

No. 8 of 2012

Tuesday, 21 May 2012

On the

Appropriation (2012 / 2013) Bill 2012

Appropriation (Parliament 2012/2013)
Bill 2012

Duties Amendment (Landholder)
Bill 2012

Education Legislation Amendment
(VET Sector, Universities and Other
Matters) Bill 2012

Independent Broad-based Anti-
corruption Commission Amendment
(Examinations) Bill 2012

Monetary Units Amendment Bill 2012

National Energy Retail Law (Victoria)
Bill 2012

Parliamentary Salaries and
Superannuation Amendment (Salary
Restraint) Bill 2012

Police and Emergency Management
Legislation Amendment Bill 2012

Road Safety Amendment Bill 2012

State Taxation Acts Amendment
Bill 2012

The Committee



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Member for Eastern Victoria



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Member for Pascoe Vale



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Terms of Reference - Scrutiny of Bills

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

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

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Useful information

Role of the Committee

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

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

Interpretive use of Parliamentary Committee reports

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

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

When may human rights be limited

Section 7 of the *Charter* provides –

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

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

Glossary and Symbols

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

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

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

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

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

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

'*penalty units*' refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (currently one penalty unit equals \$122.14).

'*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. 8 of 2012

Appropriation (2012/2013) Bill 2012

Introduced	1 May 2012
Second Reading Speech	1 May 2012
House	Legislative Assembly
Member introducing Bill	Hon. Kim Wells MLA
Portfolio responsibility	Treasurer

Purpose

Background

This 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 2012/2013.

The Committee makes no further comment.

Appropriation (Parliament 2012/2013) Bill 2012

Introduced	1 May 2012
Second Reading Speech	1 May 2012
House	Legislative Assembly
Member introducing Bill	Hon. Kim Wells MLA
Portfolio responsibility	Treasurer

Background

This Bill provides appropriation authority for payments of certain sums out of the Consolidated Fund to the Parliament for the financial year 2012/2013.

Note: In addition to appropriating money for the purposes of the Parliament the Bill appropriates money for the financial year 2012/2013 for the Auditor-General for the State of Victoria, being an independent officer of the Parliament pursuant to sections 94A to 94C of the *Constitution Act 1975*.

The Committee makes no further comment.

Duties Amendment (Landholder) Bill 2012

Introduced	1 May 2012
Second Reading Speech	2 May 2012
House	Legislative Assembly
Member introducing Bill	Hon. Robert Clark MLA
Portfolio responsibility	Treasurer

Purpose

The Bill amends the to substitute new Parts 1 and 2 into Chapter 3 in the *Duties Act 2000* (the 'Act') to introduce a new landholder duty model in Victoria in place of the current land rich duty model. [5] The Bill makes consequential and transitional amendments to reflect the change from a 'land rich' to a 'landholder' model. [5 to 12].

The Bill also makes a number of minor statute law revision amendments to the Act correcting punctuation and reflecting the name change made to a Commonwealth Act (see below). [13 to 15]

The Bill makes consequential amendments to the *Planning and Environment Act 1987*. [16 to 25]

The Bill amends the *Financial Sector Reform (Victoria) Act 1999* as a result of the change of name of the *Financial Sector (Transfers of Business) Act 1999 (Cth)*. The amendments reflect the new name of the Act being the '*Financial Sector (Business Transfer and Group Restructure) Act 1999 (Cth)*'. [26 to 29]

The Committee makes no further comment.

Education Legislation Amendment (VET Sector, Universities and Other Matters) Bill 2012

Introduced	1 May 2012
Second Reading Speech	3 May 2012
House	Legislative Council
Member introducing Bill	Hon. Peter Hall MLC
Portfolio responsibility	Minister for Higher Education and Skills Minister responsible for the Teaching Profession

Purpose

The Bill amends the *Education and Training Reform Act 2006* to:

1. transfer regulation of apprenticeships from the Victorian Skills Commission (the Commission) to the Victorian Registration and Qualifications Authority (the VRQA).
2. transfer to the Minister the Commission's functions in relation to the reserve powers over TAFE institute boards, such as the power to recommend removal of unsatisfactory directors
3. provide governance reforms in the adult, community and further education sector, including requirements to hold public annual meetings, prepare long term strategic plans and annual corporate plans.
4. provide that the VRQA may seek an injunction from a court to prevent further breaches of regulatory requirements or to require a registered training organisation to undertake positive action to improve its performance or remedy a situation.
5. provide authority to the VRQA to share information when requested in writing by its Commonwealth counterparts.
6. extend the Victorian Student Number ¹ (the VSN) system to Commonwealth-regulated providers operating in Victoria, subject to enabling regulations being made by the Commonwealth to allow State VSN requirements to apply to nationally registered providers.
7. clarify that public sector employees already receiving full-time salaries are not eligible for extra pay as directors of boards of TAFE institutes or adult education institutions.
8. facilitate the grant of leave of absence to members of the Councils of Universities.
9. make machinery and technical amendments reflecting recent changes to departmental structures.

Content and Committee comment

Commencement by proclamation and retrospective commencement

The Committee notes that clause 50 is to commence on proclamation and clause 62(5) commences with retrospective effect from 1 July 2007.

The Committee observes that the explanatory memorandum provides detailed information concerning the commencement provisions for these clauses.

¹ The VSN is a unique identifier allocated to every student under age 25 in schools and registered vocational education and training providers.

Extract from the explanatory memorandum:

... For these reasons, the timing of the commencement of clause 50 (or whether it commences at all) will depend on Ministerial Council consent and the making of Commonwealth regulations. If and when this consent is obtained, and the required regulations are made, clause 50 will be proclaimed so as to commence at the same time as those regulations.

... The second exception is clause 62(5), which is to be taken to have come into operation on 1 July 2007, the commencement date for the Principal Act. Clause 62(5) corrects transitional provisions in the Principal Act. While the provision is retrospective, it merely corrects cross-references to ensure that two transitional arrangements of that Act work as originally intended.

The Committee accepts that in all the circumstances it is justifiable to provide for commencement by proclamation and retrospective commencement respectively for clauses 50 and 62(5).

The Committee makes no further comment.

Monetary Units Amendment Bill 2012

Introduced	1 May 2012
Second Reading Speech	2 May 2012
House	Legislative Assembly
Member introducing Bill	Hon. Robert Clark MLA
Portfolio responsibility	Treasurer

Purpose

The Bill amends the *Monetary Units Act 2004* to make special provision in relation to fee units, penalty units and the annual rate for the 2012-2013 financial year.

Note: The amendments in this Bill relate to the 2012-2013 financial year only. Following these amendments, the provisions of the Act relating to the indexation of fee units and penalty units will continue to operate as before.

For the financial year commencing on 1 July 2012, the value of a fee unit is \$12.53 and the value of a penalty unit is \$140.84.

The Bill provides that for the financial year commencing 1 July 2012 the annual rate referred to in section 5 of the Act is 2.5%.

The Committee makes no further comment.

Parliamentary Salaries and Superannuation Amendment (Salary Restraint) Bill 2012

Introduced	1 May 2012
Second Reading Speech	2 May 2012
House	Legislative Assembly
Member introducing Bill	Hon. Louise Asher MLA
Portfolio responsibility	Premier

Purpose

The Bill amends the *Parliamentary Salaries and Superannuation Act 1968* to limit the increase in the salary that would otherwise be payable to members of the Parliament of Victoria to 2.5% for the 2012-2013 financial year.

The Committee makes no further comment.

Police and Emergency Management Legislation Amendment Bill 2012

Introduced	1 May 2012
Second Reading Speech	2 May 2012
House	Legislative Assembly
Member introducing Bill	Hon. Peter Ryan MLA
Portfolio responsibility	Minister for Police and Emergency Services

Purpose

The Bill amends the:

- *Bushfires Royal Commission Implementation Monitor Act 2011* to extend the operation of that Act and reporting requirements under it for a further 2 years. The Bill proposes that the Act will be repealed on 30 September 2014. [3 to 6]
- *Country Fire Authority Act 1958* to expand the category of persons who are able to exercise the powers of the Chief Officer of the Country Fire Authority in circumstances where an officer of the Country Fire Authority is not present. [7]
- *Police Regulation Act 1958* to remove the limitations on the number of Deputy Commissioners and Assistant Commissioners that may be appointed under the Act and enable the Chief Commissioner to determine standards as to grooming and clothing accessories. [8 and 9]

The Second Reading Speech relevantly provides:

The Bill proposes to amend the *Police Regulation Act 1958* to put the amended 'Uniform and appearance' policy into effect by providing an explicit statutory power for the Chief Commissioner to issue standards of grooming and acceptable clothing accessories, such as jewellery, headgear, sunglasses and make-up, for members of the police force, police recruits, police reservists and protective services officers. The Bill provides that such standards may differ based on sex, gender identity, physical features or religious belief or activity, and provides for exceptions to be granted based on genuine medical, cultural or religious grounds.

- *Sale of Land Act 1962* to require a vendor's statement to disclose when land is in a bushfire-prone area. This provision has a default commencement on 31 July 2013. [10]

The Second Reading Speech relevantly provides:

Part 5 of the Bill, which amends section 32 of the *Sale of Land Act 1962*, will come into operation on a date to be proclaimed, with a default commencement date of 31 July 2013. This will allow time for the conveyancing industry and vendors in bushfire-prone areas to be adequately informed of the new disclosure requirements.

The Committee makes no further comment.

Road Safety Amendment Bill 2012

Introduced	1 May 2012
Second Reading Speech	2 May 2012
House	Legislative Assembly
Member introducing Bill	Hon. Terry Mulder MLA
Portfolio responsibility	Minister for Roads

Purpose

The Bill amends the *Road Safety Act 1986* to:

- require a person who has been found guilty of certain driving offences and who has had his or her vehicle impounded or immobilised as a result of the commission of that offence to complete a safe driving program. [5]
- provide further powers for the relocation or sale of vehicles that have been impounded or immobilised and to make other amendments to Part 6A of the Act. [6 to 27]
- introduce new, nationally agreed criteria for assessing whether a damaged light motor vehicle (other than a motor cycle) is a statutory write-off. [4 and 28]

The Bill also makes minor amendments of a statute law revision nature to the Act and the *Road Management Act 2004*. [29 to 31]

The Committee makes no further comment.

State Taxation Acts Amendment Bill 2012

Introduced	1 May 2012
Second Reading Speech	2 May 2012
House	Legislative Assembly
Member introducing Bill	Hon. Kim Wells MLA
Portfolio responsibility	Treasurer

Purpose

The Bill amends the *Duties Act 2000* to:

- replace the Commissioner's discretion not to aggregate dutiable transactions with a specific exception to the aggregation of dutiable property where vacant land is bought by home builders
- make provision in Part 4A for certain parallel arrangements (including parallel home building contracts)
- increase the rate of duty payable on new and near new passenger cars, the dutiable value of which does not exceed the Commonwealth's luxury car tax threshold
- extend the exemption from motor vehicle duty to certain veterans assessed under the *Military Rehabilitation and Compensation Act 2004* (Cth)
- substitute a new section 51 of the Act to remove the exemption from duty for grants of Crown land. An exemption from duty has been retained in respect of the dedication of a free and perpetual right of way to the use of the public.

The Bill amends the *National Taxation Reform (Consequential Provisions) Act 2000* to provide for the payment of penalties and interest in relation to the State's notional GST liabilities.

The Committee makes no further comment.

Ministerial Correspondence

Independent Broad-based Anti-corruption Commission Amendment (Examinations) Bill 2012

The Bill was introduced into the Legislative Assembly on 18 April 2012 by the Hon. Andrew McIntosh MLA. The Committee considered the Bill on 30 April 2011 and made the following comments in Alert Digest No. 7 of 2012 tabled in the Parliament on 1 May 2011.

Committee's Comments

Charter report

Fair hearing – Disclosure of information to defendants in criminal proceedings – Compelled disclosure of protected documents or things

Summary: The Committee will write to the Minister seeking further information as to whether new section 33A permits the IBAC to disclose relevant information to defendants in criminal prosecutions that preceded, were the subject of or were independent of an IBAC investigation and whether new sections 33H(2) and 33I(6) bar a court from permitting parties to see the non-protected parts of otherwise protected documents or things.

The Committee notes that clause 13, inserting new section 33A, makes it an offence for an IBAC officer to disclose information obtained in the course of their or the IBAC's duties, functions or powers. New sections 33A and 33B provide for exceptions to this ban for disclosures:

- in the exercise of the officer's or the IBAC's duties, functions or powers under any Act
- as authorised or required by the *Independent Broad-based Anti-corruption Commission Act 2011*
- if the IBAC considers it appropriate, to an integrity body, law enforcement body, prosecutorial body or relevant principal officer if the IBAC considers that the information is relevant to the duties, functions or powers of that body
- for the purpose of prosecutions or disciplinary processes 'instituted as a result of an investigation conducted by the IBAC or by the Victorian Inspectorate'

In addition, new sections 33H, 33I and 33K bar IBAC officers, consultants or employees from being compelled in legal proceedings to:

- produce documents or things they have come to possess in the course of their or the IBAC's duties, functions or powers if the proceeding is non-criminal and the IBAC certifies that disclosure of the document is likely to reveal certain sensitive information or be contrary to the public interest
- produce documents or things they object to disclosing if the proceeding is criminal unless a court finds that disclosure is either unlikely to reveal certain sensitive information or be contrary to the public interest or that exceptional circumstances exist that require disclosure
- disclose information obtained in the course of their duties, functions or powers in any proceeding unless the IBAC certifies that the giving of the information is in the public interest.

The Statement of Compatibility addresses the compatibility of the latter three provisions with the Charter's right to a fair hearing as follows:

New Division 4 of Part 2 may also engage the right to a fair hearing. New section 33H limits the circumstances in which a protected person, including IBAC officers, can be compelled to produce any document or other thing in a legal proceeding or a disciplinary process or action. New section 33I provides for a protected person to object to the production of documents or information that have come into his or her possession or control in the performance of the duties and functions or the exercise of powers under the IBAC act, and for the Court to determine that application. Accordingly, there may be instances where the IBAC does not disclose information, and as a consequence that information is not available for a person charged with a criminal offence or a party to a civil proceeding. The IBAC or the Court (whoever is required by the bill to determine the matter) will need to balance factors for disclosure, such as a defendant having access to information that may be relevant to their defence against factors that might count against disclosure, such as needing to ensure the safety of an informant.

The purpose of the right to a fair hearing is to ensure procedural fairness. It includes the principle of equality of arms: everyone who is a party to a proceeding must have a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis his or her opponent. The right guarantees no more than a reasonable opportunity to present one's case. It does not grant a right to seek information, evidence or documents that may be useful in advancing one's own case in every circumstance.

However, the Committee notes that the substantial difference between the state and criminal defendants has invariably led courts, whether applying the common law or human rights law, to rule that the timely disclosure of exculpatory information held by the state to criminal defendants is usually essential to ensure fair hearings in criminal matters.

The Committee observes that new sections 33A and 33B therefore may also engage the Charter's right to a fair hearing because new section 33A only expressly permits the IBAC to choose to disclose information to criminal defendants in prosecutions that were instated as a result of an IBAC or Victorian Inspectorate investigation (rather than prosecutions that preceded, were the subject of or were independent of such investigations.) This differs from otherwise similar disclosure regimes in integrity statutes elsewhere in Australia and the rules on courtroom disclosure in new sections 33H, 33I and 33K.

The Committee also observes that new sections 33H(2) and 33I(6), which bar a court from compelling the disclosure of 'protected documents or things' in some circumstances, lack an equivalent to a provision in the existing regime for protected documents or things in the *Police Integrity Act 2008* that specifies that the regime only applies to a protected 'part' of a document or thing.

The Committee will write to the Minister seeking further information as to whether:

- new section 33A permits the IBAC to disclose relevant information to defendants in criminal prosecutions that preceded, were the subject of or were independent of an IBAC investigation; and
- new sections 33H(2) and 33I(6) bar a court from permitting parties to see the non protected parts of otherwise protected documents or things.

Pending the Minister's response, the Committee draws attention to clause 13.

Fair hearing – Abrogation of privilege against self incrimination – Use of evidence derived from compelled answers

Summary: Clause 21 provides that a person must comply with a request from the IBAC to answer a question or produce a document even if complying with that request may tend to incriminate him or her. The Committee will write to the Minister seeking further information as whether the provision of a statutory derivative use immunity is a less restrictive alternative reasonably available to achieve the clause’s purpose of assisting the IBAC to undertake full and proper investigations.

The Committee notes that clause 21, inserting a new section 82ZC, provides that a person must comply with a request from the IBAC to answer a question or produce a document even if complying with that request may tend to incriminate him or her. The Committee observes that new section 82ZC engages the Charter’s rights to a fair hearing and against compelled self-incrimination.

The Statement of Compatibility remarks:

The purpose of the provision is to assist the IBAC in its function as a truth-seeking body that is able to undertake full and proper investigations.

Where, in the course of an investigation, the IBAC discovers evidence of criminal conduct and the IBAC is of the opinion that the evidence is of sufficient probative force to permit prosecution, the IBAC may refer a matter to a prosecutorial body. Accordingly, it is not considered that the bill will engage the rights in criminal proceedings...

If it were the case that self-incrimination information obtained from a person was disclosed in accordance with the Act, for example to the Chief Commissioner of Police, it would be a matter for the police to determine what use is made of the information. The Bill makes it clear that the answer or information itself cannot be used in proceedings other than those listed at new section 82ZC(2). It would be a matter for a court to determine whether other evidence derived from that information is admissible.

However, the Committee notes that the Supreme Court of Victoria has held that the Charter’s rights with respect to self-incrimination ‘should not be limited simply to persons who have already been charged’ and rejected the argument that ‘that the residual discretion of a trial judge to exclude evidence is a sufficient mechanism for upholding the rights contemplated by the Charter’.

The Committee observes that new section 82ZC(2), like similar provisions in most other integrity commission statutes in Australia, does not expressly bar anyone from being prosecuted on the basis of information derived from self-incriminatory answers or documents they were compelled to provide. However, the Supreme Court of Victoria has applied Charter s. 32’s interpretation rule to read a similar Victorian provision as providing an implied derivative use immunity to people who are questioned and later charged.

The Committee will write to the Minister seeking further information as whether the provision of a statutory derivative use immunity would be a less restrictive alternative reasonably available to achieve new section 82ZC(2)’s purpose of assisting the IBAC to undertake full and proper investigations. Pending the Minister’s response, the Committee draws attention to clause 21.

Committee’s Comments

Thank you for your letter dated 30 April 2012 in relation to the Independent Broad-based Anti-corruption Commission Amendment (Examinations) Bill 2012.

As noted in the second reading speech, this Bill amends the *Independent Broad-based Anti-corruption Commission Act 2011 (IBAC Act)*, which was passed by the Victorian Parliament on

23 November 2011. This Bill provides the Independent Broad-based Anti-corruption Commission (IBAC) with further tools in order to achieve the objects in the IBAC Act, specifically:

- to investigate serious corrupt conduct as it relates to the public sector; and
- to provide broad oversight of police conduct.

This Bill represents the next step in the process of delivering the Government's ongoing integrity reforms, completing IBAC's full suite of investigation, examination and referral powers.

I now turn to the request for advice directed to me in the Committee's Report, as contained within Alert Digest No. 7 of 2012 and as tabled in Parliament on 30 April 2012.

Clause 13

Section 33A

Clause 13 of the Bill inserts a new section into the IBAC Act, section 33A. Section 33A makes it an offence for an IBAC officer to disclose information obtained in the course of their, or IBAC's, duties functions or powers (subject to specified exceptions in sections 33A and 33B). Section 33A allows the IBAC to disclose information in the context of a prosecution that arises as a result of an IBAC investigation. Section 33B also allows the IBAC to disclose information if the IBAC considers that the information is relevant to the performance of the duties and functions or the exercise of powers of:

- an integrity body;
- a law enforcement agency;
- a prosecutorial body; or
- the relevant principal officer.

Sections 33A and 33B provide an appropriate limitation on the disclosure of information to safeguard the confidentiality and integrity of the operations of the IBAC, whilst permitting disclosure in necessary circumstances to bodies, including prosecutorial bodies.

Furthermore, the IBAC is empowered to report to Parliament on any matter relating to the performance of its duties and functions.

Section 33H(2) and section 33I(6)

Clause 13 of the Bill also amends the IBAC Act to introduce sections 33H and 33I. The Committee correctly identifies that these sections form part of a Division designed to protect the content of sensitive information, and bar the IBAC or a court from compelling disclosure of 'protected documents and things' in some circumstances.

The regime established in this Division does not expressly prohibit a court from determining that only part of a document is a 'protected document or thing'. The process established by the new Division, including sections 33H(2) and 33I(6), provides for the IBAC or a court to determine an application for protected documents or things (depending on the specific type of application). The manner in which the application is determined will depend on the facts and circumstances of each case, and of each protected document or thing.

Clause 21

Clause 21 of the Bill provides for the abrogation of the privilege against self-incrimination. Provisions such as Clause 21 are standard in legislation relating to investigatory bodies in Australia and are important to ensure that the IBAC has the tools it needs to undertake full and proper investigations.

Consistent with the approach taken with interstate legislation applying to integrity bodies, the use of derivative information is to be determined by the court.

This ensures there is appropriate flexibility for the court to determine the matter on the individual facts and circumstances. The clause ensures that the IBAC can undertake its functions and objectives effectively and in accordance with the intention of the legislation.

Thank you for providing me with the opportunity to comment on clauses 13 and 21 of the Independent Broad-based Anti-corruption Commission Amendment (Examinations) Bill 2012.

Andrew McIntosh MP

Received 21 May 2012

The Committee thanks the Minister for this response.

Further Committee Comment

The Committee notes the Minister's remark that new section 33A permits the IBAC to disclose information to defendants in criminal proceedings that resulted from an IBAC investigation. However, the Committee observes that it sought further information as to whether new section 33A permits the IBAC to disclose information to defendants in proceedings that did not result from an IBAC investigation, i.e. ones that preceded, were the subject of or were independent of an IBAC investigation.

The Committee also notes the Minister's remark that the Division containing new sections 33H(2) and 33I(6) 'does not expressly prohibit a court from determining that only part of a document is a 'protected document or thing'. However, the Committee observes that it sought further information about whether those sections actually permit a court to permit parties to see the non-protected parts of documents or things, in light of the omission in this Bill of language permitting such partial disclosure in the existing regime in the *Police Integrity Act 2008*.

National Energy Retail Law (Victoria) Bill 2012

The Bill was introduced into the Legislative Assembly on 27 March 2012 by the Hon. Michael O'Brien MLA. The Committee considered the Bill on 16 April 2012 and made the following comments in Alert Digest No. 6 of 2012 tabled in the Parliament on 17 April 2011.

Committee's Comments

[Charter report]

Property – Meters and associated infrastructure not part of land – Whether deprivation of property in accordance with law

Summary: Clauses 105 and 127 provide that a 'meter or associated infrastructure' is 'not part of the land' on which it is installed and is 'personal property'. The Committee will write to the Minister seeking further information as to the meaning of 'meter or associated infrastructure' and as to the compatibility of these clauses with the Charter's right not to be deprived of property otherwise than in accordance with law.

The Committee notes that clauses 105 and 127, respectively inserting new sections 94A into the *Electricity Industry Act 2000* and 140A into the *Gas Industry Act 2001*, provide that a 'meter or associated infrastructure' is 'not part of the land' on which it is installed and is 'personal property'. To the extent that these clauses change the ownership of a meter or associated infrastructure, their effect may be to deprive land owners of property rights with respect to these items and to give property rights in these items to others, e.g. an energy distributor or retailer, potentially exposing owners to criminal or civil liability for trespass or other property offences if they deal with those items without consent.

The Second Reading Speech remarks:

Cluses 105 and 127 of the bill insert new sections into the Electricity Industry Act 2000 and Gas Industry Act 2001 to confirm that meters are not part of the land on which they are installed. Codes made by the Essential Services Commission currently contain the same provision but it is considered appropriate that this matter should, for the avoidance of doubt, be dealt with in the acts themselves.

The Committee notes that existing s.2.2 of the Essential Services Commission's Electricity Customer Metering Code, which provides that customers do not have a proprietary interest in metering equipment and that equipment left on a premises does not become the customer's property even if it is annexed to the customer's land, includes a definition of 'metering equipment' and only affects the customer's proprietary interests. By contrast, clause 105 does not define either 'meter' or 'associated infrastructure' and applies to anyone who has or will have a property interest in the land where the meter or infrastructure is installed.

The Committee observes that the Charter's right not to be deprived of property does not apply to deprivations that are 'in accordance with law'. Similarly to the common law's principle of legality, 'a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct; he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.' For example, a new land owner should be able to identify if he or she owns a box surrounding a meter.

The Committee will write to the Minister seeking further information as to the meaning of 'meter or associated infrastructure' in clauses 105 and 127 and as to the compatibility of these clauses with the Charter's right not to be deprived of property otherwise than in accordance with law. Pending the Minister's response, the Committee draws attention to clauses 105 and 127.

Minister's Response

Thank you for your letter of 17 April 2012 regarding the *National Energy Retail Law (Victoria) Bill 2012*. My response to your questions regarding the operation of clauses 105 and 127 of the Bill follows.

Meaning of 'meter or associated infrastructure'

The phrase 'meter and associated infrastructure' refers to the electricity or gas meter (being the device that records consumption of electricity or gas) and associated infrastructure such as data loggers, transformers and communications infrastructure. (The term 'metering equipment' is not used in the Bill as this is not a defined term in the national electricity and gas metering rules.) It does not refer to the meter box.

In the electricity market (for wholesale market settlement, and customer billing purposes) a meter (and associated infrastructure) must be provided, installed and maintained by a metering provider engaged by the electricity distributor or retailer (see sections 7.2.5 and 7.4.1 of the National Electricity Rules). The ownership of metering equipment may be vested in third party metering providers or, in some rare instances, customers (most likely large customers) rather than the retailer, as a result of contractual arrangements. Similarly, in the gas market, a distributor must provide the gas meter and associated infrastructure (see clause 6.1(a) of the Gas Distribution System Code and Rule 292 of the Declared Wholesale Gas Market Rules).

While a customer may choose to install their own 'check meter', the meter used for wholesale market settlement, and customer billing purposes, cannot be provided by the customer.

Compatibility with the Charter Act

Clauses 105 and 127 of the National Energy Retail Law (Victoria) Bill (and their predecessor clause 2.2 of the Electricity Customer Metering Code) are intended to displace the law of fixtures, providing that an item which has been attached to land does not form part of the land, so that a meter and associated infrastructure do not become the property of an owner of that land merely because they are affixed to that land. The intent is to ensure that meters are personal rather than real property, not to deprive a person of his or her property. If a customer chooses to install their own 'check meter' or is otherwise the owner of metering equipment, the meter remains their personal property under clauses 105 and 127.

It is therefore the Government's view that clauses 105 and 127 do not engage the right to property, and are compatible with section 20 of the Charter of Human Rights and Responsibilities Act 2006.

I trust this information is of assistance.

HON. MICHAEL O'BRIEN MP
Minister for Energy and Resources

1 May 2012

The Committee thanks the Minister for this response.

Committee Room
21 May 2012

Appendix 1

Index of Acts and Bills in 2012

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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)

(i) and (ii) repeals, alters or varies the jurisdiction of the Supreme Court

Australian Consumer Law and Fair Trading Bill 2011	1
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Appendix 3

Ministerial Correspondence 2012

Table of correspondence between the Committee and Ministers during 2012

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Associations Incorporation Reform Bill 2011	Minister for Consumer Affairs	07-02-12 24-02-12	1 of 2012 4 of 2012
Australian Consumer Law and Fair Trading Bill 2011	Minister for Consumer Affairs	07-02-12 24-02-12	1 of 2012 4 of 2012
Control of Weapons and Firearms Acts Amendment Bill 2011	Minister for Police and Emergency Services	07-02-12 29-02-12	1 of 2012 4 of 2012
Water Legislation Amendment (Water Infrastructure Charges) Bill 2011	Minister for Water	28-02-12 14-03-12	12 of 2011 5 of 2012
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Water Amendment (Governance and Other Reforms) Bill 2012	Minister for Water	13-03-12 27-03-12	4 of 2012 5 of 2012
Victorian Inspectorate Amendment Bill 2012	Minister responsible for the establishment of an anti-corruption commission	27-03-12 16-04-12	5 of 2012 6 of 2012
Independent Broad-based Anti-corruption Commission Amendment (Examinations) Bill 2012	Minister responsible for the establishment of an anti-corruption commission	01-05-12 21-05-12	7 of 2012 8 of 2012
National Energy Retail Law (Victoria) Bill 2012	Minister for Energy and Resources	17-04-12 01-05-12	6 of 2012 8 of 2012

Table of Ministers responses still pending

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published