

No. 7 of 2013

Tuesday, 28 May 2013

On the

Appropriation (2013-2014) Bill 2013
Appropriation (Parliament 2013-2014)
Bill 2013

Building and Planning Legislation
Amendment (Governance and Other
Matters) Bill 2013

Fortification Removal Bill 2013

Heavy Vehicle National Law
Application Bill 2013

Marine (Domestic Commercial Vessel
National Law Application) Bill 2013

Parliamentary and
Public Administration Legislation
Amendment Bill 2013

Sentencing Amendment (Abolition of
Suspended Sentences and Other
Matters) Bill 2013

State Tax Laws Amendment (Budget
and Other Measures) Bill 2013

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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. 7 of 2013

Appropriation (2013-2014) Bill 2013

Introduced	7 May 2013
Second Reading Speech	9 May 2013
House	Legislative Assembly
Member introducing Bill	Hon. Michael O'Brien MLA
Portfolio responsibility	Treasurer

Purpose

The Bill provides appropriation authority for payments of certain sums out of the Consolidated Fund for the ordinary annual services of the Government for the financial year 2013/2014.

Charter report

The Appropriation (2013-2014) Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Appropriation (Parliament 2013-2014) Bill 2013

Introduced	7 May 2013
Second Reading Speech	7 May 2013
House	Legislative Assembly
Member introducing Bill	Hon. Michael O'Brien MLA
Portfolio responsibility	Treasurer

Purpose

The Bill provides appropriation authority for payments of certain sums out of the Consolidated Fund to the Parliament for the financial year 2013/2014.

Charter report

The Appropriation (Parliament 2013-2014) Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Building and Planning Legislation Amendment (Governance and Other Matters) Bill 2013

Introduced	7 May 2013
Second Reading Speech	8 May 2013
House	Legislative Assembly
Member introducing Bill	Hon. Robert Clark MLA
Portfolio responsibility	Minister for Planning

Purpose

The Bill amends the *Building Act* 1993 and the *Architects Act* 1991. In particular it: -

- Establishes the Victorian Building Authority and abolishes the Building Commission and the Plumbing Industry Commission;
- Establishes an independent governing board and provides for the appointment of a Chief Executive Officer;
- Provides for practitioner appeals of decisions of the Building Practitioners Board to be heard by the Victorian Civil and Administrative Tribunal;
- Strengthens the disciplinary powers of the Building Practitioners Board;
- Commences the alignment of the regulation of architects into the Victorian Building Authority framework.

Part 2 – Amendment of *Building Act* 1993

- It establishes the Victorian Building Authority (the Authority) and the Victorian Building Authority Board (VBA Board). The VBA Board consists of a Chief Commissioner, a Deputy Chief Commissioner and three other Commissioners appointed by the Governor in Council on the recommendation of the Minister. The VBA may appoint a Chief Executive Officer who is responsible for the day to day management of the Authority. The Authority must establish and administer the Victorian Building Authority Fund (the Fund). The Fund is to be divided into the Building Account and the Plumbing Account. Building levies must be paid into the Fund. The Authority may refer any matters to the Building Practitioners Board. **[4]** Note the Explanatory memorandum: - *'The Authority will replace the Building Commission (BC) and the Plumbing Industry Commission (PIC). It will integrate the functions of the BC and the PIC to create a more effective and accountable governance regime. Further reforms in a later Bill will see the Authority also replace the Architects Registration Board of Victoria (ARBV), the Building Practitioners Board (BPB) and the Building Appeals Board (BAB).'*
- It establishes a Plumbing Advisory Council. **[6]** It empowers the Authority to provide information to the Director of Consumer Affairs Victoria about a domestic building if the Authority considers the provision of information will assist in the resolution of the dispute. **[7]** A person may make application to VCAT for review of a decision of the BPB. Application for registration as a building practitioner will require a signed authorisation for the conduct of a police record check. **[9]** It broadens the disciplinary measures available to the BPB including the power to require a registered building practitioner to give an undertaking to do a specified thing or complete or rectify specified building work. A condition may be imposed or limitation on a building practitioner's registration. **[10]** Application for registration as a licensed plumber will require a signed authorisation for the conduct of a police record check. **[12]**

Part 3 – Amendment of *Architects Act 1991* – Part 4 – Transitional and savings provisions – Part 5 – Amendment of *Planning and Environment Amendment (General) Act 2013* – Part 6 – Repeal of amending Act

- It requires the Architects Registration Board of Victoria to advise the Minister on the carrying out of the Board's functions under the *Architects Act 1991*. [13] The Governor in Council may make regulations with respect to the *Architects Act 1991*. [14] Note the Explanatory memorandum:- '*Part 3 of the Bill is the first step in the integration of the regulation of architects into the Victorian Building Authority. Further integration will occur after the Authority is established*'. Part 4 contains transitional and savings provisions. [15-34]
- It amends section 33 of the *Planning and Environment Amendment (General) Act 2013*. It provides for an additional circumstance when a determining referral authority is to be a party to a proceeding for review before VCAT. Note the Explanatory memorandum: - '*Existing section 33 is one of several sections in the Planning and Environment Amendment (General) Act 2013 that amend the Planning and Environment Act 1987 to provide for two kinds of referral authority: a determining referral authority and a recommending referral authority. It was intended that a determining referral authority would be a party to a proceeding for review of a refusal to grant a planning permit in specified circumstances and of a permit condition if that condition was required by the authority. However existing section 33 provides that a determining referral authority is only a party to a proceeding relating to a refusal.*' [36] It also provides for the automatic repeal of the amending Act on 1 July 2014. [37]

Charter report

The Building and Planning Legislation Amendment (Governance and Other Matters) Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Marine (Domestic Commercial Vessel National Law Application) Bill 2013

Introduced	7 May 2013
Second Reading Speech	8 May 2013
House	Legislative Assembly
Member introducing Bill	Hon. David Hodgett MLA
Portfolio responsibility	Minister for Ports

Purpose

The purposes of the Bill are: -

- To adopt in Victoria a national approach to the regulation of marine safety in relation to domestic commercial vessels (the domestic commercial vessel national law);
- Apply the Commonwealth domestic commercial vessel national law as a law of Victoria;
- To make provision to enable the Commonwealth domestic commercial vessel national law and the applied law of Victoria to be administered on a uniform basis by the Commonwealth (and by Victorian officials as delegates of the Commonwealth) as if they constituted a single law of the Commonwealth.

Note the extract from the Statement of Compatibility: -

'In June 2009, the Council of Australian Government (COAG) decided to pursue a range of national transport schemes, including a national rail safety investigator and national regulators for the heavy vehicle, rail and domestic commercial marine sectors.

On 7 December 2009, COAG resolved to develop a national marine scheme to transfer State and Territory regulated commercial vessels to Commonwealth coverage with the Australian Maritime Safety Authority (AMSA) becoming the national regulator for all commercial vessels in Australian coastal and inland waters...

The purpose of the Bill is to facilitate the roll out of national commercial vessels scheme in Victoria, including the transfer to Commonwealth control of a small number of commercial vessels which are not within Commonwealth power. That legislation attaches, as Schedule 1 to the Act, the Marine Safety (Domestic Commercial Vessel) National Law (the national law) and transfers over 90% of Victoria's approximately 1465 commercial vessels from State control to Commonwealth control when it commences. Some vessels, however, are beyond the Constitutional power of the Commonwealth and can only be transferred to it under State law.

The Bill applies the national law and extends it to the small number of Victorian commercial vessels (around 100 vessels not owned by corporations and operating in inland waters) which are not currently within Commonwealth reach. Specifically, the Bill applies the national law as amended from time to time as a law of Victoria.'

Part 1 – Preliminary – Part 2 – Applied provisions

- Part 1 contains preliminary provisions including definitions. Clause [2] is the commencement provision which provides that the Bill comes into operation on a day or days to be proclaimed. Note the Explanatory memorandum: *'This is appropriate as commencement of the national scheme is dependent on a range of factors including the actions of other jurisdictions. Commencement of the Marine Safety (Domestic Commercial Vessel) National Law Act 2012 of the Commonwealth will be effected by proclamation. To the extent possible, the States and the Northern Territory will contemporaneously proclaim the commencement of local legislation to apply the Commonwealth domestic commercial vessel national law in each jurisdiction.'*

- Part 2 sets out the application of the provisions. It applies the Commonwealth domestic commercial vessel national law as law of this State. Victoria's marine safety laws continue to have effect. **[4]** Note the Explanatory memorandum:- *'Subclause (3) clarifies that subclause (2) does not operate to exclude a law of Victoria relating to marine safety that would not otherwise be excluded by the Commonwealth domestic commercial vessel national law. This puts beyond doubt that current Victorian laws that regulate marine safety but which are not directly affected by the Marine Safety (Domestic Commercial Vessel) National Law continue to have effect. An example of this is the Marine (Drug, Alcohol and Pollution Control) Act 1988 and significant parts of the Marine Safety Act 2010.'*
- Clause **4** provides that regulations made under the Bill may provide that the Commonwealth domestic commercial vessel national law applies as if amendments made to that law by the Commonwealth and specified in the regulations made under the Bill had not taken effect. Note the Explanatory memorandum:- *'Subclause (4) permits the making of certain regulations under the Bill. Regulations can provide that the National Law (Cth) applies in Victoria as if a change to the national law which is not approved by the Standing Council on Transport and Infrastructure had not been made. Similarly, subclause (4) permits the making of regulations under the Bill that provide that a subordinate instrument made under the National Law (Cth) but which has been withdrawn, rescinded or amended by the Commonwealth Minister had not taken effect in Victoria. The relevant Commonwealth Minister is the Minister for Transport and Infrastructure.'*

Part 3 – Functions and powers – Part 4 - Offences

- It enables the National Regulator to delegate certain powers and functions to an officer or employee of a Commonwealth agency, or an officer or employee of a State or Territory agency with the consent of the relevant State or Territory. **[7]** The delegation of functions to State and Territory marine safety agencies and their officers and employees is fundamental to the day-to-day operation of the national scheme. It applies Commonwealth criminal laws as laws of Victoria in relation to an offence as if those provisions were a law of the Commonwealth. **[9]**
- Part 4 sets out the application of the law in relation to offences. It sets out the application of Commonwealth criminal laws to offences against applied provisions. It contains a no double jeopardy provision. It provides that a person is not liable to be punished for an offence under the applied provisions in Victoria if the person has been punished for the same offence by the Commonwealth under the Commonwealth domestic commercial vessel national law. **[11]**

Part 5 – Administrative Law matters – Part 6 – Fees and fines

- Part 5 sets out the application in relation to administrative laws. It applies the Commonwealth administrative laws as laws of Victoria to any matter arising in relation to the applied provisions. (*Commonwealth administrative laws* are defined in clause 3.) **[12]** Regulations may be made with respect to fees payable to Victoria for things done under the Marine Safety (Domestic Commercial Vessel) National Law by a delegate of the National Regulator who is an officer or employee of, or engaged by Victoria or an agency of Victoria. Regulations may also be made in respect of services provided by an accredited person who is an officer or employee of, or engaged by Victoria or an agency of Victoria. **[14]** It also specifies fees to be provided by the Safety Director under delegation from the National Director. Note the Explanatory memorandum:- *'The fees specified in the Schedule are the same as the fees currently imposed under the Marine Safety Regulations 2012 for equivalent services. These fees will apply in Victoria until cost recovery levels are reviewed and new fee regulations can be made in accordance with the requirements of the Subordinate Legislation Act 1994.'*

Part 7 – Victorian modifications – Part 8 – Miscellaneous – Part 9 – Transitional

- Part 7 specifically contains provisions which set out the application of the Charter Act in respect of the legislation. The Safety Director is a public authority for the purposes of the Charter Act. The Safety Director acting as a delegate of the National Regulator must act in accordance with the Charter Act. Officers and employees exercising powers and functions under a Commonwealth Act remain public authorities and are therefore bound by the obligations in section 38 of the Charter Act. **[17]**
- Part 8 contains various miscellaneous technical provisions which are required for the administration of the national law. This includes provisions for persons and classes of persons to accept delegations to carry out functions and exercise powers under the Marine Safety (Domestic Commercial Vessel) National Law. **[20]** It contains a standard regulation making power for Victoria. **[21]** Part 9 contains transitional provisions. This includes the a standard regulation making power for matters of a transitional nature which may have a retrospective effect. **[22]** Note the Explanatory memorandum:- '*Subclause (3) also permits a provision of regulations made under this clause to be retrospective in operation to a date not earlier than the day on which the Bill receives the Royal Assent*'.

Part 10 – Amendment of the *Marine Safety Act 2010*

- Part 10 provides for a number of consequential changes to the *Marine Safety Act 2010* which are required as a result of the commencement of the Marine Safety (Domestic Commercial Vessel) National Law. It aligns a new definition of recreational vessel with the definition of that term in the National Law Cth. This ensures the application of the *Marine Safety Act 2010* to vessels that are not subject to the Marine Safety (Domestic Commercial Vessel) National Law. This includes vessels owned by primary or secondary schools and certain not for profit community groups. **[25]** It updates regulation making powers. **[61, 62]**
- Note the Explanatory memorandum:- '*The Marine Safety Act 2010 continues to regulate certain aspects of the operation of all commercial vessels in State waters. These include: -*
 - *Local waterway rules;*
 - *Drug and alcohol controls;*
 - *Rules dictating when pilots are required to assist with vessel movements; and*
 - *Harbour masters powers to direct commercial vessels.*

The Marine Safety (Domestic Commercial Vessel) National Law will regulate the following broad categories of commercial vessel which are currently regulated under the Marine Safety Act 2010: -

- *Trading vessels (used for carriage of passengers or cargo for hire or reward or provision of services to ships, for example, tugs and tenders);*
- *Hire and drive vessels (used or intended to be used for hire or reward or other consideration for example, hired 'tinnies', jetskis, sail boards, sail boats, row boats, pedal boats and self drive vessels including yachts, cabin cruisers and houseboats, used solely for recreational purposes);*
- *Fishing vessels (used or intended to be used for catching fish or other living resources of the sea or the seabed for profit or reward).*

However, the definition of a domestic commercial vessel under the National Law (Cth) is broader than the definition of commercial vessel under the Marine Safety Act 2010. Examples of vessels which fall within the scope of the national scheme which are not currently regulated as commercial vessels in Victoria are-

- *Vessels operated by government agencies for fisheries enforcement or managing waters;*
- *Unpowered barges;*
- *Vessels owned and operated by tertiary educational institutions (for example, vessels owned by rowing and diving clubs affiliated with universities);*
- *Unpowered hire and drive vessels (such as canoes, rowing boats, pedal boats or pedalos, sail boards, sail boats etc.)*

Part 11 – Amendment of other Acts – Schedule

- It updates the *Interpretation of Legislation Act 1984* to recognise the proposed commencement of the national scheme. **[83]** It updates references and makes consequential changes to the definition section of the *Marine (Drug, Alcohol and Pollution Control) Act 1988* to ensure alignment with and consistency of that Act, the Bill and the Marine Safety (Domestic Commercial Vessel) National Law. **[84]** It amends the *Transport (Compliance and Miscellaneous) Act 1983* so that transport safety officers who enter marine premises or board a vessel for compliance and investigative purposes. They may direct a master or owner of vessel or a person operating a vessel to supply information, answer questions or produce documents for the purpose of determining whether the vessel is a domestic commercial vessel within the meaning of the Marine Safety (Domestic Commercial Vessel) National Law. **[90]**
- It updates and amends definitions in the *Transport Integration Act 2010*. It includes a Schedule of fees and charges payable to Victoria in relation to the services provided to the National Regulator under the Marine Safety (Domestic Commercial Vessel) National Law.

Annexure 1

- Annexure 1 sets out accompanying notes and explanatory memorandum to the Marine Safety (Domestic Commercial Vessel) National Law Bill. This includes a Statement of Compatibility with Human Rights. It also includes the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012 (Cth)* which was assented to on 12 September 2012.
- The Governor-General's regulation making power is set out in clause **[19]** of Annexure 1. Part 1 contains the preliminary provisions and definitions. Part 2 sets out those matters relating to the National Marine Safety Regulator. The Australian Maritime Safety Authority is the National Marine Safety Regulator. **[9, 10]** The National Regulator may by writing, delegate powers and functions to an officer or employee of an agency of the Commonwealth or an officer or employee of an agency of a State or the Northern Territory. **[11]**
- Part 3 sets out the general safety duties relating to domestic commercial vessels. This includes the duties of owners of domestic commercial vessels to ensure safety of vessels, marine safety equipment and operations. It also sets out the related offences and penalties. **[12, 13]** A person may apply for a unique identifier for a domestic commercial vessel and a certificate of operation. **[30, 47]** Regulations may be made in relation to certificates of competency and unique identifiers. **[58, 75-80]**
- Part 5 sets out general provisions relating to the obligation to render assistance and reporting requirements. The penalty for failure to render assistance in accordance with clause 85 is four years imprisonment. In relation to clause 86 the penalty is ten years imprisonment. **[85, 86]**
- Part 6 sets out the powers of marine safety inspectors. It also provides for the appointment of marine safety inspectors and the issue of identity cards. **[91, 92]** Division 2 of Part 6 sets

out matters relating to entry, search, seizure, detention and information gathering powers. In particular it sets out powers of marine safety inspectors relating to the entry of vessels without consent or a warrant. [97, 99] Enforcement powers are set out. [105] Division 8 provides that application may be made to a magistrate for a monitoring warrant. [134]

- Part 8 sets out general matters including review of decisions made by the National Regulator. [139] It makes provision for the National Regulator to charge fees as prescribed by the regulations. [150] It includes a general power for the Governor-General to make regulations. [159] The Regulations may prescribe penalties. [162]

Annexure 2

- Annexure 2 contains the Explanatory memorandum which outlines the detail of the Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Bill 2012. It also contains the *Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Act 2012*.

Annexure 3

- Annexure 3 contains the Explanatory memorandum which outlines the detail of the Marine Safety (Domestic Commercial Vessel) National Law Amendments Bill 2013. It also contains the *Marine Safety (Domestic Commercial Vessel) National Law Amendment Act 2013*. The purpose of the *Marine Safety (Domestic Commercial Vessel) National Law Amendment Act 2013* is to ensure the Australian Maritime Safety Authority (AMSA) as the National Regulator is able to reimburse to the states and Northern Territory amounts collected for infringement notices.

Charter report

Applied Commonwealth laws – Obligations of public authorities

Summary: Clauses 9 and 12 apply various Commonwealth criminal and administrative laws to offences against and matters arising under the Marine Safety (Domestic Commercial Vessel) National Law. The Committee will write to the Minister seeking further information as to the effect of clauses 9 and 12 on the operation of Charter s. 38's provision for the obligations of public authorities.

The Committee notes that clause 17 (in Part 7 of the Bill) provides that certain Victorian public officials (the Director, Transport Safety, Victorian public officials the Director appoints as transport safety officers, Victorian public servants and Victorian public officials appointed as marine safety inspectors) are 'public authorities for the purposes of' the Charter, when they are exercising powers or functions delegated under the *Marine Safety (Domestic Commercial Vessel) National Law* or the *Australian Maritime Safety Authority Act 1990*.¹

The Statement of Compatibility remarks:

Public authorities are subject to obligations in section 38 to act compatibly with human rights and to give relevant human rights proper consideration when making decisions.

A number of functions are conferred on commonwealth officers and bodies, particularly the national regulator. Where the functions and powers are exercised by a commonwealth officer or body under the national law, the officers and bodies will not fall within the definition of public authority and the obligations on public authorities will not apply.

However, under section 11 of the national law, the national regulator may delegate powers and functions to officers or employees of a Victorian agency. Pursuant to section 4 of the charter act those officers and employees are public authorities.

¹ Charter s. 4 defines 'public authority'. Charter s. 38 provides that it is unlawful for a public authority to act incompatibly with a human right or to fail to give proper consideration to a human right.

The bill clarifies that the *Charter of Human Rights and Responsibilities Act 2006* applies to a Victorian public authority (within the meaning of section 4 of that act) when exercising powers delegated to that public authority under the applied provisions or the commonwealth domestic commercial vessel national law or the *Australian Maritime Safety Authority Act 1990* of the commonwealth.

Part 7 of the bill provides that, even though those officers and employees may be exercising powers and functions under a commonwealth act, they are public authorities and are therefore bound by the obligations in section 38 of the charter act.

The Committee notes that, in contrast to many national uniform law schemes considered by the Victorian Parliament, this scheme involves the application of a federal law. In this scheme, the applied federal laws include not only the national law itself, but also various Commonwealth criminal and administrative laws. The applied Commonwealth criminal laws include laws relating to the investigation and prosecution of offences. While the Statement of Compatibility, in accordance with this Committee's *Practice Note No 3*, addresses the interaction of the Charter with the national law, it does not address the interaction of the Charter with the applied Commonwealth criminal and administrative laws.

The Committee observes that Part 7 of the Bill clarifies the application of the Charter to powers and functions exercised under the national law, but does not expressly address the application of the Charter to the applied Commonwealth criminal and administrative laws.

The Committee notes that clauses 9(2) and 12(2) respectively provide that, '[f]or the purposes of a law of Victoria, 'an offence against' or 'a matter arising under' the applied national law must be treated as an offence against or matter arising under Commonwealth, not Victorian, law. In the case of matters arising, clause 12(3) provides for an exception to clause 12(2) 'as provided by Part 7'. There is no similar exception to clause 9(2)'s provision for offences against the national law.

The Committee will write to the Minister seeking further information as to the effect of clauses 9 and 12 on the operation of the Charter s. 38's provision for the obligations of public authorities. Pending the Minister's response, the Committee draws attention to clauses 9 and 12.

Privacy – Boarding and searching vessels without reasonable grounds

Summary: Sections 97 and 99 of the *Marine Safety (Domestic Commercial Vessel) National Law* permit marine safety inspectors to board and search any vessel at any time for the purpose of assessing compliance with that law, whether or not the inspector suspects that the search will reveal evidence of a breach of that law. The Committee refers to Parliament for its consideration the question of whether or not sections 97 and 99, by allowing inspectors to conduct random compliance inspections of any vessel (including hired recreational vessels) at any time, are compatible with the Charter's right against arbitrary or unlawful interferences in privacy.

The Committee notes that section 97 of the *Marine Safety (Domestic Commercial Vessel) National Law* provides that a marine safety inspector 'may board a vessel' for 'monitoring purposes'. 'Monitoring purposes' mean finding out whether the national law is being or has been complied with, assessing the correctness of information supplied under the national law or investigating a marine incident.²

The Committee also notes that section 99 provides that a marine safety inspector may exercise one of the 'vessel monitoring powers' for monitoring purposes. The 'vessel monitoring powers' include 'the power to search the vessel and any thing on the vessel'.³ Clause 99(1) specifies that this power

² *Marine Safety (Domestic Commercial Vessel) National Law*, s. 3.

³ *Marine Safety (Domestic Commercial Vessel) National Law*, s. 99(2)(a).

applies ‘whether or not the inspector has reasonable grounds for suspecting that there may be evidential material on the vessel’.

In short, sections 97 and 99 of the national law permit marine safety inspectors to board and search any vessel at any time for the purpose of assessing compliance with that law, whether or not the inspector suspects that the search will reveal evidence of a breach of that law. The Committee considers that sections 97 and 99 may engage the Charter’s right against arbitrary or unlawful interferences in privacy.⁴

The Statement of Compatibility remarks:

The legal basis for the exercise of these powers is clearly prescribed in the relevant sections. They are sufficiently precise to enable an individual to regulate a marine safety inspector's conduct.... Masters, owners and operators of vessels who are the persons most likely to be subject to the exercise of these powers can reasonably be expected to be aware of them, having regard to their qualifications and the requirements for commercial vessel operation.

Further, the provisions are drafted with sufficient precision and contain appropriate safeguards to ensure that the degree of interference is proportionate to that objective.

As noted earlier in this statement, commercial vessels are inherently mobile and the nature of the commercial activities means that they do not necessarily follow any predictable pattern or timetable.

A number of provisions therefore allow searches without the need for a warrant.

Monitoring and compliance activities often need to be undertaken as and when an opportunity presents, frequently while the vessel is at sea. The vessels may also be operating in geographically remote areas and with limited or no mobile telephone access. In these circumstances, obtaining a warrant can be impractical and may limit the regulator's capacity to undertake the regulatory role in a less restrictive manner. For this reason, the enforcement powers in the national law are appropriate and proportionate.

In summary, any permitted interferences with privacy are precise and circumscribed and the powers can only be exercised in controlled and prescribed circumstances.

Prosecutions under the national law would be frustrated without these powers as evidence may not otherwise be obtainable and could be concealed or destroyed.

I am therefore satisfied that the regime is compatible with the right to privacy.

The Parliament of Australia’s scrutiny of bills committee, in its consideration of the federal Bill, remarked that ‘it remains unclear to the Committee why an “oral authorisation scheme” could not be implemented, at least in a modified form’.⁵

The Committee notes that the terms of sections 97 and 99 not only permit the boarding and searching of vessels without an independent confirmation that there are grounds for such actions, but also expressly dispense with any requirement for the marine safety inspector to have ‘reasonable grounds for suspecting that any evidential material’ will be found as a result of the boarding or searching. In effect, sections 97 and 99 allow marine safety inspectors to conduct random compliance searches of any vessel. The Committee observes that Victoria’s *Marine Safety Act 2010* was recently amended to similar effect.⁶

⁴ Charter s. 13(a).

⁵ Senate Standing Committee for the Scrutiny of Bills, *Seventh Report of 2012*, p. 278 (reporting on the Marine Safety (Domestic Commercial Vessel) National Law Bill 2012 (Cth).) The Committee noted that such a scheme is provided for in the Maritime Powers Bill 2012 (Cth), clause 25(1). In addition, that Bill provides for complete exemptions from the requirement for authorisation where powers are exercised ‘to ensure the safety of the officer or any other person’: clause 29.

⁶ *Marine Safety Act 2010*, s. 126B(2), inserted by the *Transport Legislation Amendment (Marine Drug and Alcohol Standards Modernisation and Other Matters) Act 2012*, s. 26. See Scrutiny of Acts and Regulations Committee, *Alert*

The federal Statement of Compatibility remarks:

The safety regulation of domestic commercial vessel activity is not new and regulation has occurred under State and Territory legislation for some time. Owners and masters of domestic commercial vessels are aware that the safety requirements pertaining to domestic commercial vessels are subject to regulatory oversight, and by applying for the unique identifier and certificates that allow them to operate as a commercial vessel they are implicitly accepting that their compliance with the regulatory requirements will be monitored.

The Committee notes that the national law may apply to vessels while they are being occupied and used for recreational purposes, for example hired recreational and residential vessels.⁷ The Committee also notes that the national law lacks a restriction contained in Victoria's similar law that boarding and searches of vessels for compliance inspections only occur 'at a reasonable time'.⁸

The Committee refers to Parliament for its consideration the question of whether or not sections 97 and 99 of the Marine Safety (Domestic Commercial Vessel) National Law, by allowing marine safety inspectors to conduct random compliance inspections of any vessel (including hired recreational vessels) at any time, are compatible with the Charter's right against arbitrary or unlawful interferences in privacy.

The Committee makes no further comment

Digest No. 14 of 2012, p. 7-8 (reporting on that Bill) and *Alert Digest No. 15 of 2012*, pp. 15-18 (Ministerial correspondence on the Committee's report.)

⁷ *Marine Safety (Domestic Commercial Vessel) National Law*, s. 7(2). The Explanatory Memorandum to the national law states: 'An example of this is a vessel used for hire and drive purposes where the hirer is undertaking recreational activities'.

⁸ *Marine Safety Act 2010*, s. 126B(3)(a).

Parliamentary and Public Administration Legislation Amendment Bill 2013

Introduced	9 May 2013
Second Reading Speech	9 May 2013
House	Legislative Assembly
Member introducing Bill	Hon. Louise Asher MLA
Portfolio responsibility	Premier

Purpose

The purpose of the Bill is to: -

- Amend the *Parliamentary Salaries and Superannuation Act 1968* to set the basic salary for Members of Parliament from 1 July 2013 and provide a formula for the automatic annual adjustment of that amount;
- Provide for other allowances payable to Members of Parliament;
- Amend the *Parliamentary Administration Act 2005* and the *Public Administration Act 2004* in respect of the duties and entitlements of certain categories of employees;
- Make consequential amendments to the *Constitution Act 1975* and the *Parliamentary Committees Act 2003*.

Part 2 – Amendment of *Parliamentary Salaries and Superannuation Act 1968*

- It inserts a new definition of basic salary that sets the salary for the 2013-4 financial year, an increase of 2.5 per cent for the 2014-15 financial year and a formula for automatic adjustment in each financial year. **[3]** It inserts new section 6 which provides that a member is entitled to be paid the basic salary, the general expense allowance of 8 per cent of the basic salary if they do not hold an Office or an additional salary and expense allowance based on their Office and any other allowance specified in the Act or the regulations to which they are entitled. It includes a revised table setting out the additional salary and expense allowance of particular offices. **[5]**
- It inserts new section 7E which provides a resettlement allowance for a member who ceases to be a member after a general election and is not a member of the defined benefits superannuation scheme. **[6]** It inserts a general regulation making power with respect to the calculation of allowances and various matters. **[7]** Regulations may be made with respect to the provision of motor vehicles to members and the payment of allowances in that regard. The Minister may make guidelines with respect to regulations, policies and procedures for or with respect to the provision of motor vehicles to members. **[8]** The State's superannuation contribution to members of Parliament who are not members of the defined benefits scheme is 6 per cent above the minimum statutory contribution rate. **[10]**

Part 3 – Amendment of *Parliamentary Administration Act 2005*, Part 4 – Amendment of *Public Administration Act 2004*, Part 5 – Consequential amendments to other Acts

- It makes consequential amendments to update various definitions including 'presiding officer'. **[11, 12, 14]** It provides that if within a period of 12 months after ceasing to be employed as an electorate officer, a person becomes employed as a public sector employee, Ministerial officer or Parliamentary adviser, the period of service as an electorate officer is to be recognised in determining any entitlements in respect of which the continuity of service is relevant unless the entitlement was paid out. **[13, 15-17]** It makes consequential amendments to the *Constitution Act 1975* to reflect the new definition for 'deputy presiding officer' and replaces references no longer required. **[18]** It repeals section 47 to 49 of the *Parliamentary Committees*

Act 2003 no longer required as allowances in respect of committee attendances will now be made under the *Parliamentary Salaries and Superannuation Act 1968*. [19]

Charter report

The Parliamentary and Public Administration Legislation Amendment Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

State Tax Laws Amendment (Budget and Other Measures) Bill 2013

Introduced	7 May 2013
Second Reading Speech	8 May 2013
House	Legislative Assembly
Member introducing Bill	Hon. Michael O'Brien MLA
Portfolio responsibility	Treasurer

Purpose

The Bill amends various Acts. In particular: -

- It amends the *Congestion Levy Act 2005* to increase the levy rate and extend it to short stay car spaces in the central business district and inner Melbourne;
- It amends the *Duties Act 2000* in relation to eligible first home buyers, young farmers, motor vehicle duty and landholder provisions;
- It amends the *Fire Services Property Levy Act 2012* to clarify how the levy is assessed;
- It amends the *First Home Owner Grant Act 2000* to increase the residence requirement from 6 to 12 months, to restrict eligibility for the First Home Owner Grant (FHOG) to buyers of new homes and to increase the amount of the FHOG for buyers of new homes to \$10,000;
- It amends the *Liquor Control Reform Act 1998* to provide for the delegation of certain powers by the Treasurer to the Commissioner of State Revenue;
- It amends the *Payroll Tax Act 2007* in relation to payments made to the contractor and owner driver provisions;
- It amends the *Taxation Administration Act 1997* in relation to staffing, delegation and disclosure of information;
- It amends the *Water Act 1989* so that certain functions can be performed by the Commissioner of State Revenue.

Part 1 – Preliminary, Part 2 – Amendment of *Congestion Levy Act 2005*

- Clause [2] is the commencement provision. It provides that section 13 operates retrospectively from 8 May 2013. The Explanatory Memorandum note: - '*Section 13 which includes NZXL Limited in the definition of listed company and listed trust in the Duties Act 2000 is taken to have come into effect on 8 May 2013, the day of the Second Reading Speech for the Bill. The retrospective commencement date is intended to prevent the distortion of investment decisions between the date of announcement and the passage of the Bill.*' It also provides that section 27 operates retrospectively from 1 July 2012. The Explanatory Memorandum note: - '*Section 27 which corrects an omission in the new landholder duty transitional provisions is taken to have come into effect on 1 July 2012 to coincide with the date on which the landholder duty regime commenced.*'
- It increases the congestion car park levy rate to \$1300 for each leviable parking space. It also extends the levy to short stay parking spaces within the central business district and inner Melbourne. [3-5]

Part 3 – Amendment of *Duties Act 2000*

- It ensures that tax concessions that apply to listed companies under the landholder duty provisions extend to companies listed on the New Zealand Stock Exchange. [13] It amends the

Duties Act 2000 to bring forward the introduction of the 40% duty reduction for eligible first home buyers from 1 January 2014 to 1 July 2013. It provides that concessions that apply to listed companies under the landholder duty provisions extend to companies listed on the New Zealand Stock Exchange. [14-15] It brings forward the introduction of the 40% first home buyer duty reduction from 1 January 2014 to 1 July 2013. Eligibility for the first home owner grant is restricted to buyers of new homes from 1 July 2013. [16-18] The Second Reading Speech extract: - 'All eligible first time buyers purchasing a home up to \$600,000 will continue to benefit from the ... duty reduction... Currently the eligibility thresholds for the duty reduction are aligned to the existing thresholds in the Duties Act for the principal place of residence duty concession, including a minimum eligibility threshold. The Bill amends the Duties Act to remove the minimum eligibility threshold for the first home owner duty reduction. As this has always been the clear intent of the scheme, the State Revenue Office has exercised its general power of administration to apply the duty reduction to first homes valued under \$130,000. This will ensure that homes purchased for less than \$130,000 are entitled to the duty reduction under the law.'

- It increases the threshold for the young farmers' duty exemption and concession in the case of one transfer of dutiable property where the value of the dutiable property does not exceed \$750,000. [19-20] It extends the exemption from motor vehicle duty for vehicles modified to carry incapacitated passengers to include modified vehicles registered in the name of a relative or carer of an incapacitated person. [26]

Part 4 – Amendment of *Fire Services Property Levy Act 2012*, Part 5 –Amendment of *First Home Owner Grant Act 2000*

- It makes various amendments to the *Fire Services Property Levy Act 2012* to address minor technical issues which have arisen with respect to the implementation of the fire services levy. It clarifies that state owned land that is leased or licensed to the Commonwealth or a public body is exempt from the fire services property levy. [31] It makes amendment to the administration of the fire services levy so that councils and the State Revenue Office will be permitted to disclose information to the Fire Services Levy Monitor. [36] It restricts eligibility for the FHOG to buyers of new residential homes from 1 July 2013. [38] It increases the amount of the first home owner grant for buyers of new residential homes from \$7000 to \$10,000. [41] It extends the first home owner grant residence requirement from 6 months to 12 months. [37]
- It permits the disclosure of information obtained under the *First Home Owner Grant Act 2000* to the Legal Services Board and the Legal Services Commissioner. The Explanatory memorandum note: - 'New subparagraphs (v) and (vi) make the Legal Services Board and the Legal Services Commissioner, being entities responsible for the regulatory oversight of the legal profession under the *Legal Profession Act 2004*, authorised recipients of protected information. This will allow information relevant to the conduct of a law practice that has been obtained in the administration and the enforcement of the *First Home Owner Grant Act 2000* to be disclosed to the Legal Services Board and Legal Services Commissioner. Without this amendment, the Legal Services Board and Legal Services Commissioner are required to rely on powers of compulsion under the *Legal Profession Act 2004* to obtain information from the State Revenue Office relevant to inquiries or investigations under the *Legal Profession Act 2004*.'

Part 6 – Amendment of *Liquor Control Reform Act 1998*, Part 7 – Amendment of *Payroll Tax Act 2007*, Part 8 – Amendment of *Taxation Administration Act 1997*, Amendment of *Water Act 1989*

- It enables the Treasurer to delegate, by instrument, to the Commissioner of State Revenue the power to make liquor subsidy payments to liquor licensees and to require information or documents to be provided for this purpose. It also enables the Commissioner of State Revenue to sub-delegate these powers, by instrument to staff of the State Revenue Office. [43] It amends the contractor provisions in Division 7 of Part 3 of the *Payroll Tax Act 2007* to clarify the payroll tax treatment of payments made to owner-drivers and other contractors. [44-45] It amends the

Taxation Administration Act 1997 to provide the Commissioner of State Revenue with the clear power to delegate by instrument any functions of the Commissioner to any of the staff employed or engaged in the State Revenue Office. [48]

- It amends the *Water Act 1989* to expressly provide for certain functions to be performed by the Commissioner of State Revenue. [52] It enables the State Revenue Office to provide details of the duty paid on land transactions that are subject to Chapter 2 of the *Duties Act 2000*. [50] The Explanatory memorandum note: - *'The purpose of this amendment is to enable the State Revenue Office to provide an inquirer with details of the duty paid or payable on that transaction. The demand for this service has arisen since the commencement of Duties Online, which allows duty to be paid and the transfer of land registered with Land Victoria without a stamp from SRO confirming the duty treatment of the transaction. While the stamp is not required for registration of the title, the Duties Online facility has not removed the demand for physical evidence of duty payment by taxpayers, legal representatives, conveyancers and financial institutions. The proposed service will not be a public register: the information will only be accessible to a person who is able to enter some key details that identify the dutiable transaction.'*

Charter report

The State Tax Laws Amendment (Budget and Other Measures) Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

The Committee makes no further comment

Ministerial Correspondence

Fortification Removal Bill 2013

The Bill was introduced into the Legislative Assembly on 17 April 2013 by the Hon. Robert Clark MLA. The Committee considered the Bill on 18 May 2013 and made the following comments in Alert Digest No. 6 of 2013 tabled in the Parliament on 7 May 2013.

Committee Comment

Charter report

Privacy – Fortification removal order – Entry without warrant to inspect residence named in an order

Summary: The effect of clause 25(a) is that any residence named in a fortification removal order can be entered without warrant by any police officer at any time for at least 15 months after the order is named. The Committee refers to Parliament for its consideration the question of whether or not clause 25(a) is compatible with the Charter's right against arbitrary interferences in a person's privacy or home.

The Committee notes that clause 15 provides that, if a magistrate makes a fortification removal order, it remains in effect for 12 months (or longer, if extended by the magistrate) after the expiry of the 3 month (or longer, if extended) compliance period, unless the Commissioner withdraws the order. Clause 25(a) provides that, on any day the order is in place, a member of Victoria police may enter and inspect premises specified in the order to determine whether the order has been complied with or another fortification has been constructed or installed on the premises.ⁱ Clause 35 provides that all such entries must be announced and explained and that force may only be used if the occupier does not permit the police to enter after being given a reasonable opportunity.

The Committee observes that the effect of clause 25(a) is that any residence named in a fortification removal order can be entered without warrant by any police officer at any time for at least 15 months after the order is made.

The Statement of Compatibility remarks:

The right to privacy and home is relevant to these provisions of the bill, where fortification removal orders are made in respect of residential premises. In my opinion, the powers of entry and inspection conferred on Victoria Police do not infringe this right because any interference will be lawful and will not be arbitrary. These powers are conferred for the limited purpose of determining whether there has been compliance with a court order.

While at the premises, Victoria Police are only authorised to do things that are reasonably necessary to determine compliance or the existence of further fortifications (cl 25(b) and cl 32(b)). Before entering, police must announce the fact and basis of their authorisation and provide a reasonable opportunity for persons present to permit entry without the police needing to use reasonable force (cl 35.)

The Committee notes that Queensland's fortification removal legislation also empowers the police to enter premises that are subject to a fortification removal order without a warrant.ⁱⁱ However, under Queensland's provisions:

ⁱ While clause 25(a) is expressed to be limited to 'fortified premises', clause 3 defines 'fortified premises' to mean 'the premises specified in a fortification removal order' (i.e. there is no requirement that the fortifications remain in place.)

ⁱⁱ *Criminal Organisation Act 2009* (Qld), s. 44(2).

- the magistrate must fix the period when inspections can occur;ⁱⁱⁱ
- the order given to the owner and occupier must state the length of that period;^{iv}
- the magistrate may make ancillary orders on how the order may be enforced, e.g. placing limits on the time of day when powers may be exercised;^v
- police are only permitted to enter premises without a warrant if they have reasonable grounds to believe that entry is necessary to inspect whether the order has been complied with or additional fortifications have been built;^{vi}
- for residential premises, magistrates must consider the interests of residents when making ancillary orders;^{vii} and entry to residential parts of premises may only occur if police reasonably believe that those parts contain fortifications and that entry to those parts is necessary to make the inspection.^{viii}

By contrast, Victoria's legislation does not expressly: permit a court to limit the inspection period or how the powers are exercised; require that the order state how long it is in effect (and hence how long inspections without warrant can occur);^{ix} require that police believe that entry is reasonably necessary to enforce the order or inspect fortifications;^x or make specific provision for residential premises.

The Committee also notes that no other Australian legislation on fortification removal authorises police to enter premises without a warrant, except to remove fortifications that were not removed as required by the order.^{xi}

The Committee refers to Parliament for its consideration the question of whether or not clause 25(a), by automatically empowering police to enter any premises (including residential premises) that are subject to a fortification removal order on any day for at least fifteen months to determine whether the order has been complied with or additional fortifications have been built, is compatible with the Charter's right against arbitrary interferences in a person's privacy or home.

Privacy – Offence to construct or install excessive security measures in premises connected with a specified offence

Summary: The Committee refers to Parliament for its consideration the question of whether or not clause 48, by criminalising any construction or installation of excessive security measures in premises that the builder ought to know are connected to a specified offence, is compatible with the Charter's right against unlawful or arbitrary interferences in privacy.

The Committee notes that clause 48 makes it an offence to construct or install fortifications on premises that the person knows or ought to know are likely to be used in connection with, or to conceal evidence of or keep proceeds of, a specified offence. Clause 4 defines 'fortifications' as a structure or device that is part of or attached to a premises, could prevent uninvited entry to premises and 'is beyond what is reasonably necessary to provide security for the ordinary lawful use of that kind of premises'. The offence is punishable by up to 6 months imprisonment.

iii *Criminal Organisation Act 2009* (Qld), s. 44(1)

iv *Criminal Organisation Act 2009* (Qld), s. 46(1)(d).

v *Criminal Organisation Act 2009* (Qld), s. 45(1).

vi *Criminal Organisation Act 2009* (Qld), ss. 44(3), 52(1).

vii *Criminal Organisation Act 2009* (Qld), s. 45(2)(a).

viii *Criminal Organisation Act 2009* (Qld), ss. 44(3), 52(2).

ix See clause 13(g)(i), only requiring that the order state that Victoria police may enter and inspect 'in accordance with Part 3... while the order is in effect'.

x See clause 25(b), which limits the police to reasonably necessary actions 'while at the premises'.

xi See *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), Part 16A; *Serious Crime Control Act 2009* (NT), Part 6; *Summary Offence Act 1953* (SA), Part 16; *Police Offences Act 1935* (Tas), Part II, Division III; *Corruption and Crime Commission Act 2003* (WA), Part 4, Division 6. Clause 37 empowers Victorian police to enter a premises without a warrant to remove fortifications.

The Statement of Compatibility does not address the ban on constructing or installing fortifications in clause 48. In relation to other provisions requiring the removal of fortifications, the Statement remarks:

Requiring a person to remove or modify a fortification that forms part of or is attached to their home might negatively affect the person's privacy or home (although a removed or modified fortification would have to be beyond what is reasonably necessary to provide security for the lawful use of residential premises.)...

To the extent that the rights in charter act s. 13(a)... are relevant, in my view these rights are not limited by the bill because:

any interference with privacy and home will be lawful and not arbitrary (and hence will not limit the right in s. 13(a))...

A fortification removal order may only be imposed by order of the Magistrates Court, after application by the chief commissioner...

The bill also contains safeguards which protect persons who may be affected by fortification removal orders. These include... the requirement that the chief commission must make reasonable efforts to serve the owner of relevant premises... with notice of the application [and] there is period for voluntary compliance with the order of at least three months before any enforcement action can be taken...

The Committee observes that these safeguards do not apply to clause 48, which criminalises the building of fortifications whether or not a fortification removal order has been made^{xii} and exposes the builder to a penalty for building fortifications that were voluntarily removed at the police's request.

While the Committee considers that banning the building of fortifications at a premises for the purpose of preventing the police from investigating crimes connected to that premises is compatible with the Charter's privacy right,^{xiii} it notes that clause 48 applies even if the builder:

- believed the measures were necessary for ordinary lawful use of a residential premises. (It is enough if a court holds that they went beyond what was reasonably necessary for that purpose.^{xiv}); or
- was unaware of the premises' link to a specified offence. (It is enough that the builder ought to know of that link.^{xv})

The Committee observes that there is no similar offence in any other Australian legislation concerning fortifications.^{xvi}

The Committee will write to the Attorney-General seeking further information about the compatibility of clause 48 with the Charter's privacy right. Pending the Attorney-General's response, the Committee draws attention to clause 48.

Minister's Response

Thank you for your letter in relation to the above Bill. I have also read your discussion of the scheme contained in the Bill in the Alert Digest No.6 of 2013.

Whilst you have not specifically sought a response from myself in relation to the inspection power, I would like to note the following matters in addressing your concern whether the power is compatible with the right against arbitrary interferences in a person's privacy or home contained in the *Charter of Human Rights and Responsibilities Act 2006*.

^{xii} Clause 49 provides for an aggravated form of the offence where a fortification removal order has been made.

^{xiii} Charter s. 13(a) provides: 'A person has the right... not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with'.

^{xiv} See clause 4(1)(c).

^{xv} See clause 48.

^{xvi} See *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), Part 16A; *Serious Crime Control Act 2009* (NT), Part 6; *Criminal Organisation Act 2009* (Qld), Part 5; *Summary Offence Act 1953* (SA), Part 16; *Police Offences Act 1935* (Tas), Part II, Division III; *Corruption and Crime Commission Act 2003* (WA), Part 4, Division 6.

The Statement of Compatibility reflects my view that the scheme contained in the Bill, and the inspection power itself, is compatible with the rights in the *Charter of Human Rights and Responsibilities Act 2006*. This view is based on the following factors –

- The power is directly linked to the legitimate purpose of determining whether an order has been complied with and continues to be complied with, or whether further fortifications have been erected.
- While at the premises, Victoria Police are only authorised to do things that are reasonably necessary to determine compliance or the existence of further fortifications.
- The entry and inspection powers form part of the required content of a fortification removal order that must be affixed to the premises and served on an owner, thus ensuring owners and occupiers will be fully aware of the police powers.
- Police must, before entering, announce the fact and basis of their authorisation and provide a reasonable opportunity for persons present to permit entry without reasonable force.
- The inspection power may extend beyond the duration of the fortification removal order only where the Magistrates' Court has made an order on the basis that it is satisfied it is appropriate to do so in all of the circumstances.

The power is clearly linked to the purposes of the scheme and is a necessary corollary of the power of the Magistrates' Court to make an order and the responsibility of police in ensuring the order is complied with and, where necessary, to take appropriate enforcement action.

The differences between legislation in place in other jurisdictions and the Bill currently before the Parliament are useful for comparison purposes but it is, in my opinion, dangerous to infer that the inspection power is unwarranted because there may be no similar power in other jurisdictions. There may be many reasons why those differences exist, but the important point to make is that the scheme will apply in Victoria and must be effective in order to counter the mischief that is being addressed.

The Committee has requested further information about the compatibility of clause 48 of the Bill with the right not to have privacy or home unlawfully or arbitrarily interfered with as protected by section 13(a) of the *Charter of Human Rights and Responsibilities Act 2006*.

Clause 48 prohibits the construction or installation of a fortification on premises that are being used or are likely to be used in connection with the commission of, concealing the evidence of, or keeping the proceeds of, a specified offence. In order to be found guilty, a person must have known, or ought to have known, of the link between the premises and the offence. In the case of an individual, the penalty is 60 penalty units or imprisonment for 6 months or both.

The Committee has observed that clause 48 criminalises the building of a fortification whether or not a fortification removal order has been made and exposes the builder to a penalty for building fortifications that were voluntarily removed at the police's request.

The Committee has also observed that clause 48 applies even if the builder believed the measures were necessary for the ordinary lawful use of residential premises or was unaware of the premises' link to a specified offence.

In my view, clause 48 is compatible with section 13(a) of the Charter Act. Prohibiting a person from building a structure or device to form part of or be attached to their home may negatively interfere with the person's privacy or home. However, any such interference will be lawful as it is specifically permitted by clause 48. Moreover, it will not be arbitrary, as it is confined to structures and devices that amount to a 'fortification' within the meaning of clause 4(1)(c) of the Bill, in circumstances where the person knows or ought reasonably to know that the premises are being used or likely to be used in connection with serious crime. The definition of 'fortification' does not capture structures and devices that are reasonably necessary to provide security for the ordinary lawful use of premises. The prosecution will carry the burden of proving the elements of the offence in clause 48.

In light of the necessary elements of the offence, it is appropriate for clause 48 to apply in circumstances where a fortification order has not been made. I note that clause 49 criminalises the building of a fortification in circumstances where a fortification removal order has been made, and consequently clause 49 imposes a more substantial penalty (240 penalty units or imprisonment for two years or both).

The Committee has also noted that the offence in clause 48 is not contained in legislative schemes interstate. As with my comments above, the absence of such an offence in interstate schemes does not necessarily determine the form of legislation appropriate for Victoria. My central concern in introducing the Bill is to ensure a practical, workable scheme that effectively responds to the use of fortifications for purposes relating to criminal activity. I am satisfied the offence in clause 48 is appropriate in that context.

I thank the Committee for drawing these matters to my attention.

ROBERT CLARK MP
Attorney-General

Received 24 May 2013

The Committee thanks the Attorney-General for this response.

Heavy Vehicle National Law Application Bill 2013

The Bill was introduced into the Legislative Assembly on 17 April 2013 by the Hon. Terry Mulder MLA. The Committee considered the Bill on 6 May 2013 and made the following comments in Alert Digest No. 6 of 2013 tabled in the Parliament on 7 May 2013.

Committee Comment

Charter report

Statement of compatibility – National law – Practice Note No. 3

Summary: The Committee will write to the Minister seeking further information as to whether, and to what extent, the Charter's operative provisions will apply under the Heavy Vehicle National Law.

The Committee notes that clause 4 applies the Schedule of the *Heavy Vehicle National Law Act 2012* (Qld), as in force from time to time, as a law of Victoria as if it were an Act passed by the Parliament of Victoria. Section 656 of the Heavy Vehicle National Law establishes the Heavy Vehicle National Regulator as 'one single national entity' with functions and powers conferred on it by that Law as applied by clause 4. Section 734 of the Heavy Vehicle National Law empowers the Governor of Queensland, acting with advice from the Executive Council of Queensland and on a unanimous recommendation of the Responsible Ministers, to make national regulations under that Law.

The Committee observes that the effect of clause 4 is that subsequent amendments to the Heavy Vehicle National Law made by the Parliament of Queensland and actions by the Heavy Vehicle National Regulator under that law will have legal effect in Victoria without further involvement by the Parliament of Victoria. However, clause 6 of the Bill and s. 734 of the Heavy Vehicle National Law provide for scrutiny of national regulations by the Parliament of Victoria, including this Committee.

The Committee recalls its Practice Note No. 3:

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

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

The Committee notes that the Victorian Government, in its submission to the National Transport Commission on the draft of the Heavy Vehicle National Law, remarked:^{xvii}

In finalising the Heavy Vehicle National Law, the National Transport Commission will need to provide Victoria with a Statement of Compatibility with the Victorian Charter of Human Rights and Responsibilities.

The Committee observes that the Charter may permit a federal body to prepare a Statement of Compatibility for a Victorian Bill at the request of the member who is to introduce the Bill into the

^{xvii} Minister for Roads, 'Victorian Government Submission on the Draft Heavy Vehicle National Law and Regulatory Impact Statement', May 2011, available at <<http://www.ntc.gov.au/rfcDocuments/Victorian%20Government201102412163877.pdf>>, p.2. See also the discussion of national laws by the federal human rights committee, which 'urges the [federal] government to ensure that human rights compatibility is an integral and explicit part of the development of all national cooperative schemes and their implementation': Parliamentary Joint Committee on Human Rights, *Third Report of 2013*, Parliament of Australia, 2013, [1.131].

Victorian Parliament,^{xviii} but that the statement must (as the statement for this Bill does) state the 'opinion' of that member as to its compatibility with human rights.^{xix}

The Committee notes that, while the Statement of Compatibility contains an assessment of the compatibility of the Heavy Vehicle National Law with human rights, it does not set out whether and to what extent the Charter's operative provisions will apply under the Heavy Vehicle National Law.

The Committee will write to the Minister seeking further information as to whether, and to what extent, the Charter's operative provisions (including its provisions for scrutiny, interpretation, declarations of inconsistent interpretation and obligations of public authorities) will apply under the Heavy Vehicle National Law. Pending the Minister's response, the Committee draws attention to clause 4.

Presumption of innocence – Reverse onus of proof – Sudden or extraordinary emergency

Summary: The effect of s. 630 of the Heavy Vehicle National Law is that someone who claims that his or her otherwise criminal conduct was due to a sudden or extraordinary emergency will be found guilty unless he or she can prove that claim on the balance of probabilities. The Committee will write to the Minister seeking further information.

The Committee notes the s. 630 of the Heavy Vehicle National Law provides:

In a proceeding for an offence against this Law, it is a defence for the person charged to prove that the conduct constituting the offence occurred in response to circumstances of sudden or extraordinary emergency.

The Committee observes that the effect of s. 630 is that someone who claims that his or her otherwise criminal conduct was due to a sudden or extraordinary emergency will be found guilty unless he or she can prove that claim on the balance of probabilities. The Committee considers that s. 630 may engage the Charter's right to be presumed innocent until proved guilty according to law.^{xx}

The Statement of Compatibility does not discuss s. 630. The Committee notes that Victoria's existing legislation on heavy vehicles (and the model law on which it was based) provides the same defence but does not impose any burden of proof on people charged with an offence.^{xxi} Instead, once the accused has presented or pointed to evidence that raises a reasonable possibility that his or her conduct was due to a sudden or extraordinary emergency, he or she must be acquitted unless the prosecution proves beyond reasonable doubt that his or her conduct was not due to such an emergency. The existing approach is consistent with the usual approach to defences of emergency or necessity in Australian criminal law.^{xxii}

The Committee will write to the Minister seeking further information as to the compatibility of s. 630 of the Heavy Vehicle National Law with the Charter's right to be presumed innocent until proved guilty according to law. Pending the Minister's response, the Committee draws attention to s. 630.

Minister's Response

Thank you for your letter dated 7 May 2013 regarding the Heavy Vehicle National Law Application Bill 2013. Your questions and my response are as follows.

(1) Whether, and to what extent, the *Charter of Human Rights and Responsibilities Act 2006* operative provisions (including its provisions for scrutiny, interpretation, declarations of

^{xviii} Charter s. 28(1) provides: 'A member of Parliament who proposes to introduce a Bill into a House of Parliament must cause a statement of compatibility to be prepared in respect of that Bill.'

^{xix} Charter s. 28(3)(a) provides that 'A statement of compatibility must state... whether, in the member's opinion, the Bill is compatible with human rights and, if so, how it is compatible'.

^{xx} Charter s. 25(1).

^{xxi} *Road Safety Act 1986*, s. 215; Road Transport Law (Compliance and Enforcement) Bill – Model Provisions, Approved by the Australian Transport Council, 3 November 2003, available at <<http://www.ntc.gov.au/DocView.aspx?documentid=00937>>, clause 154.

^{xxii} E.g. *Crimes Act 1958*, s. 9AI; *Criminal Code* (Cth), s. 10.3.

inconsistent interpretation and obligations of public authorities) will apply under the Heavy Vehicle National Law.

Interpretation and declaration of inconsistent interpretation

Clause 4 of the Heavy Vehicle National Law Application Bill 2013 (“the Bill”) declares that the Heavy Vehicle National Law, which is set out in the schedule to the *Heavy Vehicle National Law Act 2012* of Queensland, applies as a law of Victoria, as if it were a Victorian Act.

This means that the interpretative provisions of section 32 of the *Charter of Human Rights and Responsibilities Act 2006* (“the Charter Act”) will apply to the Heavy Vehicle National Law in Victoria, as will section 36 of the Charter Act with respect to declarations of inconsistent interpretation by the Supreme Court of Victoria.

Scrutiny

The human rights impacts of the Heavy Vehicle National Law were assessed in the Statement of Compatibility tabled in relation to the Bill.

Future amendments to the Heavy Vehicle National Law will be subject to a rigorous review process prior to them being introduced into the Queensland Parliament, which will include assessment of potential human rights impacts. Proposed amendments will only proceed if they have been unanimously approved by the Standing Committee on Transport and Infrastructure (“SCOTI”), comprising responsible Ministers. VicRoads and the Victorian Ministerial representative on SCOTI will of course ensure that the human rights implications of any proposed amendments are fully considered during their development.

As noted by your Committee in its report, the Heavy Vehicle National Law is contained in a Queensland Act and therefore future amendments to that Law will flow through automatically into the Victorian law (through the application provisions of clause 4) without a Bill needing to be introduced into the Victorian Parliament. As a result, amendments to the Heavy Vehicle National Law will not be subject to the parliamentary scrutiny provisions of sections 28-30 of the Charter Act.

However, it should be noted that section 4(1) of the *Legislative Standards Act 1992* of Queensland requires that fundamental legislative principles need to be considered in policy development for a government Bill in that jurisdiction. Fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. The principles include requiring that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament

I am confident that the processes for review of future amendments to the Heavy Vehicle National Law, including the requirement for the unanimous approval of responsible Ministers and assessment of proposals against the Queensland Parliament’s Statement of Fundamental Legislative Principles, will ensure that human rights impacts are given appropriate consideration in the development and evaluation of those amendments.

Obligations of public authorities

The Charter Act applies to ‘public authorities’. This includes all entities established by a statutory provision who have functions of a public nature (section. 4(b)) or entities whose functions are or include functions of a public nature, when it is exercising those functions on behalf of Victoria (section 4(c)).

The National Regulator is an entity established by a statutory provision (section 656 of the Heavy Vehicle National Law) and exercises function of a public nature (section 659). The National Regulator has functions of a public nature and exercises those functions in or on behalf of the state of Victoria (in some cases through Victorian agencies).

Therefore, the Charter Act applies to the National Regulator in the exercise of its functions in Victoria, and in respect of its conduct and decisions affecting persons in Victoria.

The National Regulator may delegate various functions and powers to VicRoads. Any arrangement between the National Regulator and VicRoads will be supported by a service level agreement as well as by an instrument of delegation. The Charter Act applies to VicRoads and staff engaged by VicRoads, when they are acting as delegates of the National Regulator, as VicRoads and its staff or contractors are public officials within the meaning of the *Public Administration Act 2004*.

(2) The compatibility of section 630 of the Heavy Vehicle National Law with the Charter's right to be presumed innocent until proved guilty according to law.

The effect of section 630 of the Heavy Vehicle National Law is that it is a defence for a person charged with an offence under that section to prove that the conduct constituting the offence occurred in response to circumstances of sudden or extraordinary emergency.

This defence derives from the common law defence of necessity or emergency. The leading authority is the Supreme Court of Victoria case of *R v Loughnan* [1981] VR 443. The three elements of the defence are:

1. The criminal act(s) must have been done only in order to avoid certain consequences, which would have inflicted "irreparable evil" upon the accused.
2. The accused must have honestly believed on reasonable grounds that he or she was placed in a situation of imminent peril.
3. The acts done to avoid the imminent peril must not have been out of proportion to the peril to be avoided.

Case law emphasises that these elements are not strict legal conditions required to establish the defence. Rather individual factual considerations will determine the success or otherwise of the defence. The accused's conduct will be excused if he or she honestly believes, on reasonable grounds, that his or her actions were necessary in order to avoid threatened death or serious injury^{xxiii}.

Therefore, under the Heavy Vehicle National Law, if a person has been charged with an offence, based on objective evidence gathered by authorised officers or police, he or she may raise this defence as a full defence to the conduct. The factual circumstances and the state of mind of the accused that led to the criminal act (in accordance with his or her belief that such an action was necessary) are peculiarly within the accused's knowledge. It is therefore appropriate that the onus is on the accused to prove the elements of this full defence to a breach of the law. If that is accomplished, on the balance of probabilities, the onus is then on the prosecution to disprove the defence beyond reasonable doubt. For these reasons, I consider that the provision is justified and is in accordance with the common law defence.

Section 630(2) of the Heavy Vehicle National Law codifies the elements of the defence in a similar way as has been done in section 10.3(2) of the Commonwealth Criminal Code, and section 9A1(2) of the *Crimes Act 1958* (Vic.). Both these provisions set out the nature of the defence in and the elements that the accused must prove. In relation to the elements needing to be established by the accused, they are drafted almost identically to section 630(2) of the Heavy Vehicle National Law. In line with the approach taken in all jurisdictions, the accused bears the evidentiary burden of raising the defence. Once that has been done, the onus is on the prosecution to eliminate any reasonable possibility that the accused acted in response to circumstances of sudden or extraordinary emergency.

Furthermore, the defence (along with other defences in Part 10.4 of the Heavy Vehicle National Law) are *in addition* to specific defences available in each offence provision.

For these reasons, I believe that section 630 of the Heavy Vehicle National Law is compatible with the right to be presumed innocent until proven guilty.

I trust this addresses the Committee's concerns.

Should you require any further information, please contact Shelley Marcus, VicRoads' Director – Legal Services on 9854 2505.

Hon Terry Mulder MP
Minister for Roads

Received 27 May 2013

The Committee thanks the Minister for this response.

^{xxiii} *R v Rogers* (1996) 86 A Crim R 542 (NSWCCA), Gleeson CJ at 547 (Clarke JA and Ireland J concurring).

Further Committee Comment

The Committee notes that s. 630 of the Heavy Vehicle National Law requires that the accused 'prove that the conduct constituting the offence occurred in response to circumstances of sudden or extraordinary emergency'. The Committee observes that, to establish this defence, the accused must prove the matters set out in s. 630(2) on the balance of probabilities.

The Committee notes that it is not enough for the accused to discharge an 'evidentiary burden' for those matters and there is no onus on the prosecution to disprove the those matters (or the wider defence) beyond reasonable doubt. In this regard, s. 630 differs from the common law defence of necessity and similar statutory provisions in s. 10.3(2) of *the Criminal Code* (Cth) and s. 9AI(2) of the *Crimes Act 1958* (Vic).

Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Bill 2013

The Bill was introduced into the Legislative Assembly on 16 April 2013 by the Hon. Robert Clark MLA. The Committee considered the Bill on 6 May 2013 and made the following comments in Alert Digest No. 6 of 2013 tabled in the Parliament on 7 May 2013.

Committee Comment

Charter report

Fair hearing – Director liable to pay fine imposed on insolvent body corporate

Summary: New section 55 provides that a court may, in some circumstances, declare that any person who was a director of an insolvent body corporate when it committed an offence is liable to pay the fine imposed on the body corporate for that offence. The Committee observes that this provision may make one person liable for a criminal penalty imposed on another, without that person being a party to the hearing that determined the criminal charge and without proof of that person's criminal responsibility for the other's offending.

The Committee notes that clause 47, inserting a new section 55 into the *Sentencing Act 1991*, provides that a court may declare that any person who was a director of a body corporate when it committed an offence is liable to pay the fine imposed on the body corporate for that offence. The declaration:

- can only be made if the court is satisfied that the body corporate is not able to pay the fine and there were reasonable grounds to believe that the body corporate would not be able to meet its liabilities when it committed the offence.
- can not be made about a particular director if that director 'satisfies' the court that he or she reasonably believed that the body corporate would be able to meet its liabilities when it committed the offence and took all reasonable steps to ensure that it would be able to do so when those liabilities became due.^{xxiv}

If the fine isn't paid, then the director may be arrested or ordered to perform community work.^{xxv}

The Committee observes that new section 55 may make one person liable for a criminal penalty imposed on another, without that person being a party to the hearing that determined that the offence was committed and without proof of that person's criminal responsibility for the other's offending. In addition, it places a burden of proof on each director to show that he or she falls within the sole exception to liability. The Committee considers that new section 55 may engage the Charter's right to a fair hearing before a criminal charge or civil proceeding is decided.^{xxvi}

The Statement of Compatibility does not address new section 55. The Committee notes that an identical provision has been part of Victorian sentencing law since at least 1991.^{xxvii} However, there are no equivalent provisions elsewhere in Australia.

The Committee observes that new section 55 differs from other common provisions that make directors of a body corporate:

^{xxiv} New section 55(2). The Court of Appeal and High Court have held that the word 'satisfies' generally imposes a legal burden of proof to prove a matter on the balance of probabilities: *R v Momcilovic* [2010] VSCA 50, [19]; *Momcilovic v R* [2011] HCA 34, [62], [454], [466], [510], [670].

^{xxv} New sections 69(1) and 69D(2). Directors do not appear to be liable to further orders relating to fine defaults (including imprisonment): see new section 69E(1) (which refers to a 'sentenced' person) and new sections 69G and 69H (which refer to an 'offender').

^{xxvi} Charter s. 24(1) states that 'A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.' See also Charter s. 25(1) (the presumption of innocence), to the extent that a director who is made liable to pay a criminal fine may be considered 'a person charged with a criminal offence'.

^{xxvii} *Sentencing Act 1991*, s. 50(6),(7). See also *Infringements Act 2006*, s. 91.

- criminally liable for offences committed by the body corporate, as such provisions generally require proof (or the absence of defences) about each director's responsibility for each offence.^{xxviii}
- criminally liable for permitting the body corporate to incur a debt while insolvent, as such provisions require proof that each director suspected the insolvency and dishonestly failed to prevent the debt from being incurred.^{xxix}
- civilly liable for permitting the body corporate to incur a debt while insolvent, as such provisions are limited to compensating actual loss or damage others have suffered because of that insolvency or penalties for the director's own prejudicial or serious failures.^{xxx}

As well, all such provisions require that body corporate's relevant conduct be proved at a hearing to which the director is a party.

The Committee refers to Parliament for its consideration the question of whether or not new section 55:

- **by potentially imposing liability for a body corporate's criminal fines on a director, without the director being a party to the hearing where the body corporate's offending was proven and without proof that the director was criminally responsible for that offending; and**
- **by imposing a burden of proof on each director to establish that he or she falls within an exception to that liability**

is compatible with the Charter's right to have criminal charges and civil proceedings decided after a fair hearing.

Minister's Response

I write to you in response to Alert Digest No.6 of 2013 regarding the *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Bill 2013* (the Bill). The Scrutiny of Acts and Regulations Committee (Committee) tabled the Alert Digest in Parliament on 7 May 2013.

The Committee commented on new section 55 of the *Sentencing Act 1991*, which is proposed to be inserted by clause 47 of the Bill. Specifically, the Committee asked whether new section 55 is compatible with the right to have criminal charges and civil proceedings decided after a fair hearing under section 24 of the *Charter of Human Rights and Responsibilities Act 2006* (Charter Act).

Proposed new section 55 re-enacts existing sections 50(6) and (7) of the *Sentencing Act 1991*. The provision therefore does not impose any greater liability on directors than exists under the current law.

New section 55 does not impose any criminal liability on directors of bodies corporate. New section 55 enables a court to declare that a director of a body corporate is personally liable to pay a fine for which a body corporate is liable, where the director is unable to establish that he or she had a reasonable belief the body corporate was solvent and took reasonable steps to ensure it continued to be solvent.

The Bill provides for a declaration under section 55 to be determined by a competent, independent and impartial court after a fair and public hearing. The requirements of section 24 of the Charter Act are therefore satisfied. In order for liability to be imposed on a director to pay a fine owed by an insolvent body corporate, the court must be satisfied that:

- the body corporate cannot pay the fine; and
- immediately before the offence was committed there were reasonable grounds to believe the body corporate was not solvent.

^{xxviii} E.g. *Statute Law Amendment (Directors' Liability) Act 2013*.

^{xxix} *Corporations Act 2001* (Cth), s. 588G(3)(c), (d).

^{xxx} *Corporations Act 2001* (Cth), ss. 588M(1)(b), (2), (3), 1317G(1)(b), 1317H(1)(b). These provisions are subject to detailed excuse provisions in ss. 588H & 1317S.

Any affected director will have the opportunity to be represented and make submissions in relation to potential liability. The prosecution will bear the burden of establishing these matters.

Further, new section 55(2) will enable the diligent and responsible director to avoid liability for payment of the fine where he or she had a reasonable belief the body corporate was solvent and took reasonable steps to ensure it continued to be solvent. (What constitutes reasonable steps will depend to some extent on the information available to and the responsibilities of the director.) If these circumstances do not exist, it is appropriate that a director should be liable for payment of the fine. Directors of a corporation have existing duties to ensure the corporation does not trade whilst insolvent.

The purpose of existing sections 50(6) and (7) and proposed new section 55 is to discourage and provide a remedy for a particular type of commercial irresponsibility, namely where directors allow their body corporate to continue to trade and incur liabilities (including fines) whilst insolvent. The provision aims to encourage directors to carry out their duties properly if the body corporate is at or approaching insolvency, and provides a sanction if they do not.

Hence, proposed new section 55 is compatible with section 24 of the Charter Act.

I trust this assists in the deliberations of the Committee.

Thank you for raising this important matter.

ROBERT CLARK MP

Attorney-General

17 May 2013

The Committee thanks the Attorney-General for this response.

**Committee Room
27 May 2013**

Appendix 1

Index of Acts and Bills in 2013

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Appendix 2

Committee Comments classified by Terms of Reference

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

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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

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

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
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
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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
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Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Bill 2013	Attorney-General	17-05-13	[ii] 7 of 2013

ⁱ 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.

ⁱⁱ 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.