



Scrutiny of Acts and Regulations Committee

Annual Review 2023 Statutory Rules and Legislative Instruments

September 2024





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Parliament of Victoria, Australia
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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 2017*;
- (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.

Contents

Committee Membership	iii
Terms of Reference	iv
Chairperson’s Foreword	vii
Chapter 1 – Introduction	1
1.1 Overview.....	1
1.2 Background.....	1
1.3 Regulation Review Subcommittee – <i>Subordinate Legislation Act 1994</i>	2
1.3.1 Subcommittee Membership	2
1.4 Role of the Subcommittee.....	2
1.4.1 Scrutiny of statutory rules	2
1.4.2 Scrutiny of legislative instruments – Subordinate Legislation Act 1994 Guidelines	3
1.5 Operation of the Subcommittee	5
1.5.1 Meetings of the Subcommittee	5
1.5.2 Reporting to the Parliament	5
1.5.3 Use of the disallowance procedure	5
Chapter 2 – Review of Statutory Rules in 2023	7
2.1 Overview.....	7
2.2 Statistics	7
2.2.1 Regulatory Impact Statements.....	7
2.2.2 Exemptions from the Regulatory Impact Statement process.....	8
2.3 Ministerial correspondence	9
2.4 Key scrutiny issues.....	10
2.4.1 Timeliness of documentation	10
2.4.2 Shared Regulatory Impact Statement	11
2.4.3 Failure to comply with publication requirements – section 12 Notice of decision	12
2.4.4 Failure to comply with publication requirements – section 11 – Notice of preparation of RIS.....	13
2.4.5 Clarity of form or intention.....	21
2.4.6 Consultation.....	22
2.4.7 Adequacy of exemption certificates	23
2.4.8 Adequacy of Premier’s certificates.....	25
2.4.9 Human rights scrutiny.....	26

- Chapter 3 – Review of Legislative Instruments in 2023 35
 - 3.1 Overview 35
 - 3.2 Statistics 35
 - 3.2.1 Regulatory Impact Statements 35
 - 3.2.2 Exemptions from the Regulatory Impact Statement process 36
 - 3.3 Ministerial correspondence 37
 - 3.4 Key scrutiny issues 37
 - 4.4.1 Timeliness of documentation 37
 - 4.4.2 Consultation 38
 - 4.4.3 Human rights scrutiny 39

- Appendices
 - A – Statutory Rules Series 2023 41
 - B – Legislative Instruments 2023 47
 - C – Ministerial Correspondence 49
 - D – Committee Practice Note 111
 - E – Committee Checklists 115

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 2023.

I wish to thank the Members of the Subcommittee, including the Hon. David Davis MP (Deputy Chairperson), Rachel Payne MP, Sheena Watt MP, and 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.

The Subcommittee worked diligently and carefully through the 2023 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 2023 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 2023 statutory rule and legislative instrument series. Katie Helme performed the legal scrutiny of the statutory rules and legislative instruments with diligence and professionalism. I thank her for the provision of timely and informative advice. I thank Helen Mason for her contribution, ongoing oversight and guidance. I also thank Sonya Caruana for her efficient administrative support. I thank Simon Dinsbergs for his additional administrative support 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.

Gary Maas MP
Chairperson
Regulation Review Subcommittee

August 2024

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 (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee). The work outlined in the report was undertaken by the Subcommittee during the 60th Parliament. In particular, the report examines:

- 138 statutory rules in the 2023 Series (see Chapter 2);
- 38 legislative instruments published in the Government Gazette during the 2023 calendar year (see Chapter 3).¹

The 2023 statutory rules series and legislative instruments were considered by the Subcommittee during the 60th Parliament in 10 meetings held between 10 May 2023 and 27 April 2024.

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 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 Committee was created by the *Parliamentary Committees (Amendment) Act 1992*.

¹ The report examines legislative instruments published in the Victorian Government Gazette during the 2023 calendar year. This includes legislative instruments published between 1 January 2023 and 31 December 2023.

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.

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

1.3 Regulation Review Subcommittee – *Subordinate Legislation Act 1994*

The Committee is a joint investigatory Committee of the Parliament of Victoria. It has members from the Upper and Lower Houses.

The Subcommittee is 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* (SLA). 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 8 February 2023 for the 60th Parliament. During the Parliament, the following members were appointed to serve on the Subcommittee:

- Gary Maas MP (Chair from 21 August 2023)
- Iwan Walters MP (Chair from 24 February 2023 to 15 August 2023)
- Hon David Davis MP (Deputy Chair)
- Rachel Payne MP
- Sheena Watt MP
- Dylan Wight MP.

1.4 Role of the Subcommittee

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

- statutory rules within the meaning of 'statutory rule' contained in section 3 of the SLA;
- legislative instruments within the meaning of section 3 of the SLA; and
- Environment Reference Standards under Part 5.2 of the *Environment Protection Act 2017*.⁵

1.4.1 Scrutiny of statutory rules

Pursuant to section 3 of the SLA, 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 SLA or by the authorising Act.

The Subcommittee scrutinises statutory rules to determine whether they comply with the legislative principles specified in the SLA. 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 SLA. As noted above, the Subcommittee does not comment on matters involving policy and its review focuses on the technical criteria contained in the SLA.

⁵ Part 5.3 of the *Environment Protection Act 2017* provides for Environment Reference Standards. Section 94 sets out the application of the *Subordinate Legislation Act 1994*.

Under section 21 of the SLA, 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 *Privacy and Data Protection Act 2014*;
- 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 2001*;
- 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 SLA 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 SLA, 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 SLA and the exemption certificate is adequate;
- there has been compliance with all notice, gazettal and tabling requirements of the SLA.

Detail about the Subcommittee's scrutiny of 2023 statutory rules is set out in Chapter 2.

1.4.2 Scrutiny of legislative instruments – *Subordinate Legislation Act 1994* Guidelines

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

⁶ The Subordinate Legislation Amendment Bill 2010 was introduced in August 2010. Amendments to the SLA 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

may encompass a range of types of instruments, including orders, guidelines, and standards. The *Subordinate Legislation Act 1994 Guidelines*⁷ (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’.⁸

The definition of ‘legislative instrument’ in section 3 of the SLA 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*;
- an instrument of purely administrative character;⁹ 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 SLA is set out in section 4A of the SLA. 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 SLA. 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 SLA 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 SLA, such as the preparation of a RIS and tabling within required timeframes.

Detail about the Subcommittee’s scrutiny of 2023 legislative instruments is set out in Chapter 3.

Subordinate Legislation Act. The amendments essentially duplicate and extend the arrangements relating to the scrutiny of statutory rules to legislative instruments.

⁷ Subordinate Legislation Act 1994 Guidelines <<https://content.vic.gov.au/sites/default/files/2023-09/Subordinate-Legislation-Act-1994-Guidelines-September-2023.pdf>>

⁸ Ibid., Guidelines, p. 5.

⁹ Section 3(2) of the SLA 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 Guidelines provide additional guidance in relation to the threshold decision as to whether an instrument is of a legislative or administrative character.

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 SLA 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 Subcommittee makes a recommendation to the full Committee to publish its correspondence in the *Alert Digest*.¹⁰

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 SLA, 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 SLA 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 SLA and the Committee has reported that failure to each House of the Parliament.

¹⁰ For a full list of copies of the *Alert Digest* see the Committee's website at: <<https://www.parliament.vic.gov.au/get-involved/committees/scrutiny-of-acts-and-regulations-committee/publicationssearch?page=1&pageSize=10>>.

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 2023 subordinate legislation.

Chapter 2

Review of Statutory Rules in 2023

2.1 Overview

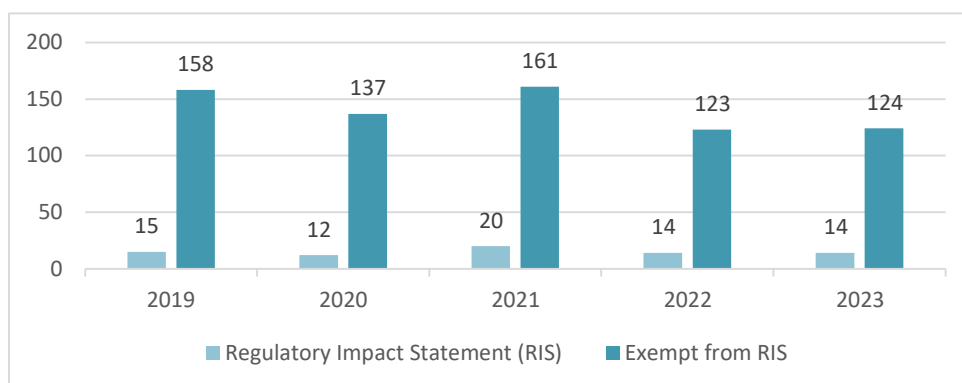
The Subcommittee scrutinises statutory rules to determine whether they comply with the legislative principles specified in the SLA. These principles are set out in full in Chapter 1.¹¹ During 2023, the Subcommittee scrutinised 138 statutory rules.

This chapter provides an overview of the Subcommittee’s scrutiny of statutory rules during 2023 and outlines the key issues arising from these statutory rules.

2.2 Statistics

The 2023 Statutory Rule Series comprised of 138 statutory rules. Of those statutory rules, 14 were accompanied by a RIS and 124 were exempt from the RIS process. The Subcommittee considered six National Law Regulations. The number of statutory rules in the 2023 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 2019 and 2023.

Figure 1: Proportion of statutory rules exempt from Regulatory Impact Statement process 2019-2023



2.2.1 Regulatory Impact Statements

Unless an exemption applies,¹² section 7 of the SLA 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;
- consultation is adequate and in particular whether appropriate organisations and individuals have been consulted;

¹¹ See section 1.4.1 of Chapter 1.

¹² Exemptions apply under sections 8 and 9 of the SLA.

- 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 2023 Series, 14 statutory rules were accompanied by RISs. The RISs for the 2023 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 SLA.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 SLA;
- 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 SLA; and
- a statutory rule exempted by a Premier's certificate sunsets within twelve months.

In the 2023 Statutory Rule Series, 124 statutory rules were exempt from the requirement to prepare an RIS. Six statutory rules were National Law Regulations and were exempt from the requirement by their enabling legislation. Table 1 below outlines the spread of exemptions from the RIS process in the 2023 Series.

¹³ SLA, section 7.

Table 1: Exemptions from the Regulatory Impact Statement process in the 2023 Series

Section	Exemption	Number Exempt
8(1)(a)	Would not impose significant economic or social burden	63
8(1)(a) and 8(1)(c)	Would not impose significant economic or social burden and fundamentally declaratory or machinery in nature	3
8(1)(a) and (f)	Would not impose a significant 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	2
8(1)(b)	Is a rule which relates only to a court or tribunal	25
8(1)(c)	Fundamentally declaratory or machinery in nature	12
8(1)(d)	Only increase Fees in Respect of a Financial Year by an Amount not Exceeding the Annual Rate Approved by the Treasurer	4
8(1)(e)(iii)	Extension of time regulation	5
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
8(1)(f)	Part of national uniform legislation scheme	1
9	Premier's certificate – Special circumstances	2
N/A	National Law Regulations	6
Total		124

2.3 Ministerial correspondence

The Subcommittee did not make any reports to Parliament in relation to statutory rules from the 2023 Series. However, the Subcommittee sought further clarification in relation to 13 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. 22 – Road Safety Road Rules Amendment (Electric Scooters) Rules 2023
- SR No. 23 – Road Safety (General) Amendment (Electric Scooters) Regulations 2023
- SR No. 26 – Corrections Amendment (Parole) Regulations 2023
- SR No. 33 – Circular Economy (Waste Reduction and Recycling) (Waste to Energy Scheme) Regulations 2023
- SR No. 49 – Forests (Recreation)(Temporary) Amendment Regulations 2023
- SR No. 50 – Conservation, Forests and Lands (Infringement Notice) Regulations 2023
- SR No. 65 – Building Amendment (Fees Expiry Date) Interim Regulations 2023
- SR No. 78 – Circular Economy (Waste Reduction and Recycling) (Container Deposit Scheme) Amendment Regulations 2023
- SR No. 86 – Water (Recreational Area) Regulations 2023
- SR No. 102 – Building and Plumbing Amendment (National Construction Code and Other Matters) Regulations 2023
- SR No. 113 – Social Services Regulations 2023

- SR No. 116 – Associations Incorporation Reform Regulations 2023
- SR No. 119 – Casino Control Regulations 2023.¹⁴

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 2023. 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.

Example: Correspondence to the Minister for Environment

On 15 February 2024, the Subcommittee noted five letters had been sent to the former Minister for Environment in September and October 2023 in relation to four statutory rules and one legislative instrument and no responses had been received. The Subcommittee resolved to write to the new Minister for Environment to request the responses be provided. The Minister quickly provided the relevant information in response to the Subcommittee's requests.¹⁵ The Subcommittee thanks the Minister for this prompt assistance.

2.4 Key scrutiny issues

Overall, the Subcommittee observed an increased number of technical scrutiny issues arising from statutory rules from the 2023 Series compared with previous years. The following section provides an overview of the key issues arising from the 2023 Series. The Subcommittee will continue to monitor these issues in the future.

2.4.1 Timeliness of documentation

Section 15A of the SLA 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.¹⁶ While failure to comply with this requirement does not affect the validity of the statutory rule,¹⁷ 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 three statutory rules from the 2023 Series were provided to the Subcommittee outside the legislative timeframe.¹⁸

In general, the Subcommittee observed increased promptness in providing documentation within the legislative timeframes compared to the previous year.¹⁹ The Subcommittee thanks Departments for their responsiveness to the Subcommittee's requests.

¹⁴ Details of correspondence are included in Appendix C.

¹⁵ See correspondence concerning SR No. 33 – Circular Economy (Waste Reduction and Recycling) (Waste to Energy Scheme) Regulations 2023; SR No. 49 – Forests (Recreation) (Temporary) Amendment Regulations 2023; SR No. 50 – Conservation, Forests and Lands (Infringement Notice) Regulations 2023; SR No. 78 – Circular Economy (Waste Reduction and Recycling) (Container Deposit Scheme) Amendment Regulations 2023 and EPA Designation – Classification of PFAS-impacted soil made under Regulation 86 of the Environment Protection Regulations 2021 in Appendix C.

¹⁶ *Subordinate Legislation Act 1994*, section 15A(2).

¹⁷ *Subordinate Legislation Act 1994*, section 15A(3).

¹⁸ These included: SR No. 29 – Local Government (General) Amendment Regulations 2023; SR No. 60 – Victorian Energy Efficiency Target Amendment (Code of Conduct) Regulations 2023; and SR No. 69 – Dangerous Goods (Explosives) Amendment Regulations 2023.

¹⁹ In 2022, documentation regarding eight statutory rules was provided to the Subcommittee outside of the legislative timelines.

2.4.2 Shared regulatory impact statement

Section 21(1)(j) of the SLA 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 requirements relating to RISs.

Section 7 of the SLA requires the responsible Minister must ensure that a regulatory impact statement (RIS) is prepared for a proposed statutory rule. This does not apply if an exemption certificate is issued under section 8.²⁰

In 2023, the Subcommittee observed a number of statutory rules which shared the same RIS. The Subcommittee considers it important that the regulatory impact of all provisions of a statutory rule are adequately assessed. Accordingly, when an RIS is shared by multiple statutory rules, the RIS should assess the impact of all statutory rules it informs.

The Subcommittee will continue to monitor this issue to ensure all RISs adequately assess the regulatory impact of statutory rules.

Example: SR No. 78 – Circular Economy (Waste Reduction and Recycling)(Container Deposit Scheme) Amendment Regulations 2023

SR No. 78 amended Circular Economy (Waste Reduction and Recycling) (Container Deposit Scheme) Regulations 2022 (Principal Regulations) to prescribe requirements for refund markings for suitable eligible containers supplied as part of the Container Deposit Scheme (the Scheme). SR No. 78 also made minor and administrative amendments to the Principal Regulations.

Subcommittee consideration

The Subcommittee considered the SR No. 78 at a meeting on 5 September 2023. The Subcommittee noted the development of the SR No. 78 was informed by the content of the original RIS developed for the Principal Regulations and the RIS consultation process. However, several provisions were developed after this process. Whilst noting that several other public documents provided significant detail about the purpose and scope of these provisions, the Subcommittee noted these were not tabled in the Parliament.

The tabling of section 8 certificates in the Parliament provides oversight. Accordingly, the Subcommittee sought the Minister's advice as to whether it may be appropriate to issue a section 8 exemption certificate in relation to the new regulations inserted by SR No. 78.²¹

On 16 February 2024, the Subcommittee followed up its request with the Minister.

Minister's response

The Minister for Environment responded on 18 March 2024.²² The Minister stated the content of the new regulations had been assessed and are not expected to result in materially different impacts to those assessed in the original RIS, or to impose a significant economic or social burden on any sector of the public. Additional consultation was undertaken with industry in relation to the changes.

The Minister stated that, in the circumstances, it was not considered necessary to issue a section 8 certificate. The section 10(4) certificate confirms that the likely impact of the statutory rule had been adequately assessed in the RIS, given the new provisions were minor and would not impose a significant burden or result in materially different impacts to those assessed in the RIS. As such the Minister considered that the requirements of sections 7 and 10 of the SLA concerning RISs had been met.

²⁰ SLA, section 7(2).

²¹ Details of correspondence are included in Appendix C.

²² Ibid.

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

2.4.3 Failure to comply with publication requirements – section 12 Notice of decision

In 2023, the Subcommittee noted one statutory rule²³ in relation to section 12 publication requirements in the SLA. In that instance, a notice advising of the Minister’s decision to make or not a statutory rule after the completion of the RIS process (section 12 Notice) was not published.

Requirements of the *Subordinate Legislation Act 1994*

Section 12 of the SLA provides:-

- (1) If a regulatory impact statement has been prepared, the responsible Minister must ensure that a notice advising of the decision to make or not to make the proposed statutory rule is published in—
 - (a) the Government Gazette; and
 - (b) a daily newspaper circulating generally throughout Victoria.
- (2) Notice of a decision not to make a proposed statutory rule must be published as soon as practicable after the decision has been made.
- (3) Notice of a decision to make a proposed statutory rule must be published before the proposed statutory rule is made.
- (4) A failure to comply with subsection (1), (2) or (3) does not affect the operation or effect of the statutory rule but the Scrutiny Committee may report the failure to each House of the Parliament.

Example: SR No. 78 – Circular Economy (Waste Reduction and Recycling) (Container Deposit Scheme) Amendment Regulations 2023

Subcommittee consideration

The Subcommittee noted that section 12(1) provides that the Minister must ensure publication of the Notice of decision in the Government Gazette and a newspaper circulating generally throughout Victoria or the Public Notices website. Failure to comply with subsection (4) however does not affect the operation of the statutory rule. However the Committee may report the failure to each House of the Parliament.

The Subcommittee also noted the section 12 Notice of decision was published on the Public Notices website on 3 August 2023. However, the section 12 Notice of decision did not appear to have been published in the Government Gazette. The Subcommittee drew the Minister’s attention to the requirements of section 12 of the SLA.²⁴

Minister’s response

The Minister for Environment responded on 18 March 2024.²⁵ The Minister stated the failure to publish the section 12 Notice of decision was an administrative oversight within the Department. The Minister noted the Department would take steps to ensure the requirements of section 12 are met. Additional steps may include the reinforcement of existing internal guidance materials and the provision of further training to policy officers.

The Subcommittee thanks the Minister for the response.

²³ SR No. 78 – Circular Economy (Waste Reduction and Recycling)(Container Deposit Scheme) Amendment Regulations 2023.

²⁴ Details of correspondence are included in Appendix C.

²⁵ Ibid.

2.4.4 Failure to comply with publication requirements – section 11 – Notice of preparation of RIS

In 2023, the Subcommittee noted two statutory rules, SR No. 116 – Associations Incorporation Reform Regulations 2023 (SR No. 116) and SR No. 119 – Casino Control Regulations 2023 (SR No. 119). In each instance a notice inviting public consultation in relation to an RIS was not published in accordance with section 11 of the SLA (section 11 Notice)

Requirements of the Subordinate Legislation Act 1994

Section 11 of the SLA provides:

- (1) If an RIS has been prepared, the responsible Minister must ensure that a notice in accordance with subsection (2) is published in—
 - (a) the Government Gazette; and
 - (b) a daily newspaper circulating generally throughout Victoria; and
 - (c) if the responsible Minister considers it appropriate, in such trade, professional or public interest publications as the responsible Minister determines.
- (2) A notice must—
 - (a) state the reason for, and the objectives of, the proposed statutory rule;
 - (b) summarise the results of the regulatory impact statement;
 - (c) specify where a copy of the regulatory impact statement and of the proposed statutory rule can be obtained;
 - (d) invite public comments or submissions within such time (being not less than 28 days from the publication of the notice) as is specified in the notice.
- (3) The responsible Minister must ensure that all comments and submissions are considered before the statutory rule is made.

The Subcommittee notes that section 12(4) specifically provides that failure to publish a section 12 Notice does not affect the operation of a statutory rule. However, the SLA is silent as to whether the failure to publish a section 11 Notice may affect the operation of a statutory rule. The Subcommittee is concerned that a failure to comply with section 11 may affect the operation or effect of the relevant regulations. In those circumstances the issue for consideration is whether the failure to comply with section 11 publication requirements may be deemed a substantial or material contravention of section 21(1)(j) of the SLA or the Guidelines.

Substantial or material contravention of the *Subordinate Legislation Act 1994*

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

What is the meaning of ‘must’? – The ordinary meaning of ‘must’

Interpretation of the text of a provision may assist in determining whether it imposes a mandatory requirement or confers a discretion. In particular, the Subcommittee notes section 11 requires the Minister ‘must’ publish a notice in the Government Gazette or a newspaper circulating generally throughout Victoria.

The Subcommittee notes the ordinary meaning conveyed by the text of the provision implies a mandatory requirement. Macquarie Dictionary defines ‘must’ as ‘indicating an obligation or necessity’.²⁶

Unlike the interpretation Acts of some other Australian jurisdictions,²⁷ Victoria’s *Interpretation of Legislation Act 1984* (Interpretation Act) does not define ‘must’. However, sections 45(1) and (2) of the Interpretation Act provide:

- (1) Where in this Act or any Act passed or subordinate instrument made on or after the commencement of this Act the word “may” is used in conferring a power, that word shall be construed as meaning that the power so conferred may be exercised, or not, at discretion.
- (2) Where in this Act or any Act passed or subordinate instrument made on or after the commencement of this Act the word “shall” is used in conferring a power, that word shall be construed as meaning that the power so conferred must be exercised.

Interpretation by the courts

The Subcommittee notes that affirmative words such as ‘must’ have previously been interpreted by the courts prima facie to impose an obligation to exercise a function. However, this is not always the case. In interpreting the *Planning and Environment Act 1987*, in *Halwood Corporation Ltd v Roads Corporation* Tadgell JA stated:²⁸

Positive obligations are expressed in the Act, in some instances understandably, by force of “must”, rather than by means of “shall”. The use of “must” as a modal auxiliary may often appropriately express an obligation, but the mere addition of “not” may fail as an apt expression of a prohibition... In truth, “must” is a ticklish auxiliary: though useful in its proper place it deserves careful handling.

Whilst the courts previously distinguished between ‘mandatory’ and ‘directory’ provisions,²⁹ the Subcommittee notes a trend towards purposive statutory interpretation. In this regard, the Subcommittee’s view is that statutory provisions must be read in context.³⁰ In *Project Blue Sky Inc v Australian Broadcasting Authority*³¹ McHugh, Gummow, Kirby and Hayne JJ noted:

An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of the purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition.

Following *Project Blue Sky*, the Subcommittee notes a court may consider the effect of failure to comply with a provision in determining whether it would invalidate the provision.³² In general, if strict compliance with a provision would result in significant injustice, courts have generally not held the provision to be mandatory.³³ By

²⁶ *Macquarie Dictionary Ninth Edition, 2023, p. 799.*

²⁷ See, for example, *Legislation Act 2001* (ACT), section 146(2). Section 146(2) states in an Act or statutory instrument, the word must, or a similar term, used in relation to a function indicates that the function is required to be exercised.

²⁸ *Halwood Corporation Ltd v Roads Corporation* [1998] 2VR 439 at 445-6.

²⁹ See, for example, *Victoria v The Commonwealth* [1975] HCA 39; (1975) 134 CLR 81 at 179-180.

³⁰ *Project Blue Sky v Australian Broadcasting Authority* [1998] HCA 28, para [69]; *Commissioner for Taxation v Consolidated Media Holdings Ltd* [2012] HCA 55, para [39].

³¹ *Ibid.* *Project Blue Sky v Australian Broadcasting Authority* [1998] HCA 28; (1998) 194 CLR 355; 153 ALR 490 at [91].

³² *Bradley v Commonwealth* [1973] HCA 34; (1973) 128 CLR 557; 1 ALR 241.

³³ *TVW Enterprises Ltd v Duffy* [No 3] (1985) 8 FCR 93, 104-5.

contrast, the courts have held that provisions are mandatory where failure to strictly comply would negate the objectives of the Act.³⁴

In this regard, provisions requiring that a function 'must' be exercised may be considered by a court within their statutory context. In 2006 in *Ozone Manufacturing Pty Ltd v Deputy Commissioner of Taxation*³⁵ DeBelle, Besanko and Layton JJ noted:

The word "must" is, generally speaking, a word of obligation. It has been described as "a word of absolute obligation" in *Posner v Collector for Interstate Destitute Persons* (Vict) [1946] HCA 50; (1946) 74 CLR 461 per Williams J at 490; *Chun Wang v Minister for Immigration & Multicultural Affairs* [1997] FCA 70; (1997) 71 FCR 386 at 391. It was called "a word of imperative obligation" in *R v Garner* [1994] VicRp 27; [1994] 1 VR 400 at 402. In certain contexts, it might have a directory as distinct from a mandatory operation, a distinction which has been criticised as elusive: *Tasker v Fullwood* [1978] 1 NSWLR 20 at 23 - 24, affirmed in *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at [93]. Plainly, the question whether "must" is a word of obligation and, if it is, the force of the obligation will depend on the statutory context and the nature of the obligation in the context in which the obligation is to be performed. In this context, the word "must" can only be reasonably understood to mean that it imposes an obligation upon the Commissioner to pay to a taxpayer any amount due to the taxpayer under a taxation law.

The use of the word 'must' and its interpretation is a factor which may assist in determining whether or not the publication errors in respect of SR No. 116 and SR No. 119 are contraventions of a substantial or material nature.

What other steps were taken to advertise the making of the RIS?

Other factors may be considered in assessing whether a contravention is of a substantial or material nature. For example, what other steps were taken to advertise the making of the RIS? The particular facts in relation to statutory rules SR No. 116 and SR No.119 provide additional material for consideration.

In 2023 the Subcommittee corresponded with two Ministers in relation to Section 11 Notice publication errors. In each instance, the Ministers expressed the view that they did not consider the errors to be contraventions of a substantial or material nature. Details of the issues and the Ministers' responses are outlined below.

Example: SR No. 116 – Associations Incorporation Reform Regulations 2023

SR No. 116 prescribes requirements for the establishment, operation and cancellation of an incorporated association under the *Associations Incorporation Reform Act 2012*, including annual reporting and fees relating to applications.

The Department proactively wrote to the Committee on 27 November 2023. It advised of an error with the publication of a Section 11 Notice. Due to the Department's oversight, the RIS was not advertised in the Government Gazette or a daily newspaper. Instead, the Department published an invitation for public comment on Consumer Affairs Victoria's social media platforms and invited stakeholders to comment via email.

Subcommittee consideration

The Subcommittee considered SR No. 116 at a meeting on 15 February 2024. The Subcommittee wrote to the Minister to express its concern that the Department's failure to comply with section 11 may affect the operation or the effect of the Regulations. The Subcommittee also requested information as to steps which may be taken to correct the failure to comply with section 11 of the SLA.

³⁴ *Forrest & Forrest Pty Ltd v Wilson* [2017] HCA 30; (2017) 346 ALR 1 at [65].

³⁵ *Ozone Manufacturing Pty Ltd v Deputy Commissioner of Taxation* [2006] SASC 91; (2006) 94 SASR 269 at [35].

Minister's response

The Minister responded on 14 March 2024. The Minister confirmed a notice for the preparation of the RIS for SR No. 116 was not published in accordance with section 11 and apologised for the oversight. The Minister advised the Department had reviewed its internal processes. It established additional controls to ensure the error would not reoccur.

The Minister's response sets out additional information about public engagement throughout the consultation process. In summary, the Minister stated:

- In March 2023, the Department undertook preliminary consultation as part of a broader review of the incorporated associations regulatory scheme. Much of this consultation was used to inform the exposure draft of the SR No. 116 and RIS.
- From 10 August to 15 September 2023, consultation on the RIS and exposure draft occurred. The Department published an invitation to comment on social media platforms and an email was sent directly to more than 40,000 incorporated associations registered in Victoria, 10 key state and Commonwealth departments, and seven other key stakeholders.
- 137 survey responses and 31 written submissions were received. The responses were received from a broad cross-section of the community and expressed a range of different views. This feedback was incorporated into the final SR No. 116.
- The intention of section 11 of the SLA is to ensure that the public and all relevant stakeholders are provided with notice of consultation on a proposed statutory rule and accompanying RIS and an opportunity to provide a comment or make a submission before the statutory rule is made.
- Failure to comply with the requirements of section 11 of the SLA was, in the circumstances, not a contravention that was of a substantial or material nature and should not affect the operation or effect of SR No. 116.
- That SR No. 116 should not be disallowed for the following reasons:
- Disallowance would require new interim regulations to be urgently made to ensure continuity of the regulatory scheme for incorporated associations.
- Disallowance may create a significant amount of confusion within the incorporated associations sector.
- Incorporated associations who have adopted the Model Rules for Incorporated Associations set out in the Regulations would be denied the benefit of procedural fairness reforms made to the internal dispute resolution processes in the updated Model Rules.

The Subcommittee thanks the Minister for the correspondence.

Example: SR No. 119 – Casino Control Regulations 2023

SR No. 119 sets out requirements relating to the corporate governance of a casino operator, player cards used for carded play, player activity statements, setting of pre-commitment limits, conduct of gaming using non-cash gaming tokens in a casino, identification of players at a casino, and exclusion of players from a casino.

Subcommittee consideration

The Subcommittee considered SR No. 119 at a meeting on 13 March 2024. The Subcommittee noted the Department failed to publish a notice in accordance with section 11 of the SLA. The Department directly contacted all impacted parties and published the RIS on the Engage Victoria website. The

Subcommittee resolved to write to the Minister to seek further information about what steps may be taken to correct the failure to comply with section 11 of the SLA.³⁶

Minister's response

The Minister responded in a letter dated 16 April 2024.³⁷ The Minister confirmed a notice for the preparation of the RIS for the Regulations was not published in accordance with section 11. The Minister advised the Department had taken steps to ensure the error would not reoccur.

The Minister's response set out information about public engagement throughout the consultation process. In summary, the Minister stated:

- The Regulations have limited application and only apply to the Melbourne Casino operator.
- The Department made efforts to ensure a wide range of stakeholders were aware of the RIS process and had adequate time to make a submission. Consultation included:
 - The Department emailed nine stakeholders and sought feedback from 1 to 29 September 2023.
 - The Department notified the Chief Executive Officer of the casino operator on 1 September 2023.
 - Notice of the RIS was published on the Engage Victoria website and accessible to the public.
 - Five submissions were received.
 - A number of changes were made to the Regulations in response to the feedback.

The Minister's view was that all relevant stakeholders were aware of the RIS, and all members of the public were given opportunity to respond. Accordingly, the Department's actions aligned with the intention of section 11. The Minister considered that failure to comply with the requirements of section 11 of the SLA was, in the circumstances not a contravention that was of a substantial or material nature and will not affect the operation or effect of the Regulations.

The Subcommittee thanks the Minister for the correspondence.

Other examples – What has occurred on previous occasions?

The Subcommittee previously considered this issue twice in 2019³⁸ and 2021.³⁹ In each instance, the responsible Minister failed to publish a notice in accordance with section 11. Whilst the Ministers noted significant consultation had occurred, they noted the failure may have affected the operation or effect of the relevant statutory rules. Both responsible Ministers repealed and remade the relevant statutory rules.

Alternative views

Whilst noting the Ministers' advice, the Subcommittee notes there may be a range of other views on whether failure to publish a notice in accordance with section 11 generally constitutes a substantial or material contravention of the SLA.

In interpreting a provision of an Act, consideration may be given to relevant matters and documents, including the Act as printed, reports of proceedings of the Parliament, explanatory memoranda or any other documents tabled in the Parliament.⁴⁰ In this regard, the Subcommittee notes consideration may be given to a range of

³⁶ Details of correspondence are included in Appendix C.

³⁷ Ibid.

³⁸ Scrutiny of Acts and Regulations Committee, *Annual Review 2019, Regulations and Legislative Instruments*, pp. 34-37. <<https://www.parliament.vic.gov.au/49ddb2/globalassets/committee-publication-record-documents/committee-36/publication-167/annual-review-2019-regulations-and-legislative-instruments.pdf>>

³⁹ Scrutiny of Acts and Regulations Committee, *Annual Review 2021 and 2022 – Statutory Rules and Legislative Instruments*, pp. 73-75. <<https://www.parliament.vic.gov.au/49ddb2/globalassets/committee-publication-record-documents/committee-36/publication-282/annual-review-2021-and-2022.pdf>>

⁴⁰ *Interpretation of Legislation Act 1984*, section 25(b)(i)-(iii).

factors, including the text of the provision, the extrinsic material, the purpose and context of the SLA, and the impact of non-compliance.

Intention of section 11 in the extrinsic material

Neither the Explanatory Memorandum nor the Second Reading Speech to the Subordinate Legislation Bill 1994 provide details of whether the provision is mandatory or the effect of non-compliance. However, both documents highlighted the importance of consulting with a broad range of stakeholders.⁴¹

Note the Explanatory Memorandum to the Subordinate Legislation Bill 1994:-

Clause 11 sets out the requirements for publication of a notice of a proposed statutory rule for comments and submissions if a regulatory impact statement has been prepared. It specifies the matters that must be included in the notice and provides that the responsible Minister must ensure that all comments and submissions are considered and that the Scrutiny Committee is provided with a copy of all comments and submissions.⁴²

Note the Second Reading Speech to the Subordinate Legislation Bill 1994:-

The government considers proper consultation is important in deciding whether a statutory rule should be made - and if so, in formulating that rule. That consultation may be within government, as between different agencies, and with the sectors of the business and the wider community potentially affected by the rule or in whose interests the proposed rule is directed. The nature and degree of consultation that is appropriate for any particular rule may vary with the nature of that rule, and the government believes that the best way to ensure that appropriate consultation is affected is not by laying down strict parameters in legislation but by drawing up guidelines that can be reviewed and amended as necessary to ensure that the best outcomes are achieved.⁴³

Statutory context of the provision

Objectives of the *Subordinate Legislation Act 1994*

The purpose and objectives of the SLA may be considered in interpreting section 11. Section 1 of the SLA provides:

The purpose of this Act is—

- (a) to ensure that the power to make subordinate legislation is exercised subject to Parliament's authority and control;
- (b) to regulate the preparation, making, publication and scrutiny of subordinate legislation;
- (c) to provide for public participation in the preparation and scrutiny of subordinate legislation;
- (d) to amend the *Interpretation of Legislation Act 1984* in relation to incorporated documents, the incorporation of amendments and the admissibility of Acts and subordinate instruments.

⁴¹ Note the Second Reading Speech to the Bill: 'The government considers proper consultation is important in deciding whether a statutory rule should be made - and if so, in formulating that rule. That consultation may be within government, as between different agencies, and with the sectors of the business and the wider community potentially affected by the rule or in whose interests the proposed rule is directed. The nature and degree of consultation that is appropriate for any particular rule may vary with the nature of that rule, and the government believes that the best way to ensure that appropriate consultation is affected is not by laying down strict parameters in legislation but by drawing up guidelines that can be reviewed and amended as necessary to ensure that the best outcomes are achieved.'

⁴² Explanatory Memorandum to the Subordinate Legislation Bill 1994, p. 2.

⁴³ Hansard, 10 November 1994, pp. 1684-1685.

Other consultation requirements - Guidelines

Section 11 may be read in the context of the other provisions of the SLA relating to consultation. Section 6 of the SLA provides:

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.

The SLA does not set out specific requirements as to whom must be consulted or the form consultation must take. The level of consultation may depend on the nature of a statutory rule. There may be a range of views as to what constitutes adequate consultation. The Subcommittee notes the Guidelines provide some guidance on consultation requirements.⁴⁴ However, consultation is ultimately up to the discretion of the responsible Minister.⁴⁵

The Guidelines highlight the importance of consulting widely:

The public consultation process gives businesses and the wider community a chance to communicate to government any concerns it may have about proposed regulations which will affect its activities. One of the aims of the RIS and the public consultation process is to obtain information and comment from the widest set of possible sources. This helps identify any weaknesses in the reasoning in the RIS, test assumptions and methodology in the RIS, and ensure that competing interests are recognised and adequately considered.⁴⁶

The Subcommittee considers that consultation should be undertaken with all those affected by a statutory rule.

Legislative developments – 2022 updates to publication requirements

The Subcommittee notes the Parliament recently considered the notice publication requirements in 2022 when considering amendments to the Interpretation Act by the *Regulatory Legislation Amendment (Reform) Act 2022*.⁴⁷ At that time, the Parliament expressly retained the requirement to publish notices in the Government Gazette and the option to publish notices in print newspapers. The changes expanded the options available to a Minister to validly comply with notice publication requirements by allowing notice publication on the Public Notices website.⁴⁸

⁴⁴ Guidelines, pp. 32-37.

⁴⁵ Guidelines, paragraph 154. Paragraph 154 of the Guidelines states 'At their own discretion, the responsible Minister may choose to undertake consultation under section 6 or section 12C of the SL Act and issue a section 6 or section 12C Certificate'.

⁴⁶ Guidelines, paragraph 181.

⁴⁷ In 2022, the requirements for the publication of public notices were updated. The *Regulatory Legislation Amendment (Reform) Act 2022* (RLAR Act) inserted new section 38M into the *Interpretation of Legislation Act 1984* (Interpretation Act). The Amendment Act aimed to 'modernise requirements for notices to be published in print newspapers without mandating that all notices be published electronically'. Amongst other matters, the Amendment Act provided that, if an Act requires notice to be published in a print newspaper circulating generally throughout Victoria, that requirement is taken to be met if the notice is published on an approved alternative website. The Amendment Act expressly provided that nothing in the section 38M limits the manner or form in which any notice required to be published by an Act, a statutory rule or other subordinate instrument may be published, or exempts any entity from complying with any other obligation or requirement under the Act, statutory rule or other subordinate instrument to which the notice relates in relation to the publication of the notice other than in a print newspaper.

⁴⁸ On 31 July 2022, the Assistant Treasurer declared, via notice in the Government Gazette, www.publicnotices.vic.gov.au to be an approved alternative Internet site for the purposes of section 38M of the Interpretation Act.

The Subcommittee notes the Victorian Government Gazette provides an important source for the official notification of the making of an RIS. In this regard, it provides a formal record where RIS consultation can be accessed and searched at any time. The Subcommittee further notes the Parliament intentionally retained the option to publish notice of consultation in newspapers circulating generally throughout Victoria to ensure vulnerable groups and individuals can be reached.⁴⁹

Impact of publication error – Effect of non-compliance – Role of the Committee

In assessing whether a substantial or material breach of the SLA has occurred, consideration may be given to the impact of non-compliance and the impact of invalidity.⁵⁰

The Subcommittee notes the effect of non-compliance with section 11 is unclear. Whilst the SLA expressly provides that failure to comply with other notice publication requirements does not affect the operation or effect of a statutory rule,⁵¹ there is no similar exception for failure to comply with the section 11 requirements. The SLA is silent as to the effect of non-compliance with section 11. However, the Guidelines state:

It is particularly important to ensure that the notice is published in accordance with sections 11 (statutory rules) and 12I (legislative instruments) of the SL Act. Failure to publish the notice may affect the operation or effect of the statutory rule or legislative instrument.⁵²

A court may find subordinate legislation invalid on the basis that procedural requirements relating to notice publication have not been fulfilled. The Subcommittee notes courts have previously found subordinate legislation invalid due to non-compliance with procedural making requirements.⁵³

In interpreting the provisions, courts must assign intention to Parliament as to the consequences of non-compliance.⁵⁴ The Subcommittee considers it is the role of the courts to determine the effect of non-compliance.

Subcommittee's consideration

In relation to the review of any statutory rule, the Committee notes the broad purposes of the SLA. The Committee also notes general comments provided about consultation in the Guidelines. However, the particular facts in relation to the review of a particular statutory rule are also important. They provide context and significant insight into the statutory rule making processes. In relation to SR No. 116 and SR No. 119, it is unclear whether failure to publish a section 11 Notice, necessarily resulted in a materially different outcome. The Subcommittee notes the Ministers' advice that all affected stakeholders were consulted and given opportunity to comment on the RISs. Despite failure to publish notices in the prescribed manner, in each instance there was extensive consultation with a broad range of stakeholders.

There may be a range of views as to whether the errors are of substantial or material nature. It is a matter about which reasonable minds may differ.⁵⁵ On one view, notwithstanding the use of the word 'must' in section 11, it may be considered, given the consultation undertaken, the errors are more technical in nature. An alternative view is that the failure to publish in accordance with the strict requirements of section 11 may amount to a substantive or material breach of section 21(j) of the SLA.

⁴⁹ Second Reading Speech to the Regulatory Legislation Amendment (Reform) Bill 2022.

⁵⁰ James J Spiegelman, 'Statutory Obligations and Discretions' in Belinda Smith et. al. *Laying Down the Law, 12th edition* (2023) p. 17.

⁵¹ For example, section 12(1) of the Subordinate Legislation Act provides that, if a RIS has been prepared, the responsible Minister must ensure that a notice advising of the decision to make or not to make the proposed statutory rule is published in the same publications. Section 12(4) expressly provides that failure to comply with subsection 12(1) does not affect the operation or effect of the statutory rule but the Committee may report the failure to each House of the Parliament.

⁵² Guidelines, paragraph 186.

⁵³ Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia Second Edition*, p. 109. [Note: the case law on this largely relates to publication of a statutory rule itself rather than the publication of other notices.]

⁵⁴ James J Spiegelman, 'Statutory Obligations and Discretions' in Belinda Smith et. al. *Laying Down the Law, 12th edition* (2023) p. 17.

⁵⁵ *Aldi Foods Pty Ltd v Moroccanoil Israel Ltd* [2018] FCAFC 93.

In relation to the publication errors the Subcommittee carefully considered the statutory rules and other material. The Subcommittee thanks the Ministers for their responses. The Ministers' responses were published in *Alert Digest 5 of 2024*.⁵⁶ The Subcommittee notes the Ministers' responses may be considered by a court in interpreting the provision.⁵⁷

2.4.5 Clarity of form or intention

Section 21(1)(i) of the SLA 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. 50 – Conservation, Forests and Lands (Infringement Notice) Regulations 2023

SR No. 50 prescribes the offences against a relevant law for which an infringement notice may be served and infringement penalties for those prescribed infringement offences.

Subcommittee consideration

The Subcommittee considered SR No. 50 at a meeting on 27 September 2023. The Subcommittee noted, where a statutory rule prescribes infringement offences, section 6A of the SLA provides the Minister must certify the statutory rule meets the requirements of the *Attorney-General's Guidelines to the Infringements Act 2006* (AG Guidelines). If the statutory rule does not comply with the AG Guidelines, the Minister must specify the reasons for why the statutory rule should be made despite not meeting those requirements. The AG Guidelines recommend against prescribing statutory offences that are subject to penalties above 120 penalty units as infringement offences. The AG Guidelines also recommend that infringement offence penalties are not set below 10 per cent of the maximum penalty for the statutory offence.

The Subcommittee noted SR No. 50 prescribes 19 offences under section 71, 75, 75A and 77A of the *Catchment and Land Protection Act 1994* (CLP Act) as infringement offences. The offences relate to the spread of noxious weeds, and the import, sale, keeping or release of pest animals. Whilst the CLP Act sets the statutory maximum for the offences at 480 penalty units, the infringement offences were set by SR No. 50 at 10 penalty units or approximately 2 per cent of the statutory maximum. Accordingly, the prescription of these offences does not comply with the requirements of the AG Guidelines. The Subcommittee noted the section 6A infringement offence consultation certificate did not contain information about the prescription of these offences as infringement offences and resolved to seek further information from the Minister.⁵⁸

On 16 February 2024, the Subcommittee followed up its request with the Minister.

Minister's response

The Minister for Environment responded on 18 March 2024. The Minister advised the offences were prescribed in close consultation with the Infringements System Oversight Unit of the Department of Justice and Community Safety. The requirements of the AG Guidelines were noted during the course of this consultation process. The Minister noted, while the infringement offences are below the recommended 10 per cent threshold, the lower amounts provide a more efficient and proportionate enforcement option for authorised officers.

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

⁵⁶ Scrutiny of Acts and Regulations Committee, *Alert Digest 5 of 2024*, pp. 51-60.

⁵⁷ *Interpretation of Legislation Act 1984*, section 35(b).

⁵⁸ Details of correspondence are included in Appendix C.

2.4.6 Consultation

Section 6 of the SLA sets out the requirements relating to consultation regarding statutory rules. The section provides 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.

Pursuant to sections 15 and 15A of the SLA, 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).⁵⁹

Paragraph 138 of 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 SLA:

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...’.⁶⁰

Paragraph 87 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 91 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 SLA. 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 2023.

⁵⁹ See SLA, sections 15(2) and 15A(3).

⁶⁰ Guidelines, p. 21.

Example: SR No. 22 – Road Safety Road Rules Amendment (Electric Scooters) Rules 2023 and SR No. 23 – Road Safety (General) Amendment (Electric Scooters) Regulations 2023

SR Nos. 22 and 23 make further provision for the use of electric scooters on roads and road related areas.

Subcommittee consideration

The Subcommittee considered the SR Nos. 22 and 23 at a meeting on 14 June 2023. The Subcommittee noted that SR Nos. 22 and 23 were both accompanied by a section 6 consultation certificate that stated consultation was undertaken with Victoria Police, the Transport Accident Commission, and the Department of Justice and Community Safety. The Subcommittee noted that the statutory rules may affect a range of stakeholders, including members of the general public. However, in the absence of further information, it was unclear whether any further consultation occurred. The Subcommittee resolved to seek advice from the Minister.

Minister's response

The Minister for Roads and Road Safety responded on 27 July 2023. The Minister advised that significant consultation was undertaken as part of the evaluation and assessment of the electric scooter trial. The Minister noted the Department of Transport and Planning consulted with e-scooter share scheme operators, local councils, the Royal Automotive Club of Victoria, the Pedestrian Council of Australia, the Accessible Transport Advisory Committee, Royal Melbourne Hospital, Blind Citizen's Australia, Council of the Aging (Victoria) and Vision Australia. The Department also commissioned an online community survey and received responses from 415 members of the public who live, work in or have visited the e-scooter trial areas.

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

2.4.7 Adequacy of exemption certificates

Section 21(1)(j) of the SLA 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 SLA.

Pursuant to section 8(3) of the SLA, 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. 102 – Building and Plumbing Amendment (National Construction Code and Other Matters) Regulations 2023

SR No. 102 made various amendments to the Building Regulations 2018 and the Plumbing Regulations 2018 to update references to certain industry standards, including Volumes One and Two of the 2022 edition of the National Construction Code (NCC 2022). SR No. 102 has the effect of incorporating these new industry standards by reference as in force on 1 May 2022.

Subcommittee consideration

The Subcommittee considered the SR No. 102 at a meeting on 25 October 2023. The Subcommittee noted SR No. 102 was accompanied by a section 8(1)(a) exemption certificate on the basis that it would not impose a significant economic or social burden on a sector of the public. The exemption certificate states that the reason for forming this opinion is that SR No. 102 applies amended definitions and reference new standards with which builders and plumbers in Victoria must comply and will not add any extra social or economic burden to builders or their customers.

The Subcommittee wrote to the Minister on 26 October 2023 to seek further detail as to why SR No. 102 would not impose a significant economic or social burden on a sector of the public, including an explanation of the changes to the incorporated industry standards and the impact of these changes.⁶¹

Minister's response

The Minister for Planning responded on 21 December 2023.⁶² The Minister advised the NCC 2022 is already incorporated by reference as in force from time to time by the Building Regulations 2018 and the Plumbing Regulations 2018. Those regulations contain certain modifications and variations to the NCC which apply in Victoria. The Minister provided a detailed overview of the effect and regulatory impact of each provision of SR No. 102. The Minister stated:

The regulations of the Amending Regulations are exempt under section 8(1)(a) of the SL Act for the following reasons-

- regulation 4 defers by seven months any regulatory impact imposed by certain new requirements of NCC 2022;
- regulations 3, 5 to 10, 12, 15(3) to (5), 16 to 19, 20(2), 22 and 34 only renumber references to clauses of the NCC 2022 to align with a new numbering scheme used in NCC 2022;
- regulations 10 and 11 correct typographical errors in the Victorian Variations to NCC 2022;
- regulations 13, 15(1) and (2), 20(1) and 21 correct drafting errors in the Building Regulations to clarify that certain references to "Schedule" refers to a Schedule to a specific Volume of NCC (not a Schedule to the Building Regulations);
- regulation 14 revokes regulation 158 of the Building Regulations as a consequence of the subject matter of that regulation now being entirely provided for in NCC 2022;
- regulation 23 amends a Form to require the provision of a small amount of information and only in limited circumstances;
- regulations 24, 25, 30 and 31 make consequential amendments because certain Australian Standards that have been incorporated by the Plumbing Regulations no longer need to do so because NCC 2022 now incorporates the Standards;
- regulations 26 to 29 substitutes regulations 18, 22, 24 and 26 of the Plumbing Regulations with similarly worded provisions only to improve their readability, without altering their regulatory effect;
- regulations 32 and 33 replace the notes at the foot of clauses 8 and 11 in Schedule 2 to the Plumbing Regulations, which does not alter the regulatory impact of clauses 8 and 11.

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

Example: SR No. 49 – Forests (Recreation) (Temporary) Amendment Regulations 2023

SR No. 49 amends the Forests (Recreation) (Temporary) Regulations 2021 (Principal Regulations) to extend their operation for a further three years until 30 June 2026.

Subcommittee consideration

The Subcommittee considered the SR No. 49 at a meeting on 11 October 2023. The Subcommittee noted that SR No. 49 had the effect of extending the operation of a legislative framework which has been in place since 2010. This is the fourth time the framework has been extended without preparing a new RIS to assess the regulatory impact of the framework. The Subcommittee noted the section 8(1)(a)

⁶¹ Details of correspondence are included in Appendix C.

⁶² Ibid.

exemption certificate stated SR No. 49 would not change the regulatory impacts on businesses or community groups as a result of the extension. However, it did not provide any information as to why it is necessary to extend the scheme for a further three years or when it is anticipated that new regulations will be made with an RIS. Accordingly, the Subcommittee sought further information from the Minister.

On 16 February 2024, the Subcommittee followed up its request with the Minister.

Minister's response

The Minister for Environment responded on 18 March 2024. The Minister advised SR No. 49 was required to extend the operation of the existing scheme for a further three years to enable time for certain legislative changes to occur:

- The Crown Land Acts (including the *Forests Act 1958*, under which the Principal Regulations are made) will be incorporated into a new Public Land Act. The proposed Public Land Act and associated regulations will supersede the Principal Regulations in the management of recreation in state forests.
- It was planned for commercial native timber harvesting to end on 1 January 2024. As part of the transition, an advisory panel was established to consider and make recommendations in relation to state forests.

The response noted the original RIS prepared in 2010 found the impact of the Principal Regulations to amount to approximately \$142,000 per year. It is anticipated that the impact of any new regulations would be approximately \$197,239 per year and below the indicative threshold for preparing an RIS prescribed by the Guidelines (i.e., \$2 million). Accordingly, new regulations would be exempt from preparing an RIS under section 8(1)(a) of the SLA. The Minister further noted that the Department has consulted with Better Regulation Victoria and received advice that it is unlikely an RIS will be required for new regulations. This process will be repeated prior to making the new regulations.

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

2.4.8 Adequacy of Premier's certificates

Section 21(1)(j) of the SLA 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 Premier's exemption certificates under section 9 of the SLA.

Section 9 of the SLA provides 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). A section 9 Premier's certificate must specify the reasons for the exemption.⁶³

In 2023, the Subcommittee considered two statutory rules accompanied by section 9 Premier's certificates. The Subcommittee observed the high quality of section 9 Premier's exemption certificates provided detailed reasons for the exemption.

Example: SR No. 65 – Building Amendment (Fees Expiry Date) Interim Regulations 2023

SR No. 65 amends the Building Regulations 2018 (Principal Regulations) to defer the revocation date of certain fees for a further 12 months until 1 July 2024. This is the third time the revocation of these fees has been deferred.

⁶³ SLA, section 9(3)(a).

Subcommittee consideration

The Subcommittee considered the SR No. 65 at a meeting on 11 October 2023. The Subcommittee noted detailed reasons for the deferral have been provided in the section 9 Premier’s certificate. The Subcommittee considered this information useful for understanding the context and purpose of SR No. 65.

The Subcommittee noted the Department of Transport and Planning will prepare an RIS and undertake public consultation on the relevant fees. This process will inform the making of new regulations to prescribe fees. It is intended to take place prior to 1 July 2024. The Subcommittee looks forward to considering these new regulations.

On 17 October 2023, the Subcommittee wrote to the Minister for Planning to note the detailed reasons provided in the section 9 Premier’s certificate. The Subcommittee did not request a response from the Minister.⁶⁴

2.4.9 Human rights scrutiny

The Subcommittee scrutinises statutory rules against section 21(ha) of the SLA 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 SLA 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 rule 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

⁶⁴ Details of correspondence are included in Appendix C.

- (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
 - (ia) 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. 26 – Corrections Amendment (Parole) Regulations 2023

SR No. 26 amends Corrections Regulations 2019 (Principal Regulations) to clarify the scope and extent of the residential condition that may be imposed on parole orders. In particular, regulation 4 amends existing regulation 114(1)(n) to specify that a prisoner must reside at the place of residence specified in the order, and must not temporarily reside at another address, unless otherwise approved in writing by the Regional Manager or the Adult Parole Board (the Board). Additionally, regulation 4 inserts new sub-regulations into existing regulation 114 to provide:

(3A) For the purpose of subregulation (1)(n) and subject to subregulation (3B), a prisoner temporarily resides at another address if the prisoner is or remains at that address overnight;

(3B) A prisoner does not temporarily reside at another address if the prisoner is required to be or remain at that address overnight as required by their paid or voluntary employment.

Regulations 5 and 6 make consequential amendments to forms in Schedule 2 of the Principal Regulations to amend the description of the residence requirement.

Subcommittee consideration

The Subcommittee considered SR No. 26 at a meeting on 14 June 2023. The Subcommittee resolved to seek advice from the Minister in relation to several issues.

Orders made prior to commencement

First, the Subcommittee noted the amendments to regulation 114(1)(n) would commence on 1 July 2023. The Subcommittee requested advice from the Minister as to whether the amended regulation 114(1)(n) will apply to parole orders made before that date.

Operation in contrast to previous requirements

Second, the Subcommittee noted a previous version of the residence condition, regulation 83B(1)(n) of the Corrections Regulations 2009 (2009 Regulations), provided that ‘the prisoner must reside each night at the place of residence specified’. Apart from the exemption of employment requirements in new sub-regulation 114(3B), the Subcommittee requested the Minister’s advice as to whether and how amended regulation 114(1)(n) would operate differently to the previous regulation 83B(1)(n) of the 2009 Regulations.

Meaning of ‘is or remains’, ‘address’ and ‘overnight’

Third, the Subcommittee noted the existing word ‘reside’ in regulation 114(1)(n) was ambiguous, and that the new phrase ‘is or remains at another address overnight’ may also be ambiguous in some circumstances. This may have implications for the reasonableness of any limit on rights under the Charter of Human Rights and Responsibilities. Accordingly, the Subcommittee sought information as to:

- the meaning of the words ‘is or remains’, ‘address’ and ‘overnight’;
- whether parolees who are subject to the amended residence condition will require written permission to: visit another address for a substantial part of the night; spend the night visiting several locations; spend a night at a non-residential location; and
- how any ambiguities in new sub-regulation 114(3A) will be resolved.

Effect of amendments to forms in Schedule 2

Fourth, in relation to regulations 5 and 6’s amendments to Forms 10 (parole order) and 13 (variations to parole order) in Schedule 2, the Subcommittee sought information as to:

- why the words ‘and time of a day’ in existing item 24 was removed;
- why the definition of ‘temporarily reside’ in new sub-regulation 114(3A) and the exemption for employment in new sub-regulation 114(3B) are not being included in the amended forms; and
- what explanations will be provided to parolees about amended regulation 114(1)(n).

Right against arbitrary or unlawful interferences with privacy

Fifth, in relation to the section 12A human rights certificate, the Subcommittee noted that the certificate did not address the right against arbitrary or unlawful interferences in privacy in section 13(a) of the Charter of Human Rights and Responsibilities. The Subcommittee observed that the amended regulations may, in practice, require that parolees tell corrections officers about their overnight activities and tell residents of other addresses they wish to visit overnight about their parole status and conditions. Accordingly, the Subcommittee sought the Minister’s advice in relation to regulation 4’s compatibility with section 13(a) of the Charter of Human Rights and Responsibilities.

Expected impact

Sixth, Subcommittee noted that amended regulation 114(1)(n) may prevent parolees from staying out overnight without residing anywhere and from spontaneously staying at another address. The Subcommittee observed that such activities may pose different risks to those regulation 4 seeks to manage but may not be accommodated by the process for obtaining written permission from the Board or a Regional Manager. Accordingly, the Subcommittee sought information as to regulation 4’s

expected impact on parolees' ability to stay out overnight without residing anywhere or to reside somewhere spontaneously.

Exemption from the human rights obligations of public authorities

Finally, the Subcommittee noted the Board is presently exempt from the human rights obligations of public authorities set out in section 38 of the Charter of Human Rights and Responsibilities, and that exemption may have implications for the compatibility of regulation 4 with the Charter of Human Rights and Responsibilities. The Subcommittee observes that the Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2013 were due to expire at the end of 2023. Accordingly, the Subcommittee sought information as to whether the existing exemption will be extended beyond 2023.

Minister's response

The Minister for Corrections responded to the Subcommittee's query in a letter on 21 August 2023.

Orders made prior to commencement

The Minister advised the amendments will not operate retrospectively to orders made prior to the commencement of SR No. 26. Any orders made prior to the commencement remain valid because they were made prior to the new condition.

Operation in contrast to previous requirements

The Minister advised the 2009 Regulations were amended in 2019 to omit the word 'each night' due to concerns about limiting prisoners on parole from undertaking shift work. The addition of the phrase 'temporarily reside' is intended to clarify the operation and requirements of the residential condition by making it clear that it will not be a breach of the condition for a prisoner on parole to sleep somewhere else or be away from their home address overnight if it is required for work purposes.

Meaning of 'is or remains', 'address' and 'overnight'

The Minister noted the words 'is or remains', 'address' and 'overnight' were used in SR No. 26 with the intention of capturing their 'ordinary meaning'. By reference to the Macquarie Dictionary the Minister advised:

'is or remains' is intended to capture prisoners on parole staying one or more nights at an unauthorised address. This was drafted in response to advice received about the legal definition of 'reside'.

'address' is given its ordinary meaning which is not restricted to a residential address. The term includes the non-residential locations the Subcommittee identified such as a hotel, motel or campsite.

'overnight' - this is generally intended to capture remaining at an address from one day into the next day. Attaching specified hours to define the meaning of 'overnight' would be undesirable for the purposes of this particular condition because it would effectively impose a curfew condition.

The Minister also stated, where the Department suspects that a breach of a condition may have occurred, it will be considered and reviewed in the individual circumstances. The amendments to condition 24 do not impact the Department's power to approve overnight stays at another address and does not prevent a prisoner on parole from visiting any other address at any time. It will also not affect existing processes to manage urgent relocation of prisoners on parole in certain cases, including emergencies.

Effect of amendments to forms in Schedule 2

The Minister advised that, to avoid a curfew, parole orders including condition 24 do not specify the times of day at which a prisoner on parole is required to be at their specified address. Simplified wording of parole orders is intended to enable prisoners to better understand their rights and obligations. Accordingly, the amended forms include simplified language and do not include the definition of 'temporarily reside' and explanation of the exemption for employment. However, a fact sheet has been provided to prisoners on parole and Practice Guidelines have been created to provide guidance for Department staff managing prisoners on parole.

Right against arbitrary or unlawful interferences with privacy

The Minister stated prisoners on parole may experience a loss of privacy through the requirement to disclose their status as a prisoner on parole and to explain their overnight activities to the Department or the Board for the purpose of obtaining permission to stay overnight at a different location. However, the Department considers the privacy right is not engaged, as the interference is not arbitrary or unlawful, and does not extend beyond what is reasonably necessary to minimise the prisoner's risk of reoffending and ensure they are appropriately monitored.

Expected impact

The Minister stated a prisoner on parole being in a place overnight due to an emergency or circumstances outside of their control, would not likely be captured by the residential requirement as the legal construction of 'reside' entails more than being in a place overnight. The Department will assess each case in its individual circumstances.

Exemption from the human rights obligations of public authorities

The Minister noted the Department was considering the operation of SR No. 26 and the need for a continued exemption of the Board from the Charter of Human Rights and Responsibilities. The Subcommittee notes the Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2013 were remade in August 2023.⁶⁵ The exemption was retained in the remade regulations.

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

Example: SR No. 33 – Circular Economy (Waste Reduction and Recycling)(Waste to Energy Scheme) Regulations 2023

SR No. 33 prescribes matters in relation to the waste to energy scheme under Part 5A of the *Circular Economy (Waste Reduction and Recycling) Act 2021* (Circular Economy Act).

Regulations 9(2)(f) and 17(1)(d) each prescribe information that must be included in an application by existing licence holders or applicants for transfers, including any information that goes to whether the applicant is a fit and proper person, and whether the person has, within the preceding 10 years, been found guilty of an indictable offence, or an offence involving fraud or dishonesty.

Subcommittee consideration

The Subcommittee considered the SR No. 33 at a meeting on 5 September 2023. The Subcommittee noted that the Human Rights Certificate stated that SR No. 33 does not limit any human rights under the Charter of Human Rights and Responsibilities. However, the Subcommittee noted SR No. 33 may engage the right against unlawful interferences with privacy, the right against arbitrary interferences in privacy, and the right against spent conviction discrimination.

⁶⁵ The Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2013 was remade on 22 August 2023 by SR No. 88 – Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2023.

Accordingly, the Subcommittee requested information as to whether regulations 9 and 17 limit the Charter of Human Rights and Responsibilities' right against unlawful or arbitrary interference with privacy, and what guidance will be provided to licence holders and applicants.

The Subcommittee also requested information about whether regulations 9 and 17 limit the Charter of Human Rights and Responsibilities' right against spent conviction discrimination and, in particular:

- whether regulations 9(2)(f) and 17(1)(f) apply to spent convictions and what information applicants will be given about that;
- whether, when read with existing sections 74Y(3)(a) and 74Z1(4)(a), those regulations authorise discrimination on the grounds of spent convictions; and
- whether any such limit is reasonable according to the test in section 7(2) of the Charter of Human Rights and Responsibilities and, in particular, whether leaving inquiries about an applicant's past convictions to the Head, Recycling Victoria's discretion is a less restrictive means reasonably available to achieve the purpose of regulations 9 and 17.

On 16 February 2024, the Subcommittee followed up its request with the Minister.⁶⁶

Minister's response

The Minister for Environment responded on 18 March 2024.⁶⁷ The Minister advised SR No. 33 does not require disclosure of each and every conviction, only those that are most relevant to enable the Head of Recycling Victoria to determine whether a person is fit and proper to operate a thermal waste to energy facility.

The Minister stated there are not considered to be any less restrictive means available to achieve the purpose of ensuring a fit and proper person is granted permission to operate a thermal waste to energy facility. Regulations 9 and 17 do not limit the right not to have a person's privacy unlawfully or arbitrarily interfered with. To the extent a person is required to provide information, it is required for legitimate and important purposes.

The Minister noted that any information gathered by the Head of Recycling Victoria will be stored and managed in accordance with the *Privacy and Data Protection Act 2014*. Guidance has been provided to applicants.

The Minister stated regulations 9 and 17 do not require the disclosure of spent convictions in an application made under sections 74X or 74I of the Circular Economy Act as these regulations are explicitly limited to convictions within the last 10 years. Regulations 9 and 17 do not authorise discrimination on the grounds of spent convictions and do not limit the right to protection from discrimination on the basis of spent convictions. However, the Head of Recycling Victoria is considered a law enforcement agency for the purposes of the *Spent Convictions Act 2021* (Spent Convictions Act). As such, the Head of Recycling Victoria retains the discretion to receive information about a person's spent convictions from another law enforcement agency for the purpose of determining whether a person is a fit and proper person, under the operation of section 21(1) of the Spent Convictions Act.

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

⁶⁶ Details of correspondence are included in Appendix C.

⁶⁷ Ibid.

Example: SR No. 86 – Water (Recreational Area) Regulations 2023

SR No. 86 provides for the control, management and use of recreational areas under the control and management of an Authority and prescribes water infringement offences and infringement penalties for the purposes of the *Water Act 1989*.

Subcommittee consideration

The Subcommittee considered the SR No. 86 at a meeting on 25 October 2023. The Subcommittee noted regulation 71(4) provides that ‘a person must not deliver an address in a recreational area unless permitted to do so’. ‘Deliver’ and ‘address’ are not defined. Accordingly, the Subcommittee sought information from the Minister as to the meaning of ‘deliver an address’.

The Human Rights Certificate discussed public addresses alongside ‘large noisy events’ and described the purpose of a variety of regulations as minimising environmental impacts. Various other regulations require a permit for nuisances, sound producing devices, structures, events, commercial activities and promotional activities. Two other regulations (regulation 41 and regulation 68) appear to have limits aimed at distinguishing between impactful and less impactful behaviour. Accordingly, the Subcommittee requested further information as to:

- why the ban on delivering a public address without permission in regulation 71(4) is needed, given these various other limitations on behaviour in recreational areas; and
- whether equivalent limitations to regulations 41 and 68 might be included in regulation 71(4).

Previous correspondence on this topic was set out in the Subcommittee’s *Annual Review 2012: Regulations and Legislative Instruments*.⁶⁸ Regulation 76(3) of the National Parks Regulations 2013 and regulation 28 of the Royal Botanical Gardens Regulations 2014 were enacted after this correspondence and remain in force at present. Accordingly, the Subcommittee requested further information as to whether equivalent limitations to those regulations (in particular regulation 28(b) of the Royal Botanical Gardens Regulations 2014) would be less restrictive means reasonably available to achieve the purpose of regulation 71(4).

Minister’s response

The Minister for Water responded on 4 December 2023.⁶⁹ The Minister advised SR No. 86 uses the ordinary English meaning of the term ‘deliver an address’, being ‘to give forth in words a formal speech or writing directed to a person or a group of people’. In practice, the permit obligation will only apply to the formal delivery of an address or a speech to a gathering or group assembly for a formal event or activity. Guidance will be provided to explain this information.

The Minister further stated, while a public address may involve some of the activities covered by the other regulations, it will not always be the case. Regulation 71(4) complements these other regulations and the requirement for a permit ensures that it can be appropriately scheduled to avoid activities clashing and manage the risk of environmental harm. It is not considered there are any less restrictive means to reasonably achieve the purpose of regulation 71(4) as:

- Regulation 76(3) of the National Parks Regulations 2013 and regulation 28 of the Royal Botanical Gardens Regulations 2014 prohibit the delivery of an address if the address is likely to disturb or annoy other visitors.
- The existing permit system is considered reasonable in light of the variety of uses of a recreational area, the need to manage risks, and the fact the requirement will not apply to small, private gatherings. Water corporations have an existing system in place to issue permits for a range of activities and it is a relatively straightforward process to obtain a permit.

⁶⁸ Scrutiny of Acts and Regulations Committee, *Annual Review 2012: Regulations and Legislative Instruments*, pp. 49-51.

⁶⁹ Details of correspondence are included in Appendix C.

- There is not considered to be any unreasonable limitation on any right protected under the Charter of Human Rights and Responsibilities.

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

Example: SR No. 113 – Social Services Regulations 2023

SR No. 113 introduces a new framework for the regulation of Victoria's social services with an aim to mitigate risks to service users.

Subcommittee consideration

The Subcommittee considered the SR No. 113 at a meeting on 15 February 2024. The Subcommittee noted a number of issues. First, regulation 17(1)(a) provides that the Regulator may have regard to the 'relevant' criminal history of an applicant for registration under the framework. The Regulations do not appear to specify any 'prescribed information' which must accompany an application for the purposes of section 21(2)(b)(ii) of the *Social Services Regulation Act 2021* (the SSR Act). The Subcommittee requested further information as to which parts of the definition of criminal history in regulation 4 are 'relevant' criminal history under regulation 17(1)(a) and what additional information about an applicant's criminal history will be reasonably required to determine an application under section 21(2)(b)(iii) of the SSR Act.

Second, regulations 23(1)(a) and 24(3)(a) require that providers of some services ensure that they consider the 'criminal history' of foster carers, usual householders and employees who provide services to children. Noting the breadth of the definition of 'criminal history' in regulation 4, the Subcommittee requested further information as to the differences between these provisions and regulation 17(1)(a) (which is limited to 'relevant' criminal history) and also how it is anticipated that providers will obtain that information.

Third, regulation 33 provides that the information about criminal convictions of providers, directors and key personnel that registered providers must notify to the Regulator is prescribed to be any conviction for an indictable offence, or any other conviction for an offence involving fraud or dishonesty punishable by 3 months or more in prison. The Subcommittee sought further information as to whether the information that must be notified includes all past convictions of directors and key personnel, and also as to the differences between the convictions prescribed by regulation 33 and the criminal history specified in regulations 17(1)(a), 23(1)(a) and 24(3)(a).

Fourth, while section 22 of the *Spent Convictions Act 2021* permits a law enforcement agency to disclose a spent conviction as part of the disclosure of a criminal record of a person to community services that seek that information in order to perform a function of assessing a person to provide care to a child under the *Children, Youth and Families Act 2005*, there does not appear to be any express provision under the *Spent Convictions Act 2021* or Regulations for disclosure of a spent conviction for the purpose of functions under the SSR Act. The Subcommittee sought advice from the Minister as to whether the information specified in regulations 17(1)(a), 23(1)(a), 24(3)(a) and 33 includes (or will include) spent convictions and, if so, whether those regulations are compatible with the equality rights in Charter of Human Rights and Responsibilities section 8 with respect to spent convictions.

The Subcommittee wrote to the Minister on 16 February 2023.⁷⁰

⁷⁰ Details of correspondence are included in Appendix C.

Minister’s response

The Minister for Children responded on 24 March 2024.⁷¹ The Minister provided significant further information in relation to:-

- Relevant criminal history;
- Criminal history – out of home care, secure welfare and foster care services;
- Interaction of the registration requirements relating to criminal history and prescribed criminal convictions;
- Spent convictions.

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

⁷¹ Ibid.

Chapter 3

Review of Legislative Instruments in 2023

3.1 Overview

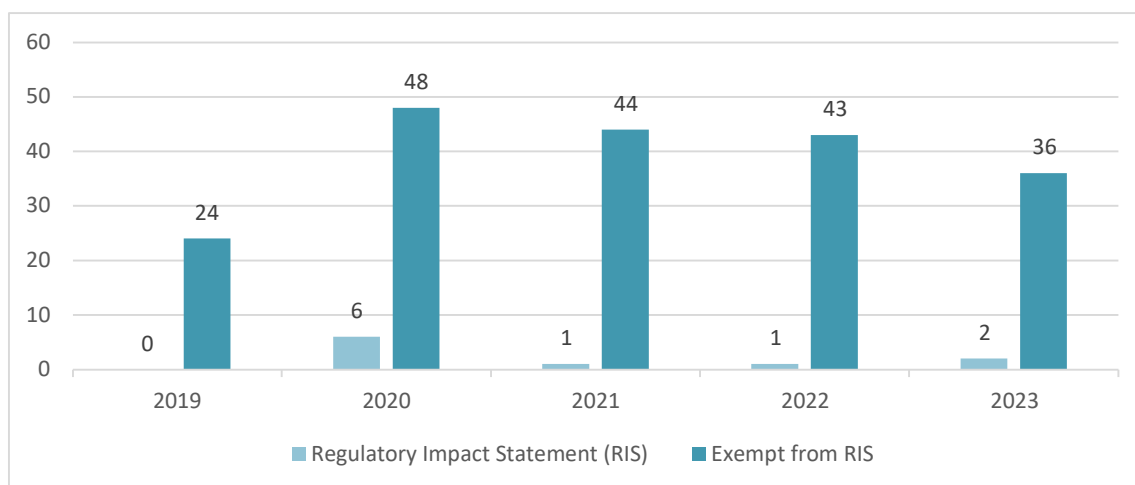
The Subcommittee scrutinises legislative instruments to determine whether they comply with the legislative principles specified in the SLA. These principles are set out in full in Chapter 1.⁷² During 2023, the Subcommittee scrutinised 38 legislative instruments.

This chapter provides an overview of the Subcommittee’s scrutiny of legislative instruments published in the Victorian Government Gazette during the 2023 calendar year.

3.2 Statistics

This report examines the 38 legislative instruments published in the Government Gazette during the 2023 calendar year. Of those instruments, two were accompanied by a RIS. While this marked a slight decrease from the previous calendar year, the number of legislative instruments published in 2023 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 2019 to 2023.

Figure 2: Proportion of legislative instruments exempt from Regulatory Impact Statement process 2019-2023



3.2.1 Regulatory Impact Statements

Unless an exemption applies, section 12E of SLA requires all legislative instruments to undergo the RIS process.⁷³

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:

⁷² See section 1.4.2 of Chapter 1.

⁷³ As noted in Chapter 2 the *Victorian Guide to Regulation* sets out the objectives of a RIS. 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.

- 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; 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 2023, two legislative instruments were accompanied by a RIS.⁷⁴ The Subcommittee did not observe any significant issues with these legislative instruments. 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 legislative instruments must be prepared with a RIS, unless they are exempted from doing so under section 12F of SLA. 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 SLA;
- 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.

Thirty-six 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 SLA under which exemptions were made.

⁷⁴ 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 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.

Table 2: Legislative instruments exempt from the Regulatory Impact Statement process in 2023

Section	Exemption	Number exempt
12F(1)(a)	Would not impose significant economic or social burden	22
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	1
12F(1)(b)	Fundamentally declaratory or machinery in nature	4
12F(1)(g)	Part of National Uniform Legislation Scheme	3
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 exemption	1
N/A	Exempt by Enabling Act	4
N/A	Prescribed not to be a legislative instrument	1
Total		38

3.3 Ministerial correspondence

The Subcommittee did not make any reports to Parliament in relation to legislative instruments published in 2023. However, the Subcommittee sought further clarification in relation to one legislative instrument.⁷⁵ In this instance, the Subcommittee wrote to the responsible Minister and received a satisfactory response to the issue. 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.

3.4 Key scrutiny issues

The Subcommittee did not observe any significant scrutiny issues regarding legislative instruments published in 2023. The following section provides an overview of the key issues encountered by the Subcommittee during the 2023 calendar year.

4.4.1 Timeliness of documentation

Section 16C of the SLA 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,⁷⁶ 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 continued to observe an improvement in the timeliness with which documentation was provided to the Subcommittee. In 2023, seven legislative instruments were provided outside of the legislative timeframe.⁷⁷ Whilst this marked a slight increase from 2022, the number remained lower than

⁷⁵ The Subcommittee sought further information from the Minister regarding EPA Designation - Classification of PFAS-impacted soil made under Regulation 86 of the Environment Protection Regulations 2021. See section 3.4.2 below.

⁷⁶ SLA, section 16C(3).

⁷⁷ These included: Electricity Distribution Code of Practice (Distributor Reporting Obligations) Amendment 2022, Gas Distribution System Code of Practice (Unaccounted for Gas Benchmarks) Amendment 2022, PrimeSafe Legislative Instruments Determination of Licence Categories and Fixing Fees for Meat Processing Facilities and Meat Transport Vehicles 1 July 2023 - 30 June 2024, PrimeSafe Legislative

previous years.⁷⁸ The Subcommittee thanks Ministers and Departments for their promptness in providing documentation to the Subcommittee.

4.4.2 Consultation

Section 12C of SLA sets out the requirements relating to consultation regarding legislative instruments. The section provides 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.

Pursuant to sections 16B and 16C of SLA, 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).⁷⁹

Paragraph 137 of the Guidelines states that the consultation requirements for legislative instruments exempt from making a RIS under section 12F(1)(a) of SLA (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 SLA. These include:

Initial consultation should be undertaken under section 12C(b) to enable the responsible Minister to obtain sufficient evidence to form a view as to whether the proposed legislative instrument imposes any burden on a sector of the public (see Part 3, Division 2 of these Guidelines).

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...’.⁸⁰

Paragraph 87 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 91 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 SLA. 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.

Instrument Determining Classes of Licences and Fixing Fees for Seafood Safety Licences, Notice to Fix Fees Under Section 73, Ministerial Order No. 1412 - Structured Workplace Learning Arrangements, and Ministerial Order No. 1413 - Work Experience Arrangements.

⁷⁸ In 2022, six legislative instruments were provided to the Subcommittee outside the legislative timeframe. See Scrutiny of Acts and Regulations Committee, *Annual Review – Statutory Rules and Legislative Instruments 2021 and 2022*, p. 35.

⁷⁹ SLA, sections 16B(3) and 16C(3).

⁸⁰ Guidelines, p. 21.

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 2023.

Example: EPA Designation - Classification of PFAS-impacted soil made under Regulation 86 of the Environment Protection Regulations 2021

The EPA Designation - Classification of PFAS-impacted soil made under Regulation 86 of the Environment Protection Regulations 2021 (the LI) classified soil that is per- and poly- fluorinated alkyl substances (PFAS) impacted soil as fill material and not priority waste for the purposes of the Environment Protection Regulations 2021.

Subcommittee consideration

The Subcommittee considered the LI at a meeting on 21 June 2023. The Subcommittee noted that the LI was accompanied by a consultation certificate. The certificate stated that consultation was undertaken with government stakeholders, including the Department of Premier and Cabinet, the former Department of Environment, Land, Water and Planning, Major Transport Infrastructure Authority, Department of Treasury and Finance and the former Department of Transport. The Subcommittee resolved to seek further details from the Minister of any additional consultation which may have occurred, including with industry participants.

Minister's response

The Minister for Environment responded in a letter dated 18 March 2024. The Minister stated that the Environment Protection Authority (EPA) engaged with industry via the Australian Industry Group (AIG), including with a range of waste industry representatives in the AIG Waste Industry Alliance. In late 2023, the EPA conducted open consultation via Engage Victoria to inform how PFAS impacted waste soil is regulated after the LI expires. This consultation process will inform how waste soil containing higher levels of PFAS will be classified under the Victorian environment protection framework. The Minister advised that this process will be finalised by mid-2024.

The Subcommittee thanks the Minister 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 SLA 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.⁸¹

In performing this function, the Subcommittee must consider the human rights certificate provided by the responsible Minister under section 12D of SLA 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

⁸¹ See section 2.4.8 in Chapter 2.

- (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
 - (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 2023 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 2023 legislative instruments were clear and well drafted.

Appendix A

Statutory Rules Series 2023

2023

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

- SR No. 3 – Independent Broad-based Anti-corruption Commission Regulations 2023
- SR No. 4 – Public Interest Monitor Regulations 2023
- SR No. 5 – Victorian Inspectorate Regulations 2023
- SR No. 6 – Land Conservation (Vehicle Control) Interim Regulations 2023
- SR No. 8 – Road Safety (Drivers) and (General) Amendment Regulations 2023
- SR No. 9 – Road Safety (Drivers) Amendment Regulations 2023
- SR No. 11 – Water Industry (Waterways Land) Regulations 2023
- SR No. 18 – Conservation, Forests and Lands (Infringement Notice) Amendment (Vehicle Control) Regulations 2023
- SR No. 20 – Drugs, Poisons and Controlled Substances Amendment (Image-Based Prescribing) Regulations 2023
- SR No. 22 – Road Safety Road Rules Amendment (Electric Scooters) Rules 2023
- SR No. 23 – Road Safety (General) Amendment (Electric Scooters) Regulations 2023
- SR No. 25 – Victorian Energy Efficiency Target Amendment (Electrification and Home Energy Rating Assessment) Regulations 2023
- SR No. 26 – Corrections Amendment (Parole) Regulations 2023
- SR No. 27 – Public Health and Wellbeing Amendment Regulations 2023
- SR No. 28 – Architects Amendment (Fees) Regulations 2023
- SR No. 29 – Local Government (General) Amendment Regulations 2023
- SR No. 33 – Circular Economy (Waste Reduction and Recycling) (Waste to Energy Scheme) Regulations 2023
- SR No. 35 – Conservation, Forests and Lands (Infringement Notice) Amendment (Land (Regulated Watercourse Land)) Regulations 2023
- SR No. 41 – Crown Land (Reserves) (Tour Operator Licence Fee) Amendment Regulations 2023
- SR No. 42 – Forests (Tour Operator Licence Fee) Amendment Regulations 2023
- SR No. 43 – Land (Tour Operator Licence Fee) Amendment Regulations 2023
- SR No. 44 – National Parks (Tour Operator Licence Fee) Amendment Regulations 2023
- SR No. 45 – Wildlife (Tour Operator Licence Fee) Amendment Regulations 2023
- SR No. 49 – Forests (Recreation)(Temporary) Amendment Regulations 2023
- SR No. 50 – Conservation, Forests and Lands (Infringement Notice) Regulations 2023
- SR No. 52 – Public Health and Wellbeing Amendment (Notifiable Conditions) Regulations 2023
- SR No. 55 – Partnership (Fees) Regulations 2023
- SR No. 57 – Health Services (Health Services Establishments) Amendment Regulations 2023
- SR No. 58 – Residential Tenancies (Caravan Parks and Moveable Dwellings Registration and Standards) Amendment (Expiry Date) Regulations 2023
- SR No. 60 – Victorian Energy Efficiency Target Amendment (Code of Conduct) Regulations 2023
- SR No. 61 – Drugs, Poisons and Controlled Substances Amendment (MDMA and Psilocybine) Regulations 2023
- SR No. 63 – Fisheries Amendment (Recreational Fishery Licence Exemption) Regulations 2023
- SR No. 64 – Conservation, Forests and Lands (Wildlife (Game) Infringement Notices) Regulations 2023
- SR No. 66 – Marine Safety (Fees) Amendment Regulations 2023

- SR No. 71 – Disability Service Safeguards Amendment Regulations 2023
- SR No. 80 – Building Amendment (Emergency Recovery) Regulations 2023
- SR No. 83 – Electricity Industry (Penalty Regime) Amendment Regulations 2023
- SR No. 84 – Gas Industry (Penalty Regime) Amendment Regulations 2023
- SR No. 86 – Water (Recreational Area) Regulations 2023
- SR No. 88 – Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2023
- SR No. 89 – Mental Health and Wellbeing Regulations 2023
- SR No. 90 – Mental Health and Wellbeing Transitional Regulations 2023
- SR No. 91 – Circular Economy (Waste Reduction and Recycling) (Container Deposit Scheme) Further Amendment Regulations 2023
- SR No. 92 – Mental Health and Wellbeing Amendment Regulations 2023
- SR No. 99 – Conservation, Forests and Lands (Infringement Notice) Amendment Regulations 2023
- SR No. 100 – Commercial Passenger Vehicle Industry and Commercial Passenger Vehicle Industry (Infringements) Amendment Regulations 2023
- SR No. 102 – Building and Plumbing Amendment (National Construction Code and Other Matters) Regulations 2023
- SR No. 103 – Dangerous Goods (Transport by Road or Rail) and (Storage and Handling) Amendment Regulations 2023
- SR No. 105 – Drugs, Poisons and Controlled Substances Amendment (Authorising Pharmacists) Regulations 2023
- SR No. 108 – Trans-Tasman Mutual Recognition (Victoria)(Temporary Exemption)(Container Deposit Scheme) Regulations 2023
- SR No. 109 – Mutual Recognition (Victoria)(Temporary Exemption)(Container Deposit Scheme) Regulations 2023
- SR No. 110 – Water (Resource Management) Amendment (Fees) Regulations 2023
- SR No. 111 – Water (Place of Take) Regulations 2023
- SR No. 112 – Electricity Safety (General) Amendment (Certificate of Electrical Safety) Regulations 2023
- SR No. 115 – Environment Protection Amendment Regulations 2023
- SR No. 117 – Public Records Regulations 2023
- SR No. 118 – Heavy Vehicle National Law Application (Infringements) Regulations 2023
- SR No. 121 – Gambling Regulation (Pre-commitment and Loyalty Scheme) and Gambling Amendment Regulations 2023
- SR No. 122 – Building and Plumbing Amendment (Solar Water Heaters and Other Matters) Regulations 2023
- SR No. 126 – Agricultural and Veterinary Chemicals (Control of Use)(Infringement Notices) Regulations 2023
- SR No. 131 – Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards (Prescribed Public Entities) Regulations 2023
- SR No. 132 – Building Amendment (Small Second Dwellings) Regulations 2023
- SR No. 135 – Architects Amendment (Architectural Practice Examination Fees) Regulations 2023

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

- SR No. 56 – Community Based Sentences (Transfer) Regulations 2023
- SR No. 59 – Sex Offenders Registration Amendment Regulations 2023
- SR No. 82 – Child Wellbeing and Safety (Information Sharing) Amendment Regulations 2023

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. 7 – Road Safety Road Rules Amendment Rules 2023
- SR No. 67 – Road Safety (General) and (Vehicles) Amendment Regulations 2023

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

- SR No. 12 – Victorian Civil and Administrative Tribunal (Schedule 1 Amendments) Rules 2023
- SR No. 16 – County Court (Chapter III Judicial Registrar Amendment) Rules 2023
- SR No. 19 – Victorian Civil and Administrative Tribunal (Oath and Affirmation of Office) Regulations 2023
- SR No. 21 – Supreme Court (DX, Address and References to the Sovereign Amendments) Rules 2023
- SR No. 30 – Victorian Civil and Administrative Tribunal Miscellaneous Amendments Rules 2023
- SR No. 31 – Supreme Court (Chapter II Supreme Court Roll Amendment) Rules 2023
- SR No. 32 – Supreme Court (Corporations) Rules 2023
- SR No. 68 – Magistrates' Court General Civil Procedure and Miscellaneous Civil Proceedings Amendment Rules 2023
- SR No. 70 – Children, Youth and Families (Children's Court Judicial Registrars) and (Children's Court Family Division) Amendment Rules 2023
- SR No. 73 – County Court (Chapter I Service and Default Judgments Amendment) Rules 2023
- SR No. 77 – Country Court (Chapters I and III Confidential Communications and Protected Health Information Amendment) Rule
- SR No. 81 – County Court (Chapters I and III Subpoena Amendment) Rules 2023
- SR No. 87 – Mental Health Tribunal Rules 2023
- SR No. 95 – Supreme Court (Chapters I and V and Library Amendments) Rules 2023
- SR No. 96 – Supreme Court (Chapter II Senior Counsel Amendment) Rules 2023
- SR No. 101 – Victims of Crime Assistance (Delegation) Regulations 2023
- SR No. 104 – Children's Court Authentication and Electronic Transmission Amendment Rules 2023
- SR No. 114 – Social Services Regulation Transitional Regulations 2023
- SR No. 120 – County Court (Chapters I, II and III Miscellaneous Amendments) Rules 2023
- SR No. 123 – Supreme Court (Chapter I Interrogatories Amendment) Rules 2023
- SR No. 124 – Supreme Court (Chapter I Appendices A and B Amendment) Rules 2023
- SR No. 125 – Supreme Court (Administration and Probate) Rules 2023
- SR No. 128 – Magistrates' Court Miscellaneous Civil Proceedings and General Civil Procedure (Costs) Amendment Rules 2023
- SR No. 129 – Magistrates' Court Criminal Procedure Amendment Rules 2023
- SR No. 130 – County Court (Chapter I Fees, Expenses, Allowances and Interpreters Amendment) Rules 2023

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

- SR No. 13 – Port Management (Transport Legislation Amendment (Port Reforms and Other Matters) Act 2022) Transitional Regulations 2023
- SR No. 14 – Conservation, Forests and Lands (Infringement Notice) Amendment Regulations 2023
- SR No. 34 – Building and Construction Industry Security of Payment Regulations 2023
- SR No. 37 – Transport (Safety Schemes Compliance and Enforcement) (Infringements) Amendment (Marine Safety) Regulations 2023
- SR No. 39 – Evidence (Miscellaneous Provisions)(Witness Identity Protection) Regulations 2023
- SR No. 48 – Transport (Compliance and Miscellaneous)(Conduct on Public Transport) and (Ticketing) Amendment (Prescribed Equipment and Processes) Regulations 2023
- SR No. 62 – Tobacco (Victorian Health Promotion Foundation) Amendment Regulations 2023
- SR No. 69 – Dangerous Goods (Explosives) Amendment Regulations 2023
- SR No. 72 – Family Violence Protection (Information Sharing and Risk Management) Amendment Regulations 2023
- SR No. 74 – Confiscation Miscellaneous Amendment Regulations 2023
- SR No. 75 – Crimes (Search Warrant) Regulations 2023
- SR No. 106 – Residential Tenancies (Caravan Parks and Moveable Dwellings Registration and Standards) Amendment Regulations 2023

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. 17 – Planning and Environment (Fees) Amendment Regulations 2023

SR No. 47 – Transfer of Land (Fees) Amendment Regulations 2023

SR No. 53 – Road Safety (Drivers) and (Vehicles) Amendment (Fees) Regulations 2023

SR No. 93 – Planning and Environment (Fees) Further Amendment Regulations 2023

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

SR No. 15 – Subordinate Legislation (Business Licensing Authority Regulations 2013) Extension Regulations 2023

SR No. 38 – Subordinate Legislation (Water (Lake Eildon Recreational Area)(Houseboats) Regulations 2013) Extension Regulations 2023

SR No. 51 – Subordinate Legislation (Wildlife Regulations 2013) Extension Regulations 2023

SR No.79 – Subordinate Legislation (Health Services (Health Service Establishments) Regulations 2013) Extension Regulations 2023

SR No. 98 – Subordinate Legislation (National Parks Regulations 2013) Extension Regulations 2023

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. 133 – Subordinate Legislation (Legislative Instruments) Amendment Regulations 2023

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

SR No. 54 – Road Safety (Vehicles) Amendment (Heavy Vehicle Registration Fees) Regulations 2023

S. 9(1) – Premier’s Certificate

SR No. 65 – Building Amendment (Fees Expiry Date) Interim Regulations 2023

SR No. 97 – Wildlife (Game) Interim Regulations 2023

S. 10 – Regulatory Impact Statements

SR No. 10 – Residential Tenancies (Rooming House Standards) Regulations 2023

SR No. 24 – Retail Leases Regulations 2023

SR No. 36 – Marine Safety Regulations 2023

SR No. 40 – Electricity Safety (Bushfire Mitigation) Regulations 2023

SR No. 46 – Drugs, Poisons and Controlled Substances Amendment Regulations 2023

SR No. 76 – Liquor Control Reform Regulations 2023

SR No. 78 – Circular Economy (Waste Reduction and Recycling)(Container Deposit Scheme) Amendment Regulations 2023

SR No. 85 – Health Records Regulations 2023

SR No. 94 – Gender Equality Amendment Regulations 2023

SR No. 107 – Circular Economy (Waste Reduction and Recycling)(Container Deposit Scheme) Amendment (Miscellaneous) Regulations 2023

SR No. 113 – Social Services Regulations 2023

SR No. 116 – Associations Incorporation Reform Regulations 2023

SR No. 119 – Casino Control Regulations 2023

SR No. 134 – Circular Economy (Waste Reduction and Recycling)(Risk, Consequence and Contingency Plans and Other Matters) Regulations 2023

National Law

SR No. 1 – Health Practitioner Regulation National Law Amendment Regulation 2022

SR No. 2 – Health Practitioner Regulation National Law Amendment (Paramedicine Qualification) Regulations 2022

Education and Care Services National Amendment Regulations 2022

Education and Care Services National Amendment (Bassinets) Regulations 2023

Education and Care Services National Further Amendment Regulations 2023

No. 127 – Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2023

Appendix B

Legislative Instruments 2023

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

Order under Section 120W Exempting Ausnet Electricity Services from Section 120M(1)(c) of the Electricity Safety Act 1998

Order under Section 120W Exempting Jemena Electricity Networks (Vic) from Section 120M (1)(c) of the Electricity Safety Act 1998

Service Victoria Identity Verification Standards

EPA Designation - Classification of Lead-Acid Batteries

Minister's Conversion Rules for Place of Take Approvals

EPA Designation - Classification of PFAS-impacted soil made under Regulation 86 of the Environment Protection Regulations 2021

PrimeSafe Legislative Instruments Determination of Licence Categories and Fixing Fees for Meat Processing Facilities and Meat Transport Vehicles 1 July 2023 – 30 June 2024

PrimeSafe Legislative Instrument Determining Classes of Licences and Fixing Fees for Seafood Safety Licences

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

Notice of Declaration of Home Buyer Scheme under Section 34B

Order Declaring a Class of Specified Entities

Declaration of Exempt Schools

Ministerial Order No. 1414 – Structured Workplace Learning Arrangements (Non-School Providers)

Ministerial Order No. 1415 – Work Experience Arrangements (Non-School Providers)

Pilotage Services Providers Standard – V1

Ministerial Order No. 1412 – Structured Workplace Learning Arrangements

Ministerial Order No. 1413 – Work Experience Arrangements

Ministerial Rules for Managing General Place of Take Approvals

Declaration of Rationing Areas in Declared Water Systems 2023

Ministerial Prohibition Determination Applicable to Particular Place of Take Approvals that are Tagged - November 2023

Designation - Classification of Digestate for Composting or Other Secondary Processing or Use

Determination - Specifications Acceptable to the Authority for Receiving Digestate

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

Ministerial Order No. 1425 – Amending Ministerial Order No. 1228 – Victorian Institute of Teaching Registration Fees

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

Order Declaring Water System Zones in Victoria

Water Trading Rules for Declared Water Systems 2023

S. 12F(1)(g) – Has undergone an Analytical and Consultation Process which is the equivalent to the Regulatory Impact Statement Process

Electricity Distribution Code of Practice (Distributor Reporting Obligations) Amendment 2022

Gas Distribution System Code of Practice (Unaccounted for Gas Benchmarks) Amendment 2022

Land Access Code of Practice 2023

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: Pharmacist Immunisers - SARS-CoV-2 (COVID-19) Vaccine

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

Section 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

S. 12G – Premier’s Exemption Certificate

Order in Council Declaring the Dingo to be Unprotected Wildlife in Certain Areas of Victoria

S. 12H – Regulatory Impact Statements

Notice to Fix Fees Under Section 73

Notice to Fix Fees Under Section 73 of the Victorian Energy Efficiency Target Act 2007

Exempt by Enabling Act

Temporary Public Interest Determination

The Workplace Facilities and the Working Environment Compliance Code

Practitioner Remuneration Order 2024

Practitioner Remuneration Order

Prescribed not to be a legislative instrument

Approval of Bellarine Peninsula Statement of Planning Policy

Appendix C

Ministerial Correspondence

This Appendix contains a list of correspondence sent to responsible Ministers by the Subcommittee regarding 2023 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.

Regulation/ Legislative Instrument	Minister	Issue	Date of Correspondence - Sent / Response
SR No. 22 – Road Safety Road Rules Amendment (Electric Scooters) Rules 2023	Minister for Roads and Road Safety – Hon. Melissa Horne	Seeking clarification on the broader public consultation undertaken in relation to SR Nos. 22 and 23.	26 June 2023 27 July 2023
SR No. 23 – Road Safety (General) Amendment (Electric Scooters) Regulations 2023	Minister for Roads and Road Safety – Hon. Melissa Horne	Seeking clarification on the broader public consultation undertaken in relation to SR Nos. 22 and 23.	26 June 2023 27 July 2023
SR No. 26 – Corrections Amendment (Parole) Regulations 2023	Minister for Corrections – Hon. Enver Erdogan	Seeking advice in relation to compatibility with human rights.	26 June 2023 21 August 2023
SR No. 33 – Circular Economy (Waste Reduction and Recycling)(Waste to Energy Scheme) Regulations 2023	Minister for Environment – Hon. Ingrid Stitt	Seeking advice in relation to Human Rights Certificate	8 September 2023 18 March 2024
SR No. 78 – Circular Economy (Waste Reduction and Recycling)(Container Deposit Scheme) Amendment Regulations 2023	Minister for Environment – Hon. Ingrid Stitt	Seeking further information on two issues, firstly to whether it may be appropriate to issue a section 8 certificate in relation to new Regulations inserted by sections 4, 6, 7 & 8; and secondly drawing the Minister’s attention, of the publication requirements of section 12 of the <i>Subordinate Legislation Act 1994</i> and also noting the failure to publish the section 12 certificate in the Government Gazette.	8 September 2023 18 March 2024
EPA Designation - Classification of PFAS-impacted soil made under Regulation 86 of the Environment Protection Regulations 2021	Minister for Environment – Hon. Ingrid Stitt	Seeking clarification if broader public consultation was undertaken.	8 September 2023 18 March 2024

Regulation/ Legislative Instrument	Minister	Issue	Date of Correspondence – Sent / Response
SR No. 49 – Forests (Recreation)(Temporary) Amendment Regulations 2023	Minister for Environment – Hon. Steve Dimopoulos	Seeking further information about why it is necessary to extend the Principal Regulations for a further three years, and when it is anticipated that new regulations will be made with an RIS.	17 October 2023 18 March 2024
SR No. 50 – Conservation, Forests and Lands (Infringement Notice) Regulations 2023	Minister for Environment – Hon. Steve Dimopoulos	Seeking further information about prescribing certain offences as infringement offences in the Regulations.	17 October 2023 18 March 2024
SR No. 65 – Building Amendment (Fees Expiry Date) Interim Regulations 2023	Minister for Planning – Hon. Sonya Kilkenny	Noting the detailed reasons for the deferral of the revocation of certain fees in the Principal Regulations which have been provided in the section 9 Premier’s certificate.	17 October 2023 No response requested.
SR No. 86 – Water (Recreational Area) Regulations 2024	Minister for Water – Hon. Harriet Shing	Seeking advice in relation to a human rights issue.	26 October 2023 4 December 2023
SR No. 102 – Building and Plumbing Amendment (National Construction Code and Other Matters) Regulations 2023	Minister for Planning – Hon. Sonya Kilkenny	Seeking further detail as to why the Regulations would not impose a significant economic or social burden on a sector of the public, including an explanation of the changes to incorporated industry standards and the impact of these changes.	26 October 2023 21 December 2023
SR No. 113 – Social Services Regulations 2023	Minister for Children – Hon. Lizzie Blandthorn	Seeking advice in relation to a human rights issue.	16 February 2024 27 March 2024
SR No. 116 – Associations Incorporation Reform Regulations 2023	Minister for Consumer Affairs – Hon. Gabrielle Williams	Regarding failure to publish a section 11 Notice in the Government Gazette and Public Notices website.	16 February 2024 14 March 2024
SR No. 119 – Casino Control Regulations 2023	Minister for Casino, Gaming and Liquor Regulation – Hon. Melissa Horne	Regarding failure to publish a section 11 Notice in the Government Gazette and Public Notices website.	14 March 2024 15 April 2024

PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee



26 June 2023

The Hon. Melissa Horne MP
Minister for Roads and Road Safety
Level 22
1 Spring Street
Melbourne
Victoria, 3000

By email: Melissa.Horne@parliament.vic.gov.au

Att: tim.v.lunn@transport.vic.gov.au

Dear Minister

**SR No. 22 – Road Safety Road Rules Amendment (Electric Scooters) Rules 2023 and
SR No. 23 –Road Safety (General) Amendment (Electric Scooters) Regulations 2023**

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rules at a meeting on 14 June 2023.

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

Consultation

Section 6(b) of the *Subordinate Legislation Act 1994* (SLA) provides that, the responsible Minister must ensure that, where the Subordinate Legislation Act 1994 Guidelines (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 the Guidelines states, in relation to the consultation requirements for statutory rules exempt from making a Regulatory Impact Statement under section 8(1)(a) of the SLA, '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'.

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.

In this instance, the statutory rules are each accompanied by a consultation certificate. The certificates state that consultation was undertaken with Victoria Police, the Transport Accident Commission, and the Department of Justice and Community Safety.

Together, the statutory rules make further provision for the use of electric scooters on roads and road related areas. Accordingly, the Subcommittee notes that the statutory rules may affect a range of

Scrutiny of Acts and Regulations Committee

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

stakeholders, including members of the general public. However, in the absence of further information, it is unclear whether any further consultation occurred.

In light of the above, the Subcommittee requests your advice as whether any further consultation was undertaken in relation to the statutory rules, including with members of the public.

The Subcommittee would appreciate your response by no later than **21 July 2023**.

Thank you for your assistance with this matter. 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



Hon Melissa Horne MP

Minister for Casino, Gaming and Liquor Regulation
Minister for Local Government
Minister for Ports and Freight
Minister for Roads and Road Safety

1 Spring Street
Melbourne, Victoria 3000 Australia
Telephone: +61 3 8392 8020

Ref: CMIN-1-23-3444

Mr Iwan Walters MP
Chairperson
Regulation Review Subcommittee
iwan.walters@parliament.vic.gov.au

Dear Mr Walters

Thank you for your letter of 26 June 2023 regarding the consultation undertaken to inform the development of the Road Safety Road Rules Amendment (Electric Scooters) Rules 2023 (the E-scooter Rules) and the Road Safety (General) Amendment (Electric Scooters) Regulations 2023 (the E-scooter Regulations).

As you may be aware, the Andrews Labor Government has been undertaking a trial of e-scooter use to inform the future regulatory framework for high powered e-scooters. The trial has been carried out via commercially operated share schemes that began in Ballarat on 15 December 2021 and in the metropolitan Melbourne council areas of Melbourne, Yarra and Port Phillip on 1 February 2022.

On 30 March 2023, the Government announced the extension of the trial for a period of six months to include the use of private e-scooters. The E-scooter Rules and E-scooter Regulations provide for minor amendments to the Road Safety Road Rules 2017 and the Road Safety (General) Regulations 2019 to give effect to the Government's decision.

There has been significant consultation undertaken as part of the evaluation and assessment of the trial, to inform its extension, and to inform the making of the E-scooter Rules and E-scooter Regulations. The Department of Transport and Planning (DTP) conducted consultation with e-scooter share scheme operators and local councils involved in the trial. In addition, and in order to gain a variety of perspectives on the use of e-scooters, DTP also consulted with the Royal Automobile Club of Victoria, the Pedestrian Council of Australia, the Accessible Transport Advisory Committee, Royal Melbourne Hospital, Blind Citizen's Australia, Council of the Aging (Victoria) and Vision Australia.



DTP also commissioned an online community survey to gather insights into the Victorian e-scooter trial and received responses from 415 Victorian residents who live, work in or have visited the e-scooter trial areas.

I trust this information adequately responds to the Subcommittee's request. If the Subcommittee wishes to discuss this matter further, please contact Benjamin Koszalka, Acting Director, Legislative and Regulatory Reform on (03) 700 44575.

Yours sincerely



Hon Melissa Horne MP
Minister for Casino, Gaming and Liquor Regulation
Minister for Local Government
Minister for Ports and Freight
Minister for Roads and Road Safety
27/07/2023

PARLIAMENT OF VICTORIA
Scrutiny of Acts and Regulations Committee



26 June 2023

The Hon. Enver Erdogan MLC
Minister for Corrections
Level 16
121 Exhibition Street
Melbourne
Victoria, 3000

By email: Enver.Erdogan@parliament.vic.gov.au

Att: Hannah.Menichelli@justice.vic.gov.au

Dear Minister

SR No. 26 – Corrections Amendment (Parole) Regulations 2023

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above Regulations at a meeting on 14 June 2023.

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

Compatibility with human rights/clarity of drafting

Section 21(1)(ha) 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 is incompatible with the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006* (the Charter). Section 21(1)(i) further provides that the Committee may report to the Parliament if it considers that the statutory rule requires explanation as to its form or intention.

The Regulations amend the Corrections Regulations 2019 (Principal Regulations) to alter the residential condition that may be imposed on parole orders. Regulation 4 amends existing regulation 114(1)(n) to specify that a prisoner must reside at the place of residence specified in the order, and must not temporarily reside at another address, unless otherwise approved in writing by the Regional Manager or the Adult Parole Board (the Board). Additionally, regulation 4 inserts new sub-regulations into existing regulation 114 to provide:

(3A) For the purpose of subregulation (1)(n) and subject to subregulation (3B), a prisoner temporarily resides at another address if the prisoner is or remains at that address overnight.

(3B) A prisoner does not temporarily reside at another address if the prisoner is required to be or remain at that address overnight as required by their paid or voluntary employment.

Regulations 5 and 6 make consequential amendments to forms in Schedule 2 of the Principal Regulations to amend the description of the residence requirement.

Scrutiny of Acts and Regulations Committee

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

The Subcommittee notes that the amendments to regulation 114(1)(n) will commence on 1 July 2023. **The Subcommittee would appreciate information as to whether the amended regulation 114(1)(n) will apply to parole orders made before that date.**

Further, in relation to the amended regulation 114(1)(n), the Subcommittee notes that a previous version of the residence condition, regulation 83B(1)(n) of the Corrections Regulations 2009 (2009 Regulations), provided that ‘the prisoner must reside each night at the place of residence specified’. Apart from the exemption of employment requirements in new sub-regulation 114(3B), **the Subcommittee requests your advice as to whether and how amended regulation 114(1)(n) will operate differently to the previous regulation 83B(1)(n) of the 2009 Regulations.**

Additionally, in relation to new sub-regulation 114(3A), while the Subcommittee appreciates that the existing word ‘reside’ in regulation 114(1)(n) was ambiguous, it notes that the new phrase ‘is or remains at another address overnight’ may also be ambiguous in some circumstances. This may have implications for the reasonableness of any limit on Charter rights. **Accordingly, the Subcommittee would appreciate information as to:**

- **the meaning of the words ‘is or remains’, ‘address’ and ‘overnight’;**
- **whether parolees who are subject to the amended residence condition will require written permission to: visit another address for a substantial part of the night; spend the night visiting several locations; spend a night at a non-residential location (e.g. a hotel/motel, campsite or entertainment venue); or be away from their place of residence at particular night-time hours (e.g. late evening or very early morning.); and**
- **how any ambiguities in new sub-regulation 114(3A) will be resolved.**

Moreover, in relation to regulations 5 and 6’s amendments to Forms 10 (parole order) and 13 (variations to parole order) in Schedule 2, **the Subcommittee would appreciate information as to:**

- **why the words ‘and time of a day’ in the existing items 24 are being removed;**
- **why the definition of ‘temporarily reside’ in new sub-regulation 114(3A) and the exemption for employment in new sub-regulation 114(3B) are not being included in the amended forms; and**
- **what explanations will be provided to parolees about amended regulation 114(1)(n).**

In addition, in relation to the (otherwise very detailed and helpful) human rights certificate, the Subcommittee notes that the certificate does not address the right against arbitrary or unlawful interferences in privacy in Charter section 13(a). The Subcommittee observes that the amended regulations may, in practice, require that parolees tell corrections officers about their overnight activities (so that their compliance with regulation 114(1)(n) can be checked) and tell residents of other addresses they wish to visit overnight about their parole status and conditions (so that those residents can respond to inquiries from the Board or Regional Manager.) **Accordingly, the Subcommittee would appreciate information as to regulation 4’s compatibility with Charter section 13(a).**

As well, in relation to the Charter section 7(2)(e)’s test of whether there are less restrictive means reasonably available to achieve regulation 4’s purposes (of ensuring that parolees can be readily

located and to protect others and themselves from risks of residing at unverified addresses), the Subcommittee notes that amended regulation 114(1)(n) may prevent parolees from staying out overnight without residing anywhere and from spontaneously staying at another address (e.g., if they miss their last train.) The Subcommittee observes that such activities may pose different risks to those regulation 4 seeks to manage (e.g., equivalent to the risks of daytime activities that regulation 114(1)(n) does not limit) but may not be accommodated by the process for obtaining written permission from the Board or a Regional Manager. **Accordingly, the Subcommittee seeks information as to regulation 4's expected impact on parolees' ability to stay out overnight without residing anywhere or to reside somewhere spontaneously.**

Finally, the Subcommittee notes the Board is presently exempt from the human rights obligations of public authorities set out in Charter section 38, and that exemption may have implications for the compatibility of regulation 4 with the Charter. The Subcommittee observes that the Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2013 are due to expire at the end of this year. **Accordingly, the Subcommittee would appreciate information as to whether the existing exemption will be extended beyond this year.**

The Subcommittee would appreciate your response by no later than **21 July 2023**.

Thank you for your assistance with this matter. 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. Enver Erdogan MLC

Minister for Corrections

Level 16, 121 Exhibition Street
Melbourne Victoria 3000
Telephone: 1300 315 189

Our ref: 23067073

Mr Iwan Walters MP
Chairperson, Regulations Review Subcommittee
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
Spring St, East Melbourne, VIC 3002

SR No. 26 – Corrections Amendment (Parole) Regulations 2023

Dear Mr Walters,

Thank you for your letter dated 26 June 2023 concerning the Corrections Amendment (Parole) Regulations 2023. Responses to the queries of the Regulations Review Subcommittee of the Scrutiny of Acts and Regulations Committee (the Subcommittee) are set out below.

Question 1: The Subcommittee would appreciate information as to whether the amended regulation 114(1)(n) will apply to parole orders made before that date.

The amendment does not operate retrospectively.

The intention is that existing parole orders that include condition 24 will be updated by the Adult Parole Board (APB) to align with the new wording (pursuant to the power in s73A of the Act and r119 of the Regulations). Once the order is updated, the new conditions will apply going forward.

A prisoner whose order has not yet been updated by the APB will remain subject to the previous wording of condition 24 on their order. The order remains valid because it was validly made pursuant to the regulations that were in force at the time.

Any new orders commencing from 1 July 2023, where a residential condition is imposed by the APB, will include the amended wording for condition 24.

Question 2: The Subcommittee requests your advice as to whether and how amended regulation 114(1)(n) will operate differently to the previous regulation 83B(1)(n) of the 2009 Regulations.

The phrase 'reside each night' used in the 2009 Regulations was amended in 2019 to omit the words 'each night' due to concerns about potentially limiting prisoners on parole from undertaking shift work.

The phrase 'temporarily reside' in the amended regulation 114(1)(n) is intended to provide clarity about the operation and requirements of condition 24. Prisoners on parole are required to reside permanently at their specified address *and* are prohibited from temporarily residing elsewhere. Rather than re-instating the phrase 'each night', the amendments inserting r114(3B) make it clear that it will not be a breach of condition 24 for a prisoner on parole to sleep somewhere else or be away from their home address overnight if it is required for work purposes.

Question 3: The Subcommittee would appreciate information as to the meaning of the words 'is or remains', 'address' and 'overnight'.

These words were used in the Regulations with the intention of capturing their ordinary meaning. By reference to the definition of these words in the Macquarie Dictionary, the Department of Justice and Community Safety (the department) notes:

'is or remains' is intended to capture prisoners on parole staying one or more nights at an unauthorised address. This was drafted in response to advice received about the legal definition of 'reside'.

'address' is given its ordinary meaning which is not restricted to a residential address. The term includes the non-residential locations the Subcommittee identified such as a hotel, motel or campsite.

'overnight' – this is generally intended to capture remaining at an address from one day into the next day. Attaching specified hours to define the meaning of 'overnight' would be undesirable for the purposes of this particular condition because it would effectively impose a curfew condition.

Question 4: The Subcommittee would appreciate information as to:

- **whether parolees who are subject to the amended residence condition will require written permission to: visit another address for a substantial part of the night; spend the night visiting several locations; spend a night at a non-residential location (e.g. a hotel/motel, campsite or entertainment venue); or be away from their place of residence at particular night-time hours (e.g. late evening or very early morning.); and**
- **how any ambiguities in new sub-regulation 114(3A) will be resolved.**

It is not possible to comment definitively on the scenarios outlined by the Subcommittee. If the APB imposes a residential condition pursuant to r114(1)(n), then it would be required that a prisoner planning to go away overnight would discuss and seek permission from either the department or the APB. That decision would be documented in writing.

Where the department suspects that a breach of a condition may have occurred, this will be considered and reviewed on its individual circumstances by the department in order to assess a prisoner on parole's compliance with their order and to determine whether a breach has occurred. Not every reportable breach will progress to court under breach of parole

provisions, and internal case management strategies can be applied by the department. Warnings can be administered to the prisoner on parole, and reports can be submitted to the APB recommending a variation to conditions on the parole order, if deemed relevant.

The amendments to condition 24 do not impact the department and the APB's power (whichever is specified in their order) to approve overnight stays at another address. All requests for overnight stays require the department to conduct an assessment to ensure risks posed to, and by, the prisoner on parole can be managed, before approval is given. The requirement to have overnight stays approved is only relevant for prisoners on parole whose parole order includes the residential condition (condition 24).

The amended condition 24 also does not prevent a prisoner on parole from visiting any other address at any time, for any purpose, subject to the conditions of their parole order. This means that prisoners on parole are able to reintegrate into the community with less restrictions than that of a curfew condition, providing the prisoner on parole returns to their approved address. The amended condition 24 also does not impact existing processes to manage the urgent relocation of prisoners on parole when reasonable, such as in circumstances of emergency.

Question 5: In relation to regulations 5 and 6's amendments to Forms 10 (parole order) and 13 (variations to parole order) in Schedule 2, the Subcommittee would appreciate information as to:

- **why the words 'and time of a day' in the existing items 24 are being removed;**
- **why the definition of 'temporarily reside' in new sub-regulation 114(3A) and the exemption for employment in new sub-regulation 114(3B) are not being included in the amended forms; and**
- **what explanations will be provided to parolees about amended regulation 114(1)(n).**

In order to avoid the effect of a curfew condition, parole orders that include condition 24 have not specified the times of day at which prisoners on parole are required to be at their specified residence. Condition 17 is a curfew condition available to the APB, to implement a condition with that effect pursuant to r114(1)(g) of the Corrections Regulations 2019.

In some cases, parole orders are lengthy and complex documents. Parole orders that are more concise and written in plain language achieve a better understanding for prisoners released into the community on parole. As such, it was considered appropriate to maintain the brevity of the amended forms, and not to include the definition of 'temporarily reside' and explanation of the exemption for employment.

However, in anticipation of the amendments, fact sheets were provided to affected prisoners on parole to support any questions regarding the amendments.

Additionally, Practice Guidelines provide the necessary guidance for department staff when managing a prisoner on parole in the community, including:

- All prisoners on parole are inducted upon commencing the order. Rather than adding to the length of the parole order, the induction explains the order conditions and ensures that the prisoner understands their obligations on parole.

- Prisoners on parole are encouraged to seek clarification and guidance from a Community Corrections Officer in relation to any desire to stay overnight at another location.
- Prisoners on parole who are employed will advise their Community Corrections Officer during reporting appointments. If there were any overnight work obligations, the prisoner on parole would then be provided guidance that this will not contravene the residential condition if this is part of their order.

Question 6: The Subcommittee would appreciate information as to regulation 4's compatibility with Charter section 13(a).

An adult prisoner who is released on parole remains under sentence. Further, s73A of the *Corrections Act 1976* specifies that the APB must give paramount consideration to the safety and protection of the community when making parole decisions. Conditions are fixed by the APB for every prisoner on parole to:

1. Enable the APB to continue to monitor the prisoner on parole's risk of reoffending, and
2. Minimise the risk that the prisoner on parole will reoffend.

Imposition of a residential condition on a prisoner indicates the APB believes that it is necessary to limit the prisoner's capacity to stay away from their specified residential address in order to minimise the prisoner's risks of re-offending and ensure they can be appropriately monitored. It is essential that there is transparency about where prisoners on parole are living so that the department can ensure they do not temporarily reside at an address that would increase their risk of reoffending, putting community safety at risk.

Prisoners on parole may experience a loss of privacy through the requirement to disclose their status as a prisoner on parole and to explain their 'overnight activities' to the department or the APB for the purpose of obtaining permission to stay overnight at a different location. However, the right protected by the Charter is a protection against arbitrary and unlawful interference with privacy. In the Victorian Supreme Court of Appeal's decision in *Thompson v Minogue* (2021) 67 VR 301, an arbitrary interference in privacy was defined as "one which is capricious, or has resulted from conduct which is unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought." Given the clear rationale and lawful mechanisms and purposes associated with maintaining the department's oversight of the location and associations of prisoners on parole, the department considers that the privacy right is not engaged, as the interference is not arbitrary or unlawful, and does not extend beyond what is reasonably necessary to meet the aims outlined above.

Question 7: The Subcommittee seeks information as to regulation 4's expected impact on parolees' ability to stay out overnight without residing anywhere or to reside somewhere spontaneously.

A prisoner on parole being in a place overnight due to an emergency or due to circumstances outside a prisoner on parole's control (such as a cancelled train service), would not likely be captured by the requirement to reside at an address or the prohibition on temporarily residing elsewhere, as the legal construction of 'reside' entails more than merely being in a place overnight.

Prisoners on parole are expected to manage their activities in a way that is consistent with their obligations as a person subject to a sentence of imprisonment. In assessing the reasonableness of a person staying away from home due to a missed train, the department would consider the reasons for missing the train and the person's subsequent efforts to seek appropriate accommodation or an alternative way home. This would inform the department's discretion to assess whether breach proceedings should be initiated.

Question 8: The Subcommittee would appreciate information as to whether the existing exemption [of the APB from the Charter] will be extended beyond this year.

The department is considering the operation of the Regulations and the need for a continued exemption of the APB from the Charter.

Thank you for raising these important matters.

Yours sincerely,



The Hon. Enver Erdogan MLC
Minister for Corrections
Minister for Youth Justice
Minister for Victim Support

21 / 8 / 2023



Scrutiny of Acts and Regulations Committee

16 February 2024

The Hon. Steve Dimopoulos MP
Minister for Environment
8 Nicholson Street
Melbourne
Victoria, 3000

By email: steve.dimopoulos@parliament.vic.gov.au

Att: juliet.reardon@delwp.vic.gov.au; george.christofi@delwp.vic.gov.au;
geoffrey.golden@delwp.vic.gov.au; stephen.gatford@epa.vic.gov.au; sibel.ali-zwart@delwp.vic.gov.au

Dear Minister

Correspondence

The Regulation Review Subcommittee (Subcommittee) would appreciate your response to correspondence sent in relation to the following statutory rules and legislative instruments:-

- SR No. 33 – Circular Economy (Waste Reduction and Recycling) (Waste to Energy Scheme) Regulations 2023¹
- SR No. 78 – Circular Economy (Waste Reduction and Recycling) (Container Deposit Scheme) Amendment Regulations 2023²
- EPA Designation – Classification of PFAS-impacted soil made under Regulation 86 of the Environment Protection Regulations 2021³
- SR No. 49 – Forests (Recreation)(Temporary) Amendment Regulations 2023⁴
- SR No. 50 – Conservation, Forests and Lands (Infringement Notice) Regulations 2023.⁵

Please do not hesitate to contact Katie Helme at SARC@parliament.vic.gov.au if you require additional information.

Yours sincerely

Gary Maas MP
Chair,
Scrutiny of Acts and Regulations Committee

¹ Note the Subcommittee's letter dated 8 September 2023 to the former Minister for Environment.

² Note the Subcommittee's letter dated 8 September 2023 to the former Minister for Environment.

³ Note the Subcommittee's letter dated 8 September 2023 to the former Minister for Environment.

⁴ Note the Subcommittee's letter dated 17 October 2023 to the Minister for Environment.

⁵ Note the Subcommittee's letter dated 17 October 2023 to the Minister for Environment.



Scrutiny of Acts and Regulations Committee

8 September 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: Juliet.reardon@delwp.vic.gov.au

Dear Minister

SR No. 33 – Circular Economy (Waste Reduction and Recycling) (Waste to Energy Scheme) Regulations 2023

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above Regulations at a meeting on 5 September 2023.

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

Compatibility with human rights

The Subcommittee noted that, in a response to an earlier query from the Committee about the Bill that inserted sections 74X, 74Y, 74Z1 & 74ZJ into the *Circular Economy (Waste Reduction and Recycling) Act 2021* published in the Committee's *Alert Digest No. 10 of 2022*,¹ the Minister for Energy remarked that:

‘the Head, Recycling Victoria could potentially receive information about a person’s spent convictions from another law enforcement agency for the purpose of assisting in determining whether a person is a fit and proper person to operate a thermal waste to energy facility. Spent convictions are likely to have little or no relevance to that determination. Any requests to law enforcement agencies by the Head, Recycling Victoria, for information about spent convictions would be an exceptional step only appropriately justified by the direct relevance of the spent conviction to the licence holder or the applicant’s status as a fit and proper person’.

¹ Scrutiny of Acts and Regulations Committee, *Alert Digest 10 of 2022*, pp. 38-40.

In addition, the Minister remarked:

‘As per section 20 of the *Spent Convictions Act 2021*, the applicant for or holder of a waste to energy licence is not required to disclose a spent conviction because it does not form part of their criminal record. The Head, Recycling Victoria, may issue guidelines under the *Circular Economy (Waste Reduction and Recycling) Act 2021* in the administration of that Act, including the proposed waste to energy scheme, which could include guidelines about the information required and not required to be disclosed in the application process.’

The Subcommittee also noted that regulations 9 and 17 each prescribe information that must be included in an application by existing licence holders or applicants for transfers, including:

- ‘any information that goes to whether the applicant’ (or officers of corporate applicants) ‘is a fit and proper person’: regulations 9(2)(d) and 17(1)(d)
- ‘whether the person... has, within the preceding 10 years, been found guilty of... an indictable offence; or... an offence involving fraud or dishonesty’: regulations 9(2)(f)(i) and (iii), and 17(1)(f)(i) and (iii).

The Subcommittee further noted that the Human Rights Certificate states that the Regulations ‘do not limit any human rights set out in the [*Charter of Human Rights and Responsibilities Act 2006* (the Charter)]’.

The Subcommittee observed that regulations 9(2) and 17(1) may engage section 13(a) of the Charter in two respects. First, to the extent that the requirements in regulations 9(2)(d) and 17(2)(d) are unclear to licence holders and applicants, they may engage the Charter right against unlawful interferences in privacy. Second, to the extent that regulations 9(2)(f) and 17(1)(f) require the disclosure of all findings of guilt of fraud, dishonesty or indictable offences in the past 10 years, they may engage the Charter right against arbitrary interferences in privacy.

The Subcommittee also observed that, to the extent that regulations 9(2)(f) and 17(1)(f) apply to spent convictions, they may, when read with sections 74Y(3)(a) & 74Z(4)(a) of the *Circular Economy (Waste Reduction and Recycling) Act 2021* and section 75 of the *Equal Opportunity Act 2010*, engage the rights against spent conviction discrimination in section 8 of the Charter.

Accordingly, the Subcommittee would appreciate information as to:

- **whether regulations 9 and 17 limit the Charter’s right against unlawful or arbitrary interference with privacy, and, in particular, the meaning of regulations 9(2)(d) and 17(1)(d) and what guidance will be provided to licence holders and applicants about that;**
- **whether regulations 9 and 17 limit the Charter’s right against spent conviction discrimination and, in particular:**

- whether regulations 9(2)(f) and 17(1)(f) apply to spent convictions and what information applicants will be given about that;
- whether, when read with existing sections 74Y(3)(a) and 74Zl(4)(a), those regulations authorise discrimination on the grounds of spent convictions under section 75 of the *Equal Opportunity Act 2010*; and
- whether any such limit is reasonable according to the test in section 7(2) of the Charter and, in particular, whether leaving inquiries about an applicant's past convictions to the Head, Recycling Victoria's discretion is a less restrictive means reasonably available to achieve the purpose of regulations 9 and 17.

The Subcommittee would appreciate your response by no later than 6 October 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



Gary Maas MP
Chair,
Scrutiny of Acts and Regulations Committee



Steve Dimopoulos MP

Minister for Environment
Minister for Tourism, Sport and Major Events
Minister for Outdoor Recreation

PO Box 500
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MIN-230902218

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
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sarc@parliament.vic.gov.au

Dear Mr Maas

Thank you for your letter of 8 September 2023 to the former Minister for Environment, the Hon. Ingrid Stitt MLC, regarding consideration of the *Circular Economy (Waste Reduction and Recycling) (Waste to Energy Scheme) Regulations 2023* (the Regulations) by the Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee. I apologise for the delay in responding.

I provide the following responses to address your request for further information on the following matters:

1. Whether regulations 9 and 17 limit the *Charter of Human Rights and Responsibilities Act 2006* (the Charter's) right against unlawful or arbitrary interference with privacy, and, in particular, the meaning of regulations 9(2)(d) and 17(1)(d) and what guidance will be provided to licence holders and applicants about that.
2. Whether regulations 9 and 17 limit the Charter's right against spent conviction discrimination and, in particular:
 - a) whether regulations 9(2)(f) and 17(1)(f) apply to spent convictions and what information applicants will be given about that
 - b) whether, when read with existing sections 74Y(3)(a) and 74ZI(4)(a), those regulations authorise discrimination on the grounds of spent convictions under section 75 of the *Equal Opportunity Act 2010* (Equal Opportunity Act) and
 - c) whether any such limit is reasonable according to the test in section 7(2) of the Charter and, in particular, whether leaving inquiries about an applicant's past convictions to the Head, Recycling Victoria's discretion is a less restrictive means reasonably available to achieve the purpose of regulations 9 and 17.

Matter 1

Regulations 9 and 17 of the Regulations prescribe information that an applicant needs to submit to the Head, Recycling Victoria (Head, RV) when applying for an existing operator licence under section 74X of the *Circular Economy (Waste Reduction and Recycling) Act 2021* (Circular Economy Act), or the transfer of a waste to energy licence, under section 74ZI of that Act, respectively.

Regulations 9(2)(d) and 17(1)(d) require the applicant to provide information to enable the Head, RV to establish whether the applicant is a fit and proper person. Under sections 74X(5) and 74ZI(5), the Head, RV must not issue an existing operator licence or transfer a waste to energy licence unless satisfied that the person is a fit and proper person to operate a thermal waste to energy facility. The



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factors that may be considered when determining whether a person is a fit and proper person are set out in section 74ZJ of the Circular Economy Act.

In practice, many of these factors will be addressed by the information required to be provided by regulations 9(2)(e)-(h) and 17(1)(e)-(h). Regulations 9(2)(d) and 17(1)(d) provide a requirement to provide additional information. In the case of applicants for existing operator licences, the application form issued by Recycling Victoria for applicants for existing operator licences indicates that the only required information pursuant to this regulation is a National Police Certificate.

The Head, RV is in the process of determining the application requirements for applications to transfer licences.

I acknowledge that the regulations require an applicant who is a natural person to submit personal information to the Head, RV, including names, address and identification. They also require applicants that are corporations to provide personal information (including names) about directors and other company officers.

As noted in the correspondence from the former Minister for Environment and Climate Action to the former Chairperson of the Scrutiny of Acts and Regulations Committee, dated 18 July 2022 (the previous correspondence), the information is requested for a legitimate purpose reflecting the significant commercial nature of operating a waste to energy facility and the overall countervailing need for lawful corporate behaviour in the circular economy.

Apart from personal information of natural person applicants and directors or officers of corporate applicants, the information collected is information that does not go to a persons' family, home or correspondence. To the extent it seeks information as to a person's prior conduct, solvency, compliance with the Act and the regulations and offending, this information is directly relevant as to whether the person (or the corporation in respect of which the person is a director or other officer), is fit and proper to operate a thermal waste to energy facility. The regulations do not require disclosure of each and every possible conviction – only those that are most relevant to the task before the Head, RV.

These matters, concerning criminal conduct of bodies corporate or officers of those entities, and compliance with the regulatory requirements of the waste to energy scheme established by the Act, is central to determining whether the applicant ought to be permitted to participate in the scheme. There are not considered to be any less restrictive means available to achieve the purpose of ensuring that fit and proper persons are granted permission to operate waste to energy facilities.

As such, regulations 9 and 17, including regulations 9(d) and 17(d), do not limit the right not to have a person's privacy unlawfully or arbitrarily interfered with protected by section 13(a) of the Charter. To the extent information as to natural persons is required, including details of prior offending (apart from spent convictions, which are addressed below) it is required for a legitimate, important and lawful end, authorized by sections 74X, 74ZI and 74ZJ of the Circular Economy Act.

Further, any personal information of natural persons collected by the Head, RV will be stored and managed consistently with the *Privacy and Data Protection Act 2014* and guidance has been provided to applicants to confirm how their information will be used.

Matter 2(a)

As outlined in the previous correspondence, an applicant is not required to disclose a spent conviction under regulations 9 and 17. DEECA's position on this has not changed since the regulations came into effect and RV was able to begin administering the scheme. The Head, RV has not and does not intend to require applicants for existing operator licences and licence transfers to provide information on spent convictions as part of their application.

Regulations 9(2)(f) and 17(2)(f) do not require the disclosure of most spent convictions protected under sections 8 and 9 of the *Spent Convictions Act 2021* (Spent Convictions Act) in an application made under 74X or 74ZI of the Circular Economy Act, as these regulations are explicitly limited to convictions within the last ten years.

To the extent regulations 9(2)(d), 9(2)(l) and 9(2)(f) and 17(1)(d), 17(1)(e) and 17(1)(f) would otherwise require disclosure of spent convictions protected under section 7 and Division 2 of Part 2 of the Spent Convictions Act, these regulations should be read in conjunction with section 20 of the Spent Convictions Act as not requiring the disclosure of such convictions.

Further, Recycling Victoria is providing clarification to existing operators that spent convictions are not required to be disclosed by applicants.

Matters 2(b) and 2(c)

As set out above, regulations 9(2) and 17(1) do not require applicants to disclose spent convictions and, as such, the Head, RV is not required to consider spent conviction information under sections 74Y(3)(a) and 74ZI(4)(a). To this extent, the Regulations themselves do not authorise discrimination on the grounds of spent convictions under section 75 of the Equal Opportunity Act, and do not limit the right to protection from discrimination on the basis of spent convictions.

However, as explained in the previous correspondence, the Head, RV is considered a law enforcement agency for the purposes of the Spent Convictions Act. As such, the Head, RV retains the discretion to receive information about a person's spent convictions from another law enforcement agency for the purpose of determining whether a person is a fit and proper person, under the operation of section 21(1) of the Spent Convictions Act. As stated in the previous correspondence, this would only occur in exceptional circumstances and if it is relevant to determine the fit and proper person test for the purposes of Part 5A of the Circular Economy Act.

If you would like more information about this matter, please call Mark Rodrigues, Executive Director, Climate Action and Circular Economy Division, Department of Energy, Environment and Climate Action, on 8508 1866 or email mark.rodrigues@delwp.vic.gov.au.

Yours sincerely



Steve Dimopoulos MP
Member for Oakleigh
Minister for Environment

18/3/24
MIN-230902218

Page 3

Official





Scrutiny of Acts and Regulations Committee

8 September 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: george.christofi@delwp.vic.gov.au; geoffrey.golden@delwp.vic.gov.au

Dear Minister

SR No. 78 – Circular Economy (Waste Reduction and Recycling) (Container Deposit Scheme) Amendment Regulations 2023

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered SR No. 78 – Circular Economy (Waste Reduction and Recycling) (Container Deposit Scheme) Amendment Regulations 2023 (the Amendment Regulations) at a meeting on 5 September 2023.

The Subcommittee approved the Regulations but seeks additional information pursuant to section 21(1)(i) of the *Subordinate Legislation Act 1994* (SLA).

Regulatory Impact Statement

The Subcommittee notes the development of the Amendment Regulations was informed by the content of the original Regulatory Impact Statement (RIS) developed for the Circular Economy (Waste Reduction and Recycling) (Container Deposit Scheme) Regulations 2022 (Principal Regulations) and the RIS consultation process. New regulation 7A is assessed in the original RIS. However, the regulations inserted by sections 4, 6, 7 and 8 were developed after this process.

The Subcommittee notes significant detail of the purpose and scope of these provisions is included in the section 12 Notice of Decision published on the Public Notices website on 3 August 2023. The section 6 certificate outlines the consultation which has taken place. The Notice of Decision and section 6 certificate provide helpful detail.

The Subcommittee considers it important that the regulatory impact of all provisions of a statutory rule are adequately assessed. The tabling of section 8 certificates in the Parliament provides oversight. However, the Subcommittee notes an additional section 8 exemption certificate has not been issued to address these provisions.

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The Subcommittee requests your advice as to whether it may be appropriate to issue a section 8 exemption certificate in relation to new regulations inserted by sections 4, 6, 7 and 8 of the Amendment Regulations.

Section 12 Notice of Decision

Section 12(1) of the SLA provides the Minister must ensure publication of the Notice of Decision in the Government Gazette, and a newspaper circulating generally throughout Victoria or the Public Notices website. Failure to comply with this requirement does not affect the operation of the statutory rule but the Committee may report the failure to each House of the Parliament.¹

In this instance, the Notice of Decision was published on the Public Notices website on 3 August 2023. However, the Notice of Decision does not appear to have been published in the Victorian Government Gazette. In these circumstances, the Subcommittee will not report this matter to the Parliament. However, the Subcommittee draws your attention to this publication error and the requirements of section 12 of the SLA.

The Subcommittee would appreciate your response by no later than 6 October 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



Gary Maas MP
Chair,
Scrutiny of Acts and Regulations Committee

¹ Section 12(4) of the *Subordinate Legislation Act 1994*.



Steve Dimopoulos MP

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Minister for Tourism, Sport and Major Events
Minister for Outdoor Recreation

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MIN-230902195

Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
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Dear Mr Maas

Thank you for your letter of 8 September 2023 to the former Minister for Environment, Ingrid Stitt MP. On behalf of the Scrutiny of Acts and Regulations Committee, you made comments and sought advice in relation to the Regulatory Impact Statement (RIS) and notice of decision for the *Circular Economy (Waste Reduction and Recycling) (Container Deposit Scheme) Amendment Regulations 2023* (Amendment Regulations). I apologise for the delay in responding.

I provide the following responses to address the committee's comments.

Regulatory Impact Statement (RIS)

Comment:

The subcommittee requests your advice as to whether it may be appropriate to issue a section 8 exemption certificate in relation to new regulations inserted by regulations 4, 6, 7 and 8 of the Amendment Regulations.

Response:

Regulations 4, 6, 7 and 8 were intended to facilitate the existing policy assessed in the Regulatory Impact Statement (RIS) and to address issues identified during contract negotiation and early mobilisation for Victoria's container deposit scheme. As recorded in the Explanatory Memorandum for the Amendment Regulations, these regulations have been assessed and are not expected to result in materially different impacts to those assessed in the RIS, or to impose a significant economic or social burden on any sector of the public. Industry was consulted on these changes in July 2023 to confirm the assessment on impacts, as noted in the section 6 Consultation Certificate.

The inclusion of regulations 4, 6, 7 and 8 in the Amendment Regulations after the RIS consultation process is consistent with common practice whereby minor and technical amendments are made following stakeholder feedback on exposure drafts of proposed regulations.

In these circumstances, it is not considered necessary to issue a section 8 certificate for the Amendment Regulations. The section 10(4) certificate confirms that the likely impact of the statutory rules had been adequately assessed in the RIS, given the new provisions were minor and would not impose a significant burden or result in materially different impacts to those assessed in the RIS. As such, it is considered that the requirements of sections 7 and 10 of the *Subordinate Legislation Act 1994* concerning regulatory impact statements have been met with respect to the Amendment Regulations.



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In addition, given Amendment Regulations have already been made, I understand it is not necessary or possible to issue a section 8 certificate at this time. However, in support of the committee's commitment to clarity and transparency, the department will consider what improvements may be made to certificates tabled in Parliament in similar cases in future.

Section 12 Notice of Decision

I note and acknowledge that the publication requirements for Notices of Decision, as set out in section 12 of the **Subordinate Legislation Act**, were not complied with in relation to the Amendment Regulations. I also acknowledge the committee's decision to not report this matter to the Parliament.

The failure to publish the notice was due to an administrative oversight within the department. I understand the department will ensure that extra care is taken in the future to meet this requirement of the **Subordinate Legislation Act**. The team will reinforce existing internal guidance materials and provide training for policy officers.

Please do not hesitate to contact Mark Rodrigues, Executive Director, Climate Action and Circular Economy Division, DEECA if you require any further information on the Amendment Regulations, on (03) 8508 1866 or via email at mark.rodrigues@delwp.vic.gov.au.

Yours sincerely



Steve Dimopoulos MP
Member for Oakleigh
Minister for Environment

19/3 124



Scrutiny of Acts and Regulations Committee

8 September 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: Stephen.gatford@epa.vic.gov.au

Dear Minister

EPA Designation - Classification of PFAS-impacted soil made under Regulation 86 of the Environment Protection Regulations 2021

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above legislative instrument at a meeting on 5 September 2023.

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

Consultation

Section 12C(b) of the *Subordinate Legislation Act 1994* provides that the responsible Minister must ensure, where the *Subordinate Legislation Act 1994* Guidelines (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 legislative so that the need for, and the scope of, the proposed legislative instrument is considered.

It is the Subcommittee's view 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.

In this instance, the legislative instrument is accompanied by a consultation certificate. The certificates state that consultation was undertaken with government stakeholders, including the Department of Premier and Cabinet, the former Department of Environment, Land, Water and Planning, Major Transport Infrastructure Authority, Department of Treasury and Finance and the former Department of Transport.

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The legislative instrument provides for the classification of per- and poly- fluorinated alkyl substances (PFAS) impacted soil as fill material and not priority waste for the purposes of the Environment Protection Regulations 2021.

The Subcommittee requests further details of any additional consultation which may have occurred, including with industry participants.

The Subcommittee would appreciate your response by no later than 6 October 2023.

Thank you for your assistance with this matter. If you have any questions in relation to this matter, please contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au.

Yours sincerely



Gary Maas MP
Chair,
Scrutiny of Acts and Regulations Committee

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Steve Dimopoulos MP

Minister for Environment
Minister for Tourism, Sport and Major Events
Minister for Outdoor Recreation

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Ref: MIN-230902206

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
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By email: sarc@parliament.vic.gov.au

Dear Mr Maas 

Thank you for your letter dated 8 September 2023 to the then-Minister for Environment, Ingrid Stitt MP, about EPA Designation - Classification of PFAS-impacted soil made under Regulation 86 of the Environment Protection Regulations 2021, which was published in the Victorian Government Gazette G21 on 25 May 2023 and will expire on 31 December 2024.

I note the committee's request for further details of any additional consultation which may have occurred during the development of this legislative instrument, including with industry participants.

This interim legislative instrument replaced a previous interim instrument – an Environment Protection Authority Victoria (EPA) general designation published in the Victorian Government Gazette S26 on 20 January 2022. In developing the initial interim legislative instrument, EPA engaged with industry via the Australian Industry Group (AIG), specifically with a range of waste industry representatives in the AIG Waste Industry Alliance.

Consultation on both interim instruments was targeted as the practical impact of these instruments is limited. The key standards, thresholds and expectations of the instrument are consistent with EPA's 2019 published position on the reuse of per-and polyfluoroalkyl substances (PFAS) impacted soil. Converting EPA's 2019 publication into a legislative instrument provided a greater level of accountability, transparency for the community and clearer compliance and enforcement pathways for the regulator.

Should these instruments not have been made, industry would have been required to apply to EPA to obtain individual waste designations that would have had the same regulatory effect.

EPA is committed to broad consultation with industry and the community on any significant changes in the approach to how PFAS is regulated in Victoria. In late 2023, EPA conducted open consultation via Engage Victoria to inform how PFAS impacted waste soil is regulated after the current interim legislative instrument expires. This consultation process is addressing how waste soil containing higher levels of PFAS will be classified under the Victorian environment protection framework. EPA plans to finalise the approach by mid-2024.

This broader consultation process reflects EPA's continued commitment to community engagement and to the principle of accountability under section 22 of the *Environment Protection Act 2017*. EPA's commitment on these matters is also set out in its Charter of Consultation.



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I trust this information is of value to the committee in discharging its responsibilities.

Yours sincerely



Steve Dimopoulos MP
Member for Oakleigh
Minister for Environment

19 / 3 / 24



Scrutiny of Acts and Regulations Committee

17 October 2023

The Hon. Steve Dimopoulos MP
Minister for Environment
8 Nicholson Street
Melbourne
Victoria, 3000

By email: steve.dimopoulos@parliament.vic.gov.au

Att: sibel.ali-zwart@delwp.vic.gov.au

Dear Minister

SR No. 49 – Forests (Recreation)(Temporary) Amendment Regulations 2023

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 11 October 2023.

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

The Regulations amend the Forests (Recreation) (Temporary) Regulations 2021 (Principal Regulations) to extend their operation for a further three years until 30 June 2026. The Regulations are accompanied by a section 8(1)(a) exemption certificate on the basis they would not impose a significant economic or social burden on a sector of the public.

The Subcommittee notes the Regulations have the effect of extending the operation of a legislative framework which has been in place since 2010. This is the fourth time the framework has been extended without preparing a new Regulatory Impact Statement (RIS) to assess the regulatory impact of the framework.

The section 8 exemption certificate states that the Regulations ‘merely extend the operation of the [Principal Regulations] and do not change the regulatory impacts on businesses or community groups as a result of the extension of the operation of those Regulations’. However, section 8 certificate does not provide any information as to why it is necessary to extend the scheme for a further three years or when it is anticipated that new regulations will be made with an RIS.

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The Subcommittee seeks further information as to:

- why it is necessary to extend the Principal Regulations for a further three years; and
- when it is anticipated that new regulations will be made with an RIS.

The Subcommittee would appreciate your response by no later than 15 November 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



Gary Maas MP
Chair,
Scrutiny of Acts and Regulations Committee



Steve Dimopoulos MP

Minister for Environment
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MIN-231007767

Mr Gary Maas MP
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Dear Mr Maas

Thank you for your letter of 17 October 2023, about SR No. 49 – Forests (Recreation) (Temporary) Amendment Regulations 2023 (the Amendment Regulations). I apologise for the delay in responding.

I understand that the Regulation Review Subcommittee of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 11 October 2023. The subcommittee approved the statutory rule. However, the subcommittee is now seeking further information in relation to a technical scrutiny matter.

The correspondence observed that the Amendment Regulations extended the *Forests (Recreation) (Temporary) Regulations 2021* (Principal Regulations) for a further three years to 30 June 2026 and noted that this would be the fourth time the Principal Regulations had been extended without the preparation of a Regulatory Impact Statement (RIS) to assess the regulatory impact of the framework.

As such, the Subcommittee seeks to understand the following:

- why it is necessary to extend the Principal Regulations for a further 3 years
- when it is anticipated that new regulations will be made with a RIS.

Why it is necessary to extend the Principal Regulations for a further three years

On 11 May 2021, the then Minister for Environment and Climate Change, the Hon Lily D'Ambrosio MP agreed to make the Principal Regulations to replace the *Forests (Recreation) Regulations 2010*, which expired on 24 May 2021.

The decision to extend the operation of the Principal Regulations to 30 June 2026 was made in light of the government's commitment to renew Victoria's public land legislation, including as it applies to state forests.

In December 2017, the Victorian Government committed to review Victoria's public land legislation in response to the Victorian Environmental Assessment Council's *Statewide Assessment of Public Land*. Subsequently, consultation on a proposal to reform Victoria's public land legislation was undertaken by the then Department of Environment, Land, Water and Planning (DELWP) in 2021.

Under the proposed reforms, 3 existing Crown Land Acts (including the *Forests Act 1958*, under which the Principal Regulations are made) will be incorporated into a new Public Land Act. The proposed Public Land Act and associated regulations will supersede the Principal Regulations in the management of recreation in state forests.

In addition to this, on 23 May 2023, the Victorian Government announced that commercial native timber harvesting would end by 1 January 2024. As part of the transition, the government will establish an advisory panel to consider and make recommendations on the areas of state forests that qualify for



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protection as National Parks, as well as the areas of state forests that would be suitable for recreation opportunities – including camping, hunting, hiking, mountain biking and 4-wheel driving.

Given the future of state forests is under consideration and there is a commitment to reform the legislation application to state forests, extending the Principal Regulations until 2026 will allow time for the abovementioned changes to settle.

When it is anticipated that new regulations will be made with a RIS

In response to the subcommittee's concern regarding the RIS, Better Regulations Victoria (BRV) has advised that should any new Forest (Recreation) Regulations (new Regulations) be made, a RIS is unlikely to be required.

In 2009, a RIS was prepared for the Forests (Recreation) Regulations 2010. This RIS found that the overall impact of the regulations on those affected was approximately \$142,000 per annum. Adjusted to account for inflation, the estimated annual fiscal burden of any new Regulations would be approximately \$197,239 per annum. This figure is well below the minimum financial threshold of \$2 million per annum required for a RIS, in accordance with the *Subordinate Legislation Act 1994* guidelines.

Further to this, it is unlikely that any new Regulations would impose additional costs or significant intangible burden to the public. Subsequently, any new Regulations would likely be exempt from a RIS under section 8(1)(a) of the *Subordinate Legislation Act 1994*. As mentioned, the Department of Energy, Environment and Climate Action has consulted with BRV on this matter and received advice that the completion of a RIS for new Regulations would be highly unlikely, however, in the event new Regulations were prepared I would, of course, complete this analysis again as relevant.

If you have further questions, please contact Will Guthrie, Director Land Policy, the Department of Energy, Environment and Climate Action at will.guthrie@delwp.vic.gov.au.

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

Yours sincerely



Steve Dimopoulos MP
Member for Oakleigh
Minister for Environment

18/3/24



Scrutiny of Acts and Regulations Committee

17 October 2023

The Hon. Steve Dimopoulos MP
Minister for Environment
8 Nicholson Street
Melbourne
Victoria, 3000

By email: steve.dimopoulos@parliament.vic.gov.au

Att: ros.spence@parliament.vic.gov.au; sibel.ali-zwart@delwp.vic.gov.au

Dear Minister

SR No. 50 – Conservation, Forests and Lands (Infringement Notice) Regulations 2023

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 27 September 2023.

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

Section 6A Infringement Offence Consultation Certificate

Where a statutory rule prescribes infringement offences, section 6A of the *Subordinate Legislation Act 1994* (SLA) provides the Minister must certify the statutory rule meets the requirements of the *Attorney-General's Guidelines to the Infringements Act 2006* (AG Guidelines). If the statutory rule does not comply with the AG Guidelines, the Minister must specify the reasons for why the statutory rule should be made despite not meeting those requirements.

The AG Guidelines recommend against prescribing statutory offences that are subject to penalties above 120 penalty units as infringement offences. The AG Guidelines also recommend that infringement offence penalties are not set below 10 per cent of the maximum penalty for the statutory offence.

In this instance, Schedule 3 to the Regulations prescribe 19 offences under section 71, 75, 75A and 77A of the *Catchment and Land Protection Act 1994* (CLP Act) as infringement offences. The offences relate to the spread of noxious weeds, and the import, sale, keeping or release of pest animals. The offences are subject to graduated penalties for different categories of noxious weeds and pest animals. The CLP Act sets a statutory maximum of 480 penalty units in the case of 'State prohibited weeds' or 'prohibited pest animals'. The Subcommittee notes the graduated

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penalty structure of the offences in the CLP Act is intended to help manage the risks associated with noxious weeds and pest animals.¹

The infringement offences are set in the Regulations at 10 penalty units or approximately 2 per cent of the statutory maximum. Accordingly, the prescription of these offences does not comply with the requirements of the AG Guidelines.

The Regulations are accompanied by a section 6A infringement offence consultation certificate (section 6A certificate). However, the section 6A certificate does not provide reasons for the prescription of offences under sections 71, 75, 75A and 77A of the CLP Act as infringement offences.

The Subcommittee seeks further information about prescribing the offences under sections 71, 75, 75A and 77A of the CLP Act as infringement offences in the Regulations.

The Subcommittee would appreciate your response by no later than 15 November 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



Gary Maas MP
Chair,
Scrutiny of Acts and Regulations Committee

¹ In relation to the offences, the Second Reading Speech to the Agriculture Legislation Amendment Bill 2022 stated:-
‘The Bill improves the controls for noxious weeds and pest animals and strengthens inspection and enforcement powers of authorised officers to better regulate the risk of introduction or spread of noxious weeds and pest animals in Victoria. Globalisation and the expansion of trade have increased Victoria’s exposure to biosecurity risks and increased the rate of new incursions into the State. The amendments create new offences and impose new requirements to address these risks. The Bill provides for graduated penalties for offences relating to the spreading of noxious weeds without a permit and improve consistency of penalties to similar offences relating to pest animals. These amendments will improve our ability to manage the risks associated with noxious weeds and pest animals’.



Steve Dimopoulos MP

Minister for Environment
Minister for Tourism, Sport and Major Events
Minister for Outdoor Recreation

8 Nicholson Street
East Melbourne, Victoria 3000

MIN-231007755

Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
SARC@parliament.vic.gov.au

Dear Gary Maas MP

SR No. 50 – CONSERVATION, FORESTS AND LANDS (INFRINGEMENT NOTICE) REGULATIONS 2023

Thank you for your letter of 17 October 2023, regarding the Regulation Review Subcommittee's consideration of the Conservation, Forests and Lands (Infringement Notice) Regulations 2023 (the Regulations). I apologise for the delay in responding.

I note the Subcommittee's request for further information in relation to the prescribing of offences under sections 71, 75, 75A and 77A of the *Catchment and Land Protection Act 1994* (CLP Act) as infringement offences in the Regulations.

Regarding the Subcommittee's query, I wish to advise that the abovementioned offences were prescribed as infringement offences in close consultation with the Infringements System Oversight Unit of the Department of Justice and Community Safety and that while it is noted that the *Attorney-General's Guidelines to the Infringements Act 2006* (AG Guidelines) recommend that infringement offence penalties not be set below 10% of the maximum penalty for the statutory offence, the maximum penalty that may be served as an infringement notice for regulations made under section 99 of the *Conservation, Forests and Lands Act 1987* is 10 penalty units.

I also note that while the infringement offences in question, limited as they are by the 10 penalty unit maximum, are a smaller percentage (2-10%) than the recommended 10-25% of the maximum penalty, the lower amounts provide a more efficient and proportionate enforcement option for authorised officers who encounter lower-level offending.

If you have further questions, please contact Will Guthrie, Director Land Policy, Department of Energy, Environment and Climate Action at will.guthrie@delwp.vic.gov.au.

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

Yours sincerely

Steve Dimopoulos MP
Member for Oakleigh
Minister for Environment

19/3/24



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Scrutiny of Acts and Regulations Committee

17 October 2023

The Hon. Sonya Kilkenny MP
Minister for Planning
Level 16
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Victoria, 3002

By email: sonya.kilkenny@parliament.vic.gov.au

Att: rowena.scheffer@delwp.vic.gov.au

Dear Minister

SR No. 65 – Building Amendment (Fees Expiry Date) Interim Regulations 2023

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 11 October 2023. The Subcommittee approved the statutory rule.

Section 9 Premier's Certificate

The Regulations amend the Building Regulations 2018 (Principal Regulations) to defer the revocation date of certain fees for a further 12 months until 1 July 2024. The Subcommittee notes this is the third time the revocation of these fees has been deferred.

The Subcommittee notes detailed reasons for the deferral have been provided in the section 9 Premier's certificate. The Subcommittee considers this information provides useful information for understanding the context and purpose of the Regulations.

The Subcommittee notes the Department of Transport and Planning will prepare a Regulatory Impact Statement (RIS) and undertake public consultation on the relevant fees. This process will inform the making of new regulations to prescribe fees. It is intended to take place prior to 1 July 2024. The Subcommittee looks forward to considering these new regulations.

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

Yours sincerely

Gary Maas MP
Chair,
Scrutiny of Acts and Regulations Committee

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Scrutiny of Acts and Regulations Committee

26 October 2023

The Hon. Harriet Shing MP
Minister for Water
Level 17
8 Nicholson Street
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Victoria, 3002

By email: harriet.shing@parliament.vic.gov.au

Att: anna.cuttriss@delwp.vic.gov.au

Dear Minister

SR No. 86 – Water (Recreational Area) Regulations 2023

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 25 October 2023.

The Subcommittee approved the statutory rule. However, the Subcommittee seeks further information about regulation 71(4), which provides that ‘a person must not deliver an address in a recreational area unless permitted to do so’.

First, the Subcommittee notes that ‘deliver’ and ‘address’ are not defined. The Subcommittee observes that the distinction between delivering an address and other forms of speech may be unclear, and may turn on matters such as content, tone, volume or purpose of the speech, as well as its intended or actual audience. Accordingly, the Subcommittee would appreciate further information as to the meaning of ‘deliver an address’.

Second, the Subcommittee notes the Human Rights Certificate discussed public addresses alongside ‘large noisy events’ and described the purpose of a variety of regulations as minimising environmental impacts. The Subcommittee observes that various other regulations require a permit for nuisances, sound producing devices, structures, events, commercial activities and promotional activities (see regulations 39, 41, 64, 68, 69, 70 & 71(1)-(3)). Accordingly, the Subcommittee would appreciate further information as to why the ban on delivering a public address without permission in regulation 71(4) is needed, given these various other limitations on behaviour in recreational areas. The Subcommittee also observes that two of the other regulations (regulation 41 and regulation 68) appear to have limits be aimed at distinguishing between impactful and less impactful behaviour (specifically, using sound producing devices in a manner that does not disturb any person or animal, and private functions

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of 30 or fewer people.) Accordingly, the Subcommittee would appreciate further information as to whether equivalent limitations might be included in regulation 71(4).

Third, the Subcommittee notes previous correspondence on this topic set out in its *Annual Review 2012: Regulations and Legislative Instruments*.¹ The Subcommittee observes that regulation 76(3) of the National Parks Regulations 2013 and regulation 28 of the Royal Botanical Gardens Regulations 2014 were enacted after this correspondence and remain in force at present. Accordingly, the Subcommittee would appreciate further information as to whether equivalent limitations to those regulations (in particular regulation 28(b) of the Royal Botanical Gardens Regulations 2014) would be less restrictive means reasonably available to achieve the purpose of regulation 71(4).

The Subcommittee would appreciate your response by no later than 1 December 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



Gary Maas MP
Chair,
Scrutiny of Acts and Regulations Committee

¹ Scrutiny of Acts and Regulations Committee, *Annual Review 2012: Regulations and Legislative Instruments*, pp. 49-51, available at: https://www.parliament.vic.gov.au/images/stories/committees/sarc/database/Annual_Review_2012_-_Regulations.pdf.



Hon Harriet Shing MP

Minister for Housing
Minister for Water
Minister for Equality

8 Nicholson Street
East Melbourne, Victoria 3002

MIN-231100371

Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee

Dear Mr Maas

SR No. 86 – Water (Recreational Area) Regulations 2023

Thank you for your letter dated 25 October 2023 regarding the Regulation Review Subcommittee's consideration of the Water (Recreational Area) Regulations 2023. I note that the Subcommittee approved the statutory rule.

The Regulations came into operation on the 19 August 2023. The Regulations apply to 40 water storages across Victoria which have currently been determined as recreational areas in accordance with section 122ZA of the *Water Act 1989*. The Regulations replace the Recreational Area: Model By-Law 2012 which has now expired. The Regulations support the ongoing enjoyment of these recreational areas by the public, while promoting the safety of visitors and the protection of water quality, water corporation facilities and preservation of Aboriginal cultural heritage, and environmental values.

I note the Subcommittee's request for further information in relation to Regulation 71(4), which provides that "a person must not deliver an address in a recreational area unless permitted to do so".

Recreational areas are used by a diverse range of people and users and contain important environmental values. An important function for water corporations is to effectively and proactively manage determined recreational areas for various, sometimes competing, recreational activities, events, and functions as well as to minimise the impact that these activities may have on the environment and the enjoyment of other recreational users. The Regulations provide water corporations with the ability to manage many recreational activities through issuing appropriate permits. Regulation 71(4) is needed because the delivery of an address can have an impact on, or take over, an area of public access. Requiring a permit enables the water corporation to manage any conflicts with another recreational user group's permitted use of the recreational area and also manage risks of harm to the environment such as impacts on biodiversity or disturbing wildlife.

The Subcommittee's first request was for information as to the meaning of the terms 'deliver' and 'address', as these are not defined in the Regulations. The Regulations use the ordinary English meaning of the term 'deliver an address', being 'to give forth in words a formal speech or writing directed to a person or a group of people'. In practice, given the ordinary English meaning of delivering an address, the permit obligation will generally only apply to the formal delivery of an address or a speech to a gathering or group assembling for a formal event or activity. For instance, the Regulation does not apply to small private family-based gatherings that may involve delivering speeches as the potential impact on other users is much lower. Guidance provided by the Department of Energy Environment and Climate Action to the water corporations will reinforce this point.

The Subcommittee's second request was for information as to why the ban on delivering a public address without permission in Regulation 71(4) is needed, given the various other limitations on



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behavior in recreational areas provided in these Regulations (i.e., Regulations 39, 41, 64, 68, 69, 70 & 71(1)-(3)). While a public address may involve some of the activities covered under other regulations, it will not always be the case. The delivery of an address can take place without requiring a sound producing device, audio equipment or additional structures (covered in Regulations 41 and 64). It may not be part of a public meeting or similar event (Regulation 68), but rather a private function, and can also be separate from an activity that is commercial (Regulation 69), solicits money (Regulation 71(1)) or is advertising or promotion (Regulation 71(2) and 71(3)). Regulation 71(4) complements these other Regulations and the requirement for a permit ensures that it can be appropriately scheduled to avoid clashes with other activities that require a permit (for example, an organised event or commercial activity), whilst also appropriately manage risks of environmental harm.

The third request from the Subcommittee was for information as to whether equivalent limitations in the National Parks Regulations 2013 and the Royal Botanical Gardens Regulations 2014 would be a less restrictive means to reasonably achieve the purpose of Regulation 71(4). Both other Regulations referred to by the Subcommittee prohibit the delivery of an address if the address is likely to disturb or annoy other visitors (Regulation 76(3) of the National Parks Regulations 2013) or causes inconvenience or nuisance to a person or disturbs an animal (Regulation 28 of the Royal Botanic Gardens Regulations 2014). The intention of Regulation 71(4) is to take an appropriate and proportionate approach to proactively manage this activity.

The existing permit system was also required under the former Model By-Law: Recreational Areas 2012. Maintaining this in the new Regulations is considered reasonable, in light of the variety of uses of a recreational area, the need to manage risks of environmental harm, and given the approach taken to administering the provisions in such a way that they will not be applied to small, private gatherings.

Water corporations have existing systems in place to issue permits for a range of activities, including the delivery of an address. It is a relatively straightforward administrative process to obtain a permit, that in most cases involves completing an online application form.

For these reasons, it is not considered there are any less restrictive means to reasonably achieve the purpose of Regulation 71(4). As such, there is not considered to be any unreasonable limitation on any right protected by the *Charter of Human Rights and Responsibilities Act 2006*, including the rights to freedom of thought, conscience, religion and belief (Section 14), freedom of expression (Section 15), and peaceful assembly and freedom of association (Section 16).

If you have further questions, please contact Lisa Lowe, Director, Environmental Policy & Community Partnerships, Department of Energy, Environment and Climate Action via email at lisa.lowe@delwp.vic.gov.au.

Thank you, once again, for raising these important matters with me.

Yours sincerely



Hon Harriet Shing MP
Minister for Water

4/12/2023



Scrutiny of Acts and Regulations Committee

26 October 2023

The Hon. Sonya Kilkenny MP
Minister for Planning
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Victoria, 3002

By email: sonya.kilkenny@parliament.vic.gov.au

Att: rowena.scheffer@delwp.vic.gov.au

Dear Minister

SR No. 102 – Building and Plumbing Amendment (National Construction Code and Other Matters) Regulations 2023

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 25 October 2023.

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

Section 8 Exemption Certificate

The Regulations make various amendments to the Building Regulations 2018 and the Plumbing Regulations 2018 to update references to certain industry standards, including Volumes One and Two of the 2022 edition of the National Construction Code. The Regulations have the effect of incorporating these new standards by reference as in force on 1 May 2022.

The Regulations are accompanied by a section 8(1)(a) exemption certificate on the basis that the Regulations would not impose a significant economic or social burden on a sector of the public. The exemption certificate states that the reason for forming this opinion is that:

Part 2 of the proposed Regulations, which amends the Building Regulations 2018, applies amended definitions and reference a new version of national construction standards with which builders in Victoria must comply and will not add any extra social or economic burden to builders or their customers.

Part 3 of the proposed Regulations, which amends the Plumbing Regulations 2018, also applies amended definitions and references a new version of national construction standards with which plumbers in Victoria must comply and will not add any extra social or economic burden to plumbers or their customers.

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Pursuant to section 8(3) of the *Subordinate Legislation Act 1994*, 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.

The Subcommittee seeks further detail as to why the Regulations would not impose a significant economic or social burden on a sector of the public, including an explanation of the changes to the incorporated industry standards and the impact of these changes.

The Subcommittee would appreciate your response by no later than 1 December 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



Gary Maas MP
Chair,
Scrutiny of Acts and Regulations Committee



The Hon Sonya Kilkeny MP

Minister for Planning
Minister for the Suburbs

1 Spring Street
Melbourne, Victoria 3000 Australia

Ref: CMIN-1-23-5859

Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
SARC@parliament.vic.gov.au

Dear Mr Maas

Thank you for your letter of 26 October 2023 requesting further detail as to why the Building and Plumbing Amendment (National Construction Code and Other Matters) Regulations 2023 (the **Amending Regulations**) do not impose a significant economic or social burden on a sector of the public and are therefore exempt under section 8(1)(a) of the *Subordinate Legislation Act 1994* (SL Act). I apologise to the Committee for the delay in responding.

The Australian Building Codes Board (ABCB), on behalf of the Australian Government and each State and Territory government, produces and maintains the National Construction Code, including the most recent edition of 2022 (NCC 2022). The Australian Building Codes Board Intergovernmental Agreement of 2020 (Agreement) provides for the adoption of the NCC by reference on a national basis through relevant legislation (amongst other matters). Clause 6.7 of the Agreement requires the ABCB to conduct regulatory impact assessments when it is addressing regulatory reform, so the assessment of any increase in regulatory burden initiated by changes to the NCC is the responsibility of the ABCB. I attach a copy of this Agreement for your information.

Automatic adoption of new editions of NCC

Volumes One and Two of the NCC are already incorporated by reference into the Building Regulations 2018 by regulation 10 of those Regulations. Volume Three of the NCC is already incorporated by reference into the Plumbing Regulations 2018 by regulation 7 of those Regulations. Whenever a new edition of the NCC Series is published, the new edition automatically applies in Victoria without any need to amend the Building Regulations or the Plumbing Regulations.

Victoria prescribes in the Building Regulations and the Plumbing Regulations certain modifications or variations to the NCC, to apply in Victoria. These types of variations (for example, the Amending Regulations) are subject to the requirements of the *Subordinate Legislation Act 1994*.



The regulations of the Amending Regulations are exempt under section 8(1)(a) of the SL Act for the following reasons—

- regulation 4 defers by seven months any regulatory impact imposed by certain new requirements of NCC 2022;
- regulations 3, 5 to 10, 12, 15(3) to (5), 16 to 19, 20(2), 22 and 34 only renumber references to clauses of the NCC 2022 to align with a new numbering scheme used in NCC 2022;
- regulations 10 and 11 correct typographical errors in the Victorian Variations to NCC 2022;
- regulations 13, 15(1) and (2), 20(1) and 21 correct drafting errors in the Building Regulations to clarify that certain references to “Schedule” refers to a Schedule to a specific Volume of NCC (not a Schedule to the Building Regulations);
- regulation 14 revokes regulation 158 of the Building Regulations as a consequence of the subject matter of that regulation now being entirely provided for in NCC 2022;
- regulation 23 amends a Form to require the provision of a small amount of information and only in limited circumstances;
- regulations 24, 25, 30 and 31 make consequential amendments because certain Australian Standards that have been incorporated by the Plumbing Regulations no longer need to do so because NCC 2022 now incorporates the Standards;
- regulations 26 to 29 substitutes regulations 18, 22, 24 and 26 of the Plumbing Regulations with similarly worded provisions only to improve their readability, without altering their regulatory effect;
- regulations 32 and 33 replace the notes at the foot of clauses 8 and 11 in Schedule 2 to the Plumbing Regulations, which does not alter the regulatory impact of clauses 8 and 11.

Thank you for raising this matter. I trust this information addresses your queries about the regulatory effect of the Amending Regulations.

Yours sincerely

The Hon Sonya Kilkenny MP
Minister for Planning
Minister for the Suburbs

Date: 21/12/2023

Enc: Attachment: ABCB Intergovernmental Agreement 2020]

The ABCB Intergovernmental Agreement 2020 was provided to the Committee.





Scrutiny of Acts and Regulations Committee

16 February 2024

The Hon. Lizzie Blandthorn MP
Minister for Children
Level 20
50 Lonsdale Street
Melbourne
Victoria, 3000

By email: Lizzie.Blandthorn@parliament.vic.gov.au

Att: sven.edquist@dffh.vic.gov.au

Dear Minister

SR No. 113 – Social Services Regulations 2023

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 15 February 2024. The Subcommittee approved the statutory rule. However, the Subcommittee seeks further information in relation to a scrutiny issue.

The Subcommittee notes that regulation 17(1)(a) provides that the Regulator may have regard to the 'relevant' criminal history of an applicant for registration. Also, the Regulations do not appear to specify any 'prescribed information' which must accompany an application for the purposes of section 21(2)(b)(ii) of the *Social Services Regulation Act 2021* (the SSR Act). The Subcommittee requests further information as to which parts of the definition of criminal history in regulation 4 are 'relevant' criminal history under regulation 17(1)(a) and what additional information about an applicant's criminal history will be reasonably required to determine an application under section 21(2)(b)(iii) of the SSR Act.

The Subcommittee also notes that regulations 23(1)(a) and 24(3)(a) require that providers of some services ensure that they consider the 'criminal history' of foster carers, usual householders and employees who provide services to children. Noting the breadth of the definition of 'criminal history' in regulation 4, the Subcommittee requests further information as to the differences between these provisions and regulation 17(1)(a) (which is limited to 'relevant' criminal history) and also how it is anticipated that providers will obtain that information.

In addition, the Subcommittee notes that regulation 33 provides that the information about criminal convictions of providers, directors and key personnel that registered providers must notify to the Regulator is prescribed to be any conviction for an indictable offence, or any other conviction for an offence involving fraud or dishonesty punishable by 3 months or more in

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prison. The Subcommittee would appreciate further information as to whether the information that must be notified includes all past (i.e., pre-employment) convictions of directors and key personnel, and also as to the differences between the convictions prescribed by regulation 33 and the criminal history specified in regulations 17(1)(a), 23(1)(a) and 24(3)(a).

The Subcommittee finally notes, while section 22 of the *Spent Convictions Act 2021* (table, row 9) permits a law enforcement agency to disclose a spent conviction as part of the disclosure of a criminal record of a person to community services that seek that information in order to perform a function of assessing a person to provide care to a child under the *Children, Youth and Families Act 2005* (e.g., sections 75 and 76), there does not appear to be any express provision under the *Spent Convictions Act 2021* or Regulations for disclosure of a spent conviction for the purpose of functions under the SSR Act. The Subcommittee would appreciate further information as to whether the information specified in regulations 17(1)(a), 23(1)(a), 24(3)(a) and 33 includes (or will include) spent convictions and, if so, whether those regulations are compatible with the equality rights in Charter section 8 with respect to spent convictions (see the definition of 'discrimination' in Charter section 3 and section 6(pb) of the *Equal Opportunity Act 2010*.)

The Subcommittee would appreciate your response by 22 March 2024.

If you have any questions in relation to this matter, please contact Katie Helme at SARC@parliament.vic.gov.au.

Yours sincerely



Gary Maas MP
Chair,
Scrutiny of Acts and Regulations Committee



Hon Lizzie Blandthorn MP

Deputy Leader of the Government in the Legislative Council
Minister for Children
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BAC-CO-44232

Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Mr Maas

I refer to your letter of 16 February 2024 seeking further information about matters raised by the Scrutiny of Acts and Regulations Committee (Committee) in relation to the Social Services Regulations 2023 (the Regulations).

Please find below further information as requested by the Committee in relation to:

- relevant criminal history of a provider or key personnel when applying for registration under the scheme
- criminal history in relation to the registration requirement for certain out of home care services, secure welfare services and foster care services
- the interaction of the registration requirements relating to criminal history and prescribed criminal convictions

Relevant criminal history

The Committee seeks further information about what parts of the definition of criminal history are the 'relevant' criminal history under the registration requirements and what additional information about an applicant's criminal history will be reasonably required to determine an application for registration under the *Social Services Regulation Act 2021* (the Act).

Regulations 15 and 16 prescribe that one of the requirements that must be met to be registered to provide a social service is that the provider and each of the key personnel of the service are suitable persons. The key personnel are prescribed in Regulation 12 and are intended to include the key decision makers for the service provider.

Regulation 17 sets out matters that the Social Services Regulator (Regulator) may consider in determining if a provider and each of the key personnel meets the suitable person requirement. One of those matters is the relevant criminal history of the person. The considerations in regulation 17 provide guidance around what the Regulator is expected to consider in determining if the requirement is met and provide an indication of what information the Regulator may request to be provided with an application for registration. For example, in



considering a person's suitability to be a provider of a social service, the Regulator may request a statement declaring the criminal history of the provider and each of the key personnel as part of the application for registration.

The definition of criminal history in the regulations covers three elements – convictions, pleas of guilty and pending charges against a person. All these elements are expected to be considered relevant by the Regulator in some circumstances when considering the provider's application for registration. It is however unlikely that every conviction, plea of guilty or pending charge will be relevant to the Regulator's consideration of suitability.

It is expected that the Regulator would provide guidance to providers in relation to what it would consider may be 'relevant' criminal history, and how different criminal histories may impact the Regulator's consideration of the provider and their key personnel's suitability. For example, it is unlikely that a minor traffic offence would be relevant to a person's suitability. If a provider or key personnel disclose a criminal history when applying to register a service, this history may trigger further enquiries by the Regulator. Where this occurs, under section 21(3) of the Act, the Regulator may request further information from the applicant. Some aspects of a criminal history may be considered by the Regulator to be so serious that they indicate that the provider or their key personnel are not suitable to be a provider of a social service. This will be a matter for the Regulator, but potentially this could include convictions in relation to fraud or convictions relating to sexual misconduct against a child.

Criminal history – out of home care, secure welfare and foster care services

The Committee has requested further information as to the difference between criminal history in regulations 23 and 24 and relevant criminal history in regulation 17 and how it is anticipated that services will obtain information about a prospective carer's criminal history.

Regulations 23 and 24 include requirements for certain providers of out of home care services, secure welfare services and foster care services, to have systems and processes in place to ensure the provider has regard to a range of matters when approving a person as a foster carer or employing or engaging a person as a carer. One of the matters is the criminal history of the person, as well as of the usual adult household members of a prospective foster carer.

Regulations 23 and 24 replicate existing requirements in the *Children, Youth and Families, Act 2005* (section 75 and 76) and related regulations in the *Children Youth and Families Regulations 2017* (regulation 9 and 10). Section 75 and 76 of the *Children, Youth and Families Act* will be repealed on 1 July 2024, when the social services regulatory scheme commences. Regulations 23 and 24 preserve existing safeguards for children and young people in foster care and residential out of home care services and are critical to ensuring these children continue to be protected from risk of harm, abuse and neglect.

Regulations 23 and 24 relate to a provider's obligation to ensure a person's suitability to care for children in secure welfare, foster care and residential care services. They serve a different purpose from Regulation 17 which relates to the regulator's obligation to ensure a person's suitability to run a social service.

Guidance to support the existing legislative requirements for services to undertake criminal history checks for prospective carers is set out in the Department of Families, Fairness and Housing's (the department) *Child Protection Manual*. The *Child Protection Manual* provides

guidance around how to assess a criminal history check. For example, it specifies that a person whose criminal history includes a Category A offence¹ must not be engaged as a carer.

It is the responsibility of the service to undertake the criminal history check for prospective carers. As set out in the Child Protection Manual, in conducting a check, services are to explain the requirement for the check and seek the prospective carer's consent to request the check from Victoria Police or another relevant agency. If a prospective carer declines to consent to a criminal history check, the service is to advise the person that their application for employment or accreditation as a carer will not proceed.

Interaction of the registration requirements relating to criminal history and prescribed criminal convictions

The Committee requested further information as to whether the information that must be notified in Regulation 33 relating to criminal convictions includes all past convictions and asked for clarification about the differences between the convictions prescribed by regulation 33 and the criminal history specified in regulations 17, 23 and 24.

The registration requirements set out that the Regulator can consider the relevant criminal history of the provider and each key personnel in determining if they meet the suitable person requirement in regulations 15 and 16. Once a provider is registered, section 47(f) of the Act requires the provider to notify the Regulator of any criminal conviction prescribed in regulation 33, of the provider and the key personnel of the service. As the Regulator will consider the criminal history of the provider and key personnel at the point of registration, the requirement to notify the Regulator of the criminal convictions prescribed in regulation 33 will be limited to any convictions since registration.

Section 47(b) of the Act requires the provider to notify the Regulator of any staffing changes that materially impact service delivery. This will include any changes to key personnel. Where there is a change to key personnel, under section 47(f) of the Act, the provider will be required to notify the Regulator of any criminal convictions prescribed in Regulation 33 of the new key personnel, including all past prescribed criminal convictions. The Act and Regulations combined ensure the Regulator is informed of serious criminal matters of key persons responsible for operating the service to ensure the Regulator can identify and manage risks relating to safe service provision.

As noted above, the criminal history in regulations 23 and 24 relate to prospective carers in out of home care, foster care and secure welfare. They are unrelated to the notification of criminal convictions of the provider and key personnel set out in regulation 33.

Spent convictions

¹ Category A offences include serious offences, including murder, rape, child pornography as an adult or sexual offences committed as an adult against a child. See [Categorisation of offences - advice | Child Protection Manual | CP Manual Victoria](#)

The Committee has requested further information as to whether the information specified in regulations 17, 23, 24 and 33 includes spent convictions and whether those regulations are compatible with the equality rights in the Charter.

The Regulator is not listed in the *Spent Convictions Act 2021* as a body that spent convictions can be disclosed to and it is unlikely that the Regulator would be considered a law enforcement agency under that Act. In addition, it is unlikely the Regulator would need to consider spent convictions for the purpose of assessing a person's suitability for registration under regulation 15 and 16 or receiving notifications about criminal convictions prescribed in regulation 33.

Regulations 23 and 24 relate to certain out of home care services, secure welfare services and foster care services considering a criminal history check of a person before the service approves or engages them as a carer. Existing provisions in the Spent Convictions Act enable spent convictions to be disclosed to 'community services' under the Children, Youth and Families Act, for the purpose of assessing suitability to be a carer for children. Community services under the Children, Youth and Families Act include the services covered by regulations 23 and 24.

Thank you for the Committee's enquiries about the Social Services Regulations 2023. Should you wish to discuss the above response further, please contact Allison Will, Executive Director, Regulation and Reform Branch at the Department of Families, Fairness and Housing on 0477 641 325 or Allison.Will@dffh.vic.gov.au.

I trust this information is of assistance.

Yours sincerely



Hon Lizzie Blandthorn MP
Deputy Leader of the Government in the Legislative Council
Minister for Children
Minister for Disability

27/3/24



Scrutiny of Acts and Regulations Committee

16 February 2024

The Hon. Gabrielle Williams MP
Minister for Consumer Affairs
Level 3
1 Treasury Place
East Melbourne VIC 3002

By email: gabrielle.williams@parliament.vic.gov.au
Att: hannah.matthews@justice.vic.gov.au; john.unkovich@justice.vic.gov.au
Jaklin.Trajkovski@justice.vic.gov.au; sanah.banihali@justice.vic.gov.au

Dear Minister

SR No. 116 – Associations Incorporation Reform Regulations 2023

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 15 February 2024. The Subcommittee has not yet approved the Regulations.

Publication of Section 11 Notice

Section 11 of the *Subordinate Legislation Act 1994* (SLA) provides that, if a regulatory impact statement (RIS) has been prepared, the responsible Minister must ensure that a notice of preparation is published in the Government Gazette and a daily newspaper circulating generally throughout Victoria.

While the Department published an invitation for public comment on Consumer Affairs Victoria's social media platforms and invited incorporated associations to comment via email, this does not meet the requirements of section 11 of the SLA. Accordingly, the Subcommittee is concerned that the Department's failure to comply with section 11 will affect the operation or effect of the Regulations.

Report by Committee

Pursuant to paragraph 21(1)(j) of the SLA, the Committee may report to each House of the Parliament if it considers that any statutory rule laid before 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.

Parliament of Victoria
Scrutiny of Acts and
Regulations Committee

+61 3 8682 2836
parliament.vic.gov.au/sarc
sarc@parliament.vic.gov.au

Parliament House
Spring Street, East Melbourne
Victoria 3002 Australia

A report of the Committee under section 21 may contain any recommendations that the Committee considers appropriate, including a recommendation that a statutory rule be disallowed in whole or in part.

The Subcommittee requests further information as to what steps may be taken to correct the failure to comply with section 11 of the SLA. The Subcommittee requests your response by no later than 10 March 2024, so that it can consider the Regulations again at its next meeting.

If you have any questions in relation to this matter, please contact Katie Helme at SARC@parliament.vic.gov.au.

Yours sincerely



Gary Maas MP
Chair,
Scrutiny of Acts and Regulations Committee



Gabrielle Williams MP

Minister for Government Services
Minister for Consumer Affairs
Minister for Public and Active Transport

Level 3, 1 Treasury Place
Melbourne, Victoria 3002
Telephone +613 9096 8587

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

240266225

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

Dear Mr Maas,

SR NO. 116 - ASSOCIATIONS INCORPORATION REFORM REGULATIONS 2023

Thank you for your letter dated 16 February 2024 relating to the Associations Incorporation Reform Regulations 2023 (the Regulations) made under the *Associations Incorporation Reform Act 2012* (the Act). I set out below my response to the concerns raised in that letter.

I acknowledge and apologise for the contravention of section 11 of the *Subordinate Legislation Act 1994* (SLA) prior to the making of the Regulations. I note that upon identification of the contravention, the Department of Government Services (the Department) proactively advised the Scrutiny of Acts and Regulations Committee (the Committee) on 27 November 2023.

Overview of the Regulations

As you are aware, the Regulations were made to replace the Associations Incorporation Reform Regulations 2012 which expired on 19 November 2023. The Regulations support the regulation of approximately 40,000 incorporated associations under the Act by prescribing a range of requirements for the establishment, operation and cancellation of an incorporated association, including establishing tiered annual reporting requirements. The Regulations also provide for Model Rules for an incorporated association which have been adopted by a majority of Victorian associations.

Compliance with section 11 of the SLA

I note that section 11 of the SLA provides that if a regulatory impact statement (RIS) has been prepared, a notice must also be prepared in accordance with section 11(2) of the SLA and published in the Government Gazette, a daily newspaper and if appropriate, in such trade, professional or public interest publications as the responsible Minister may determine.

I can confirm that a notice for the preparation of the RIS for the Regulations was not published in accordance with section 11 of the SLA.

Your details will be dealt with in accordance with the *Public Records Act 1973* and the *Privacy and Data Protection Act 2014*. Should you have any queries or wish to gain access to your personal information held by this department please contact our Privacy Officer at the above address.



The Department has reviewed its internal processes and procedures to establish additional controls to ensure this omission does not reoccur.

Extensive Consultation ahead of making the Regulations

Notwithstanding non-compliance with section 11 of the SLA, extensive consultation and stakeholder engagement took place in relation to the RIS and an exposure draft of the Regulations as detailed below.

Early Targeted Consultation

In early March 2023, the Department undertook preliminary targeted consultation as part of a review of the incorporated associations regulatory scheme. This consultation took the form of an Issues Paper setting out key issues, together with a series of questions, and was distributed to twenty-two key stakeholders for feedback. The list of stakeholders invited to participate in the targeted consultation included key peak bodies and individual incorporated associations across Victoria in a broad range of sectors, including sporting clubs, professional associations and faith or cultural associations. Targeted stakeholders also included professional legal entities such as the Law Institute of Victoria, Justice Connect and the Victorian Bar.

The Department received a response on the Issues Paper from six stakeholders including the RSL Victoria, Victorian Bar, Neighbourhood Houses Vic, Vicsport, Community Clubs Victoria and the Office of the Registrar of Indigenous Corporations. The Department received extensive feedback from these stakeholders which informed the development of an exposure draft of the Regulations.

Public Consultation on the RIS and exposure draft Regulations

In early August 2023, the Department invited the public to comment on the RIS and an exposure draft of the Regulations via the Engage Victoria website. Stakeholders were invited to respond to a five-question survey available on the website or provide a submission in response to the RIS and exposure draft of the Regulations, or both. Consultation took place between 10 August to 15 September 2023. The five-question survey was prepared to encourage feedback from individuals and smaller incorporated associations which may not have resources to develop a written submission.

An invitation to provide feedback on the RIS and exposure draft Regulations was also published on Consumer Affairs Victoria's social media platforms (Facebook and X - previously known as Twitter). An invitation to provide a response was also sent by direct email to all 40,000+ incorporated associations registered in Victoria.

In addition, an invitation was sent via email to key state and Commonwealth departments and agencies to inform them of the consultation and to encourage them to invite others in their networks to comment on the RIS and exposure draft Regulations. Agencies contacted include the Department of Education, Department of Families, Fairness and Housing, Department of Jobs, Skills, Industry and Regions, Department of Treasury and Finance, Department of Justice and Community Safety, Department of Premier and Cabinet, the Office of the Registrar of Indigenous Corporations, Australian Charities and Not for Profits Commission, Dispute Settlement Centre of Victoria and the Australian Taxation Office.



An invitation to comment on the RIS and exposure draft of the Regulations was also sent to key stakeholders, including entities which are not incorporated associations and who may otherwise have been alerted through a notice published in accordance with the requirements of section 11. These stakeholders included the Ethnic Communities' Council of Victoria, the Victorian Bar, Justice Connect, Victorian Council of Social Service, Community Clubs Victoria, Victorian Aboriginal Community Controlled Health Organisation, the Law Institute of Victoria and the Council of Australian Postgraduate Associations.

These engagement measures were undertaken to ensure that all incorporated associations and interested stakeholders would have the opportunity to comment upon or make a submission on the RIS and the exposure draft Regulations.

The Engage Victoria platform received approximately 12,097 views from 6056 stakeholders during the public consultation period. The Department subsequently received a total of 168 responses via the Engage Victoria platform and by email. Of the 168 responses, 137 provided a response to the survey only, 11 provided a written submission only, and a further 20 respondents provided both a written submission and response to the survey.

Stakeholders who provided a response to the RIS and the exposure draft of the Regulations were from a wide cross-section of the community, ensuring that a broad range of views were considered in finalising the Regulations. Of those that provided feedback, 47 stakeholders were individuals and 121 were organisations, including incorporated associations across a range of sectors including sporting, art, social inclusion, charities, and historical societies. A notice of decision as required by section 12 of the SLA was published on 9 November 2023 in the Government Gazette and on the public notice website after the Regulations were made.

All stakeholders, including those that provided a response, were also notified via social media and email on 21 November 2023, that the Regulations had been made and that feedback provided during the consultation period had been considered in finalising the Regulations. A detailed summary of the submissions and comments received was published online via Engage Victoria. The summary included a response by the Department to each issue raised by stakeholders.

Review of the statutory rule by the Committee

I note that where a statutory rule has been made in contravention of a provision of the SLA and the contravention is of a substantial or material nature, the Committee may recommend that Parliament disallow the Regulations in whole or in part. I understand that the intention of section 11 of the SLA is to ensure that the public and all relevant stakeholders are provided with notice of consultation on a proposed statutory rule and accompanying RIS and an opportunity to provide a comment or make a submission before the statutory rule is made.

Having regard to the extensive consultation and engagement with the public and sector stakeholders undertaken by the Department prior to the making of Regulations, I respectfully submit that the failure to comply with the notice requirements in section 11 of the SLA was, in the circumstances, not a contravention that was of a substantial or material nature and should not affect the operation or effect of the Regulations.

Disallowance of the Regulations would require that new (interim) regulations be urgently made to ensure continuity of the regulatory scheme for incorporated associations and may create a significant amount of confusion within the incorporated associations sector.



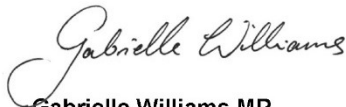
The Regulations introduced reforms to reduce the regulatory burden on incorporated associations through the introduction of new reporting requirements for incorporated associations who are also registered as charities with the Australian Charities and Not for Profits Commission to enable them to prepare annual financial reports that will satisfy requirements under both regulatory schemes, as well as reduced reporting requirements for small incorporated associations.

Incorporated associations who have adopted the Model Rules for Incorporated Associations set out in the Regulations would also be denied the benefit of procedural fairness reforms made to the internal dispute resolution processes in the updated Model Rules. These reforms were widely supported in stakeholder responses to the RIS and exposure draft regulations.

The Regulations also raised the asset ceiling for voluntary cancellation of an incorporated association making it easier for incorporated associations with assets up to the value of \$50,000 to cancel or wind up without the expense of appointing a liquidator.

I once again apologise for the failure of the Department to comply with section 11 of the SLA and trust that the actions I have outlined appropriately address the matter. If you require more information about this issue, please contact Jaklin Trajkovski, Acting Executive Director, Regulation Policy and Dispute Services, Department of Government Services by email at Jaklin.Trajkovski@justice.vic.gov.au.

Sincerely,



Gabrielle Williams MP
Minister for Consumer Affairs
Minister for Government Services
Minister for Public and Active Transport

14 / 03 / 2024



Scrutiny of Acts and Regulations Committee

14 March 2024

The Hon. Melissa Horne MP
Minister for Casino, Gaming and Liquor Regulation
Level 16
121 Exhibition Street
Melbourne VIC 3000

By email: Melissa.Horne@parliament.vic.gov.au

Dear Minister

SR No. 119 – Casino Control Regulations 2023

The Regulation Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee (the Committee) considered the above statutory rule at a meeting on 13 March 2024. The Subcommittee has not yet approved the Regulations.

Publication of Section 11 Notice

Section 11 of the *Subordinate Legislation Act 1994* (SLA) provides that, if a regulatory impact statement (RIS) has been prepared, the responsible Minister must ensure that a notice of preparation is published in the Government Gazette and a daily newspaper circulating generally throughout Victoria.

While the Department directly contacted impacted parties and published the RIS on the Engage Victoria website, this does not meet the requirements of section 11 of the SLA. Accordingly, the Subcommittee is concerned that the Department's failure to comply with section 11 will affect the operation or effect of the Regulations.

Report by Committee

Pursuant to paragraph 21(1)(j) of the SLA, the Committee may report to each House of the Parliament if it considers that any statutory rule laid before 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.

A report of the Committee under section 21 may contain any recommendations that the Committee considers appropriate, including a recommendation that a statutory rule be disallowed in whole or in part.

Parliament of Victoria

Scrutiny of Acts and
Regulations Committee

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Parliament House
Spring Street, East Melbourne
Victoria 3002 Australia

The Subcommittee requests further information as to what steps may be taken to correct the failure to comply with section 11 of the SLA. The Subcommittee requests your response by no later than 16 April 2024, so that it can consider the Regulations again at its next meeting.

If you have any questions in relation to this matter, please contact Katie Helme at SARC@parliament.vic.gov.au.

Yours sincerely



Gary Maas MP
Chair,
Scrutiny of Acts and Regulations Committee

CC: minister.horne@minstaff.vic.gov.au



The Hon Melissa Horne MP

Minister for Casino, Gaming and Liquor Regulation
Minister for Local Government
Minister for Ports and Freight
Minister for Roads and Road Safety

121 Exhibition Street
Melbourne, Victoria 3000 Australia

Our ref: 24032791

Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
Spring Street
EAST MELBOURNE VIC 3002

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

Dear Mr Maas

Response regarding SR No. 119 – Casino Control Regulations 2023

I write in response to your correspondence of 14 March 2024, which requested further information regarding what steps might be taken to correct a failure to comply with section 11 of the *Subordinate Legislation Act 1994* (SLA) in relation to the Casino Control Regulations 2023 (Regulations).

The Department of Justice and Community Safety (the department) previously notified the Scrutiny of Acts and Regulations Committee (SARC) of the administrative error that led to the failure to publish a Regulatory Impact Statement (RIS) notice in accordance with section 11 of the SLA. In that letter, the department apologised unreservedly for the error and indicated it had undertaken considerable consultation, including contacting all impacted parties regarding the relevant RIS and publishing that RIS on the Engage Victoria website.

I can confirm that the relevant business unit has taken steps to ensure this does not happen again, including circulating a list of steps required under the SLA that policy officers and executives can reference during the regulation-making process.

Steps taken to comply with the SLA

I understand SARC is concerned that the department's failure to comply with section 11 may affect the operation or effect of the Regulations.

The Regulations have limited application, applying only to the Melbourne Casino operator. Even so, the department made considerable efforts when publishing the RIS to ensure a



wide range of stakeholders were aware of the process and had adequate time to make a submission.

The Director, Policy, Gaming and Liquor, emailed the following stakeholders on 1 September 2023 advising that the RIS was available for feedback until 29 September 2023:

- Alliance for Gambling Reform
- Australian Human Rights Commission
- Australian Transaction Reports and Analysis Centre
- Office of the Victorian Information Commissioner
- United Workers Union
- Uniting Church in Australia (specifically gambling researcher Mark Zirnsak).
- Victorian Gambling and Casino Control Commission
- Victorian Responsible Gambling Foundation
- Victoria Police.

The (then) Executive Director, Gaming and Liquor, notified the Chief Executive Officer of the casino operator, Crown Melbourne, on the same day.

Notice of publication of the RIS was published on the Engage Victoria website and publicly accessible. As outlined in the Statement of Reasons, five submissions were received on the RIS, including one submission that was accepted by the department after the nominated deadline. Twelve changes were made to the Regulations following the RIS consultation.

I consider these were reasonable steps for the department to take. The department engaged a range of stakeholders on the matter and made the RIS publicly available. It is my view that all relevant stakeholders were aware of the RIS, and all members of the public were given an opportunity to respond to its contents. This aligns with the intention of section 11 of the SLA.

On this basis, it is my view that the contravention is not of a substantial or material nature, and it will not affect the operation or effect of the Regulations.

Next steps

I ask that SARC consider the reasons set out in this letter supporting my view that the contravention in this case is not of a substantial or material nature when determining whether to report to the Houses of Parliament.

I would be grateful if you would notify Simone Cusack, Executive Director, Gaming and Liquor, of your determination at simone.cusack@justice.vic.gov.au.

Thank you for your consideration of this matter.

Yours sincerely



Hon Melissa Horne MP
Minister for Casino, Gaming and Liquor Regulation

Date: 15/04/2024

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 48 of the Guidelines. As stated in paragraph 201, 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;
- 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 29, paragraph 126 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 2019 (discussed above) which set many different 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:

- (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 or 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 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 prefers to receive 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 were updated in November 2020. The current versions 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.

Please forward all relevant documents to:
Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
Melbourne VIC 3000

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



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*)

Note: Section 13 certificates are not required for court rules or for statutory rules which are not made by Governor-in-Council.

Please forward all relevant documents to:
Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
Melbourne VIC 3000

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



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.

Please forward all relevant documents to:
Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
Melbourne VIC 3000

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



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*)

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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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
- Copy of RIS Government Gazette advertisement – Notice of decision

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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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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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