



SCRUTINY OF ACTS AND
REGULATIONS COMMITTEE

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Annual Review
2010

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Scrutiny of Acts and Regulations Committee

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Terms of Reference

Section 17 of the *Parliamentary Committees Act 2003* sets out the statutory functions of the Scrutiny of Acts and Regulations Committee. These functions are –

- (a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly –
 - (i) trespasses unduly on rights or freedoms;
 - (ii) makes rights, freedoms or obligations dependent on insufficiently defined administrative powers;
 - (iii) makes rights, freedoms or obligations dependent on non-reviewable administrative decisions;
 - (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *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;
- (c) to consider any Act that was not considered under paragraph (a) or (b) when it was a Bill –
 - (i) within 30 days immediately after the first appointment of members of the Committee after the commencement of a Parliament; or
 - (ii) within 10 sitting days after the Act receives Royal Assent –whichever is the later, and to report to the Parliament with respect to that Act on any matter referred to in those paragraphs;
- (d) the functions conferred on the Committee by the *Subordinate Legislation Act 1994*;
- (e) the functions conferred on the Committee by the *Environment Protection Act 1970*;
- (f) the functions conferred on the Committee by the *Co-operative Schemes (Administrative Actions) Act 2001*;
- (fa) the functions conferred on the Committee by the Charter of Human Rights and Responsibilities.
- (g) to review any Act in accordance with the terms of reference under which the Act is referred to the Committee under this Act.

Chairperson's Introduction

I am pleased to present the Scrutiny of Acts and Regulations Committee's Annual Review covering the calendar year 2010. The report covers the activity of the Committee in the final year of the 56th Parliament. It was my privilege to serve as a Member of the Committee in the last Parliament and as Chairperson of its Redundant Legislation Subcommittee.

I wish to record in this Annual Review a note of appreciation to a number of distinguished past Members. The Chairperson of the Committee in the past Parliament (the 56th Parliament, 2006 – 2010) was Mr Carlo Carli MLA and the Deputy Chairperson was the veteran Member and father of the House Mr Ken Jasper MLA. Mr Ken Jasper MLA also served as the Chairperson of the important Regulation Review Subcommittee. Mr Carli and Mr Jasper retired from political life on the dissolution of the 56th Parliament. The Committee extends its appreciation to both these former Members for many years of dedicated service to the Committee in the immediate past Parliament and a number of previous Parliaments. The Committee also thanks the other Members serving on the Committee in the 56th Parliament that are mentioned in the body of the review.

The functions of the Committee are to review all Bills introduced into Parliament, to review regulations, to review and report on redundant or unclear Acts and to undertake specific inquiries that may be referred to the Committee either by a House of the Parliament or by a Minister.

During the last year of the previous Parliament the Committee was assisted in its human rights scrutiny by Associate Professor Jeremy Gans of the University of Melbourne Law School. The Committee thanks Dr Gans for his timely and professional legal advice.

The Committee was supported during the year by a small and dedicated secretariat. I take this opportunity to thank our Senior Legal Adviser, Andrew Homer, for effectively leading the secretariat team during 2010. The previous Committee was also fortunate to have experienced guidance in the scrutiny of regulations by our Legal Adviser (Regulations), Helen Mason. The Committee also notes the effective administration support provided to the Committee by Simon Dinsbergs, Victoria Kalapac and Sonya Caruana.

Edward O'Donohue MLC
Chairperson

May 2011

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) presented to the Parliament. The Committee does not make any comments on the policy aspects 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 must report to the Parliament whether the Bill is incompatible with human rights.

Annual Review 2010

This report provides an overview of the activities and functions of the Victorian Parliament's Scrutiny of Acts and Regulations Committee (the 'Committee') during the calendar year 2010. There are two publications that further describe the Committee's work during 2010, the Annual Review of Regulations considered in 2010¹ and the cumulative Alert Digest² concerning the scrutiny of Bills introduced in the Parliament in 2010.

The Committee's reports and other publications (including this review) are available on the Committee's website: www.parliament.vic.gov.au/sarc.

The Committee

The Committee is established under the *Parliamentary Committees Act 2003*³ (the 'Act') as one of the 12 Joint House Committees of the Victorian Parliament. It is one of six Joint House Committees administered by the Department of the Legislative Assembly. The remaining six Joint House Committees are administered by the Department of the Legislative Council.

Membership of the Committee is drawn from Members of the Legislative Council (the 'Council') and the Legislative Assembly (the 'Assembly') and from both government and opposition members.

Brief history of the Committee

The Committee under its current name was established at the commencement of the 52nd Parliament in November 1992. Mr Victor Perton MLA (LP – Doncaster) became the Committee's first Chairman. Following the March 1996 State election, the Committee was reconstituted for the 53rd Parliament with Mr Peter Ryan MLA (NP – Gippsland South) as Chairman. The 53rd Parliament was dissolved in August 1999. The Committee of the 54th Parliament was reconstituted on 15 December 1999 with Ms Mary Gillett MLA (ALP – Werribee) elected Chair of the Committee. From March 2003, the Chairperson of the Committee in the 55th Parliament was Ms Lily D'Ambrosio MLA (ALP – Mill Park). In the 56th Parliament the Chairperson of the Committee was Mr Carlo Carli MLA (ALP – Brunswick).

Prior to the Committee in its present form, the Parliament performed a scrutiny of subordinate legislation (regulations) function through the now defunct Legal and Constitutional Committee. Statute law revision Bills were at one time considered by the Statute Law Revision Committee which was established by the Parliament as a specific purpose committee to consider periodic statute law revision Bills. Such Bills were far less frequent than in current times.

The Parliaments of the Commonwealth, New South Wales, Queensland and the Australian Capital Territory have parliamentary committees that perform comparable scrutiny of bills functions. All Australian Parliaments have committees that perform scrutiny of regulations.

Committee composition and membership

The Act⁴ requires that a Parliamentary Committee comprise not less than 4 members and more than ten members, of whom at least two must be members of the Council and two of the Assembly.

During 2010 the Committee consisted of nine members, five from the Assembly and four from the Council.

As in all previous Parliaments, during 2010 the Committee was composed of five members from the government and four members from opposition parties. The Chairperson and Deputy Chairperson of the Committee are held respectively by a government and opposition member.

Committee members during 2010

The members of the Committee during 2010 were –

- Mr Carlo Carli MLA (Chairperson)
- Mr Ken Jasper MLA (Deputy Chairperson)
- Mr Colin Brooks MLA
- Mr Neale Burgess MLA
- Mr Khalil Eideh MLC
- Mr Telmo Languiller MLA
- Mr Edward O'Donohue MLC
- Mrs Inga Peulich MLC
- Ms Jaala Pulford MLC

The subcommittees

At the commencement of each newly elected Parliament it is the custom of the Committee to establish, by special resolution the Regulation Review Subcommittee and the Redundant Legislation Subcommittee. The Committee may also, from time to time, establish other subcommittees that may be necessary or desirable to undertake specialist inquiry work.

Regulation Review Subcommittee

The functions of this Subcommittee are to review statutory rules, as defined by the *Subordinate Legislation Act 1994*, against specified terms of reference prescribed in that Act.⁵ Pursuant to other statutory reporting responsibilities, the Subcommittee must also review other certain special subordinate instruments.

The members of the Regulation Review Subcommittee during 2010 were –

- Mr Ken Jasper MLA (Chair)
- Mr Neale Burgess MLA
- Mr Carlo Carli MLA
- Mr Colin Brooks MLA
- Mr Khalil Eideh MLC

Redundant Legislation Subcommittee

The Subcommittee was first established as a consequence of a long-standing Governor in Council reference first given to the Committee in 1994. The reference, which has been renewed in subsequent Parliaments, requires the Committee to review and make recommendations concerning Acts or other legislative instruments that are unclear, ambiguous or that may stand in need of redrafting.

During 2010 the Subcommittee did not have an inquiry to undertake. The members of the Redundant Legislation Subcommittee during 2010 were –

- Mr Edward O'Donohue MLC (Chairperson)
- Mr Carlo Carli MLA

- Mr Khalil Eideh MLC
- Mrs Inga Peulich MLC
- Ms Jaala Pulford MLC

Secretariat and consultants

Staffing

The Committee employs a small secretariat staff comprising an Executive Officer (Senior Legal Adviser), a Legal Adviser, Regulations and two administrative support staff. The secretariat of the Committee during 2010 comprised of –

- Mr Andrew Homer, Executive Officer and Senior Legal Adviser
- Mr Simon Dinsbergs, Assistant Executive Officer
- Ms Helen Mason, Legal Adviser, Regulations
- Ms Sonya Caruana, Committee Administrative Officer
- Mrs Victoria Kalapac, Committee Administrative Officer

The Committee's office is located at Level 3, 55 St Andrews Place, East Melbourne 3002.

Consultants

During 2010 the Parliament engaged the following consultants to assist the Committee with specialist advice or inquiry assignments –

- Associate Professor Dr Jeremy Gans, Human Rights Adviser (University of Melbourne).

Committee terms of reference – Charter of Human Rights and Responsibilities Act 2006

On 1 January 2007 provisions relevant to the Committee's functions and terms of reference came into force as a consequence of the enactment of the *Charter of Human Rights and Responsibilities Act 2006* (the 'Charter').

Section 30 of the Charter and its footnote provides –

30. Scrutiny of Acts and Regulations Committee

The Scrutiny of Acts and Regulations Committee must consider any Bill introduced into Parliament and must report to the Parliament as to whether the Bill is incompatible with human rights.

Note

The Scrutiny of Acts and Regulations Committee must also review all statutory rules and report to Parliament if it considers the statutory rule to be incompatible with human rights: see section 21 of the *Subordinate Legislation Act 1994*.

To reflect the Committee's new human rights functions and statutory reporting responsibilities the Schedule to the Charter made consequential amendments to the *Parliamentary Committees Act 2003* and the *Subordinate Legislation Act 1994*.

The amendments made to the *Parliamentary Committees Acts 2003* inserted the following provisions within section 17 –

17. Scrutiny of Acts and Regulations Committee

- (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–
- (viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;
 - ...
 - (fa) the functions conferred on the Committee by the Charter of Human Rights and Responsibilities;

A new paragraph was inserted in section 21 of the *Subordinate Legislation Act 1994* to reflect the same Charter reporting functions in respect to the scrutiny of statutory rules.

21. Review of statutory rules by the Scrutiny Committee

- (ha) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;

The Committee's work during 2010

The Committee's work during the year fell into four main areas –

- Scrutiny of Bills introduced into Parliament;⁶
- Scrutiny of subordinate legislation⁷ (regulations) and specified directives and other instruments;⁸
- Review of redundant, ambiguous or unclear legislation;
- Inquiries or the review of Acts that are referred to the Committee by a resolution of either the Council or the Assembly⁹ or by a Minister through an Order of the Governor in Council published in the Government Gazette.¹⁰

Section 17(a) – Scrutiny of Bills

The Committee considered 98 Bills during 2008. Pursuant to section 17(a) the Committee is required to consider any Bill introduced in the Council or the Assembly and report to the Parliament under eight separate heads of scrutiny, numbered sub-paragraphs (i) to (viii) –

- (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;

A list of the Bills considered and the tabling dates of the 16 separate Alert Digests in which they are found is shown in **Appendix 1**. The Bills on which the Committee made a substantive comment based on the respective scrutiny principles is shown in **Appendix 2**.

Section 17(a)(viii) – is incompatible with the human rights & Section 30, Charter of Human Rights and Responsibilities Act 2006

2010 saw two occasions when Parliament amended legislative provisions that the Committee had previously reported may be incompatible with human rights. Parliament reversed rules:

- making same-sex partners of long-term pensioners ineligible for reversionary pensions, which the Committee had reported in 2008 may be incompatible with the Charter's equality rights.¹¹
- permitting finally dealt with charges to be considered in 'working with children' assessments, which the Committee had reported in 2007 may be incompatible with the Charter's right to the presumption of innocence.¹²

It was also the first year that an Australian court reported on the potential human rights incompatibility of a Victorian law. In March, the Court of Appeal declared that a 'deemed possession' provision in Victoria's drugs statute 'cannot be interpreted consistently with' the Charter's right to the presumption of innocence.¹³ Like the Committee's reports, this declaration does not affect the validity of legislation or Parliament's powers; however, the government is required to table a written response.¹⁴

The Committee itself made ten findings that Bills 'may be incompatible' with the following human rights:

- **Privacy, children, liberty (Charter ss. 13(a), 17(2), 21(1)):** amendments broadening the scheme for random weapon searches.¹⁵
- **Habeas corpus (Charter s. 21(7)):** provisions reversing the onus of proof and limiting grounds of review for orders detaining people with severe substance dependence.¹⁶
- **Presumption of innocence (Charter s. 25(1)):** provisions requiring alleged publishers of non-compliant credit advertisements to prove that they were not the publisher;¹⁷ requiring people nominated as masters or purchasers of a vessel at the time of an offence to prove their innocence of the offence;¹⁸ and allowing seven days' immobilisation of the vehicle of a person believed by a police officer to be a dangerous driver.¹⁹
- **Privilege against self-incrimination (Charter s. 25(2)(k)):** provisions requiring people to lead investigators to evidence of their own guilt with respect to an association's affairs;²⁰ exotic pests or diseases;²¹ breaches of tenancy law;²² and complaints about judicial officers.²³
- **Retrospective penalties (Charter s. 27(2)):** provisions allowing courts to order ineligibility for home detention for offenders whose offences were committed before those provisions commenced.²⁴

In light of the recurrence of some human rights issues in its reports, the Committee issued a Practice Note on co-operative schemes, self-incrimination and the presumption of innocence.²⁵ The Committee also wrote to the Premier inquiring about arrangements to ensure that Parliament is informed about human rights issues raised by amendments to a Bill.²⁶

Section 17(b) – Section 85, Constitution Act 1975 – Limitation on the jurisdiction of the Supreme Court

Pursuant to section 17(b) of the *Parliamentary Committees Act 2003*, the Committee has a statutory reporting responsibility in relation to Bills which include provisions that repeal, alter or vary the unlimited jurisdiction of the Supreme Court. This responsibility has a nexus to the unique 'manner and form' requirements found in section 85 of the *Constitution Act 1975*.²⁷ The Act requires the Committee to report to the Parliament as to whether such provisions are, in all the circumstances, appropriate and desirable.

Of the 98 Bills considered in 2010, three Bills (3)²⁸ contained a section 85 *Constitution Act 1975* provision. In comparison in 2009 of the 104 Bills introduced four Bills (4) contained a section 85 provision. The Bills containing section 85 *Constitution Act 1975* provisions are listed in a section of **Appendix 2**.

Bills where submissions were received during 2010

Within the relevant terms of reference the Committee welcomes public submissions concerning Bills currently before the Parliament. The Committee is aware of the onerous time constraints applying to such submissions. The strict timelines for making submissions arise from the necessity for the Committee to table a report on Bills for the assistance of Members prior to the resumption of the debate after the second reading speech is delivered. This tight timetable may mean that as little as 2 weeks may be available for the receipt of written submissions from the time it is introduced in the Parliament.

Where need arises and time permits, the Committee reserves the right to invite evidence to be given before it at a private or public hearing. In special circumstances the Committee may delay making a report on a Bill in order to hold public hearings or receive written submissions. During 2010 the Committee received submissions in respect of the following Bills –

- *Severe Substance Dependence Treatment Bill 2009* – Alert Digest No. 1 of 2010
- *Equal Opportunity Bill 2010* – Alert Digest No. 4 of 2010
- *Education and Training Reform Further Amendment Bill 2010* – Alert Digest No. 5 of 2010
- *Members of Parliament (Standards) Bill 2010* – Alert Digest No. 5 of 2010
- *Control of Weapons Amendment Bill 2010* – Alert Digests Nos. 8 and 9 of 2010
- *Occupational Licensing National Law Bill 2010* – Alert Digest No. 12 of 2010

Public hearings

During 2010 the Committee did not hold any public hearings in respect to any Bill introduced in the Parliament.

A selection of noteworthy Bills considered in 2010

1. New principal Acts

The ***Civil Procedure Bill 2010*** to propose a new principal Act to reform and modernise the laws and practices for the resolution of civil disputes and the initiation and conduct of civil proceedings and appeals.

The ***Climate Change Bill 2010*** to provide a framework for action on climate change in Victoria.

The ***Education and Care Services National Law Bill 2010*** to adopt the Education and Care Services National Law and establish a National Quality Framework and the Australian Children's Education and Care Quality Authority. Victoria was the host jurisdiction for this national scheme legislation.

The ***Equal Opportunity Bill 2010*** to repeal the 1995 Act and re-enact and extend the law relating to equal opportunity and protection against discrimination, sexual harassment and victimisation.

The ***Fire Services Commissioner Bill 2010*** to create the position of Fire Services Commissioner and make the position of Chief Fire Officer a statutory office.

The ***Judicial Commission of Victoria Bill 2010*** to create the Judicial Commission (the Commission) of Victoria and repeal the *Judicial College of Victoria Act 2001* and incorporate the functions performed under the repealed Act within the functions of the Commission.

The ***Livestock Management Bill 2010*** to adopt the Victorian and Australian Standards regarding livestock management and for related purposes.

The ***Marine Safety Bill 2010*** to provide a new framework for an Act covering marine safety and operations.

The ***Members of Parliament (Standards) Bill 2010***²⁹ to promote public trust and confidence in Members of Parliament and establish a register of interests for members of Parliament.

The ***Occupational Licensing National Law Bill 2010*** to adopt the Occupational Licensing National Law which sets out the regulatory framework for the National Occupational Licensing System.

The ***Offshore Petroleum and Greenhouse Gas Storage Bill 2010*** to re-enact with modifications, provisions regulating petroleum exploration, recovery activities and petroleum facilities. The Bill also provided for the regulation of injection and permanent geological storage of greenhouse gases within the Victorian offshore area.

The ***Personal Safety Intervention Orders Bill 2010*** to make provision for personal safety intervention orders to protect victims of assault, harassment, property damage, stalking and serious threats.

The ***Pharmacy Regulation Bill 2010*** to regulate the ownership and operation of pharmacy businesses and pharmacy departments and establish Victorian Pharmacy Authority.

The ***Public Finance Accountability Bill 2010*** to provide a new Act concerning public finance, accountability and financial resource management in Victoria.

The ***Severe Substance Dependence Treatment Bill 2010*** to provide a legislative regime for court orders for the detention and treatment of persons with severe substance dependence.

The ***Therapeutic Goods (Victoria) Bill 2010*** to provide for the application of a national scheme for the regulation of therapeutic goods by applying the Commonwealth law as a law of Victoria.

The ***Traditional Owner Settlement Bill 2010*** to advance reconciliation and promote good relations between the State and traditional owners.

The ***Transport Integration Bill 2010*** to provide a framework for integrated and sustainable transport system in Victoria.

2. Amending Acts

The ***Bail Amendment Bill 2010*** amongst a number of amendments, the Bill required that a decision maker consider a persons aboriginal background before making a determination under the Act.

The ***Electoral Amendment (Electoral Participation) Bill 2010*** to allow electoral enrolment on election day of persons qualified to vote subject to certain proof of identity requirements.

The ***Fair Trading Amendment (Australian Consumer Law) Bill 2010*** to apply the Australian Consumer Law as a law of Victoria.

The ***Magistrates' Court Amendment (Mental Health List) Bill 2010*** to create a Mental Health List of the court on a three year trial basis.

The ***Subordinate Legislation Amendment Bill 2010*** to extend the application of the Act to Legislative Instruments as defined by the Bill and to enable the Committee to recommend disallowance of Legislative Instruments in certain circumstances. The Bill also amends the Act in a number of other respects following a review of the Act by the Committee in 2004.

3. Private Members Bills

The ***Government (Political) Advertising Bill 2010*** to prevent misuse of taxpayers money by the government on political advertising and information campaigns especially during an election period.

The ***Drugs, Poisons and Controlled Substances Amendment (Prohibition of Display and Sales of Bonges) Bill 2010*** to prohibit the display and sale of bonges.

4. Statute Law Revision Bills

The **Legislation Reform (Repeals No. 6) Bill 2009** was the sixth in a series of foreshadowed statute law revision Bills that have been progressively introduced to further remove spent and redundant legislation from the statute books. The Bill repealed 23 principal Acts and a further 405 amending Acts.

Ministerial correspondence related to Bills

Ministerial response turnaround time varies greatly, some Ministers responding to the Committee’s correspondence within days and others regrettably over much longer periods. The Committee considers that responses should be received promptly in order to inform the debate in Parliament on the matters of concern identified by the Committee, where possible prior to the Bills passage through both Houses. On occasion the Committee has needed to follow up correspondence with a courtesy reminder letter. In 2010 the longest delays in receiving a Minister’s response was over 6 months in relation to the *Transport Legislation Amendment (Compliance Enforcement and Regulation) Bill 2010* and the *Crimes Legislation Amendment Act 2010*.

Statistical summary of Bills considered by the Committee from 2006 to 2010

Table 1 – Number of Bills considered by the Committee and of those the number having section 85 Constitution Act 1975 provisions.

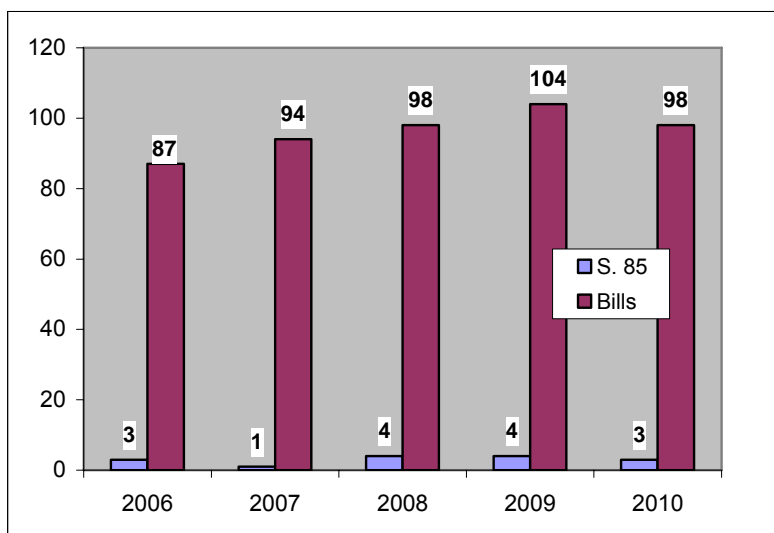
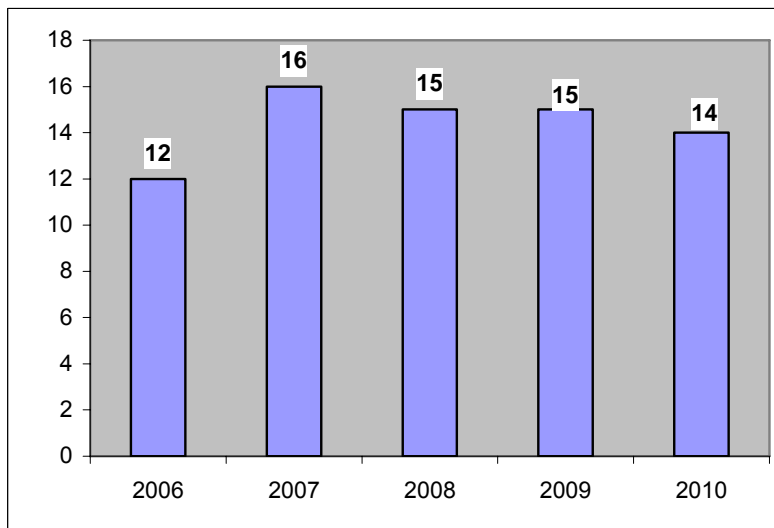


Table 2 – Number of Alert Digests tabled in Parliament



The results of the Committee's work

One of the main functions of the Committee is to review Bills introduced into a House of the Parliament and to report to the Parliament on the use of certain legislative practices in those Bills. The heads of legislative scrutiny are listed in sections 17(a)(i) to (viii) of the Act. The ongoing feedback the Committee receives suggests that Members are assisted by the information provided in Alert Digests, which often include important extracts from the second reading speech and the explanatory memorandum.

Scrutiny of Subordinate Legislation

Section 17(d) – Subordinate Legislation Act 1994

The Regulation Review Subcommittee held eight meetings during 2010 and considered 129 statutory rules in total. Of those rules 23 were accompanied by Regulatory Impact Statements. The statutory rules examined by the Subcommittee during 2010 are shown at **Appendix 5**. The Committee did not make any adverse reports during 2010 concerning regulations. However, of the statutory rules examined the Subcommittee had concerns with 7. It wrote to the responsible Ministers seeking clarification. In each case the Subcommittee generally received satisfactory responses to the issues raised. The Committee intends to release its Annual Review of Statutory Rules (2010 series) in mid 2011.

Section 17(e) – Environment Protection Act 1970

In 2010 the Regulation Review Subcommittee did not consider any State environment protection policies or waste management policies under this term of reference.

Other referrals to the Committee

Section 17(f) – Reports pursuant to the Co-operative Schemes (Administrative Actions) Act 2001

The Committee was not required to report to the Parliament during 2008 on any Act sought to be declared pursuant to the *Co-operative Schemes (Administrative Actions) Act 2001*.

Section 17(g) – Review of Acts referred to the Committee

The Committee was not required to report to the Parliament during 2009 on any Act under this subsection of the Act.

Section 33 – Referrals to Joint Investigatory Committees

In December 2009 the Committee received a Parliamentary referral in respect to the *Legislation Reform (Repeals No. 6) Bill 2009*. The Committee's report concerning this statute law amendment Bill was tabled in February 2010.

Committee budget and expenditure³⁰

<i>Budget</i>	<i>Actual</i>	<i>Budget</i>	<i>Actual</i>	<i>Budget</i>
<i>2008/2009</i>	<i>2008/2009</i>	<i>2009/2010</i>	<i>2009/2010</i>	<i>2010/2011</i>
\$499,822	\$483,888	\$577,591	\$542,531	\$427,267

* Six months to 1 January 2011 actual expenditure of \$195,652 or 45.79 % of Annual Budget.

Committee publications released during 2010

The Committee has published the following reports and papers in print and also on its website during 2010 –

- *Report on the Legislation Reform (Repeals No. 6) Bill 2009*, February 2010

- *Annual Review 2009*, March 2010
- *Annual Review 2009, Regulations 2009*, August 2010
- *Alert Digests Nos. 1 to 14*, February to October 2010

A chronological list of all Committee reports and publications dating from the inception of the Committee in 1992 to the present day is provided in **Appendix 4**.

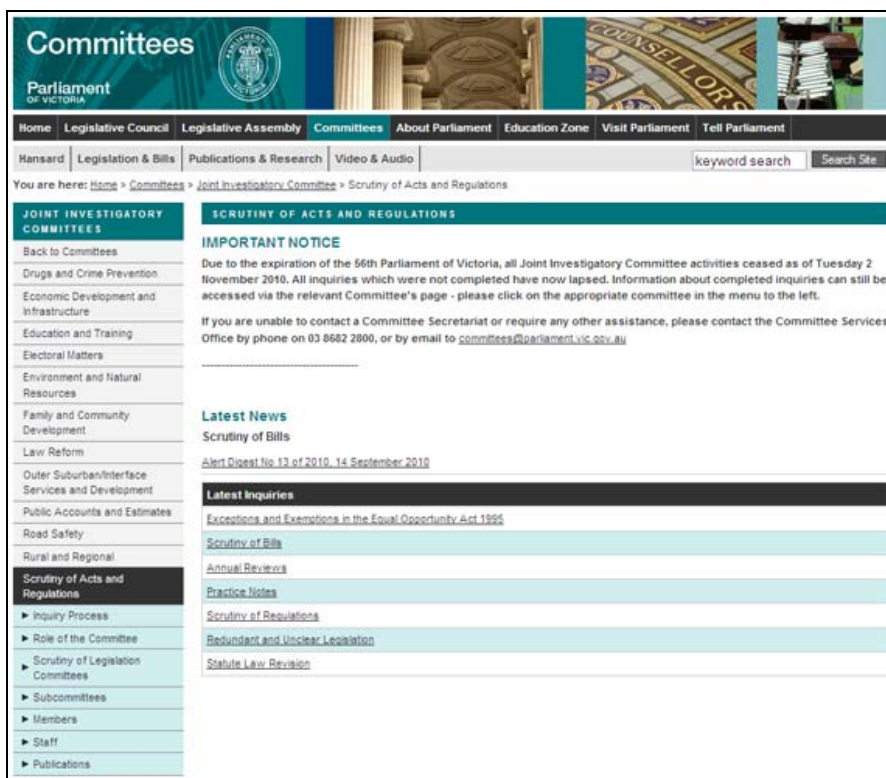
Other Reports and Digests due for publication during 2011

- *Alert Digests of 2011*, from March to December 2011
- *Report on the Statute Law Revision Bill 2011*, March 2011
- *Annual Review 2010, Regulations 2010*, mid-2011

Committee website

The Committee continues to maintain a comprehensive and frequently updated website. Committee reports, including Alert Digests, are usually added to the website within 24 hours of being tabled.

The Committee’s website also includes the contact and membership details of counterpart Australasian scrutiny committees.



Appendix 1

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Building Amendment Bill 2010	6, 7
Child Employment Amendment Bill 2010	4, 7
Civil Procedure Bill 2010	10
Climate Change Bill 2010	11
Confiscation Amendment Bill 2010	12
Constitution (Appointments) Bill 2009	1
Consumer Affairs Legislation Amendment Bill 2009	2
Consumer Affairs Legislation Amendment (Reform) Bill 2010	11
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Credit (Commonwealth Powers) Bill 2010	3
Crimes Legislation Amendment Act 2010	4
Crimes Legislation Amendment Bill 2009	1, 4
Domestic Animals Amendment (Dangerous Dogs) Bill 2010	7
Drugs, Poisons and Controlled Substances Amendment (Prohibition of Display and Sale of Bonges) Bill 2010	7
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Environment Protection Amendment (Landfill Levies) Bill 2010	5
Electricity Industry Amendment (Critical Infrastructure) Bill 2009	3
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Fair Trading Amendment (Australian Consumer Law) Bill 2010	12
Fair Trading Amendment (Unfair Contract Terms) Bill 2010	6
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Firearms and Other Acts Amendment Bill 2010	10, 12
Gambling Regulation Amendment (Licensing) Bill 2010	6
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Health and Human Services Legislation Amendment Bill 2010	4
Judicial Commission of Victoria Bill 2010	13
Juries Amendment (Reform) Bill 2010	10, 12
Justice Legislation Amendment Bill 2010	4, 7
Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Bill 2010	5, 14
Justice Legislation Further Amendment Bill 2010	12, 14
Justice Legislation Miscellaneous Amendments Bill 2009	4
Legislation Reform (Repeals No. 6) Bill 2009	1
Liquor Control Reform Amendment (ANZAC Day) Bill 2010	2
Liquor Control Reform Amendment Bill 2010	11
Livestock Management Bill 2009	1
Local Government and Planning Legislation Amendment Bill 2010	11
Magistrates' Court Amendment (Mental Health List) Bill 2009	1
Marine Safety Bill 2010	12, 13

Members of Parliament (Standards) Bill 2010	5, 7
Mineral Resources Amendment (Sustainable Development) Bill 2010	11
Occupational Licensing National Law Bill 2010	12, 14
Offshore Petroleum and Greenhouse Gas Storage Bill 2010	2
Parks and Crown Land Legislation (Mount Buffalo) Bill 2010	7
Personal Property Securities (Statute Law Revision and Implementation) Bill 2010	11, 12
Personal Safety Intervention Orders Bill 2010	9, 11
Pharmacy Regulation Bill 2010	7, 9
Plant Biosecurity Bill 2010	11, 14
Primary Industries Legislation Amendment Bill 2010	10, 12
Private Security Amendment Bill 2010	11, 12
Public Finance and Accountability Bill 2009	1
Prahran Mechanics' Institute Bill 2010	6
Public Finance and Accountability Bill 2009	6
Radiation Amendment Bill 2010	3
Residential Tenancies Amendment Bill 2010	12
Road Legislation Miscellaneous Amendments Bill 2010	12
Road Safety Amendment (Hoon Driving) Bill 2010	13
Serious Sex Offenders (Detention and Supervision) Bill 2009	1
Severe Substance Dependence Treatment Bill 2009	1, 6
State Taxation Acts Amendment Bill 2010	7
Statute Law Amendment (National Health Practitioner Regulation) Bill 2010	3
Subordinate Legislation Amendment Bill 2010	11
Superannuation Legislation Amendment Bill 2010	8, 11
Summary Offences and Control of Weapons Acts Amendment Bill 2009	1
Supported Residential Services (Private Proprietors) Bill 2010	9
Therapeutic Goods (Victoria) Bill 2010	5, 6
Traditional Owner Settlement Bill 2010	11, 12
Transport Accident and Accident Compensation Legislation Amendment Bill 2010	11, 12
Transport Integration Bill 2009	1, 2
Transport Legislation Amendment (Compliance, Enforcement and Regulation) Bill 2010	4, 14
Transport Legislation Amendment (Ports Integration) Bill 2010	7
Tourist and Heritage Railways Bill 2010	11
Trustee Companies Legislation Amendment Bill 2010	5
Water Amendment (Victorian Environmental Water Holder) Bill 2010	8, 10
Working with Children Amendment Bill 2010	9

Alert Digest tabling dates 2010

Alert Digest No. 1	2 February 2010
Alert Digest No. 2	23 February 2010
Alert Digest No. 3	10 March 2010
Alert Digest No. 4	23 March 2010
Alert Digest No. 5	13 April 2010
Alert Digest No. 6	4 May 2010
Alert Digest No. 7	25 May 2010
Alert Digest No. 8	8 June 2010
Alert Digest No. 9	22 June 2010
Alert Digest No. 10	27 July 2010
Alert Digest No. 11	10 August 2010
Alert Digest No. 12	31 August 2010
Alert Digest No. 13	14 September 2010
Alert Digest No. 14	5 October 2010

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.

Alert Digest Nos.

Section 17(a)

(i) trespasses unduly upon rights or freedoms

Accident Compensation Amendment Bill 2009	1
Occupational Licensing National Law Bill 2010	12

(ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers

Transport Accident and Accident Compensation Legislation Amendment Bill 2010	11
Transport Integration Bill 2009	1

(iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions

Transport Integration Bill 2009	1
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(iv) unduly requires or authorises acts or practices that may have an adverse effect on privacy within the meaning of the Information Privacy Act 2000

Occupational Licensing National Law Bill 2010	12
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(vi) inappropriately delegates legislative power

Education and Care Services National Law Bill 2010	13
Justice Legislation Amendment Bill 2010	4
Marine Safety Bill 2010	12
Public Finance and Accountability Bill 2009	1
Transport Integration Bill 2009	1
Transport Legislation Amendment (Compliance Enforcement and Regulation) Bill 2010	4
Water Amendment (Victorian Environmental Water Holder) Bill 2010	8

(vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny

Health Practitioner Regulation National Health (Victoria) Bill 2010	13
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(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities

Associations Incorporation Amendment Bill 2010	8
Building Amendment Bill 2010	6
Child Employment Bill	4
Civil Procedure Bill 2010	10
Control of Weapons Amendment Bill 2010	8
Courts Legislation Miscellaneous Amendments Bill 2010	6

Crimes Legislation Amendment Act 2010	4
Crimes Legislation Amendment Bill 2009	1
Drugs, Poisons and Controlled Substances Amendment (Prohibition of Display and Sale of Bonges) Bill 2010	7
Equal opportunity Bill 2010	4
Fair Trading Amendment (Australian Consumer Law) Bill 2010	12
Firearms and Other Acts Amendment Bill 2010	10
Judicial Commission of Victoria Bill 2010	13
Juries Amendment (Reform) Bill 2010	10
Justice Legislation Amendment Bill 2010	4
Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Bill 2010	5
Justice Legislation Further Amendment Bill 2010	12
Livestock Management Bill 2009	1
Marine Safety Bill 2010	12
Members of Parliament (Standards) Bill 2010	5
Personal Property Securities (Statute Law Revision and Implementation) Bill 2010	11
Personal Safety Intervention Orders Bill 2010	9
Pharmacy Regulation Bill 2010	7
Plant Biosecurity Bill 2010	11
Primary Industries Legislation Amendment Bill 2010	10
Private Security Amendment Bill 2010	11
Severe Substance Dependence Treatment Bill 2009	1
Superannuation Legislation Amendment Bill 2010	8
Therapeutic Goods (Victoria) Bill 2010	5
Traditional Owner Settlement Bill 2010	11

Section 17(b)

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

Accident Compensation Amendment Bill 2009	1
Plant Biosecurity Bill 2010	11
Transport Accident and Accident Compensation Legislation Amendment Bill 2010	11

Appendix 3

Ministerial Correspondence 2009-10

Table of correspondence between the Committee and Ministers during 2009-10

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Electricity Industry Amendment (Critical Infrastructure) Bill 2009	Energy and Resources	10.11.09 03.03.10	13 of 2009 3 of 2010
Justice Legislation Miscellaneous Amendments Bill 2009	Police and Emergency Services	10.11.09 16.03.10	13 of 2009 4 of 2010
Constitution (Appointments) Bill 2009	Premier	24.11.09 12.01.10	14 of 2009 1 of 2010
Serious Sex Offenders (Detention and Supervision) Bill 2009	Corrections	24.11.09 16.12.09	14 of 2009 1 of 2010
Summary Offences and Control of Weapons Acts Amendment Bill 2009	Police and Emergency Services	24.11.09 07.01.10	14 of 2009 1 of 2010
Consumer Affairs Legislation Amendment Bill 2009	Consumer Affairs	08.12.09 15.02.10	15 of 2009 2 of 2010
Accident Compensation Amendment Bill 2009	Finance, WorkCover and the Transport Accident Commission	02.02.10 09.03.10	1 of 2010 4 of 2010
Crimes Legislation Amendment Bill 2009	Attorney-General	02.02.10 15.03.10	1 of 2010 4 of 2010
Transport Integration Bill 2009	Transport	02.02.10 22.02.10	1 of 2010 2 of 2010
Transport Integration Bill 2009	Attorney-General	23.03.10 13.04.10	4 of 2010 5 of 2010
Equal Opportunity Bill 2010	Treasurer	02.02.10 15.04.10	1 of 2010 6 of 2010
Public Finance and Accountability Bill 2009	Mental Health	02.02.10 21.04.10	1 of 2010 6 of 2010
Severe Substance Dependence Treatment Bill 2009	Health	13.04.10 29.01.10	5 of 2010 6 of 2010
Therapeutic Goods (Victoria) Bill 2010	Planning	05.05.10 24.05.10	6 of 2010 7 of 2010
Building Amendment Bill 2010	Attorney-General	23.03.10 19.05.10	4 of 2010 7 of 2010
Child Employment Amendment Bill 2010	Attorney-General	23.03.10 05.05.10	4 of 2010 7 of 2010
Justice Legislation Amendment Bill 2010	Education	13.04.10 07.05.10	5 of 2010 7 of 2010
Justice Legislation Amendment Bill 2010	Premier	13.04.10 13.05.10	5 of 2010 7 of 2010
Courts Legislation Miscellaneous Amendments Bill 2010	Attorney-General	05.05.10 08.06.10	6 of 2010 9 of 2010
Pharmacy Regulation Bill 2010	Health	25.05.10 08.06.10	7 of 2010 9 of 2010
Courts Legislation Miscellaneous Amendments Bill 2010	Attorney-General	05.05.10 08.06.10	6 of 2010 9 of 2010
Pharmacy Regulation Bill 2010	Health	25.05.10 08.06.10	7 of 2010 9 of 2010

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Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Water Amendment (Victorian Environmental Water Holder) Bill 2010	Water	08.06.10	8 of 2010
Control of Weapons Amendment Bill 2010	Police and Emergency Services	08.06.10 27.07.10	8 of 2010 11 of 2010
Personal Safety Intervention Orders Bill 2010	Attorney-General	22.06.10 27.07.10	9 of 2010 11 of 2010
Superannuation Legislation Amendment Bill 2010	Finance	08.06.10 27.07.10	8 of 2010 11 of 2010
Firearms and Other Acts Amendment Bill 2010	Police and Emergency Services	27.07.10 18.08.10	10 of 2010 12 of 2010
Juries Amendment (Reform) Bill 2010	Attorney-General	27.07.10 17.08.10	10 of 2010 12 of 2010
Primary Industries Legislation Amendment Bill 2010	Agriculture	27.07.10 19.08.10	10 of 2010 12 of 2010
Personal Property Securities (Statute Law Revision and Implementation) Bill 2010	Attorney-General	10.08.10 25.08.10	11 of 2010 12 of 2010
Private Security Amendment Bill 2010	Police and Emergency Services	10.08.10 30.08.10	11 of 2010 12 of 2010
Marine Safety Bill 2010	Roads and Ports	31.08.10 13.09.10	12 of 2010 13 of 2010
Traditional Owner Settlement Bill 2010	Aboriginal Affairs	10.08.10 28.08.10	11 of 2010 13 of 2010
Transport Accident and Accident Compensation Legislation Amendment Bill 2010	Finance, WorkCover and the Transport	10.08.10 03.09.10	11 of 2010 13 of 2010
Associations Incorporation Amendment Bill 2010	Consumer Affairs	08.06.10 16.09.10	8 of 2010 14 of 2010
Education and Care Services National Law Bill 2010	Children and Early Childhood Development	14.09.10 01.10.10	13 of 2010 14 of 2010
Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Bill 2010	Attorney-General	13.04.10 20.09.10	5 of 2010 14 of 2010
Justice Legislation Further Amendment Bill 2010	Attorney-General	31.08.10 16.09.10	12 of 2010 14 of 2010
Occupational Licensing National Law Bill 2010	Finance, WorkCover and the Transport	31.08.10 24.09.10	12 of 2010 14 of 2010
Plant Biosecurity Bill 2010	Agriculture	10.08.10 27.09.10	11 of 2010 14 of 2010
Transport Legislation Amendment (Compliance, Enforcement and Regulation) Bill 2010	Transport, Roads and Ports	23.03.10 28.09.10	4 of 2010 14 of 2010
Civil Procedure Bill 2010	Attorney-General	27.07.10 20.10.10	10 of 2010 1 of 2011

Outstanding Correspondence

Crimes Legislation Amendment Act 2010	Attorney-General	23.03.10	4 of 2010
Drugs, Poisons and Controlled Substances Amendment (Prohibition of Display and Sale of Bongs) Bill 2010	Mr Peter Kavanagh MLC	25.05.10	7 of 2010
Fair Trading Amendment (Australian Consumer Law) Bill 2010	Consumer Affairs	31.08.10	12 of 2010
Judicial Commission of Victoria Bill 2010	Attorney-General	14.09.10	13 of 2010

Appendix 4

Committee Reports and Other Papers

Chronological Listing of Committee Reports and Other Papers

Reports to Parliament	
Alert Digest Nos. 1 to 10; Cumulative Report Nos. 1 and 2	March to May 1993
First Report on Subordinate Legislation, Annual Report concerning Statutory Rules Series 1991	March 1993
Second Report on Subordinate Legislation, Port of Melbourne Authority (Transport, Handling and Storage of Dangerous Substances and Oils) Regulations 1992	March 1993
Operation of the Subordinate Legislation Act 1962	March 1993
Commencement by Proclamation	April 1993
First Report on the Operation of Section 32 of the Interpretation of Legislation Act 1984 concerning: Local Government (Reporting and Accounting) Regulations 1993	May 1993
Report by the Honourable B.A.E. Skeggs, MLC	
Discussions with the Select Committee on the Scrutiny of Delegated Powers, House of Lords, Westminster	October 1993
Third Report on Subordinate Legislation, Annual Report concerning Statutory Rules Series 1992	October 1993
Review of the Victorian Equal Opportunity Act 1984, Interim Report	October 1993
Report upon an Inquiry into the Operation of the Subordinate Legislation Act 1962	November 1993
Second Report on the Operation of Section 32 of the Interpretation of Legislation Act 1984 concerning: Water (Annual Reporting) (Amendment) Regulations 1993	November 1993
Review of the Victorian Equal Opportunity Act 1984, Final Report	November 1993
Proceedings of the Australasian and Pacific Conference on Delegated Legislation and Scrutiny of Bills, July 1993	November 1993
World Conference on Human Rights, Austria	November 1993
Reports to Parliament	
Alert Digest Nos. 11 to 20 of 1993	July to November 1993
Fourth Report on Subordinate Legislation, Land Tax (Further Amendment) Regulations 1993	March 1994
Scrutiny of Acts and Regulations Committee, First Annual Report	April 1994
Reports to Parliament	
Alert Digest Nos. 1 to 7 of 1994	March to May 1994
Redundant and Unclear Legislation, First Report	November 1994
Fifth Report on Subordinate Legislation, Annual Report concerning Statutory Rules Series 1993	November 1994
Report on the Australian Federalism Conference, July 1994	November 1994
Reports to Parliament	
Alert Digest Nos. 8 to 14 of 1994	August to November 1994
Sixth Report on Subordinate Legislation, Stock (Hormonal Growth Promotants Status Declarations) Regulations 1994	March 1995
Scrutiny of Acts and Regulations Committee, Second Annual Report	March 1995
Possible repeal of the Carriers and Innkeepers Act 1966, Discussion Paper	April 1995
Seventh Report on Subordinate Legislation, Environment Protection (Scheduled Premises and Exemptions) Regulations 1994	May 1995
Discussion Paper No. 1, Section 85 of the Constitution Act 1975	May 1995
Reports to Parliament	
Alert Digest Nos. 1 to 8 of 1995	March to June 1995

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Discussion paper No. 1 on the Scrutiny of National Scheme Legislation and the Desirability of Uniform Scrutiny Principles	August 1995
Eight Report on Subordinate Legislation, Annual Report concerning Statutory Rules Series 1994	September 1995
Redundant and Unclear Legislation, Review of the Trade Unions Act 1958	November 1995
Redundant and Unclear Legislation, Second Report	November 1995
Reports to Parliament	
Alert Digest Nos. 9 to 14 of 1995	August to November 1995
Review of the Evidence Act 1958 (Vic) and Review of the Role and appointment of Public Notaries	October 1996
Scrutiny of Acts and Regulations Committee, Third Annual Report	November 1996
Redundant and Unclear Legislation, Review of the Hire Purchase Act 1959	December 1996
Redundant and Unclear Legislation, Review of Unlawful Assemblies and Processions Act 1958, Issues Paper	December 1996
Abalone – Taking Stock – Information Paper	
Review of the Fisheries (Abalone) Regulations 1996 under the Subordinate Legislation Act 1994	December 1996
Reports to Parliament	
Alert Digest Nos. 1 to 10 of 1996	March 1997
Scrutiny of Acts and Regulations Committee, Fourth Annual Report	April 1997
Ninth Report on Subordinate Legislation, Annual Report Concerning Statutory Rules Series 1995 and 1996	May 1997
Redundant and Unclear Legislation, Third Report	December 1997
Reports to Parliament	
Alert Digest Nos. 1 to 12 of 1997	December 1997
Redundant and Unclear Legislation, Review of the Carriers and Innkeepers Act 1958	May 1998
Tenth Report on Subordinate Legislation, Annual Report Concerning Statutory Rules Series 1997	May 1998
Scrutiny of Acts and Regulations Committee, Fifth Annual Report	May 1998
The Right to Silence: An Examination of the Issues, Discussion Paper	June 1998
Reports to Parliament	
Alert Digests Nos. 1 to 8 of 1998	December 1998
Inquiry into the Right to Silence, Final Report	March 1999
Scrutiny of Acts and Regulations Committee, Sixth Annual Report	May 1999
Eleventh Report on Subordinate Legislation, Annual Report concerning Statutory Rules Series 1998	May 1999
Redundant and Unclear Legislation, Review of the Unlawful Assemblies and Processions Act 1958	May 1999
Reports to Parliament	
Alert Digests Nos. 1 to 6 of 1999	September 1999
Redundant and Unclear Legislation, Review of the Constitutional Convention Act 1972	May 2000
Report on the Statute Law Revision Bill	October 2000
Inquiry into the Subordinate Legislation Act 1994, Discussion Paper	November 2000
Reports to Parliament	
Alert Digests Nos. 1 to 11 of 2000	February 2001
Scrutiny of Acts and Regulations Committee, Annual Review 2000	February 2001
Committee Newsletter No. 1	March 2000
Annual Review 2000, Regulations 1999 and 2000	April 2001
Redundant and Unclear Legislation, Inquiry into the Summary Offences Act 1966, Discussion Paper	May 2001
Report on an Interim Privacy Code for Members of the Victorian Parliament	May 2001
Committee Newsletter No. 2	August 2001
Privacy Code for Members of the Victorian Parliament, Frequently Asked Questions and Compliance Checklist	October 2001
Report pursuant to Parliamentary Committees Act 1968, section 4D(cb) concerning the intended declaration and proclamation of the National Crime Authority (State Provisions) Act 1984 as a relevant State Act for the purposes of the Co-operative Schemes (Administrative Actions) Act 2001	November 2001
Redundant and Unclear Legislation, Inquiry into the Summary Offences Act 1966, Final Report	November 2001
Reports to Parliament	
Alert Digests Nos. 1 to 13 of 2001	February 2002
Scrutiny of Acts and Regulations Committee, Annual Review 2001	February 2002

Report pursuant to Parliamentary Committees Act 1968, section 4D(cb) concerning the intended declaration and proclamation of the Classification (Publications, Films and Computer Games) (Enforcement) Act 1995 as a relevant State Act for the purposes of the Co-operative Schemes (Administrative Actions) Act 2001	February 2002
Final Report on a Privacy Code of Conduct for Members of the Victorian Parliament	March 2002
Report on the Statute Law (Further Revision) Bill	March 2002
Review of the Vagrancy Act 1966, Discussion Paper	April 2002
Improving Victoria's Parliamentary Committee System	May 2002
Parliamentary Review of ANZAC Day Laws, Discussion Paper	June 2002
Committee Newsletter No. 3	July 2002
Inquiry into Electronic Democracy, Discussion Paper	September 2002
Review of the Vagrancy Act 1966, Final Report	September 2002
Inquiry into the Subordinate Legislation Act 1994	September 2002
Annual Review 2001, Regulations 2001	October 2002
Parliamentary Review of ANZAC Day Laws, Report	October 2002
Reports to Parliament	
Alert Digests Nos. 1 to 9 of 2002	April 2003
Annual Review 2002	August 2003
Annual Review 2002, Regulations 2002	November 2003
Discrimination in the Law, Discussion Paper	December 2003
Reports to Parliament	
Alert Digests Nos. 1 to 9 of 2003	February 2004
Annual Review 2003	May 2004
Annual Review 2003, Regulations 2003	May 2004
Victorian Electronic Democracy, Discussion Paper	November 2004
Redundant and Unclear Legislation, Report concerning the Maintenance Act 1965, Marriage Act 1958 and the Perpetuities and Accumulations Act 1968	November 2004
Victorian Electronic Democracy, Report on Evidence Obtained in North America – August 2004	November 2004
Discrimination in the Law, Progress Report: Summary of Submissions, Statutory Compliance Defences and Human Rights Protections	December 2004
Report on the Statute Law Revision Bill	February 2005
Reports to Parliament	
Alert Digests Nos. 1 to 11 of 2004	March 2005
Annual Review 2004	March 2005
Annual Review 2004, Regulations 2004	May 2005
Victorian Electronic Democracy, Final Report	May 2005
Discrimination in the Law, Interim Report	June 2005
Discrimination in the Law, Final Report	September 2005
Reports to Parliament	
Alert Digests Nos. 1 to 13 of 2005	March 2006
Annual Review 2005	March 2006
Report on the Statute Law (Further Revision) Bill	March 2006
Annual Review 2005, Regulations 2005	July 2006
Reports to Parliament	
Alert Digests Nos. 1 to 12 of 2006	November 2006
Report on the Statute Law Repeals Bill 2006	April 2007
Report on the Statute Law Revision Bill 2006	May 2007
Annual Review 2006	August 2007
Annual Review 2006, Regulations 2006	August 2007
Report on the Legislation Reform (Repeals No. 1) Bill 2007	October 2007
Report on the Legislation Reform (Repeals No. 2) Bill 2007	February 2008
Annual Review 2007	April 2008
Report on the Legislation Reform (Repeals No. 3) Bill 2007	May 2008

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Report on the Police Integrity Bill 2008	June 2008
Annual Review 2007, Regulations 2007	August 2008
Redundant Corporations Laws	December 2008
Alert Digests Nos. 1 to 15 of 2008	February to December 2008
Annual Review 2008	March 2010
Report on the Legislation Reform (Repeals No. 4) Bill 2010	May 2010
Equal Opportunity Act 1995, Options Paper, Exceptions and Exemptions Inquiry	May 2010
Annual Review 2008, Regulations 2008	July 2010
Equal Opportunity Act 1995, Final Report, Exceptions and Exemptions Inquiry	December 2010
Alert Digests Nos. 1 to 15 of 2010	February to December 2010
Report on the Legislation Reform (Repeals No. 6) Bill 2010	February 2010
Annual Review 2010	March 2010
Annual Review 2010, Regulations 2010	August 2010
Alert Digests Nos. 1 to 14 of 2010	February to October 2010
Report on the Statute Law Revision Bill 2011	March 2011

Appendix 5

Regulations considered – 2010

Statutory Rules Series 2009

S. 8(1)(a) – Fee Increase

SR No. 179 – Metropolitan Fire Brigades Amendment Regulations 2009

S. 8(1)(b) – Court Rules

SR No. 132 – Supreme Court (Criminal Procedure Amendment) Rules 2009

SR No. 144 – Supreme Court (Chapter 1 Amendment No. 16) Rules 2009

SR No. 145 – Supreme Court (Criminal Procedure Further Amendment) Rules 2009

SR No. 146 – Supreme Court (Evidence Amendments) Rules 2009

SR No. 153 – Magistrates' Court Civil Procedure (Scale of Costs and Fees Amendment) Rules 2009

SR No. 154 – Victorian Civil and Administrative Tribunal (Lists Amendment) Rules 2009

SR No. 155 – Bail Amendment Regulations 2009

SR No. 156 – Major Crime (Investigative Powers) Amendment Regulations 2009

SR No. 157 – Magistrates' Court (Fees, Costs and Charges) Amendment Regulations 2009

SR No. 158 – Crimes (Certified Statement of Conviction) Revocation Regulations 2009

SR No. 159 – Children, Youth and Families Amendment Regulations 2009

SR No. 160 – Sentencing Amendment Regulations 2009

SR No. 161 – Crimes (Alibi Evidence) Revocation Regulations 2009

SR No. 162 – Evidence Regulations 2009

SR No. 169 – Criminal Procedure Regulations 2009

SR No. 170 – Magistrates' Court General Amendment Regulations 2009

SR No. 171 – Crown Proceedings Amendment Regulations 2009

SR No. 173 – Crimes (Procedure) Revocation Regulations 2009

SR No. 182 – County Court (Costs Court Amendment) Rules 2009

SR No. 183 – County Court Criminal Procedure Rules 2009

SR No. 181 – Magistrates' Court Criminal Procedure Rules 2009

SR No. 184 – County Court (Chapter 1 Amendment No.1) Rules 2009

SR No. 185 – County Court (Evidence Amendments) Rules 2009

SR No. 186 – Children, Youth and Families (Children's Court Family Division)(Amendment No.1) Rules 2009

SR No. 189 – Children's Court Criminal Procedure Rules 2009

S. 9(1)(a) – No Appreciable Economic or Social Burden

SR No. 140 – Road Safety Road Rules Amendment (Speed Limit) Rules 2009

SR No. 141 – Gambling Regulation Amendment (Bingo) Regulations 2009

SR No. 150 – Greenhouse Gas Geological Sequestration (Exemption) Regulations 2009

SR No. 163 – Supreme Court (Fees) Amendment (Costs Court) Regulations 2009

SR No. 167 – Gambling Regulation Amendment (Advertising) Regulations 2009

SR No. 168 – Infringements (General) Further Amendment (Lodgeable Infringement Offences) Regulations 2009

SR No. 188 – Control of Weapons Amendment Regulations 2009

S. 9(1)(a) and (c) – No Appreciable Economic or Social Burden and Fundamentally Declaratory Nature

SR No. 133 – Births, Deaths and Marriages Registration Amendment Regulations 2009

SR No. 135 – Corrections Amendment Regulations 2009

SR No. 137 – Road Safety Road Rules Further Amendment Rules 2009

SR No. 152 – Environment Protection (Scheduled Premises and Exemptions) Amendment Regulations 2009

S. 9(1)(b) – National Uniform Scheme

SR No. 175 – Electricity Safety (Equipment Efficiency) Amendment (Televisions, Liquid-Chilling Packages, Close Control Airconditioners and General Lighting Services) Regulations 2009

S. 9(1)(c) – Of a Fundamentally Declaratory or Machinery Nature

SR No. 138 – Road Safety (Drivers) Amendment Regulations 2009

SR No. 147 – Travel Agents Amendment Regulations 2009

SR No. 148 – Fair Trading Amendment Regulations 2009

SR No. 172 – Evidence Revocation Regulations 2009

SR No. 176 – Health Services (Private Hospitals and Day Procedure Centres) Amendment Regulations 2009

SR No. 187 – Serious Sex Offenders (Detention and Supervision) Regulations 2009

S. 9(3) – Premier’s Certificate

SR No. 139 – Building Amendment (Private Bushfire Shelter Construction) Interim Regulations 2009

S. 10, 11 and 12 – Regulation Impact Statements

SR No. 119 – Road Safety (Vehicles) Amendment (Electronic Stability Control) Regulations 2009

SR No. 123 – Water (Resource Management) Amendment Regulations 2009

SR No. 129 – Road Safety (Traffic Management) Regulations 2009

SR No. 134 – Liquor Control Reform Regulations 2009

SR No. 136 – Alpine Resorts (Management) Regulations 2009

SR No. 142 – Relationships (Fees) Regulations 2009

SR No. 143 – Wildlife (Marine Mammals) Regulations 2009

SR No. 149 – Greenhouse Gas Geological Sequestration Regulations 2009

SR No. 151 – Electricity Safety (Cathodic Protection) Regulations 2009

SR No. 164 – Electricity Safety (Installations) Regulations 2009

SR No. 165 – Electricity Safety (Management) Regulations 2009

SR No. 166 – Forests (Licences and Permits) Regulations 2009

SR No. 174 – Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2009

SR No. 177 – Assisted Reproductive Treatment Regulations 2009

SR No. 178 – Public Health and Wellbeing Regulations 2009

SR No. 180 – Marine Regulations 2009

Statutory Rules Series 2010

S. 8(1)(a) – Fee Increase

SR No. 34 – Transfer of Land (Fees) Amendment Regulations 2010

SR No. 35 – Road Safety (Drivers) and Road Safety (Vehicles) Amendment (Fees) Regulations 2010

SR No. 36 – Chattel Securities (Registration) Amendment (Fees) Regulations 2010

SR No. 50 – Building Amendment (Fees) Regulations 2010

SR No. 51 – Plumbing Amendment (Fees) Regulations 2010

SR No. 59 – Zoological Parks and Gardens Amendment (Fees) Regulations 2010

S. 8(1)(b) – Court Rules

- SR No. 6 – Magistrates’ Court (Judicial Registrars) Amendment Rules 2010
- SR No. 22 – Supreme Court (Chapter 1 Amendment No.17) Rules 2010
- SR No. 23 – Supreme Court (Subpoena, Search Order and Freezing Order Amendment) Rules 2010
- SR No. 24 – Supreme Court Admiralty Rules 2010
- SR No. 25 – Magistrates’ Court Civil Procedure (Amendment No.1) Rules 2010
- SR No. 43 – Magistrates’ Court (Arbitration) Regulations 2010
- SR No. 53 – Supreme Court (Chapter 1 Amendment No.18) Rules 2010
- SR No. 54 – Supreme Court (Chapter Vi Amendment No.5) Rules 2010
- SR No. 55 – Supreme Court (Criminal Procedure Amendment) Rules 2010

S. 8(1)(d)(iii) Extension of Time

- SR No. 19 – Subordinate Legislation (Planning and Environment (Fees) Regulations 2000 – Extension of Operation) Regulations 2010
- SR No. 20 – Subordinate Legislation (Subdivision (Permit and Certification Fees) Regulations 2000 – Extension of Operation) Regulations 2010
- SR No. 38 – Subordinate Legislation (Dangerous Goods (Explosives) Regulations 2000 – Extension of Operation) Regulations 2010
- SR No. 48 – Subordinate Legislation (Petroleum Regulations 2000 – Extension of Operation) Regulations 2010
- SR No. 64 – Subordinate Legislation (Magistrates’ Court General Regulations 2000 – Extension of Operation) Regulations 2010

S. 9(1)(a) – No Appreciable Economic or Social Burden

- SR No. 2 – Infringements (General) Amendment (Fee Waiver) Regulations 2010
- SR No. 7 – Road Safety Road Rules (Enforcement Vehicles and Escort Vehicles) Amendment Rules 2010
- SR No. 10 – Taxation Administration Amendment Regulations 2010
- SR No. 12 – Racing (Racing Integrity Assurance) Regulations 2010
- SR No. 13 – Fisheries (Fees, Royalties and Levies) Amendment Regulations 2010
- SR No. 14 – Victorian Civil and Administrative Tribunal (Fees) Amendment Regulations 2010
- SR No. 17 – Infringements (General) Amendment Regulations 2010
- SR No. 18 – Occupational Health and Safety Amendment (Hazardous Substances Classification) Regulations 2010
- SR No. 27 – Marine Amendment Regulations 2010
- SR No. 29 – Agricultural and Veterinary Chemicals (Control of Use) (Infringement Notices) Amendment Regulations 2010
- SR No. 57 – Forests (Fire Protection) Amendment Regulations 2010
- SR No. 58 – Conservation, Forests and Lands (Infringement Notice) Further Amendment Regulations 2010
- SR No. 60 – National Parks (Fees and Charges) Amendment Regulations 2010
- SR No. 80 – Road Safety (Vehicles) Amendment (Electronic Stability Control) Regulations 2010

S. 9(1)(a) and (c) – No Appreciable Economic or Social Burden and Fundamentally Declaratory Nature

- SR No. 8 – Transport Accident Amendment (Home Modification Agreement) Regulations 2010
- SR No. 26 – Road Safety (Vehicles) Amendment Regulations 2010
- SR No. 28 – Road Safety (Drivers) Amendment (Repeat Speeders Trial) Regulations 2010
- SR No. 31 – Transport Accident (Impairment) Regulations 2010
- SR No. 39 – Livestock Disease Control Amendment Regulations 2010
- SR No. 75 – Cemeteries and Crematoria Amendment Regulations 2010

S. 9(1)(b) – National Uniform Scheme

- SR No. 15 – Building Amendment (Bushfire Construction – Short Term Requirements) Regulations 2010
- SR No. 33 – Road Safety (Vehicles) Amendment (Heavy Vehicle Charges) Regulations 2010
- SR No. 45 – Fair Trading (Information Standard)(Cosmetics) Regulations 2010

S. 9(1)(c) – Of a Fundamentally Declaratory or Machinery Nature

- SR No. 4 – Transport (Infringements) Regulations 2010

- SR No. 5 – Public Transport Competition Amendment Regulations 2010
- SR No. 11 – Conservation, Forests and Lands (Contracts) Regulations 2010
- SR No. 16 – Road Safety (General) Amendment Regulations 2010
- SR No. 37 – Conservation, Forests and Lands (Infringement Notice) Amendment Regulations 2010
- SR No. 40 – Motor Car Traders Amendment Regulations 2010
- SR No. 41 – Transport (Infringements) Amendment Regulations 2010
- SR No. 46 – Conveyancers (Professional Conduct and Trust Account and General) Amendment Regulations 2010
- SR No. 52 – Road Safety (General) Amendment (Application of Fees) Regulations 2010
- SR No. 62 – Tobacco (Victorian Health Promotion Foundation) Amendment Regulations 2010
- SR No. 71 – Water (Register of Interests) Regulations 2010
- SR No. 72 – Water (Notice of Disposition of Land) Regulations 2010
- SR No. 74 – Assisted Reproductive Treatment Amendment Regulations 2010
- SR No. 76 – Health Services (Supported Residential Services) Amendment Regulations 2010
- SR No. 77 – Residential Tenancies Amendment (Student Accommodation) Regulations 2010
- SR No. 78 – Non-Emergency Patient Transport Amendment Regulations 2010
- SR No. 79 – Public Health and Wellbeing Amendment Regulations 2010

S. 9(3) – Premier’s Certificate

- SR No. 32 – Building Amendment (Private Bushfire Shelter Construction) Interim Regulations 2010

S. 10, 11 and 12 – Regulation Impact Statements

- SR No. 1 – Associations Incorporation Amendment (Fees and Other Matters) Regulations 2010
- SR No. 3 – Mineral Resources (Sustainable Development)(Extractive Industries) Regulations 2010
- SR No. 9 – Road Safety (Driving Instructors) Regulations 2010
- SR No. 21 – Electricity Safety (Registration and Licensing) Regulations 2010
- SR No. 30 – Forests (Recreation) Regulations 2010
- SR No. 44 – Land Acquisition and Compensation Regulations 2010
- SR No. 49 – Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 2010
- SR No. 52 – Road Safety (General) Amendment (Application of Fees) Regulations 2010

Health Practitioner Regulation National Law

- SR No. 42 – Health Practitioner Regulation National Law Regulation

Appendix 6

Practice Notes

Practice Note No. 1

The Practice Note advises legal and legislation officers of the Committee's expectations in respect to information that should be provided to the Parliament concerning provisions in Bills that test or invoke the Committee's terms of reference.

In its scrutiny of Bills the Committee may initially make an adverse report to Parliament in its Alert Digest in respect to a number of legislative practices included in a Bill that appear to test or invoke the Committee's terms of reference in section 17 of the *Parliamentary Committees Act 2003* (the 'Act').

Where the Committee makes an initial adverse comment it will draw the provision to the attention of Parliament and will note that further advice will be sought from the responsible Minister. The Minister's response is published in the next Alert Digest upon receipt. To avoid needless Ministerial correspondence the Committee strongly prefers that explanatory material be provided at the time a Bill is introduced in Parliament in either the Second Reading Speech and or the explanatory memorandum.

Provisions frequently of concern to the Committee include –

1.1 Unexplained Retrospective Provisions

Where a Bill contains a provision that has retrospective operation (deeming, validating or backdated to the time of an announcement or 'press release') the Committee would expect that the Parliament will be provided with an explanation why it is desirable or necessary for the provision to be retrospective. The explanation should include the reason why a specific retrospective date is chosen, and provide sufficient information whether the retrospectivity may detrimentally affect any person. Where there is insufficient information provided to the Parliament, the grounds for an initial adverse report by the Committee will be that such a provision may constitute an undue trespass to rights and freedoms within the meaning of section 17(a)(i) of the Act.

1.2 Unexplained Wide Delegation of Powers and Functions Provisions

Where a Bill provides for a delegation of powers or functions in wide or unlimited terms, such as a delegation to 'any person', the Committee expects that Parliament will be informed as to the reasons why it is desirable or necessary to employ such a wide or unlimited delegation of powers. Where there is insufficient information provided to the Parliament the grounds for an initial adverse report by the Committee will be that such a provision may make rights, freedoms or obligations dependent upon insufficiently defined administrative powers within the meaning of section 17(a)(ii) of the Act.

1.3 Unexplained Commencement by Proclamation or Delayed Commencement in excess of 12 months

Where a Bill provides for the commencement of an Act by proclamation and no forced commencement provision is provided OR where the commencement is more than 12 months from Royal Assent, the

Committee expects that Parliament will be informed as to the reasons why it is desirable or necessary to employ such a commencement provision. Where there is insufficient information provided to the Parliament, the grounds for any initial adverse report by the Committee will be that such a provision may constitute an inappropriate delegation of legislative power within the meaning of section 17(a)(vi) of the Act.

1.4 Insufficient or Unhelpful Explanatory Material

The Committee will write to Ministers where, in the Committee's opinion, explanatory material (clause notes and/ or the Second Reading Speech) are unhelpful in describing the purpose or effect of a key provision. On one occasion the Committee noted a clause note concerning professional disciplinary matters stated that '*Clause 3 amends section 23*'. The Committee considers that there would be very few, if any, circumstances where such brevity could be appropriately characterised as 'explanatory'. The Committee considers that clause notes are critical, particularly where the provision deletes or substitutes certain words in a section where it would be problematic comprehending the amendment in its full context without some aide memoir as to its purpose and intent.

The Committee endorses the following remarks from a recent report of the Senate Standing Committee for the Scrutiny of Bills –

The committee relies on the explanatory memorandum to explain the purpose and effect of the associated bill and the operation of its individual provisions. In particular, the committee expects that an explanation will be given for any provision within a bill that appears to test or infringe the committee's terms of reference and provide reasons or justification for this.

**Senate Standing Committee for the Scrutiny of Bills – "The Quality of Explanatory Memoranda Accompanying Bills, 24 March 2004"*

In particular the Committee will comment on deficient or inaccurate explanatory material provided in respect to the following types of legislative provisions –

- Powers of arrest, detention and deprivation of liberty
- Search and seizure powers without judicial warrant
- Creation of strict or absolute liability offences
- Reversal of onus of proof in criminal (or civil penalty) offences
- Abridgment of the right to silence or the privilege against self-incrimination
- Freedom of communication, assembly, movement, association, religion or conscience
- Infringement of the right to vote
- Denial of or failure to advise of, judicial or merits review of administrative decisions
- Denial or abridgment of the principle of 'fair trial' or the principles of natural justice
- Acquisition of property without adequate compensation
- Privacy of information and health records
- Inappropriately delegates legislative power (ie. allow regulations to alter the provisions of an Act, or allow regulations to establish a tax (as distinct from a fee for service or penalty)).

The grounds for an adverse report where an explanatory memorandum is plainly deficient or inadequate is that such a provision may test or invoke one or more of the Committee's terms of reference.

Committee Room
17 October 2005

Practice Note No. 2

The Practice Note advises Victorian Government legislation officers of the Committee's expectations in respect to information that should be provided to the Parliament concerning provisions in Bills that engage the Committee's terms of reference.

In its scrutiny of Bills the Committee may initially make an adverse report to Parliament in its Alert Digest in respect to a number of legislative practices included in a Bill that appear to engage or infringe the Committee's terms of reference in section 17 of the *Parliamentary Committees Act 2003*.

Where the Committee makes an initial adverse comment it will draw the provision to the attention of Parliament and will note that further advice will be sought from the responsible Minister. The Minister's response is published in the next Alert Digest. To avoid needless Ministerial correspondence the Committee strongly prefers that explanatory material³¹ be provided at the time a Bill is introduced in Parliament.

The Committee notes the following matters –

2.1 Statement of Compatibility – section 28 of the Charter³²

The Committee will write to Ministers where, in the Committee's opinion, a Statement of Compatibility is inadequate or unhelpful in describing the purpose or effect of provisions in a Bill that may engage or infringe a Charter right.

The Committee has determined that it will characterise a Statement of Compatibility as a form of explanatory memoranda equivalent in status to an explanatory memorandum accompanying a Bill.

The Committee considers that the provision to Parliament of reasonable explanatory material is critical to the Parliament's exercise of legislative power in an informed manner.

The Committee once again endorses the following remarks from a report of the Senate Standing Committee for the Scrutiny of Bills –

The committee relies on the explanatory memorandum to explain the purpose and effect of the associated bill and the operation of its individual provisions. In particular, the committee expects that an explanation will be given for any provision within a bill that appears to test or infringe the committee's terms of reference and provide reasons or justification for this.

*** Senate Standing Committee for the Scrutiny of Bills – "The Quality of Explanatory Memoranda Accompanying Bills, 24 March 2004"*

2.2 Statute law revision type amendments and their explanatory notes

The Committee frequently encounters provisions in Bills that include one or more house keeping amendments in the form of statute law revision amendments. These amendments typically correct minor spelling, grammatical or cross-reference errors. On other occasions they may repeal spent or redundant provisions in Acts.

The Committee observes that often the explanatory memorandum in respect to such amendments will simply provide 'Clause 27 – makes statute law revision amendments'. The Committee does not consider this is a useful explanation of the purpose of the statute law revision. By way of contrast, when the Committee deals with Statute Law Revision Bills an explanation is always provided for each item sought to be amended. Some examples found in a recent statute law revision Bill will demonstrate this point –

Item 26 – *Firearms Act 1996* – amends section 3 to repeal the definition of airgun as it is not in the correct alphabetical order.³³

Item 75 – *Water Act 1989* – amends section 33U(1)(e) to remove an unnecessary full stop; section 64GB(8) to remove an unnecessary hyphen; section 259(1)(c) to remove an unnecessary comma, and section 306(1)(b) to remove an unnecessary word.³⁴

In the future scrutiny of Bills the Committee will seek reasoned explanatory material which succinctly characterises the revision or correction sought to be made.

Example:

Clause 13 makes statute law revision amendments. – Unhelpful

Clause 13 removes an unnecessary word /punctuation / corrects a cross reference in section 128 OR repeals section 128 as the provision is now spent and any remaining transitional or savings effect is preserved by the operation of section 14 of the Interpretation of Legislation Act 1984. – Acceptable

**Committee Room,
6 August 2007**

Practice Note No. 3

The Committee's Practice Notes advise Victorian Government legislation officers of the Committee's expectations in respect to information that should be provided to the Parliament concerning provisions in Bills that engage the Committee's terms of reference. To avoid needless Ministerial correspondence the Committee strongly prefers that this information should be set out in explanatory material³⁵ provided at the time a Bill is introduced in Parliament.

This Practice Note addresses matters arising under the Charter that repeatedly arise in Bills and that, in some cases, have been the subject of recent rulings by Victorian courts:

Bills applying non-Victorian laws – Compatibility with human rights – Impact on the operation on the Charter – Adequacy of explanatory material

The Victorian Parliament often considers Bills that apply non-Victorian laws as laws of Victoria or refer powers to non-Victorian bodies to enact laws that apply in Victoria. Such schemes raise a number of concerns for scrutiny, including that the adopted laws may not be subject to the human rights protections in the Charter (which generally apply only to laws passed by the Victorian parliament and to activities under those laws or otherwise done on behalf of Victoria) or to equivalent protections elsewhere.

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 the human rights impact of the scheme. Such an explanation should generally have two components:

First, the Statement of Compatibility should assess the human rights compatibility of all laws that are to be applied in Victoria and whose text is known at the time the Bill is introduced. This includes:

- existing non-Victorian legislation or schedules to legislation that will apply in Victoria
- existing non-Victorian subordinate legislation that will apply in Victoria
- Bills and exposure drafts of non-Victorian legislation that, if enacted, will apply in Victoria

The explanatory material should also identify the status of the non-Victorian legislation, i.e. whether or not it had been enacted or not when the Victorian Bill was introduced.

Second, the explanatory material should set out whether, and to what extent, the Charter's operative provisions will apply under the national cooperative scheme as it applies in Victoria. This includes:

- whether the Charter’s provisions for parliamentary scrutiny will apply to amendments to non-Victorian laws and subordinate legislation made under those laws³⁶
- whether the Charter’s interpretation rule will apply to non-Victorian laws that apply in Victoria pursuant to the scheme³⁷
- whether the Charter’s provision for declarations of inconsistent interpretation will apply to non-Victorian laws that apply in Victoria pursuant to the scheme³⁸
- whether public authorities operating under the scheme in Victoria will be subject to the Charter’s provision on obligations of public authorities³⁹

To the extent that adopting the national scheme amounts to a limitation of a Charter right, the statement of compatibility should address whether or not that limitation is reasonable under the test set out in Charter s. 7(2). The discussion of any less restrictive alternatives reasonably available to achieve the purpose of the law should address whether the applied laws could be subjected to some or all of the Charter’s operative provisions.

The Committee acknowledges that the above matters may require a complex legal assessment. However, it considers that the absence of ongoing Victorian parliamentary scrutiny of national cooperative schemes makes it vital that Parliament is fully informed of the human rights consequences of such schemes at the time a relevant Bill is introduced.

Privilege against self-incrimination – Removal of the privilege – Whether reasonable limit

The Victorian Supreme Court recently reinterpreted a Victorian statute that abolished the common law privilege against self-incrimination to ensure that it was compatible with the Charter.⁴⁰ This Note sets out the Committee’s views on the requirements of statements of compatibility in light of that decision.

Where a provision of any Bill either:

- provides that a natural person must answer questions or provide information or documents even if those answers, information or documents may tend to incriminate that person, or
- creates new powers or extends ones for questioning or provision of information or documents that are subject to such a provision

the Statement of Compatibility should state whether and how that provision satisfies the test for reasonable limits on rights in Charter s. 7(2).

The analysis in the Statement should generally set out the demonstrable justification for:

- **the coercive power itself**, i.e. the justification for requiring people to answer questions or produce documents or information.⁴¹ The discussion should address the scope of the power and any penalty for non-compliance with the power.
- **the abrogation of the privilege against self-incrimination**, i.e. the justification for requiring people give answers or produce documents or information that may tend to incriminate them. Particular attention should be given to provisions that:
 - require people to engage in new incriminatory behaviour (such as answer questions or reveal their knowledge of documents), as opposed to merely surrendering existing incriminatory items (such as documents known to be in their possession.)
 - apply to people who are presently facing investigation or prosecution for matters related to the subject-matter of the coercive power.
- **any reduction in the immunity against use of the information**, i.e. any reduction in the common law implication that incriminatory evidence that could not have been acquired without a coercive power

cannot be used against the person from whom it was required in a later proceeding. Particular attention should be given to the justification for:

- permitting incriminatory information to be used in proceedings other than those for perjury or contempt.
- only providing for partial immunity, e.g. for the answers given but not for information derived from them
- reducing the immunity for people who are not voluntary participants in the regulatory scheme in question.
- permitting incriminatory information to be used in proceedings unrelated to the regulatory scheme
- any rules permitting the information to be distributed to others, especially where any legal immunity does not apply (e.g. in non-Victorian or overseas proceedings)
- **preconditions for any protection**, e.g. a requirement that the person assert the privilege prior to answering or providing the information or document. Particular attention should be given to the absence of procedural protections for such people, such as prior warnings about any condition and the provision of independent legal advice.

The Statement's discussion of less restrictive alternatives reasonably available to achieve the purpose of the provision should address the alternative of a more limited abrogation of the privilege, including restricting the coercive power or abrogation of the privilege to a narrower category of information or people or providing broader immunity or protections.⁴²

Presumption of innocence – Reverse onus – Whether reasonable limit

The Victorian Court of Appeal recently declared that it cannot interpret the 'deemed possession' provision of the *Drugs, Poisons and Controlled Substances Act 1985* in a way that is consistent with the Charter's right to be presumed innocent until proved guilty according to law.⁴³ This Note sets out the Committee's views on the requirements of statement of compatibility in light of the decision.

The Statement of Compatibility for any Bill that creates (or extends the operation of or increases the applicable penalty in respect of) a provision that:

- places the legal onus of proof on an accused with respect to any issue in a criminal proceeding, including provisions that do not specify a standard of proof, such as balance of probabilities.
- deems a fact to be proved in any circumstance
- provides that proof of any fact is 'prima facie evidence' of a different fact⁴⁴
- places an evidential onus on an accused with respect to an essential element of an offence
- should state whether and how that provision satisfies the Charter's test for reasonable limits on rights.

Matters that should generally be addressed in the Statement include:

- whether or not there is a rational connection between any facts that must be first proved by the prosecution and the facts that are presumed or in respect of which the accused bears an onus
- an assessment of the practical risk that the provision may allow an innocent person to be convicted of the offence
- an outline of any evidence for any factual assertions relied on to argue that the limitation is demonstrably justifiable,⁴⁵ e.g. an assertion that the reverse onus is necessary for the effective prosecution of the offence

- in the case of a provision that places a legal onus on an accused, whether an evidential onus would be a less restrictive alternative reasonably available to achieve the purpose of the provision⁴⁶
- whether people potentially affected by the provision will be given sufficient notice of it to allow them to effectively discharge any onus of proof

The Committee observes that the Court of Appeal generally rejected the relevance of either the seriousness or the lack of seriousness of the offence or penalty to the question of whether a reverse onus is justified.⁴⁷

**Committee Room,
26 July 2010**

[The Committee's Practice Notes are available from – www.parliament.vic.gov.au/sarc]

Endnotes

- ¹ To be published June 2011.
- ² To be published by April 2011.
- ³ *Parliamentary Committees Act 2003*, s. 5(k).
- ⁴ *Parliamentary Committees Act 2003*, s. 21(1).
- ⁵ *Subordinate Legislation Act 1994*, s. 21.
- ⁶ *Parliamentary Committees Act 2003*, ss. 17(a) and (b).
- ⁷ The scrutiny of statutory rules (regulations) predates the formation of the Committee and was performed by a number of predecessor parliamentary committees such as the Legal and Constitutional Committee (now defunct).
- ⁸ *Co-operative Schemes (Administrative Actions) Act 2001*, s. 4(4)-(9); *Dangerous Goods Act 1985*, s. 9C(4); *Essential Services Commission Act 2001*, ss. 49(11) & 51(2); *Estate Agents Act 1980*, ss. 10C(2) & 45A(2); *Fair Trading Act 1999*, s. 32NA(7); *Fisheries Act 1995*, s. 151(8B); *Fundraising Act 1998*, s. 16A(6); *Port Services Act 1995*, s. 184(1)-(3); *Public Health and Wellbeing Act 2008*, s. 126(4); *Radiation Act 1995*, s. 5(2); *Rail Corporations Act 1996*, s. 38C(2); *Rail Safety Act 2006*, s. 104(3); and *Road Management Act 2004*, ss. 23(4) & 30(2).
- ⁹ *Parliamentary Committees Act 2003*, ss. 33(1)(a) and (b).
- ¹⁰ *Parliamentary Committees Act 2003*, s. 33(1)(b).
- ¹¹ See *Alert Digest No 8 of 2010* (reporting on the Superannuation Legislation Amendment Bill 2010).
- ¹² See *Alert Digest No 9 of 2010* (reporting on the Working With Children Amendment Bill 2010.)
- ¹³ *R v Momcilovic* [2010] VSCA 50. The ACT Supreme Court later made a similar declaration with respect to that jurisdiction's bail law: *In the Matter of an Application for Bail by Isa Islam* [2010] ACTSC 147.
- ¹⁴ Charter ss. 36-37. The declaration was appealed to the High Court and no response will be required unless and until that Court upholds it.
- ¹⁵ *Alert Digest No 8 of 2010* (reporting on the Control of Weapons Amendment Bill 2010).
- ¹⁶ *Alert Digests No 1 of 2010* and *No 6 of 2010* (reporting on the Severe Substance Dependence Treatment Bill 2010).
- ¹⁷ *Alert Digest No 3 of 2010* (reporting on the Credit (Commonwealth Powers) Bill 2010).
- ¹⁸ *Alert Digest No 12 of 2010* (reporting on the Marine Safety Bill 2010)
- ¹⁹ *Alert Digest No 13 of 2010* (reporting on the Road Safety (Hoon Driving) Amendment Bill 2010).
- ²⁰ *Alert Digest No 8 of 2010* (reporting on the Associations Incorporation Amendment Bill 2010).
- ²¹ *Alert Digest No 11 of 2010* (reporting on the Plant Biosecurity Bill 2010)
- ²² *Alert Digest No 12 of 2010* (reporting on the Residential Tenancies Amendment Bill 2010).
- ²³ *Alert Digest No 13 of 2010* (reporting on the Judicial Commission of Victoria Bill 2010.)
- ²⁴ *Alert Digest No 4 of 2010* (reporting on the Justice Legislation Amendment Bill 2010).
- ²⁵ Practice Note No 3.
- ²⁶ *Alert Digest No 4 of 2010* (reporting on the *Crimes Legislation Amendment Act 2010*.)
- ²⁷ The *Constitution Act 1975* requires provisions that engage section 85 to be passed by an absolute majority of both Houses of the Parliament and that a member introducing such a provision make a section 85 Statement either when the Bill is second read or before the third reading of the Bill. For the provision to be effective the Bill must specifically declare the intention of the provision to repeal, alter or vary the jurisdiction of the Supreme Court of Victoria.
- ²⁸ *Criminal Procedure Legislation Amendment Bill 2007*.
- ²⁹ Bill lapsed on the dissolution of the 56th Parliament.
- ³⁰ Budgets and expenditure include current inquiry budgets, staff salaries, superannuation and training, office expenses, Members allowances and interstate and overseas travel.
- ³¹ Explanatory material includes: (1) a Statement of Compatibility made under section 28 of the *Charter of Rights and Responsibilities Act 2006*; (2) an explanatory memorandum (clause notes) and (3) Ministerial correspondence.
- ³² *Charter of Human Rights and Responsibilities Act 2006*.
- ³³ Statute Law Revision Bill 2006, Schedule.
- ³⁴ Statute Law Revision Bill 2006, Schedule.
- ³⁵ Explanatory material includes – (1) a Statement of Compatibility made under section 28 of the *Charter of Rights and Responsibilities Act 2006*, (2) an explanatory memorandum (clause notes), and (3) Ministerial correspondence.
- ³⁶ Charter ss. 28 & 30; *Subordinate Legislation Act 1994*, ss. 12A & 21(1)(ha).
- ³⁷ Charter s. 32, the definition of 'statutory provision' in Charter s. 3 and the definition of 'Act' in s. 38 of the *Interpretation of Legislation Act 1984*.
- ³⁸ Charter ss. 36 & 37
- ³⁹ Charter s. 38 and the definition of 'public authority' in Charter s. 4.
- ⁴⁰ Re an application under the Major Crime (Investigative Powers) Act 2004 [2009] VSC 381. See Charter ss. 24(1) & 25(2)(k).
- ⁴¹ These powers may also engage the Charter's rights to privacy (s. 13(a)) and freedom of expression (s. 15(2)).
- ⁴² Charter s. 7(2)(e).
- ⁴³ *R v Momcilovic* [2010] VSCA 50
- ⁴⁴ *R v Momcilovic* [2010] VSCA 50, [135]
- ⁴⁵ *R v Momcilovic* [2010] VSCA 50, [146]
- ⁴⁶ Charter s. 7(2)(e)
- ⁴⁷ *R v Momcilovic* [2010] VSCA 50, [148]