

# **No. 10 of 2013**

**Tuesday, 20 August 2013**

## **On the**

Assisted Reproductive Treatment  
Amendment (Access by Donor-  
Conceived People to Information About  
Donors) Bill 2013

Children, Youth and Families  
Amendment Bill 2013

Corrections Amendment  
(Breach of Parole) Bill 2013

Open Courts Bill 2013

Succession to the Crown  
(Request) Bill 2013

University of Ballarat Amendment  
(Federation University Australia)  
Bill 2013

# The Committee



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Member for Eastern Metropolitan



Deputy Chairperson  
Hon. Christine Campbell MLA  
Member for Pascoe Vale



Ms Ann Barker MLA  
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## Terms of Reference - Scrutiny of Bills

The functions of the Scrutiny of Acts and Regulations Committee are –

- (a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly –
  - (i) trespasses unduly upon rights or freedoms;
  - (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;
  - (iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions;
  - (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000*;
  - (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2001*;
  - (vi) inappropriately delegates legislative power;
  - (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
  - (viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;
- (b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament –
  - (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the *Constitution Act 1975*, or raises an issue as to the jurisdiction of the Supreme Court;
  - (ii) if a Bill repeals, alters or varies section 85 of the *Constitution Act 1975*, whether this is in all the circumstances appropriate and desirable;
  - (iii) if a Bill does not repeal, alter or vary section 85 of the *Constitution Act 1975*, but an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;

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# Useful information

## Role of the Committee

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

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

## Interpretive use of Parliamentary Committee reports

Section 35 (b)(iv) of the *Interpretation of Legislation Act 1984* provides –

In the interpretation of a provision of an Act or subordinate instrument consideration may be given to any matter or document that is relevant including, but not limited to, reports of Parliamentary Committees.

## When may human rights be limited

Section 7 of the *Charter* provides –

Human rights – what they are and when they may be limited –

- (2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—
  - (a) the nature of the right; and
  - (b) the importance of the purpose of the limitation; and
  - (c) the nature and extent of the limitation; and
  - (d) the relationship between the limitation and its purpose; and
  - (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

## Glossary and Symbols

'Assembly' refers to the Legislative Assembly of the Victorian Parliament

'Charter' refers to the Victorian *Charter of Human Rights and Responsibilities Act 2006*

'Council' refers to the Legislative Council of the Victorian Parliament

'DPP' refers to the Director of Public Prosecutions for the State of Victoria

'human rights' refers to the rights set out in Part 2 of the Charter

'IBAC' refers to the Independent Broad-based Anti-corruption Commission

'penalty units' refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (currently one penalty unit equals \$140.84)

'Statement of Compatibility' refers to a statement made by a member introducing a Bill in either the Council or the Assembly as to whether the provisions in a Bill are compatible with Charter rights

'VCAT' refers to the Victorian Civil and Administrative Tribunal

[ ] denotes clause numbers in a Bill

# Alert Digest No. 10 of 2013

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## Assisted Reproductive Treatment Amendment (Access by Donor-Conceived People to Information About Donors) Bill 2013

<b>Introduced</b>	12 June 2013
<b>Second Reading Speech</b>	26 June 2013
<b>House</b>	Legislative Council
<b>Member introducing Bill</b>	Hon Gavin Jennings MLC
<b>Private Members Bill</b>	

### Purpose

The Bill amends the *Assisted Reproductive Treatment Act 2008* (the 'ART Act') to:

- ensure that all Victorians conceived through the use of donor gametes have access to identifying information, regardless of when those gametes were donated by removing those sections of the Act that limit the access to identifying information by reference to the period in which the gametes were first donated. The Bill also retains the additional procedures that must be followed where the applicant is a child.
- provide for contact vetoes to be able to be lodged by a donor or donor-conceived person for persons conceived from gametes donated prior to 1998. The Bill creates an exception to apply in circumstances where there is a continuation of contact between the relevant donor and donor-conceived person.

**Note:** The Bill seeks to give effect to the recommendations of the Law Reform Committee of the Parliament.

Extract from the Second Reading Speech:

Access to information by donor-conceived people is currently regulated under Part 6 of the ART Act. In accordance with section 53, a central register of donor information was established by the registrar of births, deaths and marriages. Under section 59, adults (over 18 years) conceived from gametes donated after 1 January 1998 can obtain identifying information about their donor via this central register as a right.

Adults conceived from gametes donated between 1988 and 1997 can apply to the registrar for identifying information about their donor only if the donor has consented to the release of that information. Adults conceived from gametes donated prior to 1988 are excluded from the operation of section 59 altogether. They must rely on the voluntary register or information provided by the relevant fertility clinic. The clinic has absolute discretion as to whether they respond and make relevant inquiries on behalf of the donor-conceived person.

### Charter report

***Non-consensual medical treatment – Freedom of belief and conscience – Provision of records concerning donor treatment procedures to the Registrar – Disclosure of identifying information about donors without the donor's consent***

**Summary:** The effect of clauses 5, 6 and 7 is to require doctors, registered ART providers and the Registrar to facilitate the disclosure of identifying information about donors of gametes to people

born as a result of a donor treatment procedure without the donor's agreement at the time of either the donation or the disclosure. The Committee refers to Parliament for its consideration the questions of the compatibility of those clauses with doctors' and ART providers' Charter right to freedom of belief and conscience and the donor's Charter right not to be subjected to medical treatment without his or her full, free and informed consent.

The Committee notes that clauses 5 and 6, inserting a new sub-section (3) into existing ss. 51 and 52, require all registered ART providers and doctors who provided a donor treatment procedure or artificial insemination prior to 1 July 1988 to give copies of all records of each procedure to the Registrar.<sup>1</sup> Clause 7, omitting para (b) from existing s. 59, removes existing whole or partial exceptions for donations prior to 31 December 1997 from the requirement for the Registrar to disclose identifying information about donors upon application by persons born as a result of a donor treatment procedure.

The Committee observes that, prior to 31 December 1997, it was lawful and generally commonplace for medical practitioners to receive and use gametes from donors for assisted reproduction procedures on the basis that the identity of anonymous donors would not be disclosed without the donor's consent. **The effect of clauses 5, 6 and 7 is to require doctors, registered ART providers and the Registrar to facilitate the disclosure of identifying information about such donors to people born as a result of a donor treatment procedure without the donor's agreement at the time of either the donation or the disclosure.**

The Statement of Compatibility remarks:

The bill positively engages and promotes the right to recognition and equality before the law, as it will enable disclosure of information to persons born as a result of donor treatment procedures regardless of when those procedures took place. Currently, donor-conceived people have different rights under Victorian law to access information about their donors depending upon the date of donation of the gametes from which they were conceived. The bill corrects this anomaly and affirms recognition and equality under the law for the welfare and interests of all persons born as a result of assisted reproductive treatment procedures. The bill is consistent with the United Nations Convention on the Rights of the Child to which Australia became a signatory in 1990. In particular, articles 7 and 8 which refer to a child's rights to know their parents and a government's responsibility to respect a child's rights to family ties.

...

The bill engages the right to privacy as it regards the provision of identifying information of pre-1988 donors and donor-conceived people who may or may not have wished to remain anonymous. This bill strikes a balance between those donors' rights to privacy with the donor-conceived people's rights to recognition and equality before the law. This balance is achieved through the contact veto mechanism. The lodgement of a contact veto prohibits contact between the donor and donor-conceived person where an application for identifying information has been made. To underscore the importance of this right to privacy, the bill creates an offence for contact made in contravention of a contact veto.

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<sup>1</sup> See also new section 59C, making it an offence to 'destroy, falsify or tamper with and records that identify parties to donor conception regardless of when the gametes were donated'.

The Committee notes that two previous Charter reports have addressed issues that are also relevant to this Bill:

- In the previous Parliament the Committee reported on the Assisted Reproductive Technology Bill 2008, which contained the provisions that are removed by clause 7 in the current Bill, restricting the release of identifying information with respect to donors of gametes donated prior to 31 December 1997. After calling for public submissions on the 2008 Bill, the Committee remarked that significant limitations on the operation of the Charter's rights regarding equality and children meant that the original provisions did not engage any Charter rights.<sup>2</sup>
- The Committee reported on the Adoption Amendment Bill 2013, which provided for a similar regime to clause 7 combining non-consensual disclosure of identifying information and vetos on subsequent contact. Noting that the regime engaged the right to privacy and that varying approaches taken to these issues throughout Australia, the Committee sought further information as to whether there were any less restrictive alternatives reasonably available to achieve the purposes of providing identifying information while regulating contact.<sup>3</sup> The Minister's response stated her view that the Bill's provisions 'fall within the range of reasonable alternatives.'<sup>4</sup>

The Committee observes that the present Bill may engage two further Charter rights:

First, clauses 5 and 6, by potentially requiring doctors and registered ART providers to provide confidential information about donors' identities to the Registrar in a way that may be contrary to what those doctors and providers perceive as their medical ethical obligation to keep the details of former patients confidential, may engage those doctors' and providers' Charter rights to freedom of belief and conscience, including the right not to be coerced in a way that limits the freedom to adopt a belief in practice.<sup>5</sup>

Second, clause 7, by potentially requiring the disclosure of identifying information contrary to the original basis on which the donor agreed to participate in a donor treatment procedure, may engage the donor's Charter right not to be subject to medical treatment without his or her full, free and informed consent.<sup>6</sup>

<sup>2</sup> *Alert Digest No. 14 of 2008* (reporting on the Assisted Reproductive Treatment Bill 2008), p.3, available at <[http://www.parliament.vic.gov.au/archive/sarc/Alert\\_Digests\\_08/08alt14.htm](http://www.parliament.vic.gov.au/archive/sarc/Alert_Digests_08/08alt14.htm)>. The Committee noted that the Charter's discrimination rights are limited to discrimination on the basis of attributes in the state's equal opportunities legislation and do not include discrimination on the basis of the date of donation of gametes used to conceive a person. The Committee also noted that the Charter's right of children to protection requires the State to protect children who are vulnerable because of their age and does not extend to broader protections in the *Convention on the Rights of the Child*. The Committee observed that both of these limitations were deliberate ones so as not to pre-empt then ongoing inquiries into adoption and assisted reproductive treatment.

<sup>3</sup> *Alert Digest No. 4 of 2013* (reporting on the Adoption Amendment Bill 2013), pp.3-4., available at <[http://www.parliament.vic.gov.au/images/stories/committees/sarc/Alert\\_Digests/Alert\\_Digest\\_No\\_4\\_of\\_2013.pdf](http://www.parliament.vic.gov.au/images/stories/committees/sarc/Alert_Digests/Alert_Digest_No_4_of_2013.pdf)> The Committee separately reported on the compatibility of the Bill's contact veto provisions with Charter's rights with respect to discrimination on the attribute of parental status. That issue does not arise under the present Bill, as clause 7, inserting a new section 59A, provides that both the donor and the donor-conceived person may lodge a contact veto.

<sup>4</sup> *Alert Digest No. 5 of 2013*, p. 16, available at <[http://www.parliament.vic.gov.au/images/stories/committees/sarc/Alert\\_Digests/Alert\\_Digest\\_No\\_5\\_of\\_2013.pdf](http://www.parliament.vic.gov.au/images/stories/committees/sarc/Alert_Digests/Alert_Digest_No_5_of_2013.pdf)>

<sup>5</sup> Charter s. 14.

<sup>6</sup> Charter s. 10(c). The Charter's right against non-consensual medical treatment and the requirements that consent be 'full' and 'informed' are unique to the Charter. Their inclusion was recommended to ensure that the Charter is 'is consistent with existing Victorian law', which stresses that 'medical consent... must be both voluntary and that the person must have been given sufficient information for an informed decision to be made': Human Rights Consultation Committee, *Rights, Responsibility and Respect: The Report of the Human Rights Consultation Committee*, (Melbourne, 2005), p. 42.

The Committee refers to Parliament for its consideration the questions of:

- whether or not clauses 5 and 6, by potentially requiring doctors and registered ART providers to perform acts that may be contrary to what those doctors and providers perceive as their ethical obligations to former patients (i.e. to provide confidential identifying information about those donors to the Registrar without the donor's consent) is compatible with doctors' and providers' Charter right to freedom of belief and conscience, including the right not to be coerced in a way that limits the freedom to adopt a belief in practice.
- whether or not clause 7, by potentially requiring actions that are contrary to the basis on which a person agreed to take part in a medical treatment procedure (i.e. by requiring the Registrar to disclose identifying information about a donor of gametes for a donor treatment procedure even if the donation was made on the basis that the donor would remain anonymous), is compatible with the donor's Charter right not to be subject to medical treatment without his or her full, free and informed consent.
- If so, whether or not those clauses, in seeking to affirm recognition and equality under the law for the welfare and interests of all persons born as a result of assisted reproductive treatment procedures, are reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom according to the test for reasonable limits on Charter rights set out in Charter s. 7(2).

The Committee makes no further comment

## Children, Youth and Families Amendment Bill 2013

<b>Introduced</b>	26 June 2013
<b>Second Reading Speech</b>	27 June 2013
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Robert Clark MP
<b>Portfolio responsibility</b>	Attorney-General

### Purpose

The Bill amends the *Children, Youth and Families Act 2005* (the Act) to:

- amend requirements for attendance of children at hearings in certain proceedings before the Family Division so that children need not attend court unless they choose to do so or the court considers it necessary, and further provides for the conduct of child protection proceedings in a less adversarial manner. **[11, 12]**
- replace the term ‘access’ with ‘contact’.
- replace the term ‘safe custody’ with ‘emergency care’.
- replace ‘dispute resolution conferences’ with ‘conciliation conferences’ in the Family Division.
- clarify that the standard of proof that applies in child protection proceedings is proof on the balance of probabilities. **[10]**
- provide further for certain breach proceedings under Divisions 3 and 4 of Part 5.3 of Chapter 5.
- provide for enforcement of costs orders made by the Children’s Court in proceedings in the Family Division, or under the *Family Violence Protection Act 2008* or the *Personal Safety Intervention Orders Act 2010*. **[54]**
- amend the *Family Violence Protection Act 2008* to give the Children’s Court jurisdiction over certain applications for family violence intervention orders if there are related child protection proceedings. **[Part 3]**
- amend the *Personal Safety Intervention Orders Act 2010* to give the Children’s Court jurisdiction over certain applications for personal safety intervention orders if there are related child protection proceedings. **[Part 4]**
- make necessary consequential amendments to other Acts.

### Charter report

The Children, Youth and Families Amendment Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Corrections Amendment (Breach of Parole) Bill 2013

<b>Introduced</b>	25 June 2013
<b>Second Reading Speech</b>	27 June 2013
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Kim Wells MP
<b>Portfolio responsibility</b>	Minister for Police and Emergency Services

### Purpose

The Bill amends the *Corrections Act 1986* (the Act) to insert a new section 78A to introduce an offence of breach of parole by failing to comply without reasonable excuse, with a prescribed term or condition of a parole order. [3]

#### Amendments to the Act and the Sentencing Act 1991

1. *Arrest* – New section 78B(1) provides that a member of the police force may, without warrant, arrest a person on parole if the officer suspects on reasonable grounds that the person has committed an offence against new section 78A.
2. *Discretionary detention* – New section 78B(2) provides that the person may be detained where the arresting police officer is satisfied that the alleged breach is not trivial or minor and detention is necessary to prevent the prisoner continuing the breach or committing a further breach of parole.
3. *Mandatory detention* – New section 78B(3) provides that the person must be detained where the alleged breach is constituted by an offence that is punishable by imprisonment other than an offence against s. 78A or a breach of a term or condition of parole that is prescribed by regulations.
4. *Detention pending Board's consideration of breach* – New section 78C provides that after being notified under section 78B(4) of the detention of a prisoner, the Board must either order the detention of the prisoner pending consideration of the breach of the parole order, or order the detention to cease.
5. *Bail provisions do not apply* – New section 78D provides that while a person is detained the provisions in the *Bail Act 1977* and the *Crimes Act 1958* relevant to Bail do not apply. An application for Bail may be made where the Board determines not to cancel the prisoner's parole order.
6. *Sentence to be served cumulatively* – The Bill inserts a new subsection (3BA) in section 16 of the *Sentencing Act 1991* to provide that any prison sentence imposed for a breach of a prescribed term or condition of a parole order is to be served cumulatively on any other prison sentence, unless exceptional circumstances exist. [5]

**The Committee notes the extract reproduced in the Charter report from the Statement of Compatibility.**

**The Committee draws attention to these provisions and the Charter report below.**

### Charter report

***Rights of detainees – People arrested on suspicion of breaching parole – Exclusion of statutory detention rights – Right to communicate with a court or lawyer***

Summary: The Committee refers to Parliament for its consideration the question of whether or not clause 3, by potentially allowing a person arrested on suspicion of breaching a prescribed term or condition of parole to be detained for twelve hours or more without the statutory rights of regular arrestees or prisoners is compatible with the Charter rights of detainees to procedures established by

law, to be promptly brought before a court and to apply to a court regarding the lawfulness of detention.

The Committee notes that clause 3, inserting a new section 78B into the *Corrections Act 1986*, provides that, in some circumstances, a person who is arrested on suspicion of breaching a prescribed term or condition of a parole order may or must be 'detained in custody'. The arresting officer must notify the Adult Parole Board within 12 hours of any arrest. 'As soon as reasonably practicable' after receiving that notice, the Board must order that the person either be 'detained in a prison or a police gaol' (pending a decision about parole) or 'cease to be detained under' the new provision.<sup>7</sup>

The Statement of Compatibility remarks:

The detention effectively amounts to a temporary suspension of parole. Pursuant to new clause 78E of the principal act, also introduced by clause 3 of the bill, the period spent in detention is to be regarded as time served in respect of the sentence of imprisonment for which the person is on parole...

I consider that these provisions are compatible with the right to liberty in s21 of the charter act. I acknowledge that persons detained under these provisions will have their parole temporarily suspended and will be detained before having the opportunity for a proper hearing before the board... However, the detention occurs pursuant to a sentence of imprisonment already imposed by the court and in order to protect the public from the dangers that arise from breaching their parole.

The Committee observes that, in Victoria, parole is not an entitlement but rather is a privilege made available and revocable by order of the relevant parole board at its discretion.<sup>8</sup> Accordingly, the Committee considers that the arrest and detention of a person on suspicion of breach of a parole order while a grant of parole is reconsidered does not limit the Charter's right against arbitrary arrest or detention.<sup>9</sup>

However, the Committee notes that clause 3 also inserts a new section 78D(1)(a), which provides that s. 464A of the *Crimes Act 1958* does not apply to people detained under new section 78B. As a result, people arrested and detained for a suspected breach of parole are not required to be brought before a court and may not receive the statutory protections available to people detained to investigate an offence, including provisions requiring that the detainee be cautioned before any questioning and be permitted to communicate with a friend or relative and a legal practitioner.<sup>10</sup> The Committee also notes that, unless and until the Board orders that the person be detained in a prison, the person may also not have any of the statutory rights of prisoners under the *Corrections Act 1986*, including provisions concerning communications with officials and visits by legal representatives.<sup>11</sup>

In short, a person arrested for suspected breaches of a prescribed term or condition of parole may be detained for twelve hours or more without statutory investigative protections, court scrutiny or

<sup>7</sup> New sections 78B(4) and 78C(1).

<sup>8</sup> *Corrections Act 1986*, ss. 74(1), 76 & 77(1).

<sup>9</sup> Charter s. 21(2).

<sup>10</sup> *Crimes Act 1958*, ss. 464A(1) (brought before a court in a reasonable time), 464A(3) (caution), 464C (communication with a friend or relative and a legal practitioner.) The rights in the latter two sections are contingent on the person being questioned under s. 464A(2), which new section 78D(1) provides does 'not apply in relation to a prisoner detained under' new section 78B.

<sup>11</sup> *Corrections Act 1986*, ss. 40(1) (visits by a lawyer), 47(1)(j) (right to make complaints) and 47(1)(m)(iii) (right to send and receive letters from a lawyer). Section 40 is limited to visits to a 'prison' and s. 47 is limited to 'every prisoner', which does not include people on parole who are not detained in a prison (s. 6C(1)(a), (2)). People detained under new section 78B are not required to be held in a prison unless the parole board orders.

custody in a prison. Rather, the continuation and terms of such a person's detention may be exclusively in the hands of the officer who arrested him or her and the board that is reconsidering his or her parole. By contrast, the other Australian jurisdictions that permit a police officer to arrest a person for a suspected breach of parole conditions<sup>12</sup> either require that the person arrested be taken before a court<sup>13</sup>, permit the person to apply for bail<sup>14</sup> or do not exclude the statutory protections provided for regular arrestees.<sup>15</sup>

The Committee observes that clause 3 may engage the Charter right of a person arrested on suspicion of breaching a prescribed term or condition of parole to be detained 'in accordance with procedures, established by law'. In addition, by excluding statutory rights to communicate with lawyers or a court, clause 3 may engage the Charter rights of such a person to 'be promptly brought before a court' and 'to apply to a court for a declaration or order regarding the lawfulness of his or her detention'.<sup>16</sup>

**The Committee refers to Parliament for its consideration the question of whether or not clause 3, by potentially allowing a person arrested on suspicion of breaching a prescribed term or condition of parole to be detained for twelve hours or more without the statutory rights of regular arrestees or prisoners (including rights to contact lawyers or a court) is compatible with the Charter rights of detainees to procedures established by law, to be promptly brought before a court and to apply to a court regarding the lawfulness of the detention.**

**The Committee makes no further comment**

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<sup>12</sup> *Crimes (Sentence Administration) Act 2005* (ACT), s. 144; *Parole of Prisoners Act 1971* (NT), s. 5(9)(b); *Correctional Services Act 1982* (SA), s. 76B (requiring authorisation of a police officer ranked as an inspector or higher.)

<sup>13</sup> *Parole of Prisoners Act 1971* (NT), s. 5(9)(10). See also *Crimes (Sentence Administration) Act 2005* (ACT), s. 144(3)(b), requiring that the person be taken before a court 'if the board is not sitting'; *Correctional Services Act 1982* (SA), s. 76B(2)(c), requiring that a magistrate be notified if the relevant board members are not 'available'.

<sup>14</sup> *Bail Act 1992* (ACT), s. 8A, providing the same entitlement to bail as would apply for the offence to which the parole obligation relates.

<sup>15</sup> *Summary Offences Act 1953* (SA), s. 79A, (applicable to any 'person apprehended by a police officer'), setting out rights to contact a relative or friend, to have a lawyer present during an interrogation and to be cautioned.

<sup>16</sup> Charter ss. 21(3), (5)(a) & (7).

## Open Courts Bill 2013

<b>Introduced</b>	26 June 2013
<b>Second Reading Speech</b>	27 June 2013
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Robert Clark MP
<b>Portfolio responsibility</b>	Attorney-General

### Purpose

The Bill is for a principal Act to consolidate the existing general statutory powers of the Supreme Court, County Court, Magistrates Court, Coroners Court and the Victorian Civil and Administrative Tribunal (VCAT) to make suppression orders and closed-court orders. The Bill makes consequential amendments to various Acts.

#### Extract from the Second Reading Speech:

The Bill will operate as an exclusive source of general statutory powers for the courts other than the Children's Court, and for VCAT, to make suppression and closed-court orders. The Bill will exclude the operation of common-law or implied powers to make these orders, except for the inherent jurisdiction of the Supreme Court. The Bill does not affect other legislation containing subject matter specific powers to make suppression and closed-court orders. The Supreme Court will retain its powers to make suppression and closed-court orders in the exercise of its inherent jurisdiction, but subject to the presumptions in favour of disclosure and hearings in public and to the procedural requirements set out in Part 2 of the Bill.

#### Presumption in favour of disclosure of information and open court proceedings

The Bill respectively provides for a presumption in favour of disclosure of information and proceedings being held in public, to which all courts and tribunals must have regard in considering whether to make a suppression or closed court order. **[4, 26]**

### The Act in brief

#### Part 1 – Preliminary

The Part make provision for preliminary matters, commencement and definitions and importantly provides a presumption in favour of disclosure of information in determining whether to make a suppression order. The Part further provides that the general statutory powers of the Bill do not exclude existing specific powers under other special statutory regimes, for example the regime governing matters in the Children's Court. **[8]**

The Supreme Court will retain its powers to make suppression and closed court orders in the exercise of its inherent jurisdiction, but subject to the general presumptions and the procedural requirements in Part 2 of the Bill. **[5]**

#### Part 2 – General provisions for suppression orders

Provides general provisions for the making of suppression orders including their duration, scope and review. Other than for interim orders, there must be sufficient credible evidence before a court or tribunal can be satisfied that there are grounds for making an order. **[9 to 14]**

**Note:** *Standing to appear – News Media Organisations* – In Parts 2 and 3 in addition to the parties and others, a news media organisation has standing to appear on applications before

a court in respect to the making of a suppression order (section 17(2)(e) ) or an interim suppression order (section 18(2)(e), and on the review of a suppression order (section 13(b)(v) ).

#### Part 3 – Proceedings suppression orders

The Part provides that a court or tribunal other than the Coroners Court will have power to make a proceeding suppression order, prohibiting or restricting the disclosure of a report of a proceeding or any information derived from a proceeding, where such an order is necessary:

- to prevent prejudice to the proper administration of justice; or
- to prevent prejudice to national or international security; or
- to protect the safety of any person; or
- to avoid undue distress or embarrassment to a party or witness in criminal proceedings involving a sexual offence or family violence; or
- to avoid undue distress or embarrassment to a child witness in criminal proceedings. **[16]**

*VCAT* – In addition to the above criteria the VCAT may also make a proceeding suppression order for any other reason in the interests of justice. **[16(1)(f)]**

*Coroners Court* – The Coroners Court may make an order if publication would be likely to prejudice the fair trial of a person or be contrary to the public interest. **[16(2)]**

*Interim order* – A court or tribunal may make an interim order without determining the merits of the substantive application. Where an interim order is made the substantive application must be determined as a matter of urgency. **[18]**

*Offence* – It is an offence to contravene a proceedings suppression order or interim order. In the absence of evidence to the contrary, a person is taken to have notice of a suppression order or interim order is in force if a court or tribunal has electronically transmitted notice of the order to the person. **[21]**

#### Part 4 – Broad Suppression Orders

The Part broadly preserves the existing powers of the County Court and the Magistrates' Court to make suppression orders relating to information not arising from proceedings, such as prohibiting publication of a defendants prior criminal convictions. The grounds in which the Magistrates' Court may make such an order is limited to situations where the order is necessary to prevent prejudice to the administration of justice or to avoid endangering the safety of a person. **[22 to 24]**

*Offence* – It is an offence to contravene a broad suppression order. In the absence of evidence to the contrary, a person is taken to have notice of a suppression order or interim order is in force if a court or tribunal has electronically transmitted notice of the order to the person. **[25]**

**Note:** The Supreme Court may make such orders in the exercise of its inherent jurisdiction.

#### Part 5 – Closed Court Orders

The Part provides a general statutory power to make closed-court orders on the same grounds on which Courts can make proceeding suppression orders. **[26 to 29]**

*Offence* – It is an offence to contravene a closed court order. **[30]**

Parts 6, 7 and 8

The Parts make provision for regulations, transitional arrangements and consequential amendments in other Acts. **[31 to 65]**

**Charter report**

The Open Courts Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Succession to the Crown (Request) Bill 2013

<b>Introduced</b>	25 June 2013
<b>Second Reading Speech</b>	26 June 2013
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Dr Denis Naphine MP
<b>Portfolio responsibility</b>	Premier

### Purpose

The Bill facilitates uniform national changes to the laws of royal succession, consistent with changes to laws made in the United Kingdom. The Bill will ensure that the Sovereign of Australia is the same person as the Sovereign of the United Kingdom.

The Bill includes a request to the Australian Parliament [5] to enact, under section 51(38)<sup>17</sup> of the Australian Constitution, an Act to provide that:

- there will be no priority for male heirs over female heirs;
- marriage to a Roman Catholic will no longer disqualify an heir from succession; and
- the Sovereign's consent to marriage will only be required for the first six persons in the line of royal succession.

The Bill implements the April 2013 decision of the Council of Australian Governments and all other States have now agreed to make a similar request to the Australian Parliament under section 51(38) of the Australian constitution.

The Bill makes necessary consequential amendments to the Victorian *Crimes Act 1958* and the *Imperial Acts Application Act 1980*.

### Charter report

The Succession to the Crown (Request) Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

### The Committee makes no further comment

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<sup>17</sup> Commonwealth Constitution, s. 51 (xxxviii) – [ The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to:] - *The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia.*

## University of Ballarat Amendment (Federation University Australia) Bill 2013

<b>Introduced</b>	25 June 2013
<b>Second Reading Speech</b>	27 June 2013
<b>House</b>	Legislative Council
<b>Member introducing Bill</b>	Hon. Peter Hall MLC
<b>Portfolio responsibility</b>	Minister for Higher Education and Skills

### Purpose

The Bill amends the *University of Ballarat Act 2010* to change the name of the University of Ballarat to Federation University Australia from 1 January 2014.

The Bill declares that despite the change of name the University remains the same body. The Bill also deals with associated transitional matters preserving the exercise of powers by the University of Ballarat, the terms and conditions of members appointed to the council and the terms on which students were enrolled at the University of Ballarat.

As a transitional measure the Bill provides for circumstances in which the conferral of awards may be in the name of the University of Ballarat, including a six-year period from 1 January 2014 where a student may request that the council confer an award in the name of the University of Ballarat.

### Charter report

The University of Ballarat Amendment (Federation University Australia) Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**



# Appendix 1

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## **Appendix 2**

### Committee Comments classified by Terms of Reference

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*This Appendix lists Bills under the relevant Committee terms of reference where the Committee has raised issues requiring further correspondence with the appropriate Minister or Member.*

#### **Alert Digest Nos.**

#### **Section 17(a)**

**(viii) is incompatible with the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006***

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



## Appendix 3

### Ministerial Correspondence 2013

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

<b>Bill Title</b>	<b>Minister/ Member</b>	<b>Date of Committee Letter / Minister's Response</b>	<b>Alert Digest No. Issue raised / Response Published</b>
Tobacco Amendment (Smoking in Outdoor Areas) Bill 2012	Ms Colleen Hartland MLC	11-12-12 06-02-13	18 of 2012 2 of 2013
Statute Law Amendment (Directors' Liability) Bill	Attorney-General	05-02-13 18-02-13	1 of 2013 2 of 2013
Co-operatives National Law Application Bill 2013	Consumer Affairs	19-02-13 28-02-13	2 of 2013 3 of 2013
Justice Legislation Amendment (Cancellation of Parole and Other Matters) Bill 2013	Corrections	04-03-13	[i] 4 of 2013
Adoption Amendment Bill 2013	Community Services	19-03-13 04-04-13	4 of 2013 5 of 2013
Rail Safety National Law Application Bill 2013	Public Transport	19-03-13 01-04-13	4 of 2013 5 of 2013
Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Bill 2013	Public Transport	19-03-13 01-04-13	4 of 2013 5 of 2013
Fortification Removal Bill 2013	Attorney-General	07-05-13 24-05-13	6 of 2013 7 of 2013
Heavy Vehicles National Law Application Bill 2013	Roads	07-05-13 27-05-13	6 of 2013 7 of 2013
Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Bill 2013	Attorney-General	17-05-13	[ii] 7 of 2013
Justice Legislation Amendment Bill 2013	Attorney-General	11-06-13 22-06-13	8 of 2013 9 of 2013
Marine (Domestic Commercial Vessel National Law Application) Bill 2013	Ports	28-05-13 13-06-13	7 of 2013 9 of 2013

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

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