer of the applicant or of another body corporate that has or had one or more officers in common with the applicant or any family member of the applicant has ever—
 - (i) been found guilty of any offence, or entered into an undertaking, under any relevant environment protection legislation and, if so, details of the findings of guilt

Spent Convictions Act 2021

The *Spent Convictions Act 2021* will come into operation before 1 December 2021. Pursuant to the *Spent Convictions Act 2021*:

- a person is not required to disclose to another person the existence of a spent conviction; or information in relation to a spent conviction: section 20(1)(b);
- a person must not request that another person disclose the existence of a spent conviction; or information in relation to a spent conviction: section 20(1)(c); and
- everyone will have a right to effective protection against discrimination on the basis of a spent conviction: section 28.

The Subcommittee notes that section 20 does not expressly provide that its terms override other statutory requirements and that the protection against discrimination is subject to an exception in the *Equal Opportunity Act 2010* for conduct that is necessary to comply with an enactment. The

Subcommittee also notes that the *Spent Convictions Act 2021* does not expressly exempt environment protection laws from its requirements. Further, the Subcommittee notes that the explanatory memorandum and certificates issued under the *Subordinate Legislation Act 1994* in relation to the Regulations did not discuss spent convictions.

Request for information

The Subcommittee requests information as to whether or not regulation 17(2)(a)(i) will apply to spent convictions when the *Spent Convictions Act 2021* commences.

The Subcommittee would appreciate your response by no later than **14 September 2021**.

Yours sincerely

A handwritten signature in black ink that reads "Mark Gepp." The signature is written in a cursive, slightly slanted style.

Mr Mark Gepp MP
Chairperson
Regulation Review Subcommittee



Department of Environment,
Land, Water and Planning

PO Box 500, East Melbourne,
Victoria 8002 Australia
delwp.vic.gov.au

Mr Mark Gepp MP
Chairperson
Regulation Review Subcommittee
Parliament of Victoria
Scrutiny of Acts and Regulations Committee
Spring Street
EAST MELBOURNE VIC 3002

Ref: MIN086977



Dear Mr Gepp

SR NO. 47/2021 – ENVIRONMENT PROTECTION REGULATIONS 2021

Thank you for your correspondence of 17 August 2021, to the Hon Lily D'Ambrosio MP, Minister for Energy, Environment and Climate Change, regarding SR No 47/2021 – Environment Protection Regulations 2021. I apologise for the delay in responding.

Your correspondence has been received by the Minister and will be responded to as soon as possible. In the meantime, if you have any queries please contact me at mark.rodriques@delwp.vic.gov.au.

The delay is due to the need to consult with the Environment Protection Authority, which administers the *Environment Protection Act 2017*. We have also needed to seek advice from our in-house solicitors to help us consider the matter in detail before formulating a response.

Thank you for writing and raising this important matter with the Minister.

Yours sincerely

Mark Rodrigues
Executive Director, Climate Change

30/09/2021

Any personal information about you or a third party in your correspondence will be protected under the provisions of the *Privacy and Data Protection Act 2014*. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorized by law. Enquiries about access to information about you held by the Department should be directed to foi.unit@delwp.vic.gov.au or FOI Unit, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002.



OFFICIAL



Hon Lily D'Ambrosio MP

Minister for Energy, Environment and Climate Change
Minister for Solar Homes

8 Nicholson Street
East Melbourne, Victoria 3002
Telephone: 03 9637 9504
DX210098

Mr Mark Gepp
Chairperson
Regulation Review Subcommittee
Parliament of Victoria
Scrutiny of Acts and Regulations Committee
Spring Street
EAST MELBOURNE VIC 3002

Ref: MBR046117



Dear Mr Gepp

SR NO. 92/2021 – ENVIRONMENT PROTECTION AMENDMENT (WIND TURBINE NOISE) REGULATIONS 2021

It has come to my attention that certain notification requirements of the *Subordinate Legislation Act 1997* (SL Act) were not completed for the Environment Protection Amendment (Wind Turbine Noise) Regulations 2021 (Regulations). At the outset, I acknowledge and apologise for this inadvertent omission.

Overview of the Regulations

As you are aware, the Regulations operate to amend the Environment Protection Regulations 2021 to set specific requirements for wind farm operators under the *Environment Protection Act 2017* (EP Act 2017). These requirements set additional measures to demonstrate compliance with the general environmental duty and the duty not to emit an unreasonable noise or permit an unreasonable noise to be emitted under the EP Act.

Requirements for wind farm operators include:

- ongoing compliance with the relevant noise standard (the New Zealand Noise Standard NZS 6808 1998 or 2010, depending on the planning permit);
- implementation of a noise management plan, including a complaints management plan;
- providing an annual statement detailing the actions that have been taken to ensure compliance;
- completing a post-construction noise assessment; and
- conducting noise monitoring every five years.

Under the EP Act 2017, the Environment Protection Authority Victoria (EPA) is the primary regulator for wind farm turbine noise, for both new and existing facilities. Noise and other emissions from wind farm turbines are no longer subject to the nuisance provisions of the *Public Health and Wellbeing Act 2008*.



OFFICIAL-Sensitive

Compliance with sections 11 and 12 of the SL Act

I confirm that the following requirements of the SL Act were not complied with:

- notice of preparation for a regulatory impact statement (RIS), published in the *Victoria Government Gazette* and a daily newspaper circulating generally throughout Victoria, as required under section 11 of the SL Act); and
- a notice of the decision to make the EP Amendment Regulations, published in the *Victoria Government Gazette*; and a daily newspaper circulating generally throughout Victoria, as required under section 12 of the SL Act.

I acknowledge the failure to publish the requisite notices as described above. The Department of Environment, Land, Water and Planning (DELWP) has reviewed its internal processes and procedures and put in place additional controls to ensure this error does not occur again.

I note that notwithstanding this statutory non-compliance, considerable consultation took place in developing the exposure draft Regulations and the RIS. In response to public consultation, DELWP received 65 submissions from a wide cross-section of stakeholders, including 41 individual members of the community, most of whom live near planned or existing wind farms, 17 members of industry and acoustical consultancies, four local councils which have wind farms in their regions, two environmental and community organisations, and the Australian Energy Infrastructure Commissioner. All respondents to the public consultation were subsequently contacted with a consultation report, which addressed comments received and explained the changes reflected in the final EP Amendment Regulations. The content of the final Regulations was also communicated widely via reference groups with wind industry members and relevant councils, updates on DELWP and EPA websites, and a webinar for wind farm industry members.

Proposed actions

To ensure that the regulatory framework continues with minimal disruption, I have instructed DELWP to prepare further regulations for me to consider recommending to the Governor in Council. These regulations will revoke the EP Amendment Regulations. I have also directed the preparation of interim regulations to continue the substance of the EP Amendment Regulations for a maximum period of 12 months, by which time it is anticipated ongoing regulations regarding wind turbine noise can be made in accordance with the SL Act.

I will write to the Premier advising of my intention to revoke the EP Amendment Regulations and to request an exemption from conducting a RIS under section 9 of the SL Act for the purpose of making interim regulations. As you are aware, the Premier may provide such an exemption if, in the Premier's opinion, the special circumstances of the case are that the public interest requires that a proposed statutory rule be made without complying with the RIS process. In my view, the reasons that there are special circumstances supporting the public interest in this matter are the need for the following reasons:

- to maintain a continuous and consistent regulatory framework for wind turbine noise while the enduring regulations are developed, given the revocation of the EP Amendment Regulations;

- to avoid stakeholder confusion, given considerable consultation and impact assessment recently occurred in the development of previous, similar regulations; and
- to enable the making of enduring regulations regarding wind turbine noise, including a full regulatory impact statement process.

I once again apologise for the failure to comply fully with sections 11 and 12 of the SL Act and trust that the actions I have outlined appropriately address the matter. If you would like more information about this matter, please contact Eve Graham, Director Environment Protection, DELWP, on 0439 713 668 or email eve.graham@delwp.vic.gov.au.

Yours sincerely



Hon Lily D'Ambrosio MP
Minister for Energy, Environment and Climate Change
Minister for Solar Homes

06 / 10 / 2021

PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee



8 June 2022

Hon Jaclyn Symes MP
Attorney-General
Level 26
121 Exhibition Street
Melbourne VIC 3000

By email: attorney-general@justice.vic.gov.au

Attention: Kiera.Dingle@justice.vic.gov.au

Dear Attorney-General

SR No. 11/22 – Relationships (Fees) Amendment Regulations 2022

The Regulations Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee considered SR No. 11/22 – Relationships (Fees) Amendment Regulations 2022 (the Regulations) at a meeting on 6 June 2022.

The Subcommittee has approved the Regulations. However, the Subcommittee seeks your advice in relation to some technical scrutiny matters.

Section 8(1)(a) exemption certificate

The Regulations amend the *Relationships (Fees) Regulations 2019* to increase fees for the issue of legal relationship certificates by the Registrar of Births, Deaths and Marriages.

A section 8(1)(a) exemption certificate (the certificate) was issued under the *Subordinate Legislation Act 1994* (the Act) on the basis that the Regulations would not impose a significant economic or social burden on a sector of the public.

The certificate states that the reason for forming this opinion is that the Regulations' measurable social and/or economic costs to any sector of the public 'are significantly less than \$2 million per year'. The certificate does not provide additional information including exact figures which would demonstrate the measurable impact of the Regulations.

The Subcommittee notes that detailed information relating to the estimated impact of the Regulations is available in other public documents, including the Regulatory Impact Statement (RIS) accompanying SR No. 9/2022 – Births, Deaths and Marriages Registration (Fees) Amendment Regulations 2022. The RIS states in relation to the Regulations:

The increases in the fee for legal certificates will also apply to certificates issued under the *Relationships Act 2008*, for which the fee is prescribed under the Relationships (Fees) Regulations 2019. However, the increase in revenue attributable to the amendment to those Regulations is very small (around \$100,000 per year based on the number of applications), and hence no RIS is required to support the amendment to those Regulations.

The Subcommittee considers that additional information in the exemption certificate would assist consideration of the Regulations.

Scrutiny of Acts and Regulations Committee

Parliament of Victoria, Spring Street, East Melbourne, VIC 3002
03 8682 2836, sarc@parliament.vic.gov.au

Pursuant to section 8(3) of the Act, exemption certificates 'must specify the reasons for the exemption'. Accordingly, the Subcommittee expects all exemption certificates to contain adequate explanations of the reasons for granting the exemption, including detailed reasons as to why there is no significant economic or social burden on a sector of the public.

In the circumstances the Subcommittee draws your attention to its expectations regarding the information that should be included in section 8(1)(a) exemption certificates.

Section 6 consultation certificate

Section 6 of the Act states that the responsible Minister must ensure that where the Subordinate Legislation Act 1994 Guidelines (the Guidelines) require consultation:

- a) there is consultation in accordance with the Guidelines with any other Minister whose area of responsibility may be affected by a proposed statutory rule so as to avoid any overlap or conflict with any other existing or proposed statutory rule or legislation
- b) there is consultation in accordance with the Guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed statutory rule so that the need for, and the scope of, the proposed statutory rule is considered
- c) a certificate of consultation in accordance with the Guidelines is issued for that statutory rule.

Paragraph 97 the Guidelines states the following in relation to the consultation requirements for statutory rules exempt under section 8(1)(a) of the Act:

Section 8(1)(a) allows exemption of a proposed statutory rule if the statutory rule would not impose a significant economic or social burden on a sector of the public. Initial consultation should be undertaken under section 6(b) for the responsible Minister to obtain sufficient evidence to form a view as to whether the proposed statutory rule imposes a significant burden.

In this instance, the Subcommittee notes that a consultation certificate was not issued in relation to section 6(b) for the Regulations. Section 15(2) of the Act provides that failure for a section 6 certificate to be laid before Parliament does not affect the operation or effect of the Regulations, but the Subcommittee may report the failure to the Parliament. In addition, section 15A(3) of the Act provides that the failure to provide the Subcommittee with a section 6 certificate does not affect the operation or effect of the Regulations.

In the circumstances the Subcommittee seeks your advice as to the application of section 6(b) of the Act and the Guidelines to the Regulations.

The Subcommittee would appreciate your response by no later than **Friday, 29 July 2022**.

Yours sincerely



Mr Mark Gepp MP
Chairperson
Regulation Review Subcommittee



Jaclyn Symes MP

Attorney-General
Minister for Emergency Services

121 Exhibition Street
Melbourne, Victoria 3000 Australia
Telephone: +61 3 8684 1111
DX 210077

Our ref: 22062433

Mr Mark Gepp MP
Chairperson
Regulation Review Subcommittee
Parliament of Victoria, Spring Street
East Melbourne VIC 3002

By email: mark.gepp@parliament.vic.gov.au

Dear Mr Gepp

Response regarding SR No. 11/22 – Relationships (Fees) Amendment Regulations 2022

I write in response to your correspondence of 8 June 2022 which, on behalf of the Regulations Subcommittee of the Scrutiny of Acts and Regulations Committee, requested advice on technical scrutiny matters. These related to your meeting of 6 June which considered the Relationships (Fees) Amendment Regulations 2022 (the Regulations).

Your correspondence has flagged issues under the *Subordinate Legislation Act 1994 (Vic)* (the Act) and its Guidelines (the Guidelines) with the Section 8(1)(a) exemption certificate; and the absence of a Section 6 consultation certificate.

I understood that the statement within the exemption certificate, asserting that the social and/or economic costs were significantly less than \$2 million per year, would be sufficient in the context of other detailed information relating to the estimated impact of the Regulations being publicly available. I note that this was insufficient and acknowledge that content within the exemption certificate should have been more detailed.

In future, I have asked my Department to ensure that a detailed explanation is provided within an exemption certificate for my approval.

Your correspondence has noted that, in seeking an exemption under section 8(1)(a) of the Act, the Guidelines stipulate that initial consultation should be undertaken under section 6(b) to form a view as to whether the proposed statutory rule imposes a significant burden.



I am advised that consultation for fee changes resulting from the Regulations occurred in late 2021, through Engage Victoria. This consultation encouraged feedback on changes to all of BDM's legal certificate fees.

Part 3 of the Guidelines notes that 'initial consultation should be undertaken under section 6(b)... to form a view as to whether the proposed statutory rule imposes a significant burden'. Prior to consultation, the Department was confident that the proposed amendments would not impose a significant economic or social burden, which was reflected in the RIS.

Initial consultation for the Regulations was considered to have been undertaken through the Engage Victoria process for the concurrent amendments to the BDMR Regulations, as the cohort affected by these changes was the same, namely the 'general public' (as set out in the RIS).

As no feedback from the consultation related to relationship certificate fee changes, the Department's view that the Regulations imposed no significant burden was confirmed. As a result no consultation certificate was prepared.

The Department acknowledges that this rationale for not preparing a consultation certificate was incorrect and arose from the misunderstanding of the distinction between 'consultation' and 'initial consultation.'

I thank you for the information and acknowledge your advice in this matter and acknowledge that a consultation certificate should have been produced in this instance.

I apologise for the oversight and acknowledge that in future my department will ensure correct application of process for section 8(1)(a) and section 6(b) of the Act and its Guidelines.

Thank you for your important scrutiny of issues which contributes to fair and transparent governance.

Yours sincerely



Jaclyn Symes MP
Attorney-General
Minister for Emergency Services

03 / 08 / 2022

PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee



20 September 2022

The Hon Ingrid Stitt MLC
Minister for Workplace Safety
Level 22
50 Lonsdale Street
Melbourne VIC 3000

By email: Ingrid.Stitt@parliament.vic.gov.au

Att: bryan_monck@worksafe.vic.gov.au

Dear Minister

SR No. 41 – Dangerous Goods (Explosives) Regulations 2022

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee considered SR No. 41 – Dangerous Goods (Explosives) Regulations 2022 (the Regulations) at a meeting on 19 September 2022.

The Subcommittee has approved the Regulations. However, the Subcommittee seeks your advice in relation to some technical scrutiny matters.

The Subcommittee notes that, for the purposes of section 21A(3)(e) of *Dangerous Goods Act 1985* (the Act), regulation 206(b) prescribes ‘a search of other known information about the person has been made and [the Victorian WorkCover Authority (the Authority)] is satisfied that the person has not been convicted or found guilty of, and does not have a charge pending for, an offence relating to an act of violence, weapons, terrorism, damage to property, illegal drugs or dishonesty within the last 10 years that in the opinion of the Authority would pose a security risk in relation to that person’.

The Subcommittee also notes that the effect of regulation 206(b), when read with section 21A(3) of the Act, may be that applicants for high consequence dangerous goods licenses and explosives licenses must consent to the Authority obtaining such information with respect to applicants who are natural persons and for all managers and security personnel of corporate applicants. As well, the Authority must refuse a license if satisfied that any such offending ‘would pose a security risk’.

However, the Subcommittee further notes that the terms of regulation 206(b) may relevantly cover some spent convictions under the *Spent Convictions Act 2021* (Spent Convictions Act). These may include infringement offences; offences where no conviction was entered; offences committed when the offender was under 15; offences where only a children’s court fine was levied or other offences committed when the offender was a child; and where a magistrate has declared the conviction spent. Such a spent conviction is ordinarily subject to section 20 of that Act (which prevents anyone from asking for such information) and also to the prohibitions on discrimination in the *Equal Opportunity Act 2010* (Equal Opportunity Act).

The Subcommittee observes that there appears to be no specific exception for dangerous goods licensing or for the Authority in the Spent Convictions Act or Spent Convictions Regulations 2021. However, **the Subcommittee requests your advice as to whether or not the scheme in section 21A(3) and regulation 206(b) is covered by one or more of the general exemptions in section 21 of the Spent**

Scrutiny of Acts and Regulations Committee

Parliament of Victoria, Spring Street, East Melbourne, VIC 3002
03 8682 2836, sarc@parliament.vic.gov.au

Convictions Act; regulation 5A of the Spent Convictions Regulations 2021; or section 75 of the Equal Opportunity Act.

The Subcommittee also observes that, while the Human Rights Certificate discusses the compatibility of regulation 206(b) with Charter section 13(a), it does not address rights against discrimination (including discrimination on the basis of a spent conviction) in Charter section 8. **The Subcommittee therefore requests your advice as to whether and how regulation 206(b) is compatible with the Charter's rights against discrimination with respect to spent convictions.**

Yours sincerely

A handwritten signature in black ink that reads "Mark Gepp." The signature is written in a cursive, slightly slanted style.

Mr Mark Gepp MP
Chairperson
Regulation Review Subcommittee



Ingrid Stitt MP

Minister for Workplace Safety
Minister for Early Childhood and Pre-Prep

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Our ref: MIN22-817

Mr Mark Gepp MP
Chairperson
Regulation Review Subcommittee
Parliament of Victoria
Spring Street
EAST MELBOURNE VIC 3002

By email: sarc@parliament.vic.gov.au

Dear Mr Gepp

Thank you for your letter of 20 September 2022, regarding SR No. 41 – Dangerous Goods (Explosives) Regulations 2022 (Explosives Regulations), specifically the interaction with the *Spent Convictions Act 2021* (SC Act) and Spent Convictions Regulations 2021, and compatibility with the *Victorian Charter of Human Rights and Responsibilities 2006* (the Charter).

On receipt of your letter, I sought advice from WorkSafe Victoria, the agency responsible for the administration of the Explosive Regulations. In response to your question, WorkSafe understands that it is covered by the general exemption in section 21 of the SC Act, enabling WorkSafe to receive information of spent convictions as part of the assessment of whether an applicant poses a security risk under regulation 206(1)(b) of the Explosives Regulations. Regulation 206(1)(b) prescribes that, prior to issuing an explosives licence under the *Dangerous Goods Act 1985* (DG Act), WorkSafe must be satisfied that an applicant has not been convicted of an offence relating to an act of violence, weapons, terrorism, damage to property, illegal drugs or dishonesty within the last 10 years that in the opinion of WorkSafe would pose a security risk.

WorkSafe acknowledges that the use of spent conviction information under regulation 206(1)(b) limits an applicant's right to equality and recognition before the law under section 8 of the Charter and this consideration should have been discussed in the Human Rights Certificate for the Explosives Regulations. As requested, the justification of the limitation of section 8(3) of the Charter is explained below.

Spent Convictions Act

WorkSafe's view is that it is a 'law enforcement agency' for the purposes of section 21 of the SC Act, as it is 'an agency responsible for the performance of functions or activities directed to any law enforcement function'¹. WorkSafe is responsible for 'the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a

¹ *Spent Convictions Act 2021*, s3, definition of 'law enforcement agency'.

penalty or sanction for a breach², pertaining to occupational health and safety, dangerous goods and worker compensation.

WorkSafe advises that, as section 21(1)(a)(i) of the SC Act allows a law enforcement agency performing a function under any Act to request spent conviction information, it is able to request spent conviction information from Victoria Police under regulation 206(1)(b) of the Explosives Regulations.

WorkSafe also confirmed that regulation 5A of the Spent Convictions Regulations 2021 does not apply to regulation 206(1)(b) of the Explosives Regulations because the decision in the latter is of a discretionary nature³. The exception in regulation 5A(b) is conditional upon a person that is 'automatically disqualified or ineligible for a licence'. The assessment of a person's security risk is subjective as an applicant must not be convicted of certain offences within the last 10 years that *in the opinion of the Authority* would pose a security risk in relation to the applicant.

Equal Opportunity Act and the Charter

WorkSafe's advice is that spent convictions are a protected attribute under section 6(pb) of the *Equal Opportunity Act 2010* (EO Act), meaning that a person cannot be directly or indirectly discriminated against on the basis of a spent conviction. However, WorkSafe advises that section 75 of the EO Act permits a person to discriminate if the discrimination is necessary to comply with, or is authorised by, a provision of an Act or an enactment.

Further, I am advised by WorkSafe that Section 21A(4) of the DG Act states that WorkSafe *must* not issue a licence to import, export, manufacture, store, sell, use, transport, handle or transfer explosives unless the Authority is of the opinion that the requirements of subsections 21A(3)(a), (b), (c), and (e) are met. The requirements in regulation 206(1) the Explosives Regulations are prescribed under subsection 21A(3)(e).

Therefore, if WorkSafe was to consider an applicant a security risk under regulation 206(1)(b) based on a spent conviction, then the licence application must be refused. In such a case, WorkSafe advises it would be necessary to discriminate against the applicant to comply with the DG Act. This would engage, and subsequently limit, an applicant's right to equality before the law under section 8(3) of the Charter.

However, WorkSafe's view is that the limitation on section 8(3) is justified under section 7(2) of the Charter for three reasons: (1) the limitation is discrete, (2) the limitation is not absolute, and (3) the limitation aims to ensure public safety.

Firstly, when determining if an applicant for an explosives licence poses a security risk, regulation 206(1)(b) only allows WorkSafe to consider:

1. offences (or pending charges) relating to an act of violence, weapons, terrorism, damage to property, illegal drugs or dishonesty; and
2. offences within the last 10 years, noting that most convictions of those aged over 20 years automatically become spent after 10 years without further reoffending.

² *Spent Convictions Act 2021*, s3, definition of 'law enforcement function'.

³ Regulation 5A of the Spent Convictions Regulations 2021 permits a law enforcement agency to disclose a spent conviction as part of a criminal record of a person to a person or body performing a licensing or registration function under any Act if (a) the person or body obtaining the criminal record is performing a licensing or registration function; and (b) an applicant is automatically disqualified or ineligible for the licence or registration if the person is convicted or found guilty of an offence in relation to which a conviction may be spent under the Act.

These restrictions mean that WorkSafe may only consider relevant spent convictions within a certain timeframe. If a spent conviction occurred within the previous 10 years, it is likely the offence:

- was immediately spent⁴; or
- occurred when the offender was between the ages of 15-20, whereby convictions are spent after five years.

Accordingly, the 10-year time frame under regulation 206(1)(b) will only capture a limited number of spent convictions. This may have a disproportionate impact on young offenders between the ages of 15-20 however, again, WorkSafe could only consider the spent conviction if it were a relevant type of offence.

Secondly, regulation 206(1)(b) provides WorkSafe with the discretion to assess each licence application on an individual basis and the identification of a spent conviction does not automatically result in a licence application being rejected.

Finally, WorkSafe's view is that discrimination on the basis of spent convictions under regulation 206(1)(b) is justified due to the significant risks associated with the handling of explosives and the potential for serious harm to person, property and environment if accessed by persons who pose a potential security risk.

WorkSafe further advises that discrimination on the basis of spent convictions is justified under similar legislation. For example, the *Firearms Act 1996* requires that a person must be a 'fit and proper person' to possess, carry, use, acquire or dispose of a firearm. A key component of the fit and proper persons test is a criminal history check, particularly in relation to a history of violence. Victoria Police is also able to consider information regarding spent convictions as part of the assessment. The dangers presented by firearms and explosives are justifiably comparable. WorkSafe's view is that it is reasonable that it be provided with the necessary information to assess whether an individual may pose a security risk to the public.

Should you wish to discuss this matter further, please contact Bryan Monck, Manager, Legislative Services and Reform at WorkSafe Victoria on (03) 4243 7494 or bryan_monck@worksafe.vic.gov.au

I hope this information has been helpful to you, and thank you for bringing this matter to my attention.

Yours sincerely



Ingrid Stitt MP
Minister for Workplace Safety

10 / 20 / 2022

⁴ Convictions are immediately spent if the offender was under 15 years at the time, or meet certain criteria if the offender was over 15 years at the time of offending.

PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee



20 March 2023

The Hon. Gayle Tierney MLC
Minister for Agriculture
Level 16
121 Exhibition St
Melbourne
Victoria, 3000

By email: Minister.Agriculture@ecodev.vic.gov.au

Att: dan.mcnamara@ecodev.vic.gov.au

Dear Minister

SR No. 70 – Livestock Management Amendment (Animal Activism) Regulations 2022

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee considered SR No. 70 – Livestock Management Amendment (Animal Activism) Regulations 2022 (the Regulations) at a meeting on 15 March 2023.

The Subcommittee approved the Regulations. However, the Subcommittee wishes to draw to your attention to a matter of regulatory compliance in relation to the *Subordinate Legislation Act 1994* (SLA).

Pursuant to section 15A of the SLA, documents accompanying a statutory rule must be sent to the Scrutiny of Acts and Regulations Committee no later than 10 working days after the making of the statutory rule. This ensures the Subcommittee has ample time to review the Regulations and associated documentation prior to the expiry of the disallowance period.

In this instance, the Regulations were made on 30 August 2022. Accordingly, the associated documentation was required by the Subcommittee on 13 September 2022. However, the Regulations and the accompanying material were received 20 working days after the material was due on 27 September 2022.

Pursuant to section 15A(2) of the SLA, failure to provide the documentation within 10 working days does not affect the operation or effect of the statutory rule. However, the Scrutiny of Acts and Regulations Committee may report the failure to each House of the Parliament.

In this instance, the Subcommittee resolved not to report the failure to each House of the Parliament and writes to draw your attention to the issue.

If you have any questions in relation to this matter, please contact the Subcommittee’s secretariat at SARC@parliament.vic.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Iwan Walters', written in a cursive style.

Mr Iwan Walters MP
Chairperson
Regulation Review Subcommittee

PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee



20 March 2023

The Hon. Ingrid Stitt MLC
Minister for Environment
2 Treasury Place
East Melbourne
Victoria, 3002

By email: Ingrid.Stitt@parliament.vic.gov.au

Att: connie.lee@delwp.vic.gov.au

Dear Minister

SR No. 76 – Forests (Forest Firefighters Presumptive Rights Compensation) Regulations 2022

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered SR No. 76 – Forests (Forest Firefighters Presumptive Rights Compensation) Regulations 2022 (the Regulations) at a meeting on 15 March 2023.

The Subcommittee approved the Regulations. However, the Subcommittee seeks further information in relation to a technical scrutiny matter.

Clarity of Form and Intention

Section 21(1)(i) of the *Subordinate Legislation Act 1994* provides that the Committee may report to the Parliament if it considers that a statutory rule laid before the Parliament requires explanation as to its form or intention.

Sections 72A to 72R of the *Forests Act 1958* (the Forests Act) establish the forest firefighters presumptive rights compensation scheme (the Scheme). The Scheme provides forest firefighters with a presumptive right to compensation if they are diagnosed with a specified form of cancer and they meet certain criteria.

Section 72N of the Forests Act provides that an application may be made to the Victorian WorkCover Authority (the Authority) for special consideration to be granted to a forest firefighter in circumstances where they would not otherwise qualify for the Scheme. Sections 72N(1)(a) and (b) require that such applications are required to be in the ‘prescribed manner and form’ and made to the Authority or a self-insurer.

The Regulations prescribe a range of matters for the purposes of supporting the Scheme. In particular, Regulation 5 provides that, for the purposes of section 72N(1)(a) of the Forests Act, an application for special consideration is in the prescribed manner and form if it is made in writing and ‘it includes any relevant supporting information’.

Scrutiny of Acts and Regulations Committee

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03 8682 2836, sarc@parliament.vic.gov.au

The Subcommittee notes that the section 12 Human Rights Certificate accompanying the Regulations states that information obtained under the Scheme could include ‘personal information’ within the meaning of the *Privacy and Data Protection Act 2014* and its Information Privacy Principles, and ‘health information’ within the meaning of the *Health Records Act 2001* and its Health Privacy Principles. However, the Certificate does not set out specific detail as to what information may be required under Regulation 5.

In the absence of further information in the Regulations or the accompanying materials, it is unclear what information may be required under Regulation 5. Without this detail, the Subcommittee notes that it may be unclear for applicants for special consideration what information may be required to be provided in order to qualify for the Scheme. The Subcommittee is concerned that this may affect an applicant’s ability to understand their rights and obligations when making an application for special consideration.

In light of the above, the Subcommittee requests your advice as to the type of information that it is envisaged will be collected under Regulation 5.

The Subcommittee would appreciate your response by no later than **Friday, 14 April 2023**.

If you have any questions in relation to this matter, please contact the Subcommittee’s secretariat at SARC@parliament.vic.gov.au.

Yours sincerely



Mr Iwan Walters MP
Chairperson
Regulation Review Subcommittee



Ingrid Stitt MP

Minister for Early Childhood & Pre-Prep
Minister for Environment

2 Treasury Place
East Melbourne, Victoria 3002

Mr Iwan Walters MP
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
Parliament House, Spring Street
East Melbourne VIC 3002
SARC@parliament.vic.gov.au

Ref: MIN107921
MIN107921

Dear Mr Walters

FORESTS (FORESTS FIREFIGHTERS PRESUMPTIVE RIGHTS COMPENSATION) REGULATIONS 2022

Thank you for your letter dated 20 March 2023 from the Regulations Review Subcommittee of the Scrutiny of Acts and Regulations Committee seeking further information regarding Regulation 5 of the *Forests (Forests Firefighters Presumptive Rights Compensation) Regulations 2022*. I apologise for the delay in responding.

I note the Subcommittee's request for advice as to the type of supporting information required in special consideration applications under Regulation 5 for the forest firefighters presumptive rights compensation scheme. I also note the Subcommittee's concern that applicants for special consideration may not understand their rights and obligations when making an application for special consideration.

Relevant supporting information for an application for special consideration is needed to determine whether an applicant attended an exceptional exposure event in accordance with the requirements of the scheme.

Section 72M of the *Forests Act 1958* provides that for the purposes of determining whether a forest firefighter has had an exceptional exposure event, regard must be given to the following—

- (a) the nature of the event
- (b) whether there are any relevant findings from a coroner, any court proceedings or other official inquiry regarding an event known to have exposed firefighters to carcinogens, and if so, the nature of the findings
- (c) any relevant records, employer data or local knowledge
- (d) any other prescribed matter.

The type of information envisioned to be collected under Regulation 5 is only that necessary for the advisory committee to provide an expert opinion and for the authority or self-insurer to make a determination on the application for special consideration, having regard to the matters required by section 72M. This information includes the details of the exceptional exposure event, duties performed at the exposure event and records and employer data proving that the firefighter attended the exceptional exposure event.

When making an application for special consideration, applicants, including applicants to self-insurers, are directed to complete a form provided on the WorkSafe website. This form is the same for both the



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firefighters presumptive rights compensation scheme and the forest firefighters scheme and is accessible here: <https://www.worksafe.vic.gov.au/resources/application-special-consideration-under-presumptive-rights-compensation-schemes>.

This form reiterates who qualifies for special consideration, how the process works, where applications are submitted, how to apply and the specified cancers and relevant qualifying periods. Under the 'how to apply' section, the information that will be considered by the Advisory Committee is clearly stated and aligns with section 72M.

The form contains a privacy notice with extensive detail on the collection, use and disclosure of personal and health information as part of applications.

If you have further questions, please contact Georgie Foster, Executive Director Policy and Planning, the Department of Energy, Environment and Climate Action via email at georgie.foster@delwp.vic.gov.au.

Thank you once again for raising this important matter with me.

Yours sincerely



Ingrid Stitt MP
Minister for Environment

29 / 05 / 2023

PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee



12 May 2023

The Hon. Danny Pearson MP
Minister for WorkSafe and the TAC
2 Treasury Place
East Melbourne
Victoria, 3002

By email: danny.pearson@parliament.vic.gov.au

Att: Laura_O'Connor@worksafe.vic.gov.au

Dear Minister

SR No. 115 – Dangerous Good (Storage and Handling) Regulations 2022

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered SR No. 115 – Dangerous Good (Storage and Handling) Regulations 2022 (the Regulations) at a meeting on 10 May 2023.

The Subcommittee approved the Regulations. However, the Subcommittee seeks further information in relation to a technical scrutiny matter.

Consideration of submissions

Section 21(1)(j) of the *Subordinate Legislation Act 1994* (SLA) provides that the Committee may report to the Parliament if it considers that a statutory rule laid before the Parliament has been prepared in contravention of any of the provisions of the SLA or of the Subordinate Legislation Act 1994 Guidelines with respect to the statutory rule, and the contravention is of a substantial or material nature.

Section 11(3) of the SLA provides that the responsible Minister must ensure that all comments and submissions received in relation to a regulatory impact statement (RIS) accompanying a statutory rule are considered before the statutory rule is made.

The Dangerous Goods (Storage and Handling) Regulations 2012 (2012 Regulations) previously prescribed matters relating to the manufacture, storage, transfer, use, handling, sale and disposal of dangerous goods for the purposes of the *Dangerous Goods Act 1985*. The 2012 Regulations commenced operation on 1 December 2012 and were due to automatically sunset on 27 November 2022.

The Regulations repeal and remake the 2012 Regulations in substantially the same form, with minor amendments to the language and structure. This has the effect of extending the operation of the existing arrangements until November 2032, when the Regulations will automatically sunset.

Alongside the development of the Regulations, the Subcommittee notes that the Independent Review of the *Dangerous Goods Act 1985* and associated regulations (the Review) has been reviewing the broader regulatory framework for dangerous goods. The Subcommittee understands

Scrutiny of Acts and Regulations Committee

Parliament of Victoria, Spring Street, East Melbourne, VIC 3002
03 8682 2836, sarc@parliament.vic.gov.au

that the implementation of the Victorian Government’s response to the Review has not been finalised. Accordingly, the Regulations did not make significant changes to the existing regulatory framework in order to prevent unnecessary burden on industry caused by multiple regulatory changes within a short period of time.

The Subcommittee notes that extensive consultation was undertaken in relation to the Regulations and the accompanying RIS. However, as much of the feedback pointed to substantive changes to the regulatory framework, it was considered to be outside of the scope of the Regulations. Instead, this feedback was noted in the Response to Public Comment published by WorkSafe in October 2022, which stated that the feedback ‘may be used to inform future work including implementing the Victorian Government’s response’ to the Review.

The Subcommittee considers that appropriate consultation is essential for the effectiveness of the regulatory system and, as such, it expects submissions to be appropriately considered in the development of a statutory rule.

In light of the above, the Subcommittee requests your advice as to the timeframe for the implementation of the Government’s response to the Review and how the public consultation undertaken in relation to the Regulations will be considered within this broader process.

The Subcommittee would appreciate your response by no later than **Wednesday, 31 May 2023**.

If you have any questions in relation to this matter, please contact the Subcommittee’s secretariat at SARC@parliament.vic.gov.au.

Yours sincerely



Mr Iwan Walters MP
Chairperson
Regulation Review Subcommittee



The Hon. Danny Pearson MP

Assistant Treasurer
Minister for Government Services
Minister for WorkSafe and the TAC
Minister for Consumer Affairs

Level 3, 1 Treasury Place
Melbourne Victoria 3002
Telephone: +61 3 7005 8911

Our ref: Ref MIN23-1330

Mr Iwan Walters MP
Chairperson
Regulation Review Subcommittee
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
Spring Street
EAST MELBOURNE, VICTORIA, 3002

By email: sarc@parliament.vic.gov.au

Dear Mr Walters

Thank you for your letter of 12 May 2023 regarding SR No. 115 – Dangerous Good (Storage and Handling) Regulations 2022.

Your enquiry relates to the consideration of feedback received during the public consultation undertaken for SR No. 115 and the associated Regulatory Impact Statement (RIS) in the context of the implementation of the Independent Review of the *Dangerous Goods Act 1985* and associated regulations (the Review).

On receipt of your letter, I sought advice from WorkSafe, the agency responsible for the administration of the Storage and Handling Regulations. In response to your query, WorkSafe has advised that the valuable comments and submissions received during this consultation period were considered in full prior to the regulations being made, noting the practical limitations identified in the RIS in relation to the Review. Several of the recommendations of the Review do relate to the Storage and Handling Regulations specifically.

In response to your query regarding timeframes, WorkSafe is in the process of implementing the Government's response to the Review. Current project timelines indicate the policy analysis and regulatory reform to support the new primary legislation will occur in 2024-2025. There is a need to have an initial focus on legislative structure and primary legislation ahead of subordinate legislation.

Consequently, it is my expectation that these regulations will be substantially reviewed taking into account the stakeholder feedback received in 2021, the findings of the Review as well as any subsequent consultation undertaken in the future, in accordance with the requirements of the *Subordinate Legislation Act 1994*. This will occur well before the sun-setting of the current Storage and Handling Regulations.

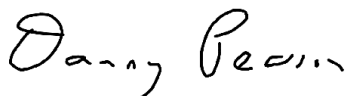


WorkSafe also note that a comparable RIS and consultation process occurred for the SR No. 41 – Dangerous Good (Explosives) Regulations 2022. The feedback received during the consultation process for both sets of regulations will be invaluable in informing future work.

Should the Subcommittee wish to discuss this matter further, please contact Ranya Shahwan, Director - Legislation, Policy and Information Services at WorkSafe via email at ranya_shahwan@worksafe.vic.gov.au

I hope this information has been helpful to you and the Subcommittee and thank you again for taking the time to write to me about this matter.

Yours sincerely



The Hon. Danny Pearson MP
Minister for WorkSafe and the TAC

01 / 06 /2023

PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee



12 May 2023

The Hon. Ingrid Stitt MLC
Minister for Environment
2 Treasury Place
East Melbourne
Victoria, 3002

By email: Ingrid.Stitt@parliament.vic.gov.au

Att: Sue.Andrews@delwp.vic.gov.au

Dear Minister

Order in Council – Declaration of Surf Coast as A Distinctive Area and Landscape

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above Order in Council at a meeting on 10 May 2023.

The Subcommittee approved the Order in Council. However, the Subcommittee seeks further information in relation to a technical scrutiny matter.

Tabling

Section 16B(1) of the *Subordinate Legislation Act 1994* (SLA) requires that, on or before the sixth sitting day after a legislative instrument has been published in the Government Gazette, a copy of the legislative instrument must be laid before each House of the Parliament. Section 16B(3) provides that failure to comply with this requirement does not affect the operation or effect of the legislative instrument but the Committee may report the failure to each House of the Parliament.

The Subcommittee considers that tabling plays an important role in ensuring parliamentary oversight of subordinate legislation and notes that legislative instruments are not disallowable until they have been tabled.

In this instance, the Subcommittee notes that the explanatory memorandum accompanying the Order in Council states that it 'is a legislative instrument as defined in the *Subordinate Legislation Act 1994*'. The Order in Council was published in the Government Gazette on 16 September 2022; however, it has not yet been tabled in the Parliament.

In light of the above, the Subcommittee requests your advice as to why the Order in Council has not been tabled in the Parliament.

The Subcommittee would appreciate your response by no later than **Wednesday, 31 May 2023**.

Scrutiny of Acts and Regulations Committee

Parliament of Victoria, Spring Street, East Melbourne, VIC 3002
03 8682 2836, sarc@parliament.vic.gov.au

If you have any questions in relation to this matter, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Iwan Walters', written in a cursive style.

Mr Iwan Walters MP
Chairperson
Regulation Review Subcommittee

PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee



12 May 2023

The Hon. Sonya Kilkenny MP
Minister for Planning
Level 16
8 Nicholson Street
East Melbourne
Victoria, 3002

By email: sonya.kilkenny@parliament.vic.gov.au

Att: Sue.Andrews@delwp.vic.gov.au; fiona.johnstone@delwp.vic.gov.au

Dear Minister

Order in Council – Extension of Period of Declaration of Bellarine Peninsula and Bass Coast as Distinctive Areas and Landscapes

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above Order in Council at a meeting on 10 May 2023.

The Subcommittee approved the Order in Council. However, the Subcommittee seeks further information in relation to a technical scrutiny matter.

Tabling

Section 16B(1) of the *Subordinate Legislation Act 1994* (SLA) requires that, on or before the sixth sitting day after a legislative instrument has been published in the Government Gazette, a copy of the legislative instrument must be laid before each House of the Parliament. Section 16B(3) provides that failure to comply with this requirement does not affect the operation or effect of the legislative instrument but the Committee may report the failure to each House of the Parliament.

The Subcommittee considers that tabling plays an important role in ensuring parliamentary oversight of subordinate legislation and notes that legislative instruments are not disallowable until they have been tabled.

In this instance, the Subcommittee notes that the explanatory memorandum accompanying the Order in Council states that it 'is a legislative instrument as defined in the *Subordinate Legislation Act 1994*'. The Order in Council was published in the Government Gazette on 29 September 2022; however, it has not yet been tabled in the Parliament.

In light of the above, the Subcommittee requests your advice as to why the Order in Council has not been tabled in the Parliament.

The Subcommittee would appreciate your response by no later than **Wednesday, 31 May 2023**.

Scrutiny of Acts and Regulations Committee

Parliament of Victoria, Spring Street, East Melbourne, VIC 3002
03 8682 2836, sarc@parliament.vic.gov.au

If you have any questions in relation to this matter, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Iwan Walters', written in a cursive style.

Mr Iwan Walters MP
Chairperson
Regulation Review Subcommittee



The Hon Sonya Kilkenny MP

Minister for Planning
Minister for Outdoor Recreation

8 Nicholson Street
East Melbourne, Victoria 3002 Australia

Ref: CMIN-1-23-2730

Mr Iwan Walters MP
Chairperson
Regulation Review Subcommittee

SARC@parliament.vic.gov.au

Dear Mr Walters

Order in Council - Extension of declaration of Surf Coast as a Distinctive Area and Landscape

Thank you for your letter of 12 May 2023 to the Hon. Ingrid Stitt MLC, Minister for Environment, regarding the tabling of the Order in Council relating to the extension of declaration of Surf Coast as a distinctive area and Landscape that was made on 15 September 2022. As this matter falls within my responsibility, I am responding on Minister Stitt's behalf.

I apologise for the delay in tabling the Order in Council in Parliament as required by Section 16B(1) of the *Subordinate Legislation Act 1994*. This has been due to the department not being informed about the requirement for the tabling of orders under *Part 3AAB - Distinctive Areas and Landscapes of the Planning and Environment Act 1987* (PE Act) which is relatively new legislation. The department did not receive this advice for previous extension orders made under this part of the PE Act.

Please note that I have written to the Clerks of the Legislative Assembly and Legislative Council requesting that they table the Order in Council for the Surf Coast extension of declaration. I have written similarly to the Clerks regarding tabling the Order in Council made on 27 September 2022 for the Bass Coast and Bellarine Peninsula extension of declarations.

I would like to thank you for alerting the department to the requirement to table the Orders in Council in Parliament and for your work with the Scrutiny of Acts and Regulation Committee.

Yours sincerely

The Hon Sonya Kilkenny MP
Minister for Planning

12/6/23



PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee



17 May 2023

The Hon. Ingrid Stitt MLC
Minister for Environment
2 Treasury Place
East Melbourne
Victoria, 3002

By email: Ingrid.Stitt@parliament.vic.gov.au

Att: Amanda.Townsend@delwp.vic.gov.au

Dear Minister

SR No. 120 – Environment Protection Amendment (Wind Turbine Noise) Regulations 2022

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered SR No. 120 – Environment Protection Amendment (Wind Turbine Noise) Regulations 2022 (the Regulations) at a meeting on 10 May 2023.

The Subcommittee approved the Regulations but seeks additional information pursuant to section 21(1)(i) of the *Subordinate Legislation Act 1994*.

The Regulations amend the Environment Protection Regulations 2021 (Principal Regulations) and provide for matters relating to the management of wind energy facility (WEF) wind turbine noise emissions.

The Subcommittee notes consultation was undertaken in the development of the Regulations between 3 March and 3 April 2022. During the course of consultation 26 submissions were received from stakeholders. A Statement of Reasons was published on Engage Victoria's website in May 2022, which provided an overview of issues raised during consultation.

On 25 March 2022, the Victorian Supreme Court delivered a judgement in the case *Uren v Bald Hills Wind Farm Pty Ltd [2022] VSC 145 (Bald Hills judgement)*, which found that a WEF operator had caused a common law nuisance due to wind turbine noise and had not demonstrated compliance with its planning permit, including the noise limits required under the relevant industry standards.

The Statement of Reasons noted that a number of submitters highlighted the relevance of the *Bald Hills* judgement to the Regulations, with some submitters noting that it may result in future non-compliance. Whilst noting that common law nuisance complaints are outside of the scope of the Regulations, the Statement of Reasons provides a detailed overview of the implications of each aspect of compliance and compliance assessment encompassed in the *Bald Hills* judgement on the development of the Regulations. The Subcommittee considers this information provides useful context.

Scrutiny of Acts and Regulations Committee

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03 8682 2836, sarc@parliament.vic.gov.au

The Statement of Reasons also notes that the *Wind Energy Turbine Noise Regulation Guidelines* (EPA Guidelines), which provide guidance on the wind turbine noise emissions under the Principal Regulations, will be updated 'as appropriate to support compliance'. However, it is unclear whether this may include information about the *Bald Hills* judgement.

The Subcommittee requests further information as to whether the *Wind Energy Turbine Noise Regulation Guidelines* will be updated to provide additional guidance to industry on the impact of the *Bald Hills judgement* on obligations under the Regulations.

The Subcommittee would appreciate your response by no later than **Wednesday, 7 June 2023**.

If you have any questions in relation to this matter, please contact Ms Katie Helme in the first instance at SARC@parliament.vic.gov.au.

Yours sincerely



Mr Iwan Walters MP
Chairperson
Regulation Review Subcommittee

Appendix D

Committee Practice Note

Exemptions

- **Dating certificates.** The Subcommittee has occasionally been presented with undated exemption certificates. The Subcommittee expects all certificates to be dated.
- **Reasons for exemption.** The Subcommittee has occasionally received regulations or legislative instruments exempted under section 8 with certificates of exemption which fail to adequately explain the reasons for granting the exemption or with reasons for granting the exemption contained in the Explanatory Memorandum. It should be noted that it is a requirement of section 8(3) of the Act that certificates of exemption 'specify the reasons for the exemption'. The Subcommittee expects all exemption certificates to contain adequate explanations of the reasons for granting the exemptions.
- **Extension of Regulations for periods up to 12 months.** Regulations expire 10 years after they have been made. The Subcommittee has been presented with a number of regulations made under sections 8(1)(e)(iii) and 5A(1) extending regulations due to expire for periods up to 12 months. Before an extension of time can be granted, the Minister must certify that due to 'special circumstances' there is insufficient time available to comply with the formal regulation-making requirements of the Act. The Subcommittee expects details of the 'special circumstances' to be contained in the section 5A(1) certificate itself as required by the Act.
- **Using appropriate exemption categories.** Departmental and agency officers need to be careful when determining which category to use when exempting regulations or legislative instruments from the Regulation Impact Statement process.
- **Typographical Errors.** Department and agency officers need to be careful when preparing certificates to ensure that they do not contain typographical errors.

Extension of time

The Subcommittee is often presented with regulations which require an extension of time for a period of twelve months. Such regulations are accompanied by a section 5A(1) certificate of special circumstances which outlines the particular reasons for the extension. It is difficult for the Subcommittee to know whether any particular regulation has been accompanied by a previous extension of time certificate. Ongoing extensions of time in respect of a particular regulation are clearly matters upon which the Subcommittee would make adverse comment.

The Subcommittee expects that in the event that a second or subsequent extensions of time are sought for a regulation (in addition to an initial request), the Minister inform it that this is the case.

Explanatory memoranda

One copy of the explanatory memorandum for each statutory rule or legislative instrument must be provided to the Subcommittee. The Subcommittee expects explanatory memoranda to comply with page 43 of the Subordinate Legislation Act 1994 Guidelines (the Guidelines).⁵³ As stated in paragraph 196, an explanatory memorandum should be brief and generally contain:

- a brief outline of the statutory rule;
- an explanation of the changes effected by each provision;

⁵³ See <<https://www.vic.gov.au/sites/default/files/2020-01/Subordinate-Legislation-Act-1994-Guidelines-2020.pdf>>.

- a statement of the reasons for making the statutory rule;
- where applicable, the reasons no RIS was prepared;
- a statement as to whether consultation has taken place, and if it has not taken place, an explanation as to why a decision was made not to consult; and
- where a statutory rule amends fees in an existing statutory rule, a table comparing the proposed and existing fees (including the percentage increase or decrease for each fee).

Fee increases

An exemption certificate may be issued under sections 8(1)(d) or 12F(1)(c) of the Act on the basis that the proposed statutory rule or legislative instrument only increases fees in respect of a financial year by an amount not exceeding the annual rate approved by the Treasurer in relation to the State Budget. For each financial year a percentage increase is set by the Treasurer. The Treasurer notifies the Subcommittee in writing of the relevant percentage increase.

A regulation may increase a number of fees, with some individual fee increases falling outside the rate set by the Treasurer. However when the total average of fee increases for that regulation is calculated, it must fall within the rate fixed by the Treasurer. This practice is referred to as the 'basket approach'. Page 28, paragraph 124 of the Guidelines provides that:

A statutory rule can set a package of fees, often known as a 'basket approach'. An example is the Prevention of Cruelty to Animals Regulations 2020 (discussed above) which set about 40 fees for approvals for therapeutic electronic devices, approvals for the use of traps and fees related to rodeos. Where there is to be an increase in one or more individual fees within a basket of fees exceeding the Treasurer's annual rate, but the increase to the basket of fees as a whole is within that rate, then this exemption can apply.

Sections 8(2) and 12F(2) of the Act validate the rounding up of fee increases to the nearest whole dollar. Sometimes the total average increase may be greater than that set by the Treasurer but may be validated on the basis that there has been rounding up to the nearest whole dollar. The Subcommittee may only approve such increases where the extra amount can be considered insignificant when compared to the whole fee. Where the amount is significant in proportion to the whole fee, the Subcommittee may request the Minister to reconsider the increase.

The preparation of a table showing new and old fees and including an indication of the percentage increase or decrease is of great assistance to the Subcommittee. The Subcommittee provides the following as an example:

| Description | Current Fee | Proposed Fee | % Increase |
|-----------------------|-------------|--------------|------------|
| Application for | \$100.00 | \$105.00 | 5.0 |
| Application for ... | \$320.00 | \$325.00 | 1.6 |

Consultation certificates

Section 6 and 12C of the Act states that the responsible Minister must ensure that where the Guidelines require consultation:

- there is consultation in accordance with the guidelines with any other Minister whose area of responsibility may be affected by a proposed statutory rule or legislative instrument so as to avoid any overlap or conflict with any other existing or proposed statutory rule, legislative instrument or other legislation;
- there is consultation in accordance with the guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed statutory rule or legislative instrument so that the need for, and the scope of, the proposed statutory rule or legislative instrument is considered;

- (c) a certificate of consultation in accordance with the guidelines is issued for the proposed statutory rule or legislative instrument.

The Guidelines provide that, where a legislative instrument has been exempted under section 12F(1)(a) of the Act, initial consultation should be undertaken to enable the responsible Minister to obtain sufficient evidence to form a view as to whether the proposed statutory rule imposes a significant burden.

Departments should ensure that consultation certificates are issued under section 6(b) or 12C(b) if required under the Guidelines.

Provision of documents to the Committee

Pursuant to sections 15A and 16C of the Act, the responsible Minister is required to send the Committee all required documentation within 10 working days after the regulation or legislative instrument has been made. The Subcommittee has a limited time within which to review regulations. The Subcommittee notes in most cases the required documentation is provided to the Committee within 10 working days after the statutory rule or legislative instrument has been made. However, there has been a recent increase in documentation being provided outside the statutory timeframe.

If the Committee wants to move for disallowance of a regulation it must do so within 18 sitting days of that regulation or legislative instrument being tabled in Parliament. Prior to the Committee moving a motion for disallowance, the Subcommittee corresponds and negotiates with the particular Minister. Accordingly, the Subcommittee needs sufficient time for this process to take place.

Additionally, the Committee receives all documentation electronically to sarc@parliament.vic.gov.au. However, in the event of a large number of documents the Committee would appreciate hard copies sent c/o SARC Secretariat, Parliament House, Spring Street, East Melbourne VIC 3002.

Appendix E

Committee Checklists

The checklists for documents required by the Committee have been reproduced below.



PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee

Statutory Rules
Regulatory Impact Statement Checklist

Section 7 – Regulatory Impact Statement

- Explanatory memorandum
- Recommendation from the Minister to make Regulations (Letter)
- Section 6 consultation certificate
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 10(3) letter of independent assessment
- Section 10(4) compliance certificate
- Section 12A human rights certificate
- Section 13 certificate from the Chief Parliamentary Counsel
- Regulatory Impact Statement (RIS)
- Copy of all submissions
- Summary of all submissions
- Copy of letters sent to those who made submissions
- Copy of draft regulations (*Optional*)
- Copy of RIS newspaper advertisement – Invitation for public comment
- Copy of Government Gazette advertisement – Invitation for public comment
- Copy of RIS newspaper advertisement – Notice of decision
- Copy of RIS Government Gazette advertisement – Notice of decision

Please forward all relevant documents to:
Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
Melbourne VIC 3000



PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee

Statutory Rules
Exemptions Checklist

Section 8(1)(a) – Would not impose Significant Economic or Social Burden

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 6 Consultation Certificate
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 8 Exemption Certificate
- Section 12A Human Rights Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Section 8(1)(b) – Is a Rule which relates only to a Court or Tribunal

- Explanatory Memorandum
- Section 6 Consultation Certificate (*Optional*)
- Section 8 Exemption Certificate
- Section 12A(3) Human Rights Exemption Certificate

Section 8(1)(c) – Is of a Fundamentally Declaratory or Machinery Nature

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 8 Exemption Certificate
- Section 12A Human Rights Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Section 8(1)(d) – Only increases Fees in respect of a Financial Year by an amount not exceeding the Annual Rate Approved by the Treasurer

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 8 Exemption Certificate
- Section 12A Human Rights Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Note: Section 13 certificates are not required for court rules or for statutory rules which are not made by Governor-in-Council.

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PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Statutory Rules Exemptions Checklist

Section 8(1)(e)(i) and (ii) – Prescribes under section 4(1)(a) or 4(1)(b) an instrument or class of instrument to be a statutory rule or to be exempt

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 8 Exemption Certificate
- Section 12A(3) Human Rights Exemption Certificate
- Section 13 certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Section 8(1)(e)(iii) – Is an extension regulation

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 5A(1) Minister's extension certificate
- Section 5A(3) Premier's extension certificate
- Section 8 Exemption Certificate
- Section 12A(3) Human Rights Exemption Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Section 8(1)(e)(iv), (v) and (vi) – Prescribes under section 4A(1)(a), 4A(1)(b) or 4A(1)(c) an instrument to be a legislative instrument or to be exempt

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 8 Exemption Certificate
- Section 12A(3) Human Rights Exemption Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

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PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee

Statutory Rules
Exemptions Checklist

Section 8(1)(f) – Is required under a national uniform legislation scheme and an assessment of costs and benefits has been undertaken under that scheme

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 6 Consultation Certificate
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 8 Exemption Certificate
- Section 12A Human Rights Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Section 8(1)(g) – Deals with administration or procedures within or a between Departments or declared authorities within the meaning of the *Public Administration Act 2004* or Departments within the meaning of the *Parliamentary Administration Act 2005*

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 6 Consultation Certificate
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 8 Exemption Certificate
- Section 12A Human Rights Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Section 8(1)(h) – Notice of the proposed statutory rule would render the proposed statutory rule ineffective or would unfairly advantage or disadvantage any person likely to be affected by the proposed statutory rule

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 6 Consultation Certificate (*Optional*)
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 8 Exemption Certificate
- Section 12A Human Rights Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

Note: Section 13 certificates are not required for court rules or for statutory rules which are not made by Governor-in-Council.

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PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Statutory Rules

Exemptions Checklist

Section 9 – The Premier may issue a certificate in writing that, in the Premier’s opinion, in the special circumstances of the case the public interest requires that the proposed statutory rule be made without complying with Section 7(1)

- Explanatory Memorandum
- Recommendation from the Minister to the Governor in Council to make the Regulations
- Section 6 Consultation Certificate (*Optional*)
- Section 6A Infringements offence consultation certificate (*if relevant*)
- Section 9 Exemption Certificate
- Section 12A Human Rights Certificate
- Section 13 Certificate from the Chief Parliamentary Counsel
- Copy of draft regulations (*Optional*)

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PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee

Legislative Instruments
Regulatory Impact Statement Checklist

Section 12D – Regulatory Impact Statement

- Legislative instrument
- Explanatory memorandum
- Section 12C consultation certificate
- Section 12D human rights certificate
- Section 12H(3) letter of independent assessment
- Section 12H(4) compliance certificate
- Regulatory Impact Statement (RIS)
- Copy of all submissions
- Summary of all submissions
- Copy of letters sent to those who made submissions
- Copy of RIS newspaper advertisement – Invitation for public comment
- Copy of Government Gazette advertisement – Invitation for public comment
- Copy of RIS newspaper advertisement – Notice of decision
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PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Legislative Instruments

Exemptions Checklist

Section 12F(1)(a) – Would not impose a significant economic or social burden

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12F(1)(b) – Is of a fundamentally declaratory or machinery nature

- Legislative instrument
- Explanatory Memorandum
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12F(1)(c) – Only increases fees in respect of a financial year by an amount not exceeding the annual rate approved by the Treasurer

- Legislative instrument
- Explanatory Memorandum
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12F(1)(d) – Only imposes a burden on a public sector body

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12F(1)(e) – An order made under the *Administrative Arrangements Act 1983*

- Legislative instrument
- Explanatory Memorandum
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

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PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Legislative Instruments

Exemptions Checklist

Section 12F(1)(f) – Is required under a national uniform legislation scheme and an assessment of costs and benefits has been undertaken under that scheme

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12F(1)(g) – Is required to undergo, or has undergone, an analytical and consultation process which, in the opinion of the responsible Minister, is equivalent to the process for a regulatory impact statement required until section 12E

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12F(1)(h) – Is not of more than 12 months duration and is necessary to respond to: (i) a public emergency; (ii) an urgent public health issue or an urgent public safety issue; or (iii) likely or actual significant damage to the environment, resource sustainability or the economy

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate (*Optional*)
- Section 12D(3) Human Rights Exemption Certificate
- Section 12F Exemption Certificate

Section 12F(1)(i) – Deals with administration or procedures within or a between Departments or declared authorities within the meaning of the *Public Administration Act 2004* or Departments within the meaning of the *Parliamentary Administration Act 2005*

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate (*Optional*)
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

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Legislative Instruments

Exemptions Checklist

Section 12F(1)(j) – Notice of the proposed legislative instrument would render the proposed legislative instrument ineffective or would unfairly advantage or disadvantage any person likely to be affected by the proposed legislative instrument

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate (*Optional*)
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12F(1)(k) – Is made under a statutory rule and the regulatory impact statement for that statutory rule has adequately considered the impact of the proposed legislative instrument

- Legislative instrument
- Explanatory Memorandum
- Section 12C Consultation Certificate (*Optional*)
- Section 12D Human Rights Certificate
- Section 12F Exemption Certificate

Section 12G – The Premier may issue a certificate in writing that, in the Premier’s opinion, in the special circumstances of the case the public interest requires that the proposed statutory rule be made without complying with Section 7(1)

- Legislative instrument
- Explanatory Memorandum
- Reasons given by the responsible Minister to the Premier as to why the public interest requires that the legislative instrument be made without preparing a RIS
- Section 12C Consultation Certificate (*Optional*)
- Section 12D Human Rights Certificate
- Section 12G Exemption Certificate

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