



**SCRUTINY OF ACTS AND
REGULATIONS COMMITTEE**

58th Parliament

Annual Review 2014
Regulations and Legislative Instruments

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TERMS OF REFERENCE

The statutory functions of the Scrutiny of Acts and Regulations Committee as set out in section 17 of the *Parliamentary Committees Act 2003* are:–

17. Scrutiny of Acts and Regulations Committee

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

- (a) To consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly –
 - (i) trespasses unduly on rights or freedoms;
 - (ii) makes rights, freedoms or obligations dependent on insufficiently defined administrative powers;
 - (iii) makes rights, freedoms or obligations dependent on non-reviewable administrative decisions;
 - (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *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 Act 2006*;
- (b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament –
 - (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the *Constitution Act 1975*, or raises an issue as to the jurisdiction of the Supreme Court;
 - (ii) if a Bill repeals, alters or varies section 85 of the *Constitution Act 1975*, whether this is in all the circumstances appropriate and desirable;
 - (iii) if a Bill does not repeal, alter or vary section 85 of the *Constitution Act 1975*, but an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;
- (c) to consider any Act that was not considered under paragraph (a) or (b) when it was a Bill–
 - (i) within 30 days immediately after the first appointment of members of the Committee after the commencement of each Parliament; or
 - (ii) within 10 sitting days after the Act receives Royal Assent –
whichever is the later, and to report to the Parliament with respect to that Act or any matter referred to in those paragraphs;
- (d) the functions conferred on the Committee by the *Subordinate Legislation Act 1994*;

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- (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 Act 2006*;
- (g) to review any Act in accordance with the terms of reference under which the Act is referred to the Committee under this Act.

PRINCIPLES OF REGULATION REVIEW

The principles of regulation review are set out in Section 21 of the *Subordinate Legislation Act 1994*:-

21. Review of statutory rules by the Scrutiny Committee

- (1) The Scrutiny Committee may report to each House of the Parliament if the Scrutiny Committee considers that any statutory rule laid before Parliament –
 - (a) does not appear to be within the powers conferred by the authorising Act;
 - (b) without clear and express authority being conferred by the authorising Act –
 - (i) has a retrospective effect; or
 - (ii) imposes any tax, fee, fine, imprisonment or other penalty; or
 - (iii) purports to shift the onus of proof to a person accused of an offence; or
 - (iv) provides for the sub-delegation of powers delegated by the authorising Act;
 - (c) appears to be inconsistent with the general objectives of the authorising Act;
 - (d) makes unusual or unexpected use of the powers conferred by the authorising Act having regard to the general objectives of that Act;
 - (e) contains any matter or embodies any principles which should properly be dealt with by an Act and not by subordinate legislation;
 - (f) unduly trespasses on rights and liberties of the person previously established by law;
 - (g) makes rights and liberties of the person unduly dependent upon administrative and not upon judicial decisions;
 - (ga) 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*;
 - (gb) 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*;
 - (h) is inconsistent with principles of justice and fairness;
 - (ha) is incompatible with the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006*;
 - (i) requires explanation as to its form or intention;
 - (j) has been prepared in contravention of any of the provisions of this Act or of the guidelines with respect to the statutory rule and the contravention is of a substantial or material nature;
 - (k) is likely to result in administration and compliance costs which outweigh the likely benefits sought to be achieved by the statutory rule.

- (2) A report of the Scrutiny Committee under this section may contain any recommendations that the Scrutiny Committee considers appropriate, including a recommendation that a statutory rule should be –
- (a) disallowed in whole or in part; or
 - (b) amended as suggested in the report.

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CHAIRPERSON'S FOREWORD

I am pleased to present the Annual Review of the operations of the Regulation Review Subcommittee of the Scrutiny of Acts and Regulations Committee to the Parliament of Victoria. The report reviews the activity of the Subcommittee in relation to the 2014 statutory rule and legislative instrument series. The majority of the work undertaken was performed by the Subcommittee during the 57th Parliament.

It is appropriate to acknowledge the work of those distinguished members who served on the Subcommittee in the 57th Parliament. The Chairperson of the Subcommittee was Mr Michael Gidley MLA. The other members of the Subcommittee were the Honourable Christine Campbell MLA, Mr Don Nardella MLA, the Honourable Richard Dalla-Riva MLC and Mr Graham Watt MLA. The current Subcommittee extends its appreciation to these distinguished members.

I also wish to thank the current members of the Subcommittee. The members are The Honourable Richard Dalla-Riva MLC, Mr Steve Dimopoulos MLA, Ms Emma Kealy MLA and Ms Sonya Kilkenny MLA. Their attendance at meetings and commitment to the process is greatly appreciated as the Subcommittee works under a strict legislative timetable. The Subcommittee(s) worked assiduously and carefully through the 2014 series. Every statutory rule and legislative instrument was considered in accordance with the requirements of the *Subordinate Legislation Act 1994* and in the context of the *Charter of Human Rights and Responsibilities*.

I also thank the Committee staff for their commitment and dedication. Ms Helen Mason performs the legal scrutiny of the statutory rules and legislative instruments. I thank her for the provision of timely, informative legal advice. I thank Ms Sonya Caruana for her efficient administrative support and Mr Simon Dinsbergs for his additional administrative support when required. I also thank Dr Jeremy Gans, who advises on compatibility of subordinate legislation with the *Charter of Human Rights and Responsibilities*.

The Subcommittee will continue to use its best endeavours to perform its role.

Ms Lizzie Blandthorn MP
Chairperson
June 2015

CHAPTER 1 – OVERVIEW

This *Annual Review* examines the major issues arising out of the scrutiny of subordinate legislation in Victoria by the Regulation Review Subcommittee (the Subcommittee).

The statutory rules series 2014 which forms part of the Annual Report covers statutory rules SR No. 1-2014 to SR No. 212-2014. The 2014 statutory rules series was considered from approximately May 2014 to June 2015. Both the previous Subcommittee and the current Subcommittee therefore considered these statutory rules. The making of the statutory rules, their timing and tabling in Parliament is the prerogative of the Executive. The legislative instruments were considered from 1 July 2014 to 30 June 2015.

WHAT IS THE REGULATION REVIEW SUBCOMMITTEE?

The Scrutiny of Acts and Regulations Committee (the Committee) is a joint investigatory Committee of the Parliament of Victoria. It has members from the Upper and Lower Houses, the Government and the Opposition. The Regulation Review Subcommittee is a subcommittee of the Committee. The Subcommittee¹ scrutinises regulations and legislative instruments as defined in section 3 of the *Subordinate Legislation Act 1994* (Vic) (the Act). It also conducts inquiries in relation to regulations and legislative instruments.

SUBCOMMITTEE MEMBERS

The Scrutiny of Acts and Regulations Committee was formed on 23 December 2014 for the 58th Parliament. On the 9 February 2015 the following members were appointed to serve on the Regulation Review Subcommittee –

- Ms Lizzie Blandthorn MLA (Chair)
- Hon. Richard Dalla-Riva MLC
- Mr Steve Dimopoulos MLA
- Ms Emma Kealy MLA
- Ms Sonya Kilkenny MLA

The members of the Subcommittee during 2014 were –

- Hon. Richard Dalla-Riva MLC
- Hon. Christine Campbell MLA
- Mr Michael Gidley MLA (Chair)
- Mr Don Nardella MLA
- Mr Graham Watt MLA

¹ Prior to 1 May 2000 the Regulation Review Subcommittee was known as the Subordinate Legislation Subcommittee.

WHAT ARE ‘REGULATIONS’ AND ‘LEGISLATIVE INSTRUMENTS’?

Legislation made by Parliament is referred to as primary legislation or Acts of Parliament. Legislation cannot be made by bodies other than Parliament unless Parliament authorises those bodies (by means of an Act of Parliament) to make ‘subordinate legislation’. Subordinate legislation scrutinised by the Committee is comprised of both regulations and legislative instruments. The term ‘regulations’ encompasses instruments such as statutory rules and court rules. ‘Legislative instruments’ may include orders-in-council, proclamations, notices and codes of practice.

Other forms of subordinate legislation may include ministerial directions, ministerial guidelines, local laws, declarations and licences. The power to make subordinate legislation is delegated by Parliament to the Executive and other non-Parliamentary bodies including government departments, statutory authorities and agencies. The powers delegated to the Executive by Parliament are contained in Acts of Parliament.

PARLIAMENTARY OVERSIGHT

The validity of a regulation or legislative instrument depends upon the power conferred by the Act under which it is made. Parliament authorises the Executive to make subordinate legislation because there is insufficient time to debate and pass all the legislation which needs to be enacted. This is particularly the case where the proposed legislation is very technical or scientific.

While regulations and legislative instruments are sometimes perceived to be of lesser importance than Acts of Parliament, they do control and prohibit the conduct of citizens and may adversely affect the rights and liberties of citizens in much the same way as Acts of Parliament. The potential for abuse of the regulation-making power and erosion of citizens’ rights always exists. As Mr Justice Stephen commented in *Watson v. Lee*² the history of delegated legislation:–

“reflects the tension between the needs of those who govern and the just expectations of those who are governed. For those who govern, subordinate legislation, free of the restraints, delays and inelasticity of the parliamentary process, offers a speedy and flexible mode of law-making. For the governed it may threaten subjection to laws which are enacted in secret and of whose commands they cannot learn: their reasonable expectations that laws shall be both announced and accessible will only be assured of realization by the imposition and enforcement of appropriate controls upon the power of subordinate legislators, whose power, as Fifoot observed “requires an adequate measure of control if it is not to degenerate into arbitrary government” ”.

Parliamentary scrutiny committees, with power to examine subordinate legislation made by the Executive, are one of the most important safeguards against the misuse of Executive power. Since the 1930s most Westminster style Parliaments have kept control over regulations through the use of scrutiny committees. Scrutiny committees exist in all

² (1979) 155 CLR 374 at 394.

Australian states and territories. Some of these scrutiny committees examine bills and regulations, while others examine only regulations.³

Victoria has scrutinised regulations since 1956.⁴ From 1982 to 1992 the Legal and Constitutional Committee was responsible for scrutinising regulations. In 1992, the Committee was created by the *Parliamentary Committees (Amendment) Act 1992 (Vic)*. It scrutinises regulations, legislative instruments and bills.

SCOPE OF THE SUBORDINATE LEGISLATION ACT 1994 (VIC)

The Act contains the procedures for making regulations and legislative instruments. It sets out the scrutiny functions of the Subcommittee. Only those instruments which come within the definition of 'statutory rule' as contained in section 3 of the Act are subject to the Act. Section 3 defines 'statutory rule' to include:–⁵

- Regulations made, approved or consented to by the Governor -in-Council;
- Regulations which may be disallowed by the Governor-in-Council excluding regulations made by local authorities;
- Rules relating to a court or tribunal or the procedure, practice or costs of a court or tribunal;
- Legislative Instruments prescribed to be statutory rules by the Governor-in-Council; and
- Legislative Instruments deemed to be statutory rules by their own authorising Act.

Regulations in the form of statutory rules constitute only a small portion of the continually growing number of different types of instruments made each year. Some examples of instruments which may fall outside the definition of 'statutory rule' or 'legislative instrument' are ministerial guidelines, ministerial directions, local laws, declarations and licences. Such instruments are not subject to:-

- The procedures of the Act. However they remain subject to any requirements contained in legislation under which they are made;
- Scrutiny by the Subcommittee and generally not subject to Parliamentary review. However it should be noted that some regulations which fall outside the definition of 'statutory rule' are subject to specific Parliamentary review requirements. For example,

³ Australian jurisdictions which examine regulations and bills include the ACT, the Commonwealth, New South Wales, Queensland, Victoria and Western Australia and those committees include – Committee on Justice and Community Safety (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee) (ACT), Senate Standing Committee for the Scrutiny of Bills (Cth); Senate Standing Committee on Regulations and Ordinances (Cth); Legislation Review Committee (NSW), Scrutiny of Legislation Committee (Qld), Scrutiny of Acts and Regulations Committee (Vic), Legislation Committee (WA) and Delegated Legislation Committee (WA).

Australian jurisdictions which examine regulations only include Northern Territory, South Australia and Tasmania and those committees include – Subordinate Legislation and Tabled Papers Committee (NT); Legislation Review Committee (SA); and Standing Committee on Subordinate Legislation (Tas).

⁴ *Subordinate Legislation Act 1956 (Vic)*.

⁵ *Subordinate Legislation Act 1994 (Vic)*, s. 3.

planning schemes (and amendments) must be tabled in Parliament within 10 sitting days after being approved.⁶

ROLE OF THE SUBCOMMITTEE

The Subcommittee examines and reviews:–

- Regulations and legislative instruments within the meaning of ‘statutory rule’ contained in the Act;
- State Environment Protection Policies and Waste Management Policies made under the *Environment Protection Act 1970 (Vic)*;

The Subcommittee meets regularly to review the regulations and legislative instruments. Meetings of the Subcommittee are not open to the public. However the Subcommittee may invite members of the public or representatives from various organisations or government departments and agencies to address it at meetings. At the meetings the legal adviser presents the Subcommittee with written and verbal advice in respect of each regulation or legislative instrument. The Subcommittee members discuss each regulation and legislative instrument and any issues and concerns. When the Subcommittee is satisfied there has been compliance with the Act in respect of a regulation or legislative instrument it passes a motion of approval.

Where the Subcommittee is dissatisfied with any matters or requires clarification, it corresponds with the responsible Minister. The Subcommittee will highlight its concerns to the Minister. It will seek in the first instance an explanation or amendment of the regulation or legislative instrument. If the Subcommittee does not receive a satisfactory explanation it may prepare a report to Parliament. This report is submitted to all members of the Committee for formal approval and adoption.⁷ The Committee may adopt or reject the report or part of it or make any changes it deems necessary.⁸

A report to Parliament may include a recommendation that a regulation or legislative instrument be amended or disallowed in whole or in part. Alternately a report provided by way of information to the Parliament may simply outline the Committee’s concerns. As a regulation or legislative instrument has already commenced operation by the time it comes before the Subcommittee, the power to recommend disallowance is only used in exceptional circumstances. Generally, such a power would be used where all other efforts to resolve the issue have failed.

Where the Committee decides to report to Parliament it may also recommend that a regulation or legislative instrument be suspended whilst Parliament considers the issues contained in the report.⁹ Such a course may be undertaken in the interests of justice and fairness. When regulations or legislative instruments are suspended in this manner they are deemed not to have been made. This means they have no effect. People are not required to comply with them during the period of suspension.¹⁰

⁶ *Planning and Environment Act 1987 (Vic)*.

⁷ The Regulation Review Subcommittee has all the powers and privileges of the full Committee. However it cannot report directly to Parliament.

⁸ *Parliamentary Committees Act 2003 (Vic)*, s. 32(4).

⁹ *Subordinate Legislation Act 1994 (Vic)*, s. 22(1).

¹⁰ *Ibid.*, s. 22(5).

DISALLOWANCE

Any Member of either House of Parliament may give notice of a disallowance motion but must do so within eighteen sitting days of the tabling of the regulation in that House. Disallowance will not be effective unless that House passes a disallowance resolution within twelve sitting days of the disallowance notice. If the Committee wants to Report to Parliament recommending disallowance, it must also comply with the eighteen sitting day requirement. This means that the Subcommittee must review and discuss all regulations and legislative instruments within strict time limits.

SCRUTINY OF REGULATIONS

The Subcommittee scrutinises regulations after they have been made to determine whether they comply with the legislative principles specified in the Act.¹¹ These principles require the Subcommittee to ensure that regulations do not unduly trespass on rights and freedoms and comply with the procedural and practical requirements of the Act. The Subcommittee does not comment on matters involving government policy. The review focuses on the technical criteria contained in the Act. More specifically, under section 21 of the Act the Subcommittee ensures that regulations and legislative instruments:–

- Are within the powers of the authorising Act;
- Do not, without clear and express authority;
 - *have a retrospective effect;*
 - *impose a tax, fee, fine, imprisonment or other penalty;*
 - *purport to shift the onus of proof to a person accused of an offence;*
 - *provide for the sub-delegation of powers delegated by the authorising Act;*
- Are consistent with the general objectives of the authorising Act;
- Do not make unusual or unexpected use of the powers conferred by the authorising Act having regard to the general objectives of the authorising Act;
- Do not contain any matters which should be contained in an Act of Parliament rather than subordinate legislation;
- Do not unduly trespass on rights and liberties of the person previously established by law;
- Do not make rights and liberties of the person unduly dependent on administrative rather than judicial decisions;
- Do not authorise or require any acts or practices which may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000* (Vic);
- Do not authorise or require any acts or practices which may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2000* (Vic);
- Are consistent with principles of justice and fairness;
- Are not incompatible with the human rights set out in the *Charter of Human Rights and Responsibilities*;
- Do not require explanation as to form or intention;

¹¹ *Subordinate Legislation Act 1994* (Vic), s. 21.

- Do not substantially or materially contravene the practical requirements of the Act or the Premier's Guidelines;¹² and
- Are not likely to result in administration and compliance costs which outweigh the benefits sought to be achieved.

The Subcommittee also ensures compliance with the procedural requirements of the Act. Where a Regulatory Impact Statement (RIS) has been prepared, some of the procedural issues the Subcommittee examines include whether:–

- all appropriate certificates have been received by the Subcommittee;
- consultation is adequate and in particular whether appropriate organisations and individuals have been consulted;
- certificates are dated and signed by the responsible Minister;
- certificates contain all the required information; and
- the RIS is adequate and in particular whether it properly explains the nature and extent of the problem to be dealt with by the new regulation; the extent to which alternatives have been considered and the appropriateness of those alternatives; the costs and benefits of the proposed regulations or legislative instrument and whether the benefits outweigh the costs.

Where a regulation or legislative instrument is exempted from the RIS process, some of the procedural requirements the Subcommittee examines include whether:–

- the regulation or legislative instrument is correctly exempted or whether it should have been made with a RIS;
- the regulation or legislative instrument is exempted under the appropriate category in the Act;
- the exemption or exception certificate specifies the section under which the exemption was granted;
- the exemption certificate is signed and dated by the responsible Minister;
- the exemption certificate contains reasons for granting the exemption as required by section 9(2);
- a regulation or legislative instrument exempted by a Premier's certificate sunsets within twelve months.

The Subcommittee also ensures that:–

- explanatory memoranda clearly set out the nature and extent of any changes and the reasons for the changes; and
- there is compliance with all notice, gazettal and tabling requirements of the Act.

¹² Department of Premier and Cabinet, Premier's Guidelines, August 2011.

THE SCRUTINY OF LEGISLATIVE INSTRUMENTS – THE FOURTH YEAR OF OPERATION

In 1985, Victoria introduced a range of regulatory reforms including a regulatory impact statement (RIS) process for the making of statutory rules and the automatic sunseting of regulations after 10 years of operation.¹³ In 1995 changes were made to the Act which imposed stronger RIS requirements on the regulation making process, specifically targeting regulations likely to impose an ‘appreciable’ economic or social burden.¹⁴ However, now the language used is whether a regulation or legislative instrument imposes a ‘significant’ economic or social burden.¹⁵

The Committee tabled a report in September 2002 ‘*Inquiry into the Subordinate Legislation Act 1994*’¹⁶. In that Report the Committee examined the effectiveness of the regulation making system in Victoria. It made a number of recommendations to improve the system to enable Victoria to achieve best practice standards set by the Organisation for Economic Co-operation and Development (OECD). The Government’s response to the Committee’s Report was tabled in the Legislative Assembly in 2003. In 2004 the Victorian Competition and Efficiency Commission (VCEC) was created to act as an independent regulatory review body. VCEC’s role includes reviewing regulatory impact statements and advising on the economic impact of significant new legislation.¹⁷

In December 2009 the *Subordinate Legislation Amendment Bill Discussion Paper*¹⁸ was released seeking submissions. The Committee carefully considered many issues raised by the Discussion Paper. The Committee considered the implications of Appendix B of the Discussion Paper including those instruments for prescription as a legislative instrument exempt from the operation of the draft Bill. The Committee also considered the proposed changes in respect of the definition of ‘legislative instrument’ and its implications in terms of resources. Of interest to the Committee is the impact of the Charter on its scrutiny of regulations. The Committee sent a written submission to the Department of Premier & Cabinet. In addition, the Committee had several productive and informative meetings with representatives of the Department of Premier & Cabinet to discuss various matters.

The *Subordinate Legislation Amendment Bill 2010* was introduced in August 2010. Amendments to the *Subordinate Legislation Act 1994* came into effect on 1 January and 1 July 2011. The amendments relate to the scrutiny of legislative instruments and specifically inserted a new Part 3 into the Act. The amendments essentially duplicate and extend the current arrangements relating to the scrutiny of statutory rules to legislative instruments.

The scrutiny of legislative instruments commenced on 1 July 2011. The Committee’s first year of the scrutiny of legislative instruments was from 1 July 2011 to 30 June 2012. The second year of the scrutiny of legislative instruments was from 1 July 2012 to 30 June 2013. The third year of scrutiny of legislative instruments was from 1 July 2013 to 30 June 2014. This is the fourth year of scrutiny of legislative instruments and comprises the period from 1

¹³ Scrutiny of Acts and Regulations Committee, *Inquiry into the Subordinate Legislation Act 1994*, September 2002.

¹⁴ Department of Premier and Cabinet, *Subordinate Legislation Amendment Bill Discussion Paper*, December 2009, page 7.

¹⁵ See sections 6 and section 12C of the *Subordinate Legislation Act 1994*.

¹⁶ Op. cit.

¹⁷ Op. cit, p. 7.

¹⁸ Department of Premier and Cabinet, *Subordinate Legislation Amendment Bill Discussion Paper*, December 2009.

July 2014 to 30 June 2015. The Committee makes further comment on the fourth year of the review of legislative instruments in Chapter 3.

SCRUTINY OF ENVIRONMENT PROTECTION AND WASTE MANAGEMENT POLICIES

The Subcommittee also has responsibility for reviewing policies made under Part 3 of the *Environment Protection Act 1970 (Vic)*. These policies include State Environment Protection Policies and Waste Management Policies.

More specifically State Environment Protection Policies include:–

- policies concerning the environment generally;¹⁹
- policies concerning the removal, disposal or reduction of litter in the environment;²⁰
- policies concerning the re-use and recycling of substances.²¹

Until recently waste management policies made under the *Environment Protection Act 1970 (Vic)* applied only to industrial waste. With changes brought about by the *Environment Protection (Resource Efficiency) Act 2002 (Vic)* waste management policies now apply to waste generally.²² Waste management policies are now enacted under s. 16A of the *Environment Protection Act 1970 (Vic)*.²³

Waste Management Policies include policies dealing with:–²⁴

- the generation, storage, treatment, transport and disposal and general handling of waste;
- the procedures to be implemented in the recycling, recovery, reclamation and re-use of waste and recycled substances;
- the methods of disposal of specified substances;
- the routes and methods of transportation of waste;
- the location of treatment and disposal plants;
- the allocation of responsibility for waste management operations and disposal; and
- the use and disposal of notifiable chemicals.

State Environment Protection Policies and Waste Management Policies are made by the Governor-in-Council on the recommendation of the Environment Protection Authority (EPA) by publishing an Order declaring the policy in the *Victorian Government Gazette*.²⁵ These policies must be tabled in each House of Parliament on or before the sixth sitting day after the Order is published in the *Victorian Government Gazette*.²⁶

¹⁹ *Environment Protection Act 1970 (Vic)*, s. 16(1).

²⁰ *Ibid.*, s. 16(1B).

²¹ *Ibid.*, s. 16(1C).

²² See definition of 'waste' in the *Environment Protection Act 1970 (Vic)*, s. 4.

²³ Previously Industrial Waste Management Policies were made under section 16(1A) of the *Environment Protection Act 1970 (Vic)*.

²⁴ *Environment Protection Act 1970 (Vic)*, s. 16A.

²⁵ *Ibid.*, s. 16(1).

²⁶ *Ibid.*, s. 18D(1).

Section 18A of the *Environment Protection Act 1970 (Vic)* sets out the requirements which must be followed when making State Environment Protection Policies and Waste Management Policies. Certain policies are excluded from the provisions concerning the preparation of policies. For example, the variation of a State Environment Protection Policy or Waste Management Policy which the EPA determines to be fundamentally declaratory, machinery or administrative in nature. Otherwise the following procedures must be followed:–

- during a minimum period of twenty-one days, the EPA must publish on three occasions in a relevant newspaper – notice of intention to declare a policy. The notice must include the area affected and advise that any person affected may submit information to the EPA;
- the EPA must consider information provided to it by any person affected or likely to be affected;
- the EPA must consult with any government department or statutory authority whose responsibilities may be affected by the policy;
- the EPA must prepare a draft policy;
- the EPA must prepare a draft impact assessment;
- during a minimum period of twenty-one days the EPA must publish on three occasions in a relevant newspaper – notice of preparation of a draft policy. The notice must include the reasons for and objectives of the policy, a description of the area affected, details of where a copy of the draft policy may be obtained and specify that any person likely to be affected may make a submission;
- the EPA must allow a period of at least three months for submissions;
- the EPA must consider all submissions; and
- the EPA must write a separate letter to each person who has lodged a submission.

Section 18C of the *Environment Protection Act 1970 (Vic)* sets out the matters which a policy impact assessment must discuss:–

- the purposes of the policy;
- the alternatives for achieving the objectives, including consideration of not declaring the policy or varying the existing policy; and
- an assessment of the possible financial, social and environmental impacts of each alternative in qualitative and, where practicable, in quantitative terms.

A copy of the following documents must be forwarded to the Committee:–

- the final policy impact assessment;
- a summary of submissions;
- a statement of the EPA's evaluation of the submissions and any changes made to the draft policy;
- a copy of the review panel's advice if there was a review panel.

The Committee may report to Parliament where these policies are beyond power or do not comply with the provisions of the *Environment Protection Act 1970 (Vic)*. Section 18D(3) provides that the Committee may report to Parliament where a policy:–

- does not appear to be within the powers conferred by the *Environment Protection Act 1970* (Vic);
- has been prepared in contravention of the *Environment Protection Act 1970* (Vic); or
- contains any matter in contravention of *Environment Protection Act 1970* (Vic).

Initial reviews of State Environment Protection Policies and Waste Management Policies are carried out by the Subcommittee. Where the Subcommittee is unable to resolve any issues, it may recommend to the Committee that a report be made to Parliament. A report to Parliament by the Committee may make any recommendations considered appropriate including that a policy be disallowed in whole or in part.²⁷

The disallowance provisions contained in sections 23 and 24 of the Act apply to State Environment Protection Policies and Waste Management Policies.²⁸ This means that the eighteen sitting day deadline applies, that is the Committee must table a motion for disallowance within eighteen sitting days after the policy has been tabled before that House.

THE CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006

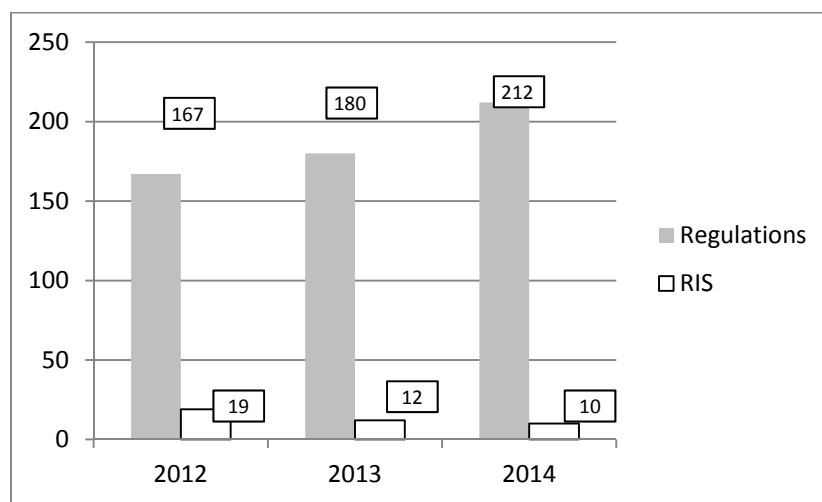
The *Charter of Human Rights and Responsibilities 2006* (the Charter) commenced operation on 1 January 2006. Pursuant to the Charter the Subcommittee is required to consider every statutory rule and legislative instrument in the context of human rights. The compatibility of each statutory rule and legislative instrument with the Charter is examined. This applies to all statutory rules and legislative instruments in the 2014 series, the subject of this report. Mention is made here of this area of scrutiny for the sake of completeness. It is discussed in further detail in Chapter 2.

²⁷ Ibid., s. 18D(4).

²⁸ Ibid., s. 18D(6).

CHAPTER 2 – THE REVIEW OF REGULATIONS – SIGNIFICANT ISSUES

During 2014 and the first five months of 2015 the Subcommittee held 14 meetings. During those meetings it considered the entire statutory rule series 2014 comprised of 212 statutory rules. Of those statutory rules, 10 were accompanied by Regulatory Impact Statements.



During 2014 and the first five months of 2015 the Subcommittee also considered **60** legislative instruments. Four of the legislative instruments were accompanied by a Regulatory Impact Statement.

The Subcommittee did not make any reports to Parliament in relation to statutory rules series 2014. It did not make any reports to Parliament in respect of any legislative instruments. However, the Subcommittee sought further clarification in relation to four statutory rules. In each instance, it wrote to the responsible Minister. The Subcommittee received satisfactory responses to the issues raised. The Subcommittee thanks the Ministers for their responses.

The Subcommittee has classified the issues it encounters into particular categories. This year the Subcommittee did not encounter any significant problems. From the Subcommittee's perspective, the area of regulation review is working well. Communication from Departments is punctual and addresses concerns. The Subcommittee wishes to thank departmental officers for the prompt and friendly manner with which they respond to queries. This greatly facilitates the work of reviewing regulations.

For the sake of consistency the areas which have been discussed on previous occasions are listed as follows:-

See page no.

(a) Section 21(1)(j) – The statutory rule has been prepared in contravention of any of the provisions of the Act or of the Guidelines with respect to the statutory rule and the contravention is of a substantial or material nature	12
(b) Sections 6 and 12C – Consultation	12
(c) Sections 11(3) and 12I(4) – Consideration of submissions – General expectation – Response required	13
(d) Section 11(1)(a) and (b) and 12(1)(a) and (b) – Technical matters – incomplete Certificates – Dates of publication in the Government Gazette and newspaper – Premier’s Certificate – Details of ‘special circumstances’	14
(e) Section 21(1)(i) – Requires explanation as to its form or intention	14
(f) Section 8(1)(a) – Is there a significant economic or social burden on any sector of the public? 16	
(g) Section 21(1)(ha) – Human Rights	17
(h) The Premier’s Guidelines – Setting a package of fees – ‘The Basket Approach’	32
(i) Sighting of material Incorporated by reference	32
(j) Other matters	34
(k) Commendation	34

The statutory rules series 2014 which forms part of the Annual Report covers statutory rules SR No. 1-2014 to SR No. 212-2014. The 2014 statutory rules series was considered from approximately May 2014 to June 2015. Both the previous Subcommittee and the current Subcommittee therefore considered these statutory rules. The making of the statutory rules, their timing and tabling in Parliament is the prerogative of the Executive.

(A) SECTION 21(1)(J) – THE STATUTORY RULE HAS BEEN PREPARED IN CONTRAVENTION OF ANY OF THE PROVISIONS OF THE ACT OR OF THE GUIDELINES WITH RESPECT TO THE STATUTORY RULE AND THE CONTRAVENTION IS OF A SUBSTANTIAL OR MATERIAL NATURE

Under section 21(1)(j) of the Act the Subcommittee examines regulations to ensure that they have been properly prepared. It examines them to see whether they have been prepared in contravention of any of the provisions of the Act or of the Premier’s Guidelines with respect to the statutory rule. It examines the regulations to see whether the contravention is of a substantial or material nature.

This year no statutory rules came within this category.

(B) SECTIONS 6 AND 12C – CONSULTATION

Sections 6 and 12C of the Act set out the requirements for consultation. These requirements apply to regulations and legislative instruments made with or without RISs. Responsible Ministers must ensure that there is consultation “where the guidelines require consultation”²⁹ with “any sector of the public on which a significant economic or social burden may be imposed.”³⁰

²⁹ Section 6, *Subordinate Legislation Act 1994*.

³⁰ *Ibid*, section 6(b).

The Premier's Guidelines³¹ provide as follows:–

75. The responsible Minister must ensure that there is consultation in accordance with these Guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed statutory rule or legislative instrument. This may include, for example, business groups, community groups, special interest groups and local government.

[See Subordinate Legislation Act 1994, July 2011, Guidelines paragraphs 63-90]

The Premier's Guidelines indicate that the "nature and degree of consultation that is appropriate for any particular statutory rule or legislative instrument will vary with the nature of subordinate legislation. However, in all cases instrument makers must comply with the consultation requirements imposed by the Act".³² This places the final responsibility on Ministers to ensure that appropriate consultation takes place and includes all those affected by a proposed regulation.

The Premier's Guidelines provide assistance with the requirements of the consultation process. However on occasions, it may be difficult for department and agency officers to determine the type of consultation which should take place. It is the view of the Subcommittee that consultation take place with all those affected by a particular regulation or legislative instrument.

The Subcommittee considers it is important for all consultation certificates to provide details of all those consulted. The Subcommittee's experience is that the consultation process in relation to statutory rules and legislative instruments has been thorough and appropriate.

(C) SECTIONS 11(3) AND 12(4) – CONSIDERATION OF SUBMISSIONS – GENERAL EXPECTATION – RESPONSE REQUIRED

General Expectations

Sections 11(3) and 12(4) of the Act imposes a duty on Ministers to "ensure all comments and submissions are considered" before the relevant instrument or rule is made."³³ The Premier's Guidelines also emphasise the need for proper consultation³⁴ before a regulation or legislative instrument is made.

The Subcommittee considers that appropriate consultation is essential for the effectiveness of the regulatory system. The Subcommittee expects that submissions will be appropriately considered. To that end, a considered response from the Department to an individual submission is tangible evidence that matters have been considered. The Subcommittee's firm view is that responses ought to be sent to those who have taken the time and effort to send in a submission.

Submissions received by the Subcommittee

The Subcommittee understands that occasionally there may be a large number of submissions in respect of a particular regulation or legislative instrument. The Subcommittee's view is that the number of submissions does not alter the expectation that

³¹ Paragraph 75, *Premier's Guidelines*, August 2011.

³² *Ibid*, paragraph 66.

³³ Sections 11(3) and 12(4), *Subordinate Legislation Act 1994*.

³⁴ Sections 63-66, *Premier's Guidelines*, July, 2011.

an appropriate response should be sent. It simply means that there are a large number of people who have issues with the proposed regulation or legislative instrument. Whilst this may mean an increased workload occasionally, the Subcommittee's view is that this is simply a part of the democratic regulatory process. Appropriate weight and consideration ought to be given to the submissions sent in. The Minister is required to perform his or her duty in accordance with sections 11(3) and 12(4) of the Act. The Subcommittee's view is that publication of a response to issues on a website is generally an inadequate response.

The Subcommittee has noticed the continuing trend of improvement in the quality of responses prepared by the Departments in respect of submissions. Departments prepare a table summary of the issues raised in the submissions. This is the case particularly where there are a large number of submissions. The Subcommittee finds this to be extremely helpful. This year, in many regulations where there were a large number of submissions, Departments have sent a general letter covering the various themes to those who made submissions. In other instances, where there were a few submissions Departments have written individual letters to those who made submissions, discussing the various matters raised in detail.

Email

The Subcommittee has considered the issue of response by email. In its deliberations, the Subcommittee will consider the response itself rather than the form in which it is sent. The Subcommittee appreciates that electronic and technological changes of course mean that email is an efficient and cost effective means of responding. Email is an appropriate way to communicate provided the response itself is detailed, sufficient and deals with the particular issues at hand. For an example, an email sent to many recipients attaching a formal letter from the Department is appropriate provided the letter itself is sufficient. Posting letters to those who do not have an email address of course remains an appropriate manner with which to deal with submissions.

(D) SECTION 11(1)(A) AND (B) AND 12(1)(A) AND (B) – TECHNICAL MATTERS – INCOMPLETE CERTIFICATES – DATES OF PUBLICATION IN THE GOVERNMENT GAZETTE AND NEWSPAPER – PREMIER'S CERTIFICATE – DETAILS OF 'SPECIAL CIRCUMSTANCES'

The Subcommittee is concerned to ensure technical compliance with the Act. Pursuant to section 11(1)(a) and (b) and 12(1)(a) and (b) of the Act, the RIS and notice of decision must be published in the Government Gazette and a daily newspaper circulating generally throughout Victoria. All relevant certificates should accompany the regulations and be signed and dated.

(E) SECTION 21(1)(I) – REQUIRES EXPLANATION AS TO ITS FORM OR INTENTION

This year the Subcommittee sought further explanation in relation to two statutory rules.

Example 1: SR No. 5 – Fisheries (Fee, Royalties and Levies) and Fisheries Amendment Regulations 2014

The Subcommittee considered the Regulations. The Regulations increased various fishing levies and also provided for the reduction or waiver of certain levies by the Minister. The levies were to be phased in over a three year period. As part of the RIS process seventy-six

submissions were received by the Department and were considered by the Minister as part of the RIS process. The Subcommittee also received a submission from the Apollo Bay Fisherman's Co-operative Society.

The Subcommittee held a meeting with representatives from the Seafood Industry, the Abalone Divers' Association and the Apollo Bay Fisherman's Co-operative Society to discuss the regulations generally and obtain further information. The Subcommittee carefully considered all the matters raised and then formally considered the Regulations. The Subcommittee formed the view that there had been compliance with the requirements of the Act. The Subcommittee wrote to the representatives who attended the meeting and thanked them for their information and attendance.

Example 2: SR No. 163 – Planning and Environment (Fees) Interim Regulations 2014 and SR No. 164 –Subdivision (Fees) Interim Regulations 2014

Subcommittee's letter³⁵

The Regulation Review Subcommittee (the Subcommittee) considered the above Regulations at a meeting on 16 March 2015.

The Subcommittee has not yet approved the Regulations. The Subcommittee notes that the Regulations commenced operation during the 57th Parliament on 17 October 2014 and will expire on 16 October 2015.

Section 9(1) Premier's certificate

The Subcommittee notes that the Regulations are made with a section 9(1) Premier's certificate. The reasons for the exemption are as follows: -

- There is insufficient time to finalize replacement Regulations before the existing regulations expire;*
- The Interim Regulations will ensure that existing fees can be charged until the replacement Regulations are finalized;*
- If the Interim Regulations are not made, the resulting revenue shortfall may impact on the ability of Councils to deliver planning and other services as they will not be able to charge fees for services provided;*
- It is anticipated that replacement regulations will be made in 2015 and that a regulatory impact statement will be prepared for those regulations.*

History of the Regulations – Fifth Premier's certificate – 57th Parliament

By way of background the Subcommittee notes that earlier Regulations were the subject of a Committee report in in Alert Digest No.17 of 2013. The Subcommittee also notes that the Regulations were made with a Premier's certificate five times during the 57th Parliament.

The Subcommittee seeks your advice as to whether it is expected permanent regulations will be made by October 2015. The Subcommittee would appreciate your response by Thursday 9 April 2015 so that it can consider the matter at its next meeting.

³⁵ Lizzie Blandthorn MP, Regulation Review Subcommittee, 18 March 2015.

Ms Lizzie Blandthorn MLA
Chairperson
Regulation Review Subcommittee

Minister's response³⁶

Thank you for your letter of 18 March 2015 requesting advice about the timing for making permanent planning and subdivision fees regulations.

I am currently considering options to progress a Regulatory Impact Statement. Should I decide to progress with an update to the existing cost analysis undertaken as part of the review of fees in 2009, I anticipate that consultation will commence before the interim Regulations expire on 16 October 2015 (subject to the Victorian Competition and Efficiency Commission's endorsement of a Regulatory Impact Statement). However, a short extension of the current fees may be required to complete consultation with local government, industry and the broader community.

If you require further information, please contact John Ginivan, Executive Director, Planning and Building Systems of the Department of Environment, Land, Water & Planning on telephone (03) 9223 5307.

HON RICHARD WYNNE MP
Minister for Planning

(F) SECTION 8(1)(A) – IS THERE A SIGNIFICANT ECONOMIC OR SOCIAL BURDEN ON ANY SECTOR OF THE PUBLIC?

Many regulations are accompanied by a section 8(1)(a) certificate of exemption which states that they do not impose a significant economic or social burden on any sector of the public.

Paragraph 97 of the Premier's Guidelines³⁷ set out the particular requirements in respect of the exemption certificates:

97. Section 8(1)(a) allows exemption of a proposed statutory rule if the statutory rule would not impose a significant economic or social burden on a sector of the public. Initial consultation should be undertaken under section 6(b) for the responsible Minister to obtain sufficient evidence to form a view as to whether the proposed statutory rule imposes a significant burden. See Part 4 of these Guidelines for detail on what constitutes a significant burden.

The Minister must include in the exemption certificate detailed reasons as to why the proposed rule does not impose a significant economic or social burden on a sector of the public under section 9(2). It will not be sufficient to simply assert that there is no significant economic or social burden on a sector of the public in the exemption certificate.

[Also *Victorian Guide to Regulation, 2011*, appendix, Division 2 – Exemptions from the RIS process, page 61 (97)]

The Subcommittee takes the view that it is not sufficient to simply assert that there is no significant economic or social burden on a sector of the public in the exemption certificate. The Subcommittee expects that detailed reasons will be given as to why there is no

³⁶ Hon Richard Wynne MP, Minister for Planning, 19 April 2015.

³⁷ Section 92, *Premier's Guidelines*, July 2011.

significant economic or social burden on a sector of the public and will examine those reasons closely.

The Subcommittee acknowledges the high standard of the exemption certificates provided to it. The quality of the work presented to the Subcommittee has made its consideration of these matters easier. The detailed nature of the exemption certificates signifies to the Subcommittee a very real attempt to grapple with whether there “is a significant economic or social burden” imposed or not. The Subcommittee is guided by the Premier’s Guidelines. It also uses a common sense approach. Each regulation or legislative instrument will be considered in context and on its merits.

(G) SECTION 21(1)(HA)– HUMAN RIGHTS

History

SARC has a considerable history in terms of the protection of human rights. The review of subordinate legislation has been conducted in the Victorian Parliament since 1956. The scrutiny of bills³⁸ was first mooted and indeed recommended in 1987 in a “Report on the Desirability or Otherwise of Legislation Defining and Protecting Human Rights”³⁹ prepared by the Legal and Constitutional Committee, the predecessor to this Committee. The scrutiny of bills commenced in Victoria in 1993. Section 21(f) of the *Subordinate Legislation Act 1994* uses the language of human rights. For several years, the Subcommittee has had to consider whether a regulation:–

Unduly trespasses on rights and liberties of the person previously established by law.

Rights

The Chair’s introduction to the First Annual Report⁴⁰ is useful in considering the concept of rights. It demonstrates the complexities associated with rights:

⁴¹Human rights have been generally argued to include civil and political rights and legal and political rights⁴². There is much greater division on the status of socio-economic rights and cultural rights ... The legislative charter of the Committee is broad. The word ‘rights’ include natural rights and other moral rights established by the writings of the philosophers, jurists and churchmen. It most certainly includes the positive, empirical category of legal rights – rights whose existence is established by examining existing statutes, codes and decisions comprising the common law of Victoria. There are also internationally acknowledged human rights which can be found in the instruments of international and domestic law.

It is now some twenty years since the Committee was required to grapple with the concept of rights. The Australian Capital Territory introduced a statutory Bill of Rights in 2004. The idea of a Bill of Rights for Victoria was floated in 2004. The Victorian Government appointed a Human Rights Consultation Committee in 2005. During 2005 that Committee heard submissions and compiled a report. The report recommended a Bill of Rights in December 2005. The *Charter of Human Rights and Responsibilities 2006* (the Charter) was enacted in

³⁸ Scrutiny of Acts and Regulations Committee, *First Annual Report*, April 1994, p. vii.

³⁹ Legal and Constitutional Committee, *Report on the Desirability or otherwise of Legislation Defining and Protecting Human Rights*, April 1987, pp. 123.

⁴⁰ Scrutiny of Acts and Regulations Committee, *First Annual Report*, April 1994, p. ix.

⁴¹ Ibid.

⁴² Legal and Constitutional Committee, *Report on the Desirability or otherwise of Legislation Defining and Protecting Human Rights*, April 1987, Chapter 2, pp. 8-18.

July 2006. As a result of the introduction of the Charter and other legislative amendments there are now defined human rights which the Subcommittee must consider in the scrutiny of subordinate legislation.

Legislative Scheme and Requirements

The Charter of Human Rights and Responsibilities Act 2007

The *Charter of Human Rights and Responsibilities Act 2007* (the Charter) commenced on 1 January 2007. Section 30 of the Charter is set out: –

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.

The Subordinate Legislation Act 1994 – section 21(ha)

Amendments were also made to the *Subordinate Legislation Act 1994*. The general principle of review is set out in section 21(ha) of the *Subordinate Legislation Act 1994*. Section 21(ha) is set out: –

Section 21. Review of statutory rules by the Scrutiny Committee

(1) The Scrutiny Committee may report to each House of the Parliament if the Scrutiny Committee considers that any statutory rule laid before Parliament-

.....

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

The particular responsibilities of the Subcommittee to review Human Rights certificates are set out in sections 12A and 12D.

12A. Human Rights Certificate

(1) The responsible Minister must ensure that a human rights certificate is prepared in respect of a proposed statutory rule, unless the proposed statutory rule is exempted under sub-section (3)

(2) A human rights certificate must-

(a) certify whether, in the opinion of the responsible Minister, the proposed statutory rule does or does not limit any human right set out in the Charter of Human Rights and Responsibilities; and

(b) if it certifies that, in the opinion of the rule does limit a human right set out in the Charter of Human Rights and Responsibilities, set out -

(i) the nature of the human right limited; and

(ii) the importance of the purpose of the limitation; and

(iii) the nature and extent of the limitation; and

(iv) the relationship between the limitations and its purpose; and

- (v) *any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.*
- (3) *Sub-section (1) does not apply if the responsible Minister certifies in writing that in his or her opinion –*
- (a) *The proposed statutory rule is a rule which relates only to a court or tribunal or the procedure, practice or costs of a court or tribunal; or*
- (b) *The proposed statutory rule only –*
- (i) *prescribes under section 4(1)(a) an instrument or class of instrument to be a statutory rule; or*
- (ii) *exempts under section 4(1)(b) an instrument or class of instrument from the operation of this Act; or*
- (iia) *prescribes under section 4A(1)(a) an instrument or a class of instrument for the purposes of paragraph (h) of the definition of legislative instrument; or*
- (iib) *prescribes under section 4A(1)(b) an instrument or a class of instrument to be, or not to be, a legislative instrument or class of legislative instrument for the purposes of this Act or any specified provision or provisions of this Act; or*
- (c) *the proposed statutory rule is an extension regulation.*

12D. Certificates and composite certificates

- (1) *A certificate issued under this Part must be—*
- (a) *signed by the responsible Minister issuing the certificate; and*
- (b) *dated with the date of signing.*
- (2) *A certificate issued under this Part may be a composite certificate which incorporates the certificates required by sections 6, 6A, 8 and 10(4) or any combination of those certificates.*

Subcommittee's obligations

Essentially, the Subcommittee is required to consider whether each statutory rule or legislative instrument is compatible with human rights as enunciated in the Charter. The Subcommittee needs to ensure that the human rights protected and promoted in the Charter are also protected in subordinate legislation.

In order to properly scrutinise and assess every statutory rule and legislative instrument and the section 12A certificate, the Subcommittee must have a working knowledge of and consider the particular human rights set out in Part 2 of the Charter. The human rights are set out below.

- Recognition and equality before the law.
- Right to life
- Protection from torture and cruel, inhuman or degrading treatment
- Freedom from forced work
- Freedom of movement
- Privacy and reputation

- Freedom of thought, conscience, religion and belief
- Freedom of expression
- Peaceful assembly and freedom of association
- Protection of families and children
- Taking part in public life
- Cultural rights
- Property rights
- Right to liberty and security of person
- Humane treatment when deprived of liberty
- Rights of Children in the criminal process
- Fair hearing
- Rights in criminal proceedings
- Right not to be tried or punished more than once
- Retrospective criminal laws

If a statutory rule or legislative instrument does not comply with the Charter, there is a possibility that it may fall outside the scope of the authorising Act.

The Subcommittee is required to consider the compatibility of regulations and legislative instruments with the Charter and to report to Parliament where it considers a statutory rule or legislative instrument to be incompatible with the Charter. The Subcommittee must consider the Human Rights certificate provided by each Minister in respect of each statutory rule or legislative instrument. First, the Subcommittee must consider whether it agrees an assessment that a particular regulation or legislative instrument does not limit any human right set out in the Charter. However, if there is some limitation in respect of a human right, the Subcommittee must consider:-

- The nature of the human right limited; and
- The importance of the purpose of the limitation; and
- The nature and extent of the limitation; and
- The relationship between the limitation and its purpose; and
- Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

If the Subcommittee decides on the basis of the information that the proposed regulations or legislative instrument are incompatible with the Charter, it may report this to the Parliament.

The Operation of the Charter in relation to Statutory Rule Series 2014 and Legislative Instruments

The Subcommittee corresponded with the relevant Minister in relation to two statutory rules and one legislative instrument. The relevant section 12A Human Rights certificate accompanies a regulation. The Subcommittee considers the regulation, the section 12A certificate and any issues raised.

Example 1: SR No. 62 – Transport (Taxi-cab Industry Accreditation) Amendment Regulations 2014

Subcommittee's letter⁴³

The Subcommittee considered the Transport (Taxi-cab Industry Accreditation) Amendment Regulations 2014 at a meeting on 4th August.

The Subcommittee notes that the Human Rights Certificate for the regulation 11, inserting a new Part 7, may be inadequate, with respect to the information it provides about 'the importance of the purpose of the limitation' and the 'relationship between the limitation and its purpose'. The Subcommittee seeks further information as to what aspects of 'public safety' are intended to be furthered by new Part 7 and how regulations 22 and 23 (which provide for the storage of GPS information and its release to the Taxi Services Commission upon request) 'directly' further that purpose.

In addition, the Subcommittee seeks your advice as to whether narrower requirements (e.g. as to what information is stored, the length of the required storage or a specification of particular circumstances when the Taxi Services Commission may request the information) would be a less restrictive alternative reasonably available to achieve the purpose of furthering public safety.

The Subcommittee would appreciate your earliest response by email to Helen.Mason@parliament.vic.gov.au and Sonya.Caruana@parliament.vic.gov.au so that it can reconsider the regulations at its next meeting.

Please contact Ms Helen Mason, legal adviser in the first instance if you require any additional information.

*Mr Michael Gidley MLA
Chair
Regulation Review Subcommittee*

Minister's response⁴⁴

Thank you for your letter of 5 August 2014 regarding SR No. 62 - Transport (Taxi-cab Industry Accreditation) Amendment Regulations 2014.

The Committee asked for further information about the importance to public safety of the requirement that metropolitan taxis have a global positioning system (GPS) fitted. The Committee also queried how keeping and supplying GPS data to the Taxi Services Commission (TSC) on request supports public safety.

A GPS and the requirement that data be provided by taxi operators supports public safety in a number of important ways by ensuring that the location of operating taxis can always be ascertained.

GPS enables taxis to be located at the time when incidents occur. Should drivers be involved in major crime (for example, robbery or assault), the driver is able to activate the taxi's emergency warning device to summon emergency assistance. The value of the emergency warning device would be limited if those responding to the emergency were not able to identify the location of the taxi.

GPS also enables the location of vehicles to be ascertained after incidents. Victims of violent crimes (for example, sexual assault of a passenger by a taxi driver) may take

⁴³ Michael Gidley MP, Regulation Review Subcommittee, 5 August 2014.

⁴⁴ Hon Terry Mulder MP, Minister for Transport, 11 September 2014.

some time to report incidents. It is also possible that affected persons may be incapacitated for long periods after incidents (for example, if a person is comatose and hospitalised following a traffic accident or assault). Access to GPS data enables incidents and crimes to be investigated and prosecuted when other evidence may not be available.

In addition, GPS enables stolen taxis to be tracked and located. It is possible that stolen taxis may be used as tools to attract potential victims of crime, particularly violent crime like robbery or sexual assault. The vehicle may also be subject to vandalism or hoon behaviour. GPS performs an important safety role for the public in supporting prompt recovery of the vehicle.

In all of these cases, GPS data provides reliable evidence of the location of vehicles at particular times which may be an important factor in successful prosecutions. The capacity for the TSC to direct that GPS data be provided also has an important deterrent effect.

I note that GPS data records the location of vehicles and not that of persons. While GPS enables the location of taxis to be identified, the TSC cannot use that data to identify the driver of taxis at particular locations and time. •

I also note that metropolitan taxi operators were already required to have GPS and to provide data to the TSC as a condition of their taxi licence before the regulations came into operation. In essence, the requirement has simply transferred from licence conditions to regulations as part of the implementation of recommendation 10.6 of the Final Report of Taxi Industry Inquiry. The Inquiry recommended that licence conditions of general application (like the requirement for GPS) should be included in regulations for transparency and clarity. The government supported this recommendation.

The requirement for a GPS for metropolitan taxis and for operators to provide data is widely supported by taxi industry participants. While not a regulatory requirement, most non-metropolitan network service providers (NSPs) provide a GPS monitoring and tracking service for the taxis in their network. This is because of the efficiency benefits of knowing the location of available vehicles to NSPs when allocating bookings.

Data is generated and stored in an automated process by the GPS. Accordingly, the administrative burden associated with keeping and providing data is minimal. Indeed, no action is required by a taxi operator in the absence of a request from TSC. Data requests can be satisfied by simply emailing data files (in the case of an historical request) or advising of the location of vehicles (in the case of a real-time request).

Previously, the retention of GPS data by networks was governed by the general requirement in schedules to the former regulations to keep certain records for five years. The new regulation shortened this period to three years for GPS data thereby reducing the regulatory burden on the taxi industry. The shorter period balances the costs of keeping and administering data and the time taken for incidents to be reported.

It is not possible to anticipate all of the circumstances where GPS data will be important for public safety. To do so may risk not being able to locate taxis or lead to the unavailability of data when it may be critical to providing emergency assistance or preventing or prosecuting crimes.

The requirement for GPS data is sound and limited in scope. It is not considered that less restrictive means of achieving the safety purposes are available.

If you require further information, please contact Ian Shepherd of the Department of Transport, Planning and Local Infrastructure on telephone (03) 8392 6886.

*Hon Terry Mulder MP
Minister for Public Transport*

Example 2: Ministerial Direction MD141 – Special Religious Instruction in Government Schools

Subcommittee's letter⁴⁵

The Regulation Review Subcommittee (the Subcommittee) considered Ministerial Direction MD 141 - Special Religious Instruction in Government Schools (MD 141) at a meeting on 4 August 2014.

The Subcommittee seeks further information about a number of possible effects of MD 141.

First, the Subcommittee seeks your advice as to whether the combined effect of clauses 6(5) and 6(7) of MD 141 may be that, in some instances, special religious instruction may be offered at a particular school to children of some religion, while simultaneously being denied to children of other religions (despite the availability of an eligible provider and the consent of some students to participate.) If so, the Subcommittee seeks further information as to the compatibility of those clauses (to the extent they have that effect) with the right of students and families (under Charter ss. 8(2) and 14(1)(b)) to enjoy their right to demonstrate their religion in teaching as part of a community without discrimination on the basis of religious activity and belief.

Second, the Subcommittee seeks your advice as to whether MD 141 may have an impact on students own behaviour at the school (for example, their ability to bring religious texts to school and to share them with others). If so, the Subcommittee seeks information as to the compatibility of MD 141 (to the extent that it limits students' own behaviour) with students' Charter rights to demonstrate their religion under Charter s. 14.

Third, the Subcommittee seeks your advice as to whether MD 141 may prevent or limit the holding of extra-curricular religious meetings at a school (for example, prayer meetings at lunch time or after school), or may prevent the attendance of adults (for example, SRI teachers or parents) at such meetings. If so, the Subcommittee seeks information as to the compatibility of MD 141 (to the extent that it may prevent or limit such meetings) with students' and others' Charter rights to demonstrate their religion under Charter s. 14.

The Subcommittee would appreciate your earliest response by email to Helen.Mason@parliament.vic.gov.au and Sonya.Carwana@parliament.vic.gov.au by Friday 15 August 2014 so that it can reconsider MD141 at its next meeting.

*Mr Michael Gidley MP
Chair
Regulation Review Subcommittee*

⁴⁵ Michael Gidley MP, Regulation Review Subcommittee, 5 August 2014.

Minister's response⁴⁶

I refer to your letter dated 5 August 2014 in which you request advice, on behalf of the Regulation Review Sub-Committee of the Scrutiny of Acts and Regulations Committee (SARC)(the Sub-Committee), on certain potential effects of Ministerial Direction MD141 - Special Religious Instruction in Government Schools.

On 19 August 2014, I amended MD141, by making Ministerial Direction MD144, to clarify the effect of several clauses including the terms on which SRI is delivered in Victorian government schools during the hours set apart for instruction. A copy of the amended MD141 is attached, along with Ministerial Direction MD144 and the supporting documentation under the Subordinate Legislation Act 1994 which will be reported to SARC by my Department within the next few days in the usual way. In this letter, when I refer to MD141, I am referring to it as amended by Ministerial Direction MD144.

Background to MD141

The Education and Training Reform Act 2006 (the ETR Act) requires that Government schools must be secular and not promote any particular religious practice, denomination or sect (ss1.2.2(2)(a) and 2.2.10(1)). This is subject to the exception that special religious instruction (SRI) may be given in a Government school, so long as SRI providers are accredited appropriately, the SRI is given on the basis of normal class organisation (or in a multi-age group, if authorised by the Minister for Education) and attendance at SRI is not compulsory for any student whose parents desire that they not attend (s2.2.11).

MD141 provides necessary guidance for Government schools on when and how SRI can be provided during school hours, through clear, enforceable procedures. It aims to ensure Government school practice is consistent with the requirements of the ETR Act, prevailing government educational policy and other applicable laws, including the Charter of Human Rights and Responsibilities Act 2006 (Vic) (the Charter). It is a particularly important direction, in light of the heightened protections that are afforded to children on account of the special duty of care that is owed by a school to a student.

MD141 and ss8 and 14 of the Charter

The Sub-Committee's requests for advice concern the relationship between MD141 and ss8 and 14 of the Charter.

Sections 2.2.10 and 2.2.11 of the ETR Act protect and promote the right to freedom of religion protected by s14 and the exercise of this right without discrimination protected by s8 of the Charter. A key purpose of MD141 is to establish binding procedures that work to minimise the risk of unreasonable limitation of these human rights.

More specifically, MD141 reinforces the freedom of students to have or adopt a religion or belief of their choice protected by s14(1)(a) of the Charter by requiring that SRI not be compulsory (cl 11), and only be provided to students whose parents consent through opting in on an informed basis (cls 11(3) and 11(5)).

A student's freedom to demonstrate their religion and right not to be coerced or restrained in a way that limits their freedom of religion, protected by ss14(1)(b) and 14(2) of the Charter respectively, are also protected by MD141. This is through the

⁴⁶ Hon Martin Dixon MP, Minister for Education, 22 August 2014.

requirements for appropriate accreditation of SRI providers (cls 7 and 8) and supervision of the delivery of SRI (cl 10), through the prohibition on the distribution or display of religious material by accredited and approved SRI instructors unless it is part of an authorised SRI program (cl 9), and the prohibition of enticements, rewards, benefits or other inducement of students to convert to a particular religion during SRI (cl 10(2)). MD141 also protects the freedom of students to display or distribute religious materials and to bring religious texts to schools (cl 9(2)).

MD141 also works to protect students' right to enjoy their freedom of religion without discrimination and to ensure that all students are equal before the law regardless of whether they practice a religion, or which religion they might practice, in accordance with ss8(2) and 8(3) of the Charter. Again, these rights are protected by MD141 providing that SRI is not compulsory and occurs only by informed consent of the student's parents (cl 11). They are also protected by the requirement that SRI take place for 30 minutes per week on average over a school year (cl 6), so that students who do not participate in SRI are not disadvantaged educationally by its provision.

In light of the above, MD141 engages s8 and 14 of the Charter, on a positive basis.

Having provided this context, I answer each of your specific questions, in turn, below.

The effect of clauses 6(5) of MD141 and compatibility with ss8(2) and 14(1)(b) of the Charter

Clause 6(5) of MD141 places an obligation on principals to ensure that students who are in SRI, as well as those not participating in SRI, have adequate supervision by a teacher. This obligation arises from a principal's non-delegable duty of care for students.

Clause 6(7) has been removed from MD141. It referred to the authority of a principal not to offer SRI at the school if they determined that the school did not have sufficient resources to meet its duty of care obligations. As clause 6(7) has been removed, I will not consider the compatibility of cl 6(7) with the Charter.

In response to the Sub-Committee's first question, because of finite resources, it is possible that the practical consequence of multiple SRI providers of different faiths approaching a school to offer SRI will be that the school cannot accommodate every request in every school year or term. It is also possible that a principal/school will opt to address this issue in other ways, for instance by rotating the provision of SRI through different providers, perhaps on a fortnightly rather than weekly basis, to achieve equitable use of available resources. However, the ability for the Minister for Education under the ETR Act to authorise SRI to be scheduled on a basis other than 'normal class organisation' (for example, for multiple ages) will support the delivery of SRI for small groups of the school community, providing the opportunity for minority interests to be accommodated.

On the resulting compatibility of clause 6(5) with 'the right of students and families (under Charter ss 8(2) and 14(1)(b)) to enjoy their right to demonstrate their religion in teaching as part of a community without discrimination on the basis of religious activity and belief', I make the following comments.

Section 14(1)(b) is not engaged by clause 6(5) of MD141

Respectfully, s14(1)(b) of the Charter is not engaged by clause 6(5) of MD141 by the circumstances described in your request for advice. Section 14(1)(b) protects a person's right to demonstrate religion or belief in worship, observance, practice and

teaching, either individually or as part of a community, in public or in private. This relates to how a person chooses to externally demonstrate his or her religion or belief.

Section 14(1)(b) includes the right to teach religion, but does not extend to the receipt of religious instruction (that is, learning). As such, this sub-clause is not engaged by MD141, which is explicitly focused on regulating the circumstances of the receipt of religious instruction from an accredited provider by students in Government schools. In contrast, section 14(1)(b) relates to the actions of a person demonstrating his or her religion through teaching others about his or her religion. As this is not the focus of MD141, and MD141 does not seek to regulate how an SRI provider teaches their religion other than in a public education context, this right is not engaged by MD141.

Section 14(1)(b) does protect the right of a student to teach their religion. However, this right is not engaged by MD141 as a student will not be an SRI provider and MD141 is limited to regulating the administration of SRI in public education. For completeness, though, students in Victorian government schools enjoy the right to freedom of religion, including demonstration of their religion in worship, observance, practice and teaching in accordance with section 14 of the Charter. The Department protects this right by, for example, adapting school uniform policies to take account of religious requirements, allowing students to bring religious texts to school and allowing students to engage in individual or group prayer at break times. Also, students are free to 'teach' each other about their faith, which they may do in the form of student-led religious clubs.

The Sub-Committee specifically refers to 'the rights of ...families ... to enjoy their right to demonstrate their religion in teaching' . . Nothing in MD141 limits the rights of families to demonstrate their religion in worship, observance, practice and teaching. The reference to 'families' in the Human Rights Certificate was an acknowledgement that families make choices about whether or not their children participate in SRI.

If s14(1)(b) is engaged by clause 6(5) of MD141, it would not be unreasonably limited by it.

If s14(1)(b) could be interpreted as engaged by clause 6(5) of MD141 on any of the bases set out above (which is denied), and further if that right was considered to be limited by the inability of the school to accommodate all SRI providers by which it is approached, then that limitation would be permissible under the Charter. This is because it would occur under law, as MD141 is a subordinate legislative instrument, and would be reasonable and demonstrably justified, in accordance with s7 of the Charter. The limitation of this right is based on the very important purpose of MD141 - to preserve a principal's common law duty of care to ensure that students are appropriately supervised at all times (including when in the presence of an adult who is not a staff member of the school) and that students who are, and are not, participating in SRI are supervised in an area that is a suitable learning environment (that is, a classroom). This limitation therefore goes to the very heart of a principal's obligation to students: duty of care (s7(2)(b) of the Charter). The limitation is not inappropriately extensive as the principal may address resource constraints in a different way to achieve equitable use of available resources. Furthermore, the limitation is confined to the hours set apart for instruction at a school, and a student is able to take instruction outside of those hours (s7(2)(c) of the Charter).

Section 8(2) of the Charter is not engaged and, if engaged, is not unreasonably limited by clause 6(5) of MD141

On the basis of the Sub-Committee's question, s8(2) of the Charter, which provides that every person has the right to enjoy his or her human rights without discrimination, would be engaged by MD141 only if s14(1)(b) was engaged by it which, as set out above, is denied. However, if s8(2) were found to be engaged, and was argued to be limited because students of certain religions may have SRI when students of other religions do not, then that limitation would be permissible under the Charter, for the same reasons set out in relation to s14(1)(b) above.

Impact of MD141 on students' right to freedom of religion at school

The Sub-Committee seeks advice as to whether MD141 'may have an impact on students' own behaviour at the school (for example, their ability to bring religious texts to school and to share them with others)' and, if such an impact exists, the compatibility of MD141 with a students' right to demonstrate their religion under s14(1)(b) of the Charter.

MD141 is directed at the provision of religious instruction to students in government schools by accredited instructors. Accordingly, MD141 does not constrain a student from bringing a religious text to school, or from participating in a student-led religious club, or otherwise worshipping, observing, practising or teaching their religion because it does not purport to regulate the activities of students. Clause 9 of MD141 has now been amended to make it clear that students are not prevented from: displaying religious materials on their person or personal belongings; distributing religious materials; or bringing religious materials to schools.

Also, as set out above, the obligation of schools to protect the right of students to demonstrate their religion is met by numerous policies and initiatives directed to this end.

Extra-curricular religious meetings at a school

The Sub-Committee seeks advice on whether MD141 'may prevent or limit the holding of extra-curricular religious meetings at a school (for example, prayer meetings at lunch time or after school) or may prevent the attendance of adults (for example SRI teachers or parents) at such meetings.' There are a number of issues embedded in this request for advice.

As set out above, the ability of students to organise themselves in groups to observe their religion is beyond the scope and purpose of MD141. As a matter of practice, such extracurricular activities may be arranged by students, in consultation with their principal, in accordance with applicable policies and procedures, for instance those related to student clubs.

However, the attendance of adults (whether parents, SRI instructors or other volunteers) at such meetings is beyond the scope of MD141 as it only purports to regulate the provision of special religious instruction to students in government schools by accredited instructors. In the unlikely event that MD141 was found to limit a parent's (or another adult, including an SRI instructor's) right to demonstrate their freedom of religion it could not be considered an unreasonable limitation. This is particularly the case as schools are not public places, which means that how and why adult visitors interact with students is a matter to be decided by a principal in accordance with the school's Visitors Policy. Effective visitors policies are essential to ensure child safety. Principals are responsible for determining, amongst other things, whether (and on what conditions) visitors are allowed into a school, ensuring that visitors are appropriately supervised by staff and that, where necessary, prior parental consent is sought. To this end, the Department has a Visitors in Schools

policy which provides guidance to schools in developing their own local Visitor Policy. These should be implemented in light of MD141.

For completeness, I note that, consistent with section 2.2.11(4) of the ETR Act, nothing in MD141 prevents the use of school grounds or buildings for any purpose outside of school hours. As with any community or other activity, the school council can decide what external groups, extra-curricular activities or community activities will take place on school grounds or in school buildings outside of school hours.

Concluding comments

To summarise, in relation to the circumstances that are the subject of your request for advice, MD141 does not engage and does not limit ss14(1)(b) and 8(2) of the Charter. In the event it was found to have limited either of these rights by the circumstances you describe (which is denied), any limitation on these rights clearly would be reasonable and demonstrably justified as required by s7 of the Charter.

In practice, MD141 engages these Charter rights in a positive manner, by working to consolidate the protection afforded by the relevant provisions of the ETR Act. MD141 assists in the realisation of freedom of religion practiced on a non-discriminatory basis within the Victorian public education system. It does so by providing that student involvement in SRI occurs on the basis of informed parental consent, and that SRI is provided by appropriately accredited and supervised instructors, and in a manner that does not impinge on the religious choices of others.

Please contact Kate Rattigan, Executive Director, Legal Division on 9637 3713 or rattigan.kate.a@edumail.vic.gov.au if you would like any further information.

*The Hon. Martin Dixon, MP
Minister for Education*

Example 3: SR No. 147 – Corrections Amendment (Smoke-Free Prisons and Other Matters) Regulations 2014

Subcommittee's letter⁴⁷

The Regulation Review Subcommittee (the Subcommittee) considered the above Regulations on 16 March 2015.

The Subcommittee has not yet approved the Regulations. The Subcommittee seeks further information in relation to Regulation 13(4)(e) of the principal regulations as inserted by Regulation 5(1).

First, the Subcommittee notes that Regulation 13(4)(e)(ii) provides for chains to be used as a restraint on prisoners where 'connected to... one or more fixtures that secure any part of the body'. A statutory example mentions 'secure fixtures when the prisoner is on a hospital bed or in a wheelchair'. The Subcommittee seeks further information as to the nature of the fixtures covered by Regulation 13(4)(e)(ii) and, in particular, how such fixtures 'secure any part of the body'.

Second, the Subcommittee notes that Article 33 of the United Nations Standard Minimum Rules for the Treatment of Prisoners provides that 'chains or irons shall not be used as restraints'. The Subcommittee seeks further information as to whether or not Regulation 13(4)(e) authorises conduct contrary to Article 33.

⁴⁷ Lizzie Blandthorn MP, Regulation Review Subcommittee, 18 March 2015.

Third, the Subcommittee notes that by way of comparison Regulation 132 of the Crimes (Administration of Sentences) Regulation 2014 (NSW) prohibits the use of 'chains or irons' as restraints in NSW prisons. The Subcommittee seeks your comments.

Fourth, the Subcommittee notes that Regulation 18 of the Court Security and Custodial Service Regulations 2005 (WA) limits the use of 'security chain links' in Western Australian prisons to adult prisoners. Given that 16 and 17 year-olds may potentially be placed in Victorian prisons (under s. 467 of the Children, Youth and Families Act 2005 (Vic)), the Subcommittee seeks further information as to whether expressly limiting the use of chains to adult prisoners in Victoria would be a less restrictive alternative reasonably available to achieve the purpose of Regulation 13(4)(e).

Finally, the Subcommittee notes that s. 86(7) of the Corrections Act 2004 (NZ) bars the attachment of chains to a New Zealand prisoner's neck, torso or (except in cases of medical necessity) leg. Item 7 of Schedule 5 of the Corrections Regulations 2005 (NZ) also provides that a New Zealand prisoner may not be restrained to a vehicle or a cell grill. The Subcommittee seeks further information as to whether expressly limiting Regulation 13(4)(e) in a similar way would be a less restrictive alternative reasonable available to achieve its purpose.

The Subcommittee would appreciate your response by Thursday 9 April 2015 so that it can consider the matter at its next meeting.

*Ms Lizzie Blandthorn MLA
Chairperson
Regulation Review Subcommittee*

Ministerial response⁴⁸

I refer to your letter dated 18 March 2015 regarding the Regulation Review Subcommittee's consideration of the Corrections Amendment (Smoke-Free Prisons and Other Matters) Regulations 2014 (the Regulations).

The Subcommittee has requested information regarding regulation 13(4)(e) of the Corrections Regulations 2009 (the Principal Regulations) as inserted by regulation 5(1) of the Regulations.

Regulation 13(4)(e) – use of chains connected to instruments of restraint

Regulation 13(4) of the Principal Regulations prescribes the types of instruments of restraint that may be applied to a prisoner, and their manner of use.

In accordance with Regulation 13, the types of instruments of restraint that may be used are:

- a) Handcuffs;*
- b) Arm restraints;*
- c) Leg restraints;*
- d) Belts which restrain any part of the body.*

In accordance with the Principal Regulations, instruments of restraint may only be used where:

⁴⁸ Hon Wade Noonan MP, Minister for Corrections, 24 April 2015.

a) *In relation to a prison, the prison Governor believes on reasonable grounds that the instrument of restraint is necessary, or if the immediate safety or security of a prison is threatened, a prison officer believes on reasonable grounds that this is necessary; or*

b) *In relation to a prisoner being transported outside a prison, the Governor believes on reasonable grounds that the application of the instrument of restraint is necessary to prevent the escape of the prisoner or the assault of, or injury to, any person, or if a prison officer believes on reasonable grounds that the prisoner's conduct during transport is such that the application of the instrument of restraint is necessary to prevent the escape of the prisoner or the assault of, or injury to, any person.*

Regulation 13(4)(e) was inserted into the Principal Regulations to make explicit that the prescribed instruments of restraint may in turn be connected to a chain, that may in turn be connected to a fixture (for example a hospital bed).

In practice, one type of chain used by Corrections Victoria in a prisoner restraint context is a chain known as a closeting chain.

A photograph of a demonstration of a closeting chain and its use is attached.

The closeting chain is a short-term option generally used only when a prisoner is being escorted outside the prison, for example in situations such as attendance at a medical clinic or hospital. Depending on the security classification and nature of the prisoner, the closeting chain could be used in other situations, such as when the prisoner is being escorted outside the prison for a court appearance or attendance at a funeral.

In a hospital or similar situation, one end of the closeting chain may be attached to a handcuff or leg restraint or other prescribed restraint, and the other end attached to a fixture such as a hospital bed. This allows the prisoner to lie comfortably whilst receiving medical treatment, at the same time providing security against escape.

In other situations, the closeting chain may be attached to a handcuff or other prescribed restraint, with the other end being held by the prison officer escorting the prisoner. This allows for security against the escape of the prisoner whilst at the same time allowing a certain degree of privacy for both the prisoner and the prison officer to, for example, use a toilet, speak to medical staff or speak to police.

The other type of chain that may be used by Corrections Victoria in a prisoner restraint context (and which is explicitly authorised by Regulation 13(4)(e)) is a length of chain that connects handcuffs to leg cuffs. This type of chain is used in limited circumstances, for example when transporting a prisoner outside prison where that prisoner has a medical condition that prevents the wearing of a restraining belt.

Article 33 of the United Nations Standard Minimum Rules for the Treatment of Prisoners

The Subcommittee has raised the United Nations Standard Minimum Rules for Treatment of Prisoners (the Standards) set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

In particular, the Subcommittee has raised Article 33, which says in part:

"Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints".

Regulation 13(4)(e) is intended to explicitly provide that prescribed instruments of restraint (in the prescribed circumstances where restraints may be used) may in turn be connected to a chain, that may in turn be connected to a fixture (for example a hospital bed).

The Principal Regulations do not permit the use of restraints as punishment.

Regulation 13(4)(e) does not authorise the use of irons as instruments of restraint.

Regulation 13(4)(e) authorises the use of a chain in the course of restraining a prisoner using other prescribed instruments of restraint, but not as an instrument of restraint in its own right.

Accordingly I do not consider that Regulation 13(4)(e) authorises conduct that is not in accordance with Article 33 of the Standards.

Crimes (Administration of Sentences) Regulations - New South Wales

The Subcommittee has raised Regulation 132(1)(2)(b) of the New South Wales Crimes (Administration of Sentences) Regulations, which specifically prohibit the use of chains and irons as restraints.

This regulation is a permissive provision that permits the use of "other articles" as restraints, but clarifies that chains and irons are not included in this otherwise undefined category. By contrast, the Principal Regulations set out an exhaustive list of what restraints can be used in the Victorian Corrections system.

Chains and irons are not included in the list of permitted restraints under the Principal Regulations.

Court Security and Custodial Service Regulations 1999 - Western Australia

The Subcommittee has raised Regulation 18 of the Western Australian Court Security and Custodial Service Regulations 1999, as amended in 2005, which has the effect of limiting the use of "security chain links" to adults in custody.

The Court Security and Custodial Services Act 1999 of Western Australia is an Act that deals with administration of court security and custodial services in that State in relation to any person in custody -whether adult or minor. Accordingly, that Act and the Regulations made under it must distinguish between those matters permitted or not permitted in relation to adults or minors.

The Corrections Act 1986 applies principally to adult offenders.

The Corrections Act does apply to a very small number of offenders over the age of 16 who, having been sentenced to be detained in a youth justice centre are transferred to a prison by the Youth Parole Board to serve the remaining portion of their detention. However in complying with the Principal Regulations, a prisoner's age is a factor that is taken into account by a Governor or prison officer in every situation where an instrument of restraint is applied.

Accordingly I do not consider that an amendment to the Principal Regulations is required to limit the use of restraints or any type of restraints to adult prisoners.

Corrections Act 2004 - New Zealand

The Subcommittee has raised section 86(7) of the New Zealand Corrections Act 2004, which bars the attachment of chains to a prisoner's neck, torso or (except in cases of medical necessity) leg.

Regulation 13 permits the use of handcuffs, arm restraints, leg restraints and belts which restrain parts of the body. There are no circumstances in which such a restraint

is attached to a prisoner's neck (such a practice being prohibited under internal policy)⁴⁹. In light of the provisions of the Principal Regulations which apply appropriate safeguards and protections in relation to the use of restraints, I see no need to further amend the Principal Regulations to deal with this matter further.

The Subcommittee also raised Schedule 5 of the Corrections Regulations 2005 made under the New Zealand Correction Act, which provides that a prisoner may not be restrained to a vehicle or cell grill.

Again, there are no circumstances in which a restraint is attached in such a way as to restrain a prisoner to a vehicle or cell grill (such a practice being prohibited under internal policy)⁵⁰.

Conclusion

I thank the Subcommittee for raising these issues.

I am considering an appropriate amendment to Regulation 13(4)(e)(ii) of the Principal Regulations to ensure that it is clear that the Regulation authorises the attachment of chains to prescribed instruments of restraint and between prescribed instruments of restraint and other fixtures (such as a hospital bed) and does not authorise the use of chains as instruments of restraint in their own right.

*Hon Wade Noonan MP
Minister for Corrections*

(H) THE PREMIER'S GUIDELINES SETTING – A PACKAGE OF FEES – 'THE BASKET APPROACH'

The Premier's Guidelines⁵¹ provide as follows: -

103 A statutory rule can set a package of fees. This is often known as a 'basket approach'. However, the section 8(1)(d) exemption does not apply if any individual fee component in the package exceeds the Treasurer's annual rate. It does not matter if the average fee increase across the package is less than the annual rate. If any individual fee is increased above the annual rate, a RIS process may need to be undertaken as the fee increase could have a significant and adverse impact on the community and business.

By way of example in SR No. 57 – *Plumbing (Fees Amendment) Regulations 2005*⁵² increased a number of fees. This was done using the 'basket' approach. In this instance, four of the seventeen fee increases exceeded the Treasurer's approved rate of 2.25% although the actual monetary increases were extremely small. In addition, the package as a whole fell within the Treasurer's approved rate. The increases were 0.03% above the approved rate. The table set out below illustrates the dollar value of the four fee increases which were marginally above the approved rate. In real terms, the largest monetary amount above an increase of 2.5% was eight cents. The smallest monetary amount above an increase of 2.5% was three cents.

⁴⁹ A policy relating to security of prisons and prisoners which is not a publicly available policy document.

⁵⁰ Ibid.

⁵¹ Section 103, *Premier's Guidelines*, July 2011.

⁵² Scrutiny of Acts and Regulations Committee, *Annual Review 2005, Regulations 2005*; July 2006, p. 21.

Item	Current Fee	Proposed Fee	Dollar Increase Based on 2.5%	% Increase	Actual Increase
For registration under section 221O or a renewal of registration under section 221ZB	\$237.00	\$243.00	\$5.92	2.53%	\$6.00
For provisional registration or renewal of provisional registration	\$79.00	\$81.00	\$1.97	2.53%	\$2.00
For restricted registration or a renewal of restricted registration	\$237.00	\$243.00	\$5.92	2.53%	\$6.00
For an application to modify the plumbing regulations under section 221ZZO	\$79.00	\$81.00	\$1.97	2.53%	\$2.00

The Subcommittee will examine each instrument carefully. The ‘basket’ of fees in its entirety must not exceed the Treasurer’s approved annual rate. However if, in a package of a number of fees, two or three slightly exceed the Treasurer’s annual rate then that may not necessarily be an immediate cause for concern. Rather, the Subcommittee will examine each fee increase, the monetary amount and what the fee is for. Each regulation will be examined on its merits and in context.

During the year when necessary there have been informal discussions with officers from the various Departments and the Legal Adviser. The discussions suggest that a strict interpretation of the Premier’s Guidelines occasionally may make it difficult for Departments in practical terms in setting a package of routine fee increases. Ultimately, regulations are the practical arm of the legislation. They need to function and be made in a common sense and practical manner where possible. The Subcommittee welcomes input from Departments.

(I) SIGHTING OF MATERIAL INCORPORATED BY REFERENCE

Regulations or legislative instruments may include a table of applied, adopted or incorporated matter in accordance with the requirements of regulation 5 of the *Subordinate Legislation Regulations 1994*. Such a table lists all the material applied, adopted or incorporated by reference in the regulations and legislative instruments. Occasionally, the Subcommittee is placed in the position where it has to consider and or approve regulations or legislative instruments without sighting the material which is incorporated into them. Where the Subcommittee does not sight the material it cannot form a view as to whether there is compliance with the Act.

The Premier’s Guidelines provide further assistance:-⁵³

262. *Section 32 of the Interpretation of Legislation Act 1984 (‘ILA’) sets out when subordinate instruments, such as statutory rules or legislative instruments, may refer to other documents. This is known as incorporation by reference.*

263. *Generally, subordinate instruments may only incorporate by reference provisions of a Victorian or Commonwealth Act, a Code (as defined in the ILA), or a Victorian or Commonwealth statutory rule. Subordinate instruments may only incorporate other matters where there is explicit power to do so in the authorising Act.*

⁵³ Sections 262-267, *Premier’s Guidelines*, July 2011.

264. *Where matter is incorporated by reference, section 32 of the ILA sets out requirements for making material available to the public and for tabling the material in Parliament.*
265. *In deciding whether to incorporate material by reference, agencies should assess the drafting convenience against the effect on the accessibility of the incorporated material and the likely level of public awareness. Agencies should reserve the use of incorporated detailed and extensive technical material to subordinate legislation affecting industries familiar with the material.*
266. *Generally, material should only be incorporated by reference if the material clearly describes the rights and obligations being created and the people who are subject to these rights and obligations.*
267. *Where it is proposed that a statutory rule or legislative instrument incorporates material, all material necessary to ensure compliance should be tabled. This includes primary references as well as references to documents at a secondary or tertiary level unless such references are irrelevant to the substance of the regulation, are unnecessary or merely comprise a reference back to the primary reference material. Unless all relevant material is tabled, the statutory rule or legislative instrument does not apply, adopt or incorporate the material effectively.*

The Subcommittee's preference is that all material is provided to it simultaneously so that it can all be considered in the context of the regulation or legislative instrument. Material incorporated by reference has been provided to the Subcommittee with the original material in respect of the regulation or legislative instrument. This certainly makes the Subcommittee's task easier. The Subcommittee wishes to acknowledge and thank those Departments who make the effort to forward to it additional material.

(J) OTHER MATTERS

The 'Balanced Scorecard Approach' – What is it?

A RIS which accompanies the regulations includes a summary of alternatives. Often the summary of alternatives includes a table. The table contains a subjective assessment of the proposed regulations and the alternatives compared to the 'Base Case' using the 'Balanced Scorecard Approach'.

The Subcommittee does not always find that the use of a table on its own provides great illumination in the context of an assessment of alternatives. If such a table is used, then there ought to be appropriate commentary which explains it.

However, the Subcommittee notes the continuing trend of the incorporation of a much more detailed explanation with a table in RISs. This is of assistance to the Subcommittee. However, it is also of more assistance to the average reader of the RIS. The Subcommittee acknowledges these efforts and hopes this trend will continue.

(K) COMMENDATION

The Subcommittee commends Ministers to the particular attention to detail in respect of the work presented to it. The Subcommittee acknowledges properly drawn certificates. The Subcommittee also acknowledges the excellent work by many Departments in responding to the large number of people and organisations who sent in submissions in respect of a particular RIS.

CHAPTER 3 – THE REVIEW OF LEGISLATIVE INSTRUMENTS – THE FOURTH YEAR OF OPERATION

(A) THE COMMITTEE’S OBLIGATION TO SCRUTINISE LEGISLATIVE INSTRUMENTS – THE POWER TO REVIEW

The *Subordinate Legislation Amendment Bill* was introduced in August 2010. Amendments to the Act came into effect on 1 January and 1 July 2011. The amendments related to the scrutiny of legislative instruments and specifically inserted new Parts 2A, 3, 3A and 5A into the Act. The amendments essentially duplicated and extended the current arrangements relating to the scrutiny of statutory rules to legislative instruments.

The Committee’s power to review legislative instruments is set out in section 25A, 25b and 25C of the Act.

25A. Review of legislative instruments by the Scrutiny Committee

- (1) *The Scrutiny Committee may report to each House of the Parliament if the Scrutiny Committee considers that any legislative instrument laid before Parliament—*
 - (a) *does not appear to be within the powers conferred by the authorising Act or the statutory rule under which it is made;*
 - (b) *without clear and express authority being conferred by the authorising Act or the statutory rule under which it is made—*
 - (i) *has a retrospective effect; or*
 - (ii) *imposes any tax, fee, fine, imprisonment or other penalty; or*
 - (iii) *purports to shift the legal burden of proof to a person accused of an offence; or*
 - (iv) *provides for the subdelegation of powers delegated by the authorising Act or the statutory rule under which it is made;*
 - (c) *is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;*
 - (d) *has been prepared in contravention of any of the provisions of this Act or of the guidelines with respect to legislative instruments and the contravention is of a substantial or material nature.*
- (2) *A report of the Scrutiny Committee under this section may contain any recommendations that the Scrutiny Committee considers appropriate, including a recommendation that a legislative instrument should be—*

- (a) *disallowed in whole or in part; or*
- (b) *amended as suggested in the report.*

25B. Suspension of legislative instrument or part of an instrument

(1) *If the Scrutiny Committee—*

- (a) *proposes under section 25A to recommend that a legislative instrument should be—*
 - (i) *disallowed in whole or in part; or*
 - (ii) *amended; and*
- (b) *is of the opinion that considerations of justice and fairness require that the operation of the legislative instrument or any part of the legislative instrument should be suspended pending the consideration by the Parliament of the legislative instrument—*

the Scrutiny Committee may propose in the report under section 25A that the operation of the legislative instrument or part of the legislative instrument be suspended.

(2) *If the Scrutiny Committee proposes that the operation of a legislative instrument or part of a legislative instrument be suspended—*

- (a) *the Scrutiny Committee must forthwith send a copy of the report to the responsible Minister, the Governor in Council and the instrument maker; and*
- (b) *subject to subsection (3), the operation of the legislative instrument or part of a legislative instrument is suspended at the end of the period of 7 days after the sending of the report to the Governor in Council until the end of the period during which the legislative instrument or part of the legislative instrument could be disallowed under section 25C.*

(3) *The Governor in Council, on the recommendation of the responsible Minister made within the period of 7 days referred to in subsection (2), may by Order published in the Government Gazette declare that the operation of the legislative instrument or part of the legislative instrument is not suspended.*

(4) *As from the date on which the Order is published, the provision in a report of the Scrutiny Committee providing for the suspension ceases to have any force or effect.*

(5) *While the operation of a legislative instrument or part of the legislative instrument is suspended under this section, the legislative instrument is deemed not to have been made or to have been made without that part.*

25C. Disallowance

(1) *This section applies to a legislative instrument if—*

- (a) *the authorising Act under which the legislative instrument is made states that the legislative instrument is subject to disallowance by the Parliament or by a House of the Parliament; or*
- (b) *in a report under section 25A, the Scrutiny Committee has recommended that the legislative instrument be disallowed in whole or in part; or*

- (c) *there was a failure to comply with section 16B(1) and the Scrutiny Committee has reported that failure to each House of the Parliament.*
- (2) *A legislative instrument to which this section applies is disallowed in whole or in part if—*
- (a) *a notice of a resolution to disallow the legislative instrument is given in a House of the Parliament—*
- (i) *on or before the 18th sitting day of that House after the instrument is laid before that House; or*
- (ii) *in the case of failure to comply with section 16B(1) in respect of a legislative instrument, on or before the 24th sitting day of that House after—*
- (A) *the legislative instrument has been published in the Government Gazette under section 16A(1); or*
- (B) *if section 16A(2) applies, notice of making and availability has been published in the Government Gazette; and*
- (b) *the resolution is passed by that House on or before the 12th sitting day of that House after the giving of the notice of the resolution.*
- (3) *Notice of a resolution to disallow a legislative instrument may be expressed to apply to the whole or to any part of the legislative instrument.*
- (4) *A resolution to disallow the whole or any part of a legislative instrument has effect according to its tenor.*
- (5) *If a House of the Parliament is prorogued or the Legislative Assembly is dissolved—*
- (a) *the prorogation or dissolution does not affect the power of the House to pass a resolution disallowing a legislative instrument; and*
- (b) *the calculation of sitting days of the House is to be made as if there had been no prorogation or dissolution.*

(B) WHAT IS A LEGISLATIVE INSTRUMENT? – DEFINED IN SECTIONS 3(1) AND (2) OF THE ACT

The term 'legislative instrument' is defined in sections 3(1) and (2) of the Act.

A legislative instrument may therefore include but is not limited to: -

- An instrument of delegation;
- An evidentiary certificate;
- An instrument of appointment or an instrument of appointment which changes conditions or terms of appointment;
- An instrument which has the sole purpose of giving notice of the making of another instrument;
- An instrument which grants, renews, varies, transfers, suspends or cancels a lease, licence or permit that authorises a specified entity to do any act or not to do any act or an instrument refusing to grant, renew, vary or transfer such a lease, licence or permit;

- An instrument that registers a specified entity or an instrument refusing to register a specified entity;
- An instrument that renews, varies, transfer, suspends or cancels a registration of a specified entity or an instrument refusing to renew, vary, transfer, suspend or cancel a registration of a specified entity;
- An instrument imposing conditions on a lease, licence, permit or registration held by a specified entity;
- An instrument for the principal purpose of taking disciplinary or enforcement action to ensure compliance with an Act, subordinate instrument or any other law.

3 Definitions

(1) In this Act—

...

legislative instrument means an instrument made under an Act or statutory rule that is of a legislative character but does not include—

- (a) a statutory rule; or*
 - (b) a local law made under Part 5 of the Local Government Act 1989 and any other instrument made by a council under that Act or any other Act; or*
 - (c) a proclamation of commencement of an Act or any provision of an Act; or*
 - (d) a planning scheme or an amendment to a planning scheme under the Planning and Environment Act 1987; or*
 - (e) the Victoria Planning Provisions within the meaning of the Planning and Environment Act 1987; or*
 - (f) a practice note or practice direction issued by or on behalf of a court or tribunal or an instrument which relates only to a court or tribunal or the procedure, practice or costs of a court or tribunal; or*
 - (g) an instrument of purely administrative character; or*
 - (h) a prescribed instrument or a prescribed class of instrument;*
- (2) For the avoidance of doubt, but without limiting paragraph (g) of the definition of legislative instrument, instruments of purely administrative character for the purposes of this Act include, but are not limited to, the following—*
- (a) an instrument of delegation;*
 - (b) an evidentiary certificate;*
 - (c) an instrument of appointment or an instrument which changes conditions or terms of appointment;*
 - (d) an instrument which has the sole purpose of giving notice of the making of another instrument;*
 - (e) an instrument which grants, renews, varies, transfers, suspends or cancels a lease, licence or permit that authorises a specified entity to do any act or not to do any act or an instrument refusing to grant, renew, vary or transfer such a lease, licence or permit;*

- (f) *an instrument that registers a specified entity or an instrument refusing to register a specified entity;*
- (g) *an instrument that renews, varies, transfers, suspends or cancels a registration of a specified entity or an instrument refusing to renew, vary, transfer, suspend or cancel a registration of a specified entity;*
- (h) *an instrument imposing conditions on a lease, licence, permit or registration held by a specified entity;*
- (i) *an instrument for the principal purpose of taking disciplinary or enforcement action to ensure compliance with an Act, subordinate instrument or any other law.*

(C) POWER TO PRESCRIBE AN INSTRUMENT TO BE A LEGISLATIVE INSTRUMENT OR TO BE EXEMPT – DEFINED IN SECTION 4A

The power to prescribe an instrument to be a legislative instrument or to be exempt is set out in section 4A of the Act.

4A Prescribing instrument to be a legislative instrument or to be exempt

- (1) *The Governor in Council may make regulations under this Act—*
 - (a) *prescribing an instrument or a class of instrument for the purposes of paragraph (h) of the definition of legislative instrument;*
 - (b) *prescribing an instrument or a class of instrument to be, or not to be, a legislative instrument or class of legislative instrument for the purposes of this Act or any specified provision or provisions of this Act, whether or not subject to conditions;*
 - (c) *exempting an instrument or a class of instrument that is a legislative instrument from the operation of this Act or any specified provision or specified provisions of this Act, whether or not subject to conditions.*
- (2) *If an instrument or a class of instrument is prescribed to be a legislative instrument or legislative instruments—*
 - (a) *this Act applies to the instrument or class of instrument; and*
 - (b) *subject to this Act, any provision of the authorising Act under which the instrument or class of instrument is made which is inconsistent with, or duplicates, any provision of this Act does not apply to the instrument or class of instrument.*
- (3) *If an instrument or a class of instrument is prescribed as exempt—*
 - (a) *the specified provision or provisions of this Act from which the instrument is prescribed to be exempt does not, or do not, apply to the instrument or class of instrument; and*
 - (b) *unless provision is made to the contrary by the authorising Act under which it is made, the instrument or a provision of it comes into operation—*
 - (i) *at the beginning of the day on which the instrument is published in the Government Gazette; or*

- (ii) *at the beginning of a later day that is expressed in the instrument as the day on which the instrument or provision (as the case requires) comes into operation.*

(D) WHAT IS A LEGISLATIVE INSTRUMENT? A FURTHER DEFINITION – THE SUBORDINATE LEGISLATION (LEGISLATIVE INSTRUMENTS) REGULATIONS 2011

Schedule 1 – Prescribed not to be legislative instruments

The *Subordinate Legislation (Legislative Instruments) Regulations 2011* (the Regulations) further define which instruments are prescribed legislative instruments and which instruments are not prescribed to be legislative instruments.

Schedule 1 of the Regulations set out the provisions of various acts which are prescribed not to be legislative instruments. The seventy four acts are listed alphabetically from the *Aboriginal Heritage Act 2006* to the *Zoological Parks and Gardens Act 1995*.

Schedule 2 – Prescribed to be legislative instruments

Schedule 2 of the Regulations sets out provisions of various acts which are prescribed to be legislative instruments. The thirty seven acts are listed in alphabetically from the *Accident Compensation Act 1985* to the *Water Act 1989*.

Schedule 3 – Exempt legislative instruments

Schedule 3 sets out those provisions of various acts which are exempt from the operation of Parts 2A, 5A, Section 16B, Section 16C, Section 16E and Section 16F of the Act. The one hundred and twenty six acts are listed alphabetically from the *Aboriginal Heritage Act 2006* to the *Wrongs Act 1958*.

(E) THE FOURTH YEAR OF OPERATION

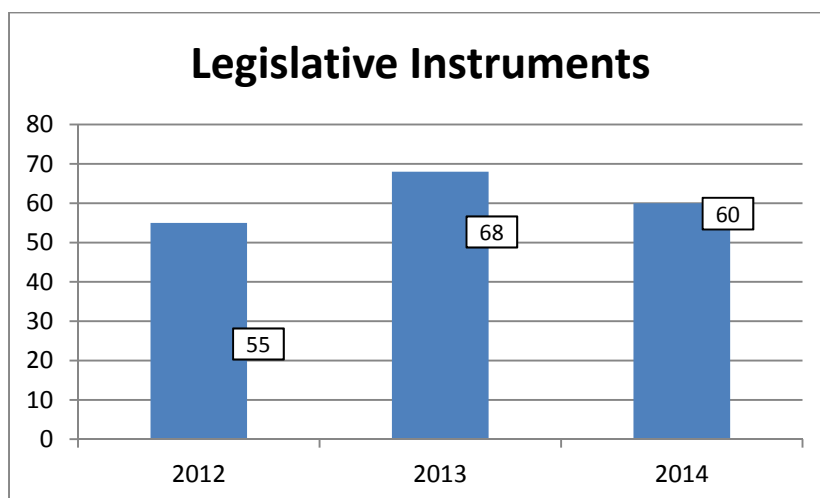
This is the fourth year of operation of the scrutiny of legislative instruments. The Subcommittee receives a steady stream of legislative instruments. To coincide with the statutory rules series, the Subcommittee scrutinises the legislative instruments from 1 July 2014 to 30 June 2015. The Subcommittee has considered 60 legislative instruments. Four of the legislative instruments were accompanied by a Regulatory Impact Statement. This year has seen further growth in the number of legislative instruments which have been scrutinised. The Subcommittee did not make any reports to Parliament.

Overall there has been a significant increase in the number of legislative instruments considered since the scrutiny commenced. There were 24 legislative instruments in the first year of operation compared with 60 legislative instruments this year.

There have been no significant ongoing issues identified, notwithstanding the growth in the number of legislative instruments being scrutinised since the inception. The Subcommittee's legal adviser receives from time to time, a number of telephone enquiries from departmental officers as to general obligations in respect of the scrutiny regime of legislative instruments.

This indicates a growing awareness by the Departments of the obligations imposed under the legislation in relation to the scrutiny of legislative instruments. Communications with

Departments have been helpful and informative. The Committee will continue to monitor the operation of the scrutiny of legislative instruments closely. The Committee thanks the Ministers for their responses. For further information please also the Committee Practice Notes in Appendix 6.



(F) MINISTERIAL CORRESPONDENCE – FEE INCREASES – SECTION 12(F)(1)(A) AND SECTION 12(F)(1)(C) EXEMPTION

The Subcommittee corresponded with the Minister in respect of one legislative instrument. The Subcommittee raised an issue in relation to a fee increase of 3.15 per cent rather than the Treasurer’s approved rate of 2.25 per cent as per the legislative exemption. The Subcommittee sought further explanation. The Minister responded acknowledging the incorrect rate was applied to the fee unit increases. However, the Minister also provided advice that an exemption from the regulatory impact statement process was granted on the basis that the legislative instrument was unlikely to impose a significant economic or social burden on a sector of the public. The fees levied were expected to raise in the order of \$20,000 which was significantly less than the threshold of \$500,000 required for the preparation of a Regulatory Impact Statement.

Example: Ministerial Order No 765 – Victorian Institute of Teaching Schedule of Registration Fees 2014-15

Subcommittee’s letter⁵⁴

The Regulation Review Subcommittee (the Subcommittee) considered Ministerial Order No 765 –Victorian Institute of Teaching Schedule of Registrations Fees 2014-15 (Order 765) at a meeting on 18 August 2014.

Exemption certificate

Order 765 fixes the annual registration fees payable by registered teachers for a period of 12 months. Order 765 is accompanied by a section 12(F)(1)(a) and 12(F)(1)(c) exemption certificate. It states: -

⁵⁴ Michael Gidley MP, Regulation Review Subcommittee, 18 August 2014.

'That in my opinion, the proposed legislative instrument does not impose a significant economic or social burden on a sector of the public and only increases fees in respect of a financial year in the amount not exceeding the annual rate approved by the Treasurer.

The reasons for forming this opinion are that-

- (i) The proposed increase in existing fees is 3.15% which is the annual rate approved by the Treasurer in relation to the State Budget in 2014;*
- (ii) The proposed increase will be the first and only increase to the relevant fees proposed for the financial year July 2014 to June 2015; and*
- (iii) The most recent increase in the relevant fees was made by Ministerial Order No 684 on 25 July 2013 (and published in Government Gazette No G31 on 1 August 2013)*

Accordingly, a Regulatory Impact Statement is not required for this legislative instrument.'

Letter to the Committee

The Scrutiny of Acts and Regulations Committee (the Committee) received a letter dated 2 April 2014 from the Treasurer advising of the annual rate for fees and charges increases. The relevant extract is set out:-

I advise that the approved annual rate for the purpose of section 8 of the Subordinate Legislation Act 1994 in respect of the 2014-15 financial year is 2.25 per cent.

Under the Subordinate Legislation Act 1994, a Regulatory Impact Statement (RIS) is not required where a proposed statutory rule or legislative instrument only increases fees in respect of a financial year by an amount not exceeding the annual rate approved by the Treasurer.

Therefore, under the Subordinate Legislation Act 1994, certificates to exempt the requirement to prepare a RIS may be issued by responsible Ministers where a proposed increase in fees in respect of the 2014-15 financial year does not exceed the approved annual rate of 2.25 per cent.'

Further enquiries

The Subcommittee's legal adviser made enquiries were made of the Department as to the basis for the fee increase of 3.15 per cent rather than the approved rate of 2.25 per cent. The Subcommittee was advised that the Treasurer had set an annual rate of 3.15 per cent for fee units and 2.25 per cent for penalty units for the year 2014-15. These values were published in Special Gazette Number S 123 (15 April 2014). <http://www.gazette.vic.gov.au/gazette/Gazettes2014/GG2014S123.pdf>

Further advice

The Subcommittee notes that the annual rate of 2.25 per cent approved by the Treasurer relates to fee increases. The Subcommittee further notes that that annual rate of 3.15 per cent relates to those fees expressed in fee units which are subject to automatic fee increases.

The Subcommittee also notes that the exemption certificate is a composite exemption certificate. If it is considered a proposed legislative instrument does not impose a significant economic or social burden on a sector of the public then it may be exempt pursuant to section 12(F)(1)(a) from the requirement to prepare a RIS.

The Subcommittee seeks your advice as to the apparent discrepancy between the annual rate of 3.15 per cent published in the Government Gazette and the stated approved annual rate of 2.25 per cent for the purposes of section 8 of the Subordinate Legislation Act 1994.

The Subcommittee would appreciate your earliest response by 28 August 2014 to helen.mason@parliament.vic.gov.au and sonya.caruana@parliament.vic.gov.au by 28 August 2014.

Please contact Ms Helen Mason, the Subcommittee's legal adviser in the first instance if you have require further assistance.

*Mr Michael Gidley MP
Chair
Regulation Review Subcommittee*

Minister's response⁵⁵

Thank you for your letter of 18 August 2014 regarding Ministerial Order No. 765 - Victorian Institute of Teaching (the Institute) Schedule of Registration Fees 2014- 15 (Ministerial Order 765) drawing to my attention the application of the Treasurer's annual fee unit rate of 3.15 per cent rather than the Treasurer's annual fee rate of 2.25 per cent to the VIT fee increases.

I acknowledge that the incorrect rate applying to fee unit increases was quoted in the Exemption Certificate for Ministerial Order 765. However, I have received advice that all Institute fees in Ministerial Order 765, with the exception of the course accreditation fee, have only increased by 2.25 per cent or less before rounding and are therefore consistent with the Treasurer's annual rate for fee increases.

The course accreditation fee has increased by 3.15 per cent. The Institute has advised that approximately ten course accreditations are undertaken in any year, with universities and higher education institutions levied for the service provided by the Institute. The course accreditation fee is expected to provide revenue of around \$20,000 in the next year.

The Department of Treasury and Finance's Cost Recovery Guidelines state that a common ground for an exemption from a requirement to prepare a Regulatory Impact Statement is if the proposed statutory rule or legislative instrument is unlikely to impose a significant economic or social burden on a sector of the public. I note that the Subordinate Legislation Guidelines nominate \$500,000 per year as an indicative threshold for significant burden. As the Institute course accreditation fee will be levied on approximately ten teacher education training providers and is expected to raise in the order of \$20,000 in the next year it is my view that this fee increase will not create a significant economic or social burden.

On this basis I endorse the Institute fees schedule 2014-15 as set out in Ministerial Order 765 and consider that the conditions for exempting these fee increases from

⁵⁵ Hon Martin Dixon MP, Minister for Education, 3 September 2014.

the requirement for a Regulatory Impact Statement pursuant to section 12(F)(1)(a) and section (c) of the Subordinate Legislation Act 1994 have been met.

If SARC would like further information you may contact Ms Carmel Muldoon, Manager, Early Childhood Employee Relations, Human Resources Division, People and Executive Services Group, Department of Education and Early Childhood Development, on 9637 2697 or by email: muldoon.carmel.a@edumail.vic.gov.au. ·

*The Hon. Martin Dixon, MP
Minister for Education*

APPENDIX 1 — REGULATIONS 2014⁶⁴

ALPHABETICAL LISTING

SR No. 175	Accident Towing Services Amendment Regulations 2014
SR No. 19	Adoption Amendment Regulations 2014
SR No. 183	Agricultural and Veterinary Chemicals (Control of Use)(Infringement Notices) Amendment Regulations 2014
SR No. 192	Assisted Reproductive Treatment Amendment Regulations 2014
SR No. 4	Australian Crime Commission (State Provisions) Regulations 2014
SR No. 196	Building Amendment (Additional New Residential Zones) Regulations 2014
SR No. 173	Building Amendment (Farm Buildings) Regulations 2014
SR No. 104	Building Amendment (Fees and Other Matters) Regulations 2014
SR No. 37	Building Amendment (General) Regulations 2014
SR No. 197	Building Amendment (Live Music) Regulations 2014
SR No. 51	Building Amendment (National Construction Code) Regulations 2014
SR No. 109	Building Amendment (New Residential Zones) Regulations 2014
SR No. 162	Building Further Amendment (New Residential Zones) Regulations 2014
SR No. 43	Child Employment Regulations 2014
SR No. 160	Children, Youth and Families Amendment (Judicial Registrar Oath and Affirmation of Office) Regulations 2014
SR No. 91	Children, Youth and Families Amendment Regulations 2014
SR No. 187	Confiscation Amendment (Unexplained Wealth) Regulations 2014
SR No. 139	Confiscation Amendment Regulations 2014
SR No. 98	Conservation, Forests and Lands (Infringement Notice) Amendment (Forests and Wildlife) Regulations 2014
SR No. 191	Conservation, Forests and Lands (Infringement Notice) Amendment Regulations 2014
SR No. 40	Conservation, Forests and Lands (Infringement Notice) and (Primary Industries Infringement Notices) Amendment Regulations 2014
SR No. 185	Conservation, Forests and Lands (Primary Industries Infringement Notices) Amendment (Fisheries) Regulations 2014
SR No. 3	Co-operatives National Law (Victoria) Local Regulations 2014
SR No. 159	Coroners Amendment Regulations 2014
SR No. 202	Coroners Court (Amendment No. 2) Rules 2014
SR No. 119	Coroners Court (Form 10 Amendment) Rules 2014
SR No. 25	Corrections (Victims Register) Regulations 2014
SR No. 12	Corrections Amendment (Breach of Parole and Other Matters) Regulations 2014

⁶⁴ This Appendix lists all 2014 regulations. Appendix 2 categorises regulations according to whether they were made with a Regulation Impact Statement or whether they were exempted from those requirements. The Committee did not move for disallowance of any of the 2014 regulations, however the Regulation Review Subcommittee did correspond with responsible Ministers concerning some regulations.

SR No. 20	Corrections Amendment (Firearms) Regulations 2014
SR No. 147	Corrections Amendment (Smoke-Free Prisons and Other Matters) Regulations 2014
SR No. 176	Country Court (Chapter I Circuit Fees, Expenses and Allowances Amendment) Rules 2014
SR No. 94	Country Fire Authority (Community Fire Refuges) Regulations 2014
SR No. 81	Country Fire Authority Amendment (Member Compensation) Regulations 2014
SR No. 165	Country Fire Authority Regulations 2014
SR No. 150	County Court (Chapter I Costs Amendment) Rules 2014
SR No. 177	County Court (Chapter II Vexatious Proceedings Amendment) Rules 2014
SR No. 14	County Court (Chapter III Amendment No. 3) Rules 2014
SR No. 178	County Court (Chapter III Amendment No. 4) Rules 2014
SR No. 100	County Court (Chapters I and III Miscellaneous Amendments) Rules 2014
SR No. 210	County Court (Miscellaneous Amendments) Rules 2014
SR No. 157	County Court (Oath and Affirmation of Office) Regulations 2014
SR No. 140	Credit (Administration) Regulations 2014
SR No. 141	Credit Regulations 2014
SR No. 42	Crimes (Confiscation) Regulations 2014
SR No. 137	Crimes (Search Warrant) Regulations 2014
SR No. 138	Criminal Organisations Control Amendment Regulations 2014
SR No. 56	Dangerous Goods (Storage and Handling) Amendment Regulations 2014
SR No. 90	Domestic Animals Amendment Regulations 2014
SR No. 50	Drugs, Poisons and Controlled Substances (Confiscation) Regulations 2014
SR No. 195	Drugs, Poisons and Controlled Substances (Drugs of Dependence - Synthetic Cannabinoids) Regulations 2014
SR No. 15	Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Regulations 2014
SR No. 95	Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Amendment Regulations 2014
SR No. 59	Drugs, Poisons and Controlled Substances (Volatile Substances) Regulations 2014
SR No. 194	Drugs, Poisons and Controlled Substances Amendment (Residential Medication Chart) Regulations 2014
SR No. 193	Drugs, Poisons and Controlled Substances (Commonwealth Standard) Revocation Regulations 2014
SR No. 167	EastLink Project Amendment Regulations 2014
SR No. 36	Electricity Safety (Installations) Amendment (Fees) Regulations 2014
SR No. 92	Environment Protection (Distribution of Landfill Levy) Amendment Regulations 2014
SR No. 124	Environment Protection (Distribution of Landfill Levy) Further Amendment Regulations 2014
SR No. 55	Equipment (Public Safety) Amendment Regulations 2014
SR No. 113	Estate Agents (Contracts) Amendment Regulations 2014
SR No. 189	Estate Agents (Exemption) Regulations 2014
SR No. 153	Estate Agents (General, Accounts and Audit) Amendment (Penalty and Infringements) Regulations 2014
SR No. 118	Evidence (Affidavits and Statutory Declarations) Amendment Regulations 2014
SR No. 122	Fences Regulations 2014
SR No. 161	Financial Management Amendment Regulations 2014

SR No. 29	Financial Management Regulations 2014
SR No. 5	Fisheries (Fees, Royalties and Levies) and Fisheries Amendment Regulations 2014
SR No. 96	Fisheries and Fisheries (Fees, Royalties and Levies) Further Amendment Regulations 2014
SR No. 52	Forests (Fire Protection) Regulations 2014
SR No. 49	Freedom of Information (Access Charges) Regulations 2014
SR No. 172	Gambling Regulations (Pre-commitment and Loyalty Scheme) Regulations 2014
SR No. 93	Gambling Regulations and Gambling Regulation (Prescribed Connection and Prescribed Profit) Amendment Regulations 2014
SR No. 9	Gas Safety (Gas Installation) Amendment Regulations 2014
SR No. 107	Guardianship and Administration (Fees) Amendment Regulations 2014
SR No. 174	Heritage (General) Amendment (Fees) Regulations 2014
SR No. 111	Honorary Justices (Transitional) Regulations 2014
SR No. 110	Honorary Justices Regulations 2014
SR No. 103	Infringements (General) Amendment Regulations 2014
SR No. 152	Infringements (General) Further Amendment Regulations 2014
SR No. 58	Liquor Control Reform Amendment (Live Music Events and Other Matters) Regulations 2014
SR No. 17	Local Government (Planning and Reporting) Regulations 2014
SR No. 102	Magistrates' Court (Arbitration) Amendment Regulations 2014
SR No. 18	Magistrates' Court (Arbitration)(Professional Costs) Amendment Regulations 2014
SR No. 70	Magistrates' Court (Chapter I and II Miscellaneous Amendments) Rules 2014
SR No. 179	Magistrates' Court (Judicial Registrars) Amendment Rules 2014
SR No. 28	Magistrates' Court (Judicial Registrars)(Personal Safety Intervention Orders Amendment) Rules 2014
SR No. 106	Magistrates' Court (Miscellaneous Civil Proceedings)(Arbitration Costs Amendment) Rules 2014
SR No. 203	Magistrates' Court (Vexatious Proceedings Amendments) Rules 2014
SR No. 24	Magistrates' Court Criminal Procedure (Amendment No. 5) Rules 2014
SR No. 121	Magistrates' Court Criminal Procedure (Infringement Court Venue Amendment) Rules 2014
SR No. 158	Magistrates' Court General Amendment (Judicial Registrar Oath and Affirmation of Office) Regulations 2014
SR No. 11	Magistrates' Court General Civil and Procedure and Miscellaneous Civil Proceedings (Trans-Tasman Proceedings Amendment) Rules 2014
SR No. 105	Magistrates' Court General Civil Procedure (Offers of Compromise Amendments) Rules 2014
SR No. 180	Magistrates' Court General Civil Procedure (Scale of Costs Amendment) Rules 2014
SR No. 112	Magistrates' Court General Regulations 2014
SR No. 7	Major Crime (Investigative Powers) Amendment Regulations 2014
SR No. 2	Meat Industry Amendment Regulations 2014
SR No. 168	Melbourne City Link Amendment Regulations 2014
SR No. 77	Mental Health Regulations 2014
SR No. 89	Mental Health Tribunal Rules 2014
SR No. 82	Metropolitan Fire Brigades (General) Amendment (Road Accident Rescue Service) Regulations 2014

SR No. 169	Mineral Resources (Sustainable Development)(Mineral Industries) Amendment Regulations 2014
SR No. 154	Mineral Resources (Sustainable Development)(Extractive Industries) Amendment Regulations 2014
SR No. 120	Motor Car Traders Amendment (Red Tape Reduction) Regulations 2014
SR No. 22	National Gas (Victoria)(Declared System Provisions) Regulations 2014
SR No. 117	Non-Emergency Patient Transport Amendment Regulations 2014
SR No. 54	Occupational Health and Safety Amendment Regulations 2014
SR No. 114	Owners Corporations Amendment Regulations 2014
SR No. 166	Parliamentary Salaries and Superannuation (Allowances) Amendment Regulations 2014
SR No. 163	Planning and Environment (Fees) Interim Regulations 2014
SR No. 126	Planning and Environment Amendment (VicSmart) Regulations 2014
SR No. 60	Plumbing Amendment Regulations 2014
SR No. 78	Police Regulation Revocation Regulations 2014
SR No. 135	Prevention of Cruelty to Animals Amendment Regulations 2014
SR No. 184	Prevention of Cruelty to Animals Further Amendment Regulations 2014
SR No. 26	Prisoners (Interstate Transfer) Regulations 2014
SR No. 30	Rail Safety Amendment Regulations 2014
SR No. 31	Rail Safety National Law (Limited Accreditation Exemptions) Regulations 2014
SR No. 116	Residential Tenancies Amendment (Prescribed Rating for Replacement Water Appliances) Regulations 2014
SR No. 200	Road Safety (Drivers) Amendment (Probationary Prohibited Vehicles) Regulations 2014
SR No. 84	Road Safety (Drivers) Amendment (Renewal Fees) Interim Regulations 2014
SR No. 27	Road Safety (Drivers) Amendment (Variation of Driver Licence and Learner Permit) Regulations 2014
SR No. 143	Road Safety (Drivers) and (General) Amendment (Alcohol Interlocks) Regulations 2014
SR No. 144	Road Safety (Drivers) and (General) Amendment (Motor Cycle Graduated Licensing System) Regulations 2014
SR No. 85	Road Safety (Drivers) and (Vehicles) Amendment (Fees) Regulations 2014
SR No. 46	Road Safety (Drivers) and (Vehicles) Amendment Regulations 2014
SR No. 199	Road Safety (Drivers), (General) and (Vehicles) Amendment Regulations 2014
SR No. 67	Road Safety (General) Amendment (Corporate Penalties) Regulations 2014
SR No. 145	Road Safety (General) and (Drivers) Amendment Regulations 2014
SR No. 131	Road Safety (Vehicles) Amendment (Emergency Management Commissioner) Regulations 2014
SR No. 23	Road Safety (Vehicles) Amendment (Heavy Vehicle National Law) Regulations 2014
SR No. 201	Road Safety (Vehicles) Amendment Regulations 2014
SR No. 68	Road Safety Road Rules Amendment (Corporate Penalties) Rules 2014
SR No. 132	Road Safety Road Rules Amendment (Emergency Management Commissioner) Rules 2014
SR No. 146	Road Safety Road Rules Amendment Rules 2014
SR No. 170	Royal Botanic Gardens Regulations 2014
SR No. 115	Sale of Land (Infringements) Regulations 2014
SR No. 73	Sale of Land (Public Auctions) Regulations 2014
SR No. 136	Seafood Safety Regulations 2014
SR No. 16	Sentencing Amendment Regulations 2014

SR No. 57	Sentencing Further Amendment Regulations 2014
SR No. 21	Serious Sex Offenders (Detention and Supervision) Amendment Regulations 2014
SR No. 142	Sex Offenders Registration Regulations 2014
SR No. 72	Sex Work (Fees) Regualtions 2014
SR No. 186	Status of Children Regulations 2014
SR No. 164	Subdivision (Fees) Interim Regulations 2014
SR No. 38	Subordinate Legislation (Architects Regulations 2004) Extension Regulations 2014
SR No. 97	Subordinate Legislation (Court Security Regulations 2004) Extension Regulations 2014
SR No. 127	Subordinate Legislation (Instruments (Fees) Regulations 2004) Extension Regulations 2014
SR No. 45	Subordinate Legislation (Legislative Instruments) Amendment Regulations 2014
SR No. 125	Subordinate Legislation (Local Government (General) Regulations 2004) Extension Regulations 2014
SR No. 61	Subordinate Legislation (Port Management (Local Ports) Regulations 2004) Extension Regulations 2014
SR No. 128	Subordinate Legislation (Property Law (Fees) Regulations 2004) Extension Regulations 2014
SR No. 129	Subordinate Legislation (Subdivision (Registrar's Fees) Regulations 2004) Extension Regulations 2014
SR No. 130	Subordinate Legislation (Transfer of Land (Fees) Regulations 2004) Extension Regulations 2014
SR No. 83	Subordinate Legislation Regulations 2014
SR No. 10	Supreme Court (Administration and Probate) Rules 2014
SR No. 204	Supreme Court (Chapter I Scale of Costs Appendices A and B Amendment) Rules 2014
SR No. 205	Supreme Court (Chapter II Arbitration Amendment) Rules 2014
SR No. 207	Supreme Court (Chapter IV Mental Impairment and Unfitness To Be Tried Amendment) Rules 2014
SR No. 208	Supreme Court (Chapters II and III Family Provision and Other Matters Amendment) Rules 2014
SR No. 209	Supreme Court (Civil Appeals Amendments) Rules 2014
SR No. 47	Supreme Court (Commercial, TEC and Intellectual Property Lists Amendment) Rules 2014
SR No. 123	Supreme Court (Fees) Amendment Regulations 2014
SR No. 156	Supreme Court (Oath and Affirmation of Office) Regulations 2014
SR No. 48	Supreme Court (RedCrest Electronic Case Management System Amendment) Rules 2014
SR No. 206	Supreme Court (Vexatious Proceedings Amendments) Rules 2014
SR No. 39	Survey Co-ordination Regulations 2014
SR No. 134	Sustainable Forests (Timber Harvesting) Revocation Regulations 2014
SR No. 76	Tobacco (Victorian Health Promotion Foundation) Amendment Regulations 2014
SR No. 8	Tobacco Amendment Regulations 2014
SR No. 198	Tourist and Heritage Railways Amendment Regulations 2014
SR No. 44	Transfer of Land (Fees) Amendment Regulations 2014
SR No. 1	Transport (Conduct) and (Infringements) Amendment (Extension of Smoking Bans) Regulations 2014
SR No. 149	Transport (Conduct) and (Infringements) Amendment (Park and Ride Facilities) Regulations 2014
SR No. 33	Transport (Conduct) Further Amendment Regulations 2014

Scrutiny of Acts and Regulations Committee

SR No. 34	Transport (Infringements) Amendment Regulations 2014
SR No. 64	Transport (Passenger Vehicles) Amendment (Taxi Services Reforms and Other Matters) Regulations 2014
SR No. 32	Transport (Safety Schemes Compliance and Enforcement)(Infringements) Regulations 2014
SR No. 62	Transport (Taxi-cab Industry Accreditation) Amendment Regulations 2014
SR No. 63	Transport (Taxi-cabs) Amendment Regulations 2014
SR No. 65	Transport (Taxi-Cabs) and (Taxi-Cab Licences - Market and Trading) Amendment Regulations 2014
SR No. 66	Transport (Ticketing) Amendment (On-the-Spot Penalty Fares) Regulations 2014
SR No. 101	Treasury Corporation of Victoria (Prescribed Agencies) Regulations 2014
SR No. 148	Valuation of Land Regulations 2014
SR No. 13	Victims of Crime Assistance Amendment No.1 Rules 2014
SR No. 80	Victoria Police (Fees and Charges) Regulations 2014
SR No. 79	Victoria Police Regulations 2014
SR No. 35	Victorian Civil and Administrative Tribunal (Amendment No. 10) Rules 2014
SR No. 133	Victorian Civil and Administrative Tribunal (Amendment No. 11) Rules 2014
SR No. 181	Victorian Civil and Administrative Tribunal (Service Outside Victoria and Other Amendments) Rules 2014
SR No. 182	Victorian Civil and Administrative Tribunal (Vexatious Proceedings Amendment) Rules 2014
SR No. 74	Victorian Energy Efficiency Target Amendment Regulations 2014
SR No. 151	Victorian Inspectorate Amendment Regulations 2014
SR No. 87	Water (Estimation, Supply and Sewerage) Regulations 2014
SR No. 99	Water (Long Service Leave) Amendment Regulations 2014
SR No. 69	Water (Resource Management) Amendment Regulations 2014
SR No. 88	Water (Trade Waste) Regulations 2014
SR No. 171	Water Industry (Reservoir Parks Land) Regulations 2014
SR No. 86	Water Industry Revocation Regulations 2014
SR No. 53	Wildlife (Game) Amendment Regulations 2014
SR No. 190	Wildlife (State Game Reserves) Regulations 2014
SR No. 75	Wildlife Amendment Regulations 2014
SR No. 155	Wildlife Further Amendment Regulations 2014
SR No. 71	Workplace Injury Rehabilitation and Compensation (Savings and Transitional) Regulations 2014
SR No. 108	Workplace Injury Rehabilitation and Compensation (Savings and Transitional) Amendment Regulations 2014
SR No. 41	Workplace Injury Rehabilitation and Compensation Regulations 2014
SR No. 188	Wrongs (Part VBA)(Asbestos Related Claims) Regulations 2014

APPENDIX 2 — REGULATIONS 2014

REGULATION IMPACT STATEMENTS

SR No. 5	Fisheries (Fees, Royalties and Levies) and Fisheries Amendment Regulations 2014
SR No. 17	Local Government (Planning and Reporting) Regulations 2014
SR No. 52	Forests (Fire Protection) Regulations 2014
SR No. 72	Sex Work (Fees) Regulations 2014
SR No. 87	Water (Estimation, Supply and Sewerage) Regulations 2014
SR No. 114	Owners Corporations Amendment Regulations 2014
SR No. 123	Supreme Court (Fees) Amendment Regulations 2014
SR No. 154	Mineral Resources (Sustainable Development)(Extractive Industries) Amendment Regulations 2014
SR No. 165	Country Fire Authority Regulations 2014
SR No. 190	Wildlife (State Game Reserves) Regulations 2014

EXEMPTIONS UNDER SECTION 8

S. 8(1)(A) — WOULD NOT IMPOSE SIGNIFICANT ECONOMIC OR SOCIAL BURDEN

SR No. 1	Transport (Conduct) and (Infringements) Amendment (Extension of Smoking Bans) Regulations 2014
SR No. 2	Meat Industry Amendment Regulations 2014
SR No. 3	Co-operatives National Law (Victoria) Local Regulations 2014
SR No. 4	Australian Crime Commission (State Provisions) Regulations 2014
SR No. 9	Gas Safety (Gas Installation) Amendment Regulations 2014
SR No. 12	Corrections Amendment (Breach of Parole and Other Matters) Regulations 2014
SR No. 15	Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Regulations 2014
SR No. 18	Magistrates' Court (Arbitration)(Professional Costs) Amendment Regulations 2014
SR No. 19	Adoption Amendment Regulations 2014
SR No. 23	Road Safety (Vehicles) Amendment (Heavy Vehicle National Law) Regulations 2014
SR No. 27	Road Safety (Drivers) Amendment (Variation of Driver Licence and Learner Permit) Regulations 2014
SR No. 30	Rail Safety Amendment Regulations 2014
SR No. 40	Conservation, Forests and Lands (Infringement Notice) and (Primary Industries Infringement Notices) Amendment Regulations 2014
SR No. 43	Child Employment Regulations 2014

SR No. 46	Road Safety (Drivers) and (Vehicles) Amendment Regulations 2014
SR No. 49	Freedom of Information (Access Charges) Regulations 2014
SR No. 51	Building Amendment (National Construction Code) Regulations 2014
SR No. 53	Wildlife (Game) Amendment Regulations 2014
SR No. 54	Occupational Health and Safety Amendment Regulations 2014
SR No. 55	Equipment (Public Safety) Amendment Regulations 2014
SR No. 56	Dangerous Goods (Storage and Handling) Amendment Regulations 2014
SR No. 58	Liquor Control Reform Amendment (Live Music Events and Other Matters) Regulations 2014
SR No. 59	Drugs, Poisons and Controlled Substances (Volatile Substances) Regulations 2014
SR No. 63	Transport (Taxi-cabs) Amendment Regulations 2014
SR No. 67	Road Safety (General) Amendment (Corporate Penalties) Regulations 2014
SR No. 68	Road Safety Road Rules Amendment (Corporate Penalties) Rules 2014
SR No. 69	Water (Resource Management) Amendment Regulations 2014
SR No. 73	Sale of Land (Public Auctions) Regulations 2014
SR No. 74	Victorian Energy Efficiency Target Amendment Regulations 2014
SR No. 79	Victoria Police Regulations 2014
SR No. 86	Water Industry Revocation Regulations 2014
SR No. 88	Water (Trade Waste) Regulations 2014
SR No. 91	Children, Youth and Families Amendment Regulations 2014
SR No. 92	Environment Protection (Distribution of Landfill Levy) Amendment Regulations 2014
SR No. 93	Gambling Regulations and Gambling Regulation (Prescribed Connection and Prescribed Profit) Amendment Regulations 2014
SR No. 95	Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Amendment Regulations 2014
SR No. 96	Fisheries and Fisheries (Fees, Royalties and Levies) Further Amendment Regulations 2014
SR No. 98	Conservation, Forests and Lands (Infringement Notice) Amendment (Forests and Wildlife) Regulations 2014
SR No. 99	Water (Long Service Leave) Amendment Regulations 2014
SR No. 102	Magistrates' Court (Arbitration) Amendment Regulations 2014
SR No. 103	Infringements (General) Amendment Regulations 2014
SR No. 107	Guardianship and Administration (Fees) Amendment Regulations 2014
SR No. 110	Honorary Justices Regulations 2014
SR No. 111	Honorary Justices (Transitional) Regulations 2014
SR No. 113	Estate Agents (Contracts) Amendment Regulations 2014
SR No. 116	Residential Tenancies Amendment (Prescribed Rating for Replacement Water Appliances) Regulations 2014
SR No. 117	Non-Emergency Patient Transport Amendment Regulations 2014
SR No. 122	Fences Regulations 2014
SR No. 124	Environment Protection (Distribution of Landfill Levy) Further Amendment Regulations 2014
SR No. 134	Sustainable Forests (Timber Harvesting) Revocation Regulations 2014
SR No. 135	Prevention of Cruelty to Animals Amendment Regulations 2014
SR No. 136	Seafood Safety Regulations 2014
SR No. 141	Credit Regulations 2014

SR No. 142	Sex Offenders Registration Regulations 2014
SR No. 143	Road Safety (Drivers) and (General) Amendment (Alcohol Interlocks) Regulations 2014
SR No. 144	Road Safety (Drivers) and (General) Amendment (Motor Cycle Graduated Licensing System) Regulations 2014
SR No. 145	Road Safety (General) and (Drivers) Amendment Regulations 2014
SR No. 146	Road Safety Road Rules Amendment Rules 2014
SR No. 147	Corrections Amendment (Smoke-Free Prisons and Other Matters) Regulations 2014
SR No. 149	Transport (Conduct) and (Infringements) Amendment (Park and Ride Facilities) Regulations 2014
SR No. 152	Infringements (General) Further Amendment Regulations 2014
SR No. 155	Wildlife Further Amendment Regulations 2014
SR No. 161	Financial Management Amendment Regulations 2014
SR No. 166	Parliamentary Salaries and Superannuation (Allowances) Amendment Regulations 2014
SR No. 169	Mineral Resources (Sustainable Development)(Mineral Industries) Amendment Regulations 2014
SR No. 170	Royal Botanic Gardens Regulations 2014
SR No. 171	Water Industry (Reservoir Parks Land) Regulations 2014
SR No. 172	Gambling Regulations (Pre-commitment and Loyalty Scheme) Regulations 2014
SR No. 173	Building Amendment (Farm Buildings) Regulations 2014
SR No. 183	Agricultural and Veterinary Chemicals (Control of Use)(Infringement Notices) Amendment Regulations 2014
SR No. 184	Prevention of Cruelty to Animals Further Amendment Regulations 2014
SR No. 185	Conservation, Forests and Lands (Primary Industries Infringement Notices) Amendment (Fisheries) Regulations 2014
SR No. 186	Status of Children Regulations 2014
SR No. 195	Drugs, Poisons and Controlled Substances (Drugs of Dependence - Synthetic Cannabinoids) Regulations 2014
SR No. 198	Tourist and Heritage Railways Amendment Regulations 2014
SR No. 199	Road Safety (Drivers), (General) and (Vehicles) Amendment Regulations 2014
SR No. 200	Road Safety (Drivers) Amendment (Probationary Prohibited Vehicles) Regulations 2014
SR No. 201	Road Safety (Vehicles) Amendment Regulations 2014

S. 8(1)(A) AND (C) – NO APPRECIABLE ECONOMIC OR SOCIAL BURDEN AND FUNDAMENTALLY DECLARATORY NATURE

SR No. 20	Corrections Amendment (Firearms) Regulations 2014
SR No. 25	Corrections (Victims Register) Regulations 2014
SR No. 37	Building Amendment (General) Regulations 2014
SR No. 39	Survey Co-ordination Regulations 2014
SR No. 66	Transport (Ticketing) Amendment (On-the-Spot Penalty Fares) Regulations 2014
SR No. 75	Wildlife Amendment Regulations 2014
SR No. 78	Police Regulation Revocation Regulations 2014
SR No. 81	Country Fire Authority Amendment (Member Compensation) Regulations 2014
SR No. 109	Building Amendment (New Residential Zones) Regulations 2014
SR No. 120	Motor Car Traders Amendment (Red Tape Reduction) Regulations 2014

SR No. 126	Planning and Environment Amendment (VicSmart) Regulations 2014
SR No. 151	Victorian Inspectorate Amendment Regulations 2014
SR No. 162	Building Further Amendment (New Residential Zones) Regulations 2014
SR No. 174	Heritage (General) Amendment (Fees) Regulations 2014
SR No. 192	Assisted Reproductive Treatment Amendment Regulations 2014
SR No. 197	Building Amendment (Live Music) Regulations 2014

S. 8(1)(A) AND 8(1)(G)(I) – NO ECONOMIC OR SOCIAL BURDEN AND DEAL WITH ADMINISTRATION OR PROCEDURES WITHIN OR AS BETWEEN DEPARTMENTS OR DECLARED AUTHORITIES WITHIN THE MEANING OF THE ADMINISTRATION ACT 2004

SR No. 29	Financial Management Regulations 2014
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S. 8(1)(B) – IS A RULE WHICH RELATES ONLY TO A COURT OR TRIBUNAL

SR No. 10	Supreme Court (Administration and Probate) Rules 2014
SR No. 11	Magistrates' Court General Civil and Procedure and Miscellaneous Civil Proceedings (Trans-Tasman Proceedings Amendment) Rules 2014
SR No. 13	Victims of Crime Assistance Amendment No.1 Rules 2014
SR No. 14	County Court (Chapter III Amendment No. 3) Rules 2014
SR No. 24	Magistrates' Court Criminal Procedure (Amendment No. 5) Rules 2014
SR No. 28	Magistrates' Court (Judicial Registrars)(Personal Safety Intervention Orders Amendment) Rules 2014
SR No. 35	Victorian Civil and Administrative Tribunal (Amendment No. 10) Rules 2014
SR No. 47	Supreme Court (Commercial, TEC and Intellectual Property Lists Amendment) Rules 2014
SR No. 48	Supreme Court (RedCrest Electronic Case Management System Amendment) Rules 2014
SR No. 70	Magistrates' Court (Chapter I and II Miscellaneous Amendments) Rules 2014
SR No. 89	Mental Health Tribunal Rules 2014
SR No. 100	County Court (Chapters I and III Miscellaneous Amendments) Rules 2014
SR No. 105	Magistrates' Court General Civil Procedure (Offers of Compromise Amendments) Rules 2014
SR No. 106	Magistrates' Court (Miscellaneous Civil Proceedings)(Arbitration Costs Amendment) Rules 2014
SR No. 112	Magistrates' Court General Regulations 2014
SR No. 119	Coroners Court (Form 10 Amendment) Rules 2014
SR No. 121	Magistrates' Court Criminal Procedure (Infringement Court Venue Amendment) Rules 2014
SR No. 133	Victorian Civil and Administrative Tribunal (Amendment No. 11) Rules 2014
SR No. 138	Criminal Organisations Control Amendment Regulations 2014
SR No. 150	County Court (Chapter I Costs Amendment) Rules 2014
SR No. 156	Supreme Court (Oath and Affirmation of Office) Regulations 2014
SR No. 157	County Court (Oath and Affirmation of Office) Regulations 2014
SR No. 158	Magistrates' Court General Amendment (Judicial Registrar Oath and Affirmation of Office) Regulations 2014

SR No. 159	Coroners Amendment Regulations 2014
SR No. 160	Children, Youth and Families Amendment (Judicial Registrar Oath and Affirmation of Office) Regulations 2014
SR No. 176	Country Court (Chapter I Circuit Fees, Expenses and Allowances Amendment) Rules 2014
SR No. 177	County Court (Chapter II Vexatious Proceedings Amendment) Rules 2014
SR No. 178	County Court (Chapter III Amendment No. 4) Rules 2014
SR No. 179	Magistrates' Court (Judicial Registrars) Amendment Rules 2014
SR No. 180	Magistrates' Court General Civil Procedure (Scale of Costs Amendment) Rules 2014
SR No. 181	Victorian Civil and Administrative Tribunal (Service Outside Victoria and Other Amendments) Rules 2014
SR No. 182	Victorian Civil and Administrative Tribunal (Vexatious Proceedings Amendment) Rules 2014
SR No. 202	Coroners Court (Amendment No. 2) Rules 2014
SR No. 203	Magistrates' Court (Vexatious Proceedings Amendments) Rules 2014
SR No. 204	Supreme Court (Chapter I Scale of Costs Appendices A and B Amendment) Rules 2014
SR No. 205	Supreme Court (Chapter II Arbitration Amendment) Rules 2014
SR No. 206	Supreme Court (Vexatious Proceedings Amendments) Rules 2014
SR No. 207	Supreme Court (Chapter IV Mental Impairment and Unfitness To Be Tried Amendment) Rules 2014
SR No. 208	Supreme Court (Chapters II and III Family Provision and Other Matters Amendment) Rules 2014
SR No. 209	Supreme Court (Civil Appeals Amendments) Rules 2014
SR No. 210	County Court (Miscellaneous Amendments) Rules 2014

S. 8(1)(C) — FUNDAMENTALLY DECLARATORY OR MACHINERY NATURE

SR No. 6	Transport (Conduct) Amendment Regulations 2014
SR No. 7	Major Crime (Investigative Powers) Amendment Regulations 2014
SR No. 8	Tobacco Amendment Regulations 2014
SR No. 16	Sentencing Amendment Regulations 2014
SR No. 21	Serious Sex Offenders (Detention and Supervision) Amendment Regulations 2014
SR No. 22	National Gas (Victoria)(Declared System Provisions) Regulations 2014
SR No. 26	Prisoners (Interstate Transfer) Regulations 2014
SR No. 31	Rail Safety National Law (Limited Accreditation Exemptions) Regulations 2014
SR No. 32	Transport (Safety Schemes Compliance and Enforcement)(Infringements) Regulations 2014
SR No. 33	Transport (Conduct) Further Amendment Regulations 2014
SR No. 34	Transport (Infringements) Amendment Regulations 2014
SR No. 42	Crimes (Confiscation) Regulations 2014
SR No. 50	Drugs, Poisons and Controlled Substances (Confiscation) Regulations 2014
SR No. 57	Sentencing Further Amendment Regulations 2014
SR No. 60	Plumbing Amendment Regulations 2014
SR No. 64	Transport (Passenger Vehicles) Amendment (Taxi Services Reforms and Other Matters) Regulations 2014
SR No. 65	Transport (Taxi-Cabs) and (Taxi-Cab Licences - Market and Trading) Amendment Regulations 2014

SR No. 76	Tobacco (Victorian Health Promotion Foundation) Amendment Regulations 2014
SR No. 78	Police Regulation Revocation Regulations 2014
SR No. 80	Victoria Police (Fees and Charges) Regulations 2014
SR No. 82	Metropolitan Fire Brigades (General) Amendment (Road Accident Rescue Service) Regulations 2014
SR No. 83	Subordinate Legislation Regulations 2014
SR No. 90	Domestic Animals Amendment Regulations 2014
SR No. 94	Country Fire Authority (Community Fire Refuges) Regulations 2014
SR No. 101	Treasury Corporation of Victoria (Prescribed Agencies) Regulations 2014
SR No. 115	Sale of Land (Infringements) Regulations 2014
SR No. 118	Evidence (Affidavits and Statutory Declarations) Amendment Regulations 2014
SR No. 131	Road Safety (Vehicles) Amendment (Emergency Management Commissioner) Regulations 2014
SR No. 132	Road Safety Road Rules Amendment (Emergency Management Commissioner) Rules 2014
SR No. 137	Crimes (Search Warrant) Regulations 2014
SR No. 139	Confiscation Amendment Regulations 2014
SR No. 140	Credit (Administration) Regulations 2014
SR No. 148	Valuation of Land Regulations 2014
SR No. 153	Estate Agents (General, Accounts and Audit) Amendment (Penalty and Infringements) Regulations 2014
SR No. 167	EastLink Project Amendment Regulations 2014
SR No. 168	Melbourne City Link Amendment Regulations 2014
SR No. 175	Accident Towing Services Amendment Regulations 2014
SR No. 193	Drugs, Posions and Controlled Substances (Commonwealth Standard) Revocation Regulations 2014
SR No. 196	Building Amendment (Additional New Residential Zones) Regulations 2014

S. 8(1)(C) AND (D) – FUNDAMENTALLY DECLARATORY OR MACHINERY NATURE – FEE INCREASE DOES NOT EXCEED THE TREASURER’S ANNUAL APPROVED RATE OF 2.25%

SR No. 104	Building Amendment (Fees and Other Matters) Regulations 2014
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S. 8(1)(D) – FEE INCREASE OF 2.25 PERCENT – TREASURER’S RATE

SR No. 36	Electricity Safety (Installations) Amendment (Fees) Regulations 2014
SR No. 44	Transfer of Land (Fees) Amendment Regulations 2014
SR No. 85	Road Safety (Drivers) and (Vehicles) Amendment (Fees) Regulations 2014

S. 8(1)(E)(III) – EXTENSION OF TIME – SECTION 5A(3) PREMIER’S CERTIFICATE

SR No. 38	Subordinate Legislation (Architects Regulations 2004) Extension Regulations 2014
SR No. 61	Subordinate Legislation (Port Management (Local Ports) Regulations 2004) Extension Regulations 2014

SR No. 97	Subordinate Legislation (Court Security Regulations 2004) Extension Regulations 2014
SR No. 127	Subordinate Legislation (Instruments (Fees) Regulations 2004) Extension Regulations 2014
SR No. 128	Subordinate Legislation (Property Law (Fees) Regulations 2004) Extension Regulations 2014
SR No. 129	Subordinate Legislation (Subdivision (Registrar's Fees) Regulations 2004) Extension Regulations 2014
SR No. 130	Subordinate Legislation (Transfer of Land (Fees) Regulations 2004) Extension Regulations 2014
SR No. 125	Subordinate Legislation (Local Government (General) Regulations 2004) Extension Regulations 2014

**S. 8(1)(E)(VI) – ONLY EXEMPTS UNDER SECTION 4A(1)(C)
AN INSTRUMENT OR A CLASS OF INSTRUMENT
FROM THE OPERATION OF THIS ACT OR
ANY SPECIFIED PROVISION OF THIS ACT**

SR No. 45	Subordinate Legislation (Legislative Instruments) Amendment Regulations 2014
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S. 9(3) – PREMIER’S CERTIFICATE – SPECIAL CIRCUMSTANCES

SR No. 84	Road Safety (Drivers) Amendment (Renewal Fees) Interim Regulations 2014
SR No. 163	Planning and Environment (Fees) Interim Regulations 2014
SR No. 164	Subdivision (Fees) Interim Regulations 2014

**SECTION 620(3) OF THE WORKPLACE INJURY REHABILITATION
AND COMPENSATION ACT 2013 – EXEMPTION FROM THE
OPERATION OF SECTIONS 6 AND 7 OF THE SUBORDINATE
LEGISLATION ACT 1994**

SR No. 41	Workplace Injury Rehabilitation and Compensation Regulations 2014
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**SECTION 621(5) OF THE WORKPLACE INJURY REHABILITATION
AND COMPENSATION ACT 2013 – EXEMPTION FROM THE
OPERATION OF SECTIONS 6 AND 7 OF THE SUBORDINATE
LEGISLATION ACT 1994**

SR No. 71	Workplace Injury Rehabilitation and Compensation (Savings and Transitional) Regulations 2014
SR No. 108	Workplace Injury Rehabilitation and Compensation (Savings and Transitional) Amendment Regulations 2014

NATIONAL LAW

Education and Care Services National Amendment Regulations 2014
Heavy Vehicle National Law

APPENDIX 3

LEGISLATIVE INSTRUMENTS 2014 - ALPHABETICAL LISTING

Alcohol Interlock Guidelines
Altering the Fees and Charges of a Class A Cemetery Trust Pursuant to Section 39 of the Cemeteries and Crematoria Act 2003
Amendment of Racing Victoria Bookmakers' Licence Levy Rules 2012
Amendment to the Determination that Specified Areas are Designated Bushfire Prone Areas
Amendment to the Determination that Specified Areas are Designated Bushfire Prone Areas - 13/10/14
Amendments to the Alcohol Interlock Guidelines
Amendments to the Greyhound Racing Victoria Local Rules of Racing and the Plumpton Coursing Rules
Approved Competency Units for the purposes of Part 12 of the Plumbing Regulations 2008
Code of Practice for the operation of breeding and rearing businesses 2014
Code of Practice for Timber Production 2014
Corangamite Catchment Management Authority By-law No. 4 Waterways Protection 2014
Declaration of Discount Factor under Section 19 of the Victorian Energy Efficiency Act 2007
Declaration of Variation to Regulation 146 of the Road Safety (Vehicles) Regulations 2009 Under Section 96A
Determination of Fees
Determination under section 3.6.5A - Fixing the Value of the Supervision Charge for Venue Operators for 2013-14
Driver Accreditation (Metropolitan Hire-Car) Amending Instrument
Driver Accreditation Application, Test, Course and Renewal Requirements Instrument
East Gippsland Catchment Management Authority By-law 2014-1 Waterways Protection
Electronic Conveyancing Operating Requirements - Version 2
Electronic Conveyancing Participation Rules - Version 2
Energy Retail Code Version 11
Exemption for retail sale or catering - eggs from small producers
Goulburn Broken Catchment Management Authority By-law No.3 Waterways Protection 2014
Greyhound Racing Victoria - Rule Amendments - 03/03/15
Greyhound Racing Victoria - Rule Amendments - 1 Jan 2015
Greyhound Racing Victoria - Rules Amendments - As of 1 August 2014
Guidelines for Assessing Fitness to Drive Under Section 27
Harness Racing Victoria - Notice of Amendments to Australian Rules of Harness Racing - 27/10/14
Harness Racing Victoria - Notice of Amendments to Australian Rules of Harness Racing (ARHR), Australian Trotting Stud Book Regulations, (ATSBR) and Australian Handicapping Rules (AHR)
Mallee Catchment Management Authority By-law No. 1 Waterways Protection 2014
Ministerial Determination - Section 5 of the Retail Leases Act 2003
Ministerial Direction 142 - Standing Application to amend an RTO's Scope of Registration

Ministerial Direction MD141 - Special Religious Instruction in Government Schools
Ministerial Direction MD144 - Amendment to Ministerial Direction MD141 Special Religious Instruction in Government Schools
Ministerial Direction requiring certain classes of persons to complete Advanced Responsible Service of Alcohol Training Pursuant to Section 146F
Ministerial Direction to Adult Education Institutions on Executive Remuneration
Ministerial Direction under section 3.8A.2
Ministerial Order - Mandatory Code of Practice for the Employment of Children in Entertainment (2014)
Ministerial Order 749 - Structured Workplace Learning and Work Experience - Arrangement Forms and Travel and Accommodation Forms
Ministerial Order 769 - Amendment to Ministerial Order 615 fixing of fees administered by the Victorian Registration and Qualifications Authority
Ministerial Order No. 755 - Exemption from Attendance or Enrolment at School (Amendment) Order – 2014
Ministerial Order No. 765 - Victorian Institute of Teaching Schedule of Registration Fees 2014-15
Ministerial Order No. 790 - Amending Ministerial Order No. 615 - Amendment to Order fixing of fees administered by the Victorian Registration and Qualifications Authority
Ministerial Order under section 3.4A.20K
Ministerial Order under section 3.4A.5(3)
North Central Catchment Management Authority By-law No. 1/2014 Waterways Protection
North East Catchment Management Authority By-law No. 2014/01 Waterways Protection
Notice - Lord Mayoral, Deputy Lord Mayoral and Councillor Allowances Alteration - Melbourne City Council
Notice - Mayoral and Councillor Allowances Adjustment
Notice - Mayoral and Deputy Mayoral Allowances Alteration - Greater Geelong City Council
Notice - Senior Officer Remuneration Threshold Increase
Notice appointing East Sunday 2015 as a Public Holiday under Section 7
Notice of Amendments to Australian Rules of Harness Racing
Notice of Legislative Instrument under the Food Act 1984 – Order under Section 41
Notice Under Section 162L(1) of the Transport (Compliance and Miscellaneous) Act 1983 (VIC)
Order - Exempting Small Egg Producers from Requirement for Marking of Eggs under the Food Standards Code
Order in Council - Declaration of class of motor vehicles to be tractors
Order under Section 7 Varying the Project Area and Extended Project Area
Ordering Amending the Flora and Fauna Guarantee (Taking, Trading In, or Keeping of Listed Fish) Order No. 1/2009
Pre-commitment Player Accountant Equipment Technical Standards
Pre-Commitment System Requirements Standard
Southern Metropolitan Cemetery Trust (SMCT) Scale of Fees and Charges
Variation to the Best Practice Environmental Management - Siting, Design, Operation and Rehabilitation of Landfills (EPA Victoria Publication 788)
Variation to the Protocol for Environmental Management - Domestic Ballast Water Management in Victorian State Waters (EPA Victoria Publication 949)
West Gippsland Catchment Management Authority By-law No.3 Waterways Protection 2014
Wimmera Catchment Management Authority By-law No.2 Waterways Protection 2014

APPENDIX 4

LEGISLATIVE INSTRUMENTS 2014

S.12F(1)(A) – DOES NOT IMPOSE A SIGNIFICANT ECONOMIC OR SOCIAL BURDEN

Amendments to the Greyhound Racing Victoria Local Rules of Racing and the Plumpton Coursing Rules
Ministerial Direction under section 3.8A.2
Ministerial Direction MD141 - Special Religious Instruction in Government Schools
Notice of Amendments to Australian Rules of Harness Racing
Order in Council - Declaration of class of motor vehicles to be tractors
Ministerial Direction MD144 - Amendment to Ministerial Direction MD141 Special Religious Instruction in Government Schools
Amendment to the Determination that Specified Areas are Designated Bushfire Prone Areas
Greyhound Racing Victoria - Rules Amendments - As of 1 August 2014
Amendment of Racing Victoria Bookmakers' Licence Levy Rules 2012
Declaration of Variation to Regulation 146 of the Road Safety (Vehicles) Regulations 2009 Under Section 96A
Ministerial Direction 142 - Standing Application to amend an RTO's Scope of Registration
Ministerial Order 769 - Amendment to Ministerial Order 615 fixing of fees administered by the Victorian Registration and Qualifications Authority
Order - Exempting Small Egg Producers from Requirement for Marking of Eggs under the Food Standards Code
Exemption for retail sale or catering - eggs from small producers
Ministerial Order No. 755 - Exemption from Attendance or Enrolment at School (Amendment) Order – 2014
Altering the Fees and Charges of a Class A Cemetery Trust Pursuant to Section 39 of the Cemeteries and Crematoria Act 2003
Approved Competency Units for the purposes of Part 12 of the Plumbing Regulations 2008
Ministerial Determination - Section 5 of the Retail Leases Act 2003
Ministerial Order No. 790 - Amending Ministerial Order No. 615 - Amendment to Order fixing of fees administered by the Victorian Registration and Qualifications Authority
Variation to the Best Practice Environmental Management - Siting, Design, Operation and Rehabilitation of Landfills (EPA Victoria Publication 788)
Code of Practice for Timber Production 2014
Driver Accreditation (Metropolitan Hire-Car) Amending Instrument
Harness Racing Victoria - Notice of Amendments to Australian Rules of Harness Racing - 27/10/14
Amendment to the Determination that Specified Areas are Designated Bushfire Prone Areas - 13/10/14
Ordering Amending the Flora and Fauna Guarantee (Taking, Trading In, or Keeping of Listed Fish) Order No. 1/2009
Declaration of Discount Factor under Section 19 of the Victorian Energy Efficiency Act 2007

Notice - Mayoral and Deputy Mayoral Allowances Alteration - Greater Geelong City Council
Notice - Mayoral and Councillor Allowances Adjustment
Notice - Lord Mayoral, Deputy Lord Mayoral and Councillor Allowances Alteration - Melbourne City Council
Notice - Senior Officer Remuneration Threshold Increase
Ministerial Direction requiring certain classes of persons to complete Advanced Responsible Service of Alcohol Training Pursuant to Section 146F
Harness Racing Victoria - Notice of Amendments to Australian Rules of Harness Racing (ARHR), Australian Trotting Stud Book Regulations, (ATSBR) and Australian Handicapping Rules (AHR)
Alcohol Interlock Guidelines
Amendments to the Alcohol Interlock Guidelines
Guidelines for Assessing Fitness to Drive Under Section 27
Pre-commitment Player Accountant Equipment Technical Standards
Greyhound Racing Victoria - Rule Amendments - 03/03/15
Order under Section 7 Varying the Project Area and Extended Project Area
Determination under section 3.6.5A - Fixing the Value of the Supervision Charge for Venue Operators for 2013-14

S. 12F(1)(A) AND (B) – DOES NOT IMPOSE A SIGNIFICANT ECONOMIC OR SOCIAL BURDEN AND FUNDAMENTALLY DECLARATORY OR MACHINERY IN NATURE

Pre-Commitment System Requirements Standard

S. 12F(1)(A) AND (C) WOULD NOT IMPOSE SIGNIFICANT ECONOMIC OR SOCIAL BURDEN AND DOES NOT EXCEED THE TREASURERS’ ANNUAL APPROVED RATE OF 2.5%

Ministerial Order No. 765 - Victorian Institute of Teaching Schedule of Registration Fees 2014-15

S. 12F(1)(A) AND (F) – WOULD NOT IMPOSE SIGNIFICANT ECONOMIC OR SOCIAL BURDEN – IS REQUIRED UNDER A NATIONAL UNIFORM LEGISLATION SCHEME AND AN ASSESSMENT OF COSTS AND BENEFITS HAS BEEN UNDERTAKEN UNDER THAT SCHEME

Electronic Conveyancing Operating Requirements - Version 2
Electronic Conveyancing Participation Rules - Version 2

S. 12F(1)(B) – FUNDAMENTALLY DECLARATORY OR MACHINERY IN NATURE

Ministerial Order 749 - Structured Workplace Learning and Work Experience - Arrangement Forms and Travel and Accommodation Forms
Notice of Legislative Instrument under the Food Act 1984 – Order under Section 41
Ministerial Order under section 3.4A.5(3)

Ministerial Order under section 3.4A.20K
Variation to the Protocol for Environmental Management - Domestic Ballast Water Management in Victorian State Waters (EPA Victoria Publication 949)

**S. 12F(1)(C) – FEE INCREASE OF 2.25 PERCENT –
TREASURER’S RATE**

Determination of Fees

**S. 12F(1)(D) – ONLY IMPOSES A BURDEN ON A PUBLIC SECTOR
BODY**

Ministerial Direction to Adult Education Institutions on Executive Remuneration

**S. 12F(1)(G) – UNDERGONE AN ANALYTICAL AND
CONSULTATION PROCESS**

North Central Catchment Management Authority By-law No. 1/2014 Waterways Protection
Driver Accreditation Application, Test, Course and Renewal Requirements Instrument
Corangamite Catchment Management Authority By-law No. 4 Waterways Protection 2014
Energy Retail Code Version 11
North East Catchment Management Authority By-law No. 2014/01 Waterways Protection
Mallee Catchment Management Authority By-law No. 1 Waterways Protection 2014
Wimmera Catchment Management Authority By-law No.2 Waterways Protection 2014
West Gippsland Catchment Management Authority By-law No.3 Waterways Protection 2014
Goulburn Broken Catchment Management Authority By-law No.3 Waterways Protection 2014
East Gippsland Catchment Management Authority By-law 2014-1 Waterways Protection

S. 12G – PREMIER’S CERTIFICATE

Notice appointing East Sunday 2015 as a Public Holiday under Section 7
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S. 12H – REGULATORY IMPACT STATEMENT

Ministerial Order - Mandatory Code of Practice for the Employment of Children in Entertainment (2014)
Notice Under Section 162L(1) of the Transport (Compliance and Miscellaneous) Act 1983 (VIC)
Code of Practice for the operation of breeding and rearing businesses 2014
Southern Metropolitan Cemetery Trust (SMCT) Scale of Fees and Charges

APPENDIX 5

MINISTERIAL CORRESPONDENCE

This Appendix contains a list of correspondence sent to responsible Ministers by the Subcommittee regarding 2014 regulations. The Appendix categorises correspondence in accordance with the nature of the issue raised by the Subcommittee.

Regulation/Legislative Instrument	Minister	Issue	Date of Committee's Letter / Minister's response
SR No. 62 – Transport (Taxi-cab Industry Accreditation) Amendment Regulations	Minister for Public Transport	Sought the Minister's advice as to the adequacy of the Human Rights Certificate in respect of regulation 11.	05-08-14 <u>11-09-14</u>
LI – Ministerial Direction – MD141	Minister for Education	Sought further information from the Minister about a number of possible effects of MD141.	05-08-14 <u>22-08-14</u>
LI – Ministerial Order No. 765	Minister for Education	Sought clarification of the rate applied by the Treasurer in relation to the exemption certificate.	18-08-14 <u>29-08-14</u>
SR No. 147 – Corrections Amendment (Smoke-Free Prisons and Other Matters) Regulations 2014	Minister for Corrections	Sought further information in relation to Regulation 13(4) of the principal regulations as inserted by Regulation 5(1).	18-03-15 <u>28-04-15</u>
SR No. 163 – Planning and Environment (Fees) Interim Regulations 2014 SR No. 164 – Subdivision (Fees) Interim Regulations 2014	Minister for Planning	Sought the Minister's advice as to whether it is expected permanent regulations will be made by October 2015.	18-03-15 <u>19-04-15</u>

APPENDIX 6

COMMITTEE PRACTICE NOTES

EXEMPTIONS

- **Dating Certificates.** The Subcommittee has occasionally been presented with undated exemption certificates. The Subcommittee expects all certificates to be dated.
- **Reasons for Exemption.** The Subcommittee has occasionally received regulations or legislative instruments exempted under section 9 with certificates of exemption which fail to adequately explain the reasons for granting the exemption or with reasons for granting the exemption contained in the Explanatory Memorandum. It should be noted that it is a requirement of section 8(3) of the *Subordinate Legislation Act 1994* (Vic) that certificates of exemption 'specify the reasons for the exemption'. The Subcommittee expects all exemption certificates to contain adequate explanations of the reasons for granting the exemptions.
- **Extension of Regulations for Periods up to 12 months.** Regulations expire 10 years after they have been made. The Subcommittee has been presented with a number of regulations made under sections 8(1)(e)(iii) and 5A(1) extending regulations due to expire for periods up to 12 months. Before an extension of time can be granted, the Minister must certify that due to 'special circumstances' there is insufficient time available to comply with the formal regulation-making requirements of the *Subordinate Legislation Act 1994*. The Subcommittee expects details of the 'special circumstances' to be contained in the section 5A(1) certificate itself as required by the *Subordinate Legislation Act 1994*. Please see additional general comments below.
- **Using Appropriate Exemption Categories.** Department and agency officers need to be careful when determining which category to use when exempting regulations or legislative instruments from the Regulation Impact Statement process.
- **Typographical Errors.** Department and agency officers need to be careful when preparing certificates to ensure that they do not contain typographical errors.

EXTENSION OF TIME

The Subcommittee is often presented with regulations which require an extension of time for a period of twelve months. Such regulations are accompanied by a section 5A(1) certificate of special circumstances which outlines the particular reasons for the extension. It is difficult for the Subcommittee to know whether any particular regulation has been accompanied by a previous extension of time certificate. Ongoing extensions of time in respect of a particular regulation are clearly matters upon which the Subcommittee would make adverse comment.

The Subcommittee expects that in the event that a second or subsequent extensions of time are sought for a regulation (in addition to an initial request), the Minister inform it that this is the case.

EXPLANATORY MEMORANDA

The Subcommittee expects Explanatory Memoranda to comply with the requirements contained in Paragraph 8.10 Premier's Guidelines. An Explanatory Memorandum must contain: –

- A brief outline of each provision;
- An explanation of the changes effected by each provision;
- A statement of the reasons for making the rule;
- Where applicable, the reasons why no regulatory impact statement was prepared;
- a statement as to whether consultation has taken place, and if it has not taken place, an explanation as to why a decision was made not to consult.

FEE INCREASES: 8(1)(D) AND 8(2)

Regulations governing fee increases are made under section 8(1)(d) of the *Subordinate Legislation Act 1994* (Vic). For each financial year a percentage increase is set by the Treasurer. The Treasurer notifies the Subcommittee in writing of the relevant percentage increase.

A regulation may increase a number of fees, with some individual fee increases falling outside the rate set by the Treasurer. However when the total average of fee increases for that regulation is calculated, it falls within the rate fixed by the Treasurer. This practice is referred to as the 'basket approach'. Section 103 of the Premier's Guidelines provides that:-

103 A statutory rule can set a package of fees. This is often known as the 'basket approach'. However, the section 8(1)(d)⁶⁵ exemption does not apply if any individual fee component in the package exceeds the Treasurer's annual rate. It does not matter if the average fee increase across the package is less than the annual rate. If any individual fee is increased above the annual rate, a RIS process may need to be undertaken as the fee increase could have a significant and adverse impact on the community and business.

Section 8(2) of the *Subordinate Legislation Act 1994* (Vic) validates the rounding up of fee increases to the nearest whole dollar. Sometimes the total average increase may be greater than that set by the Treasurer but may be validated on the basis that there has been rounding up to the nearest whole dollar. The Subcommittee may only approve such increases where the extra amount can be considered trifling when compared to the whole fee. Where the amount is significant in proportion to the whole fee, the Subcommittee may request the Minister to reconsider the increase.

The Subcommittee is bound by the Guidelines. A strict interpretation of the Guidelines leads to the view that as a matter of principle individual fees in a 'basket' package should not exceed the Treasurer's annual rate. However, the Subcommittee is of the view that fee increases and the Guidelines need to be read in a commonsense manner. Clearly, it is often sensible to introduce a 'basket' package of fees. It is a more efficient and streamlined manner of introducing a large number of routine fee increases. In this instance monetary increases were extremely small.

The Subcommittee will examine each regulation carefully. The Subcommittee is conscious of its statutory obligations. The Subcommittee's view is that it is a matter of balance. The 'basket' of fees in its entirety must not exceed the Treasurer's approved annual rate. However if, in a package of a number of fees, two

⁶⁵ Section 103, Premier's Guidelines, July 2011

or three slightly exceed the Treasurer's annual rate then that may not necessarily be an immediate cause for concern. Rather, the Subcommittee will examine each fee increase, the monetary amount and what the fee is for. Each Regulation will be examined on its merits and in context.

The Subcommittee will continue to carefully scrutinise the Regulations and the Guidelines.

The preparation of a table showing new and old fees and including an indication of the percentage increase or decrease is of great assistance to the Subcommittee. The Subcommittee provides the following as an example:

Description	Current Fee	Proposed Fee	% Increase
Application for	\$100.00	\$105.00	5.0
Application for ...	\$320.00	\$325.00	1.6

INDEPENDENT ADVICE CERTIFICATES: 10(3)

Under section 10(3) of the *Subordinate Legislation Act 1994* (Vic) a Minister must ensure that independent advice as to the adequacy of a Regulation Impact Statement is obtained. The provision of that independent advice assists the Subcommittee in its review of the regulations.

LEGISLATIVE INSTRUMENTS OUTSIDE THE SUBORDINATE LEGISLATION ACT 1994

The Subcommittee plays a vital role in ensuring that rights are adequately protected. It cannot do this if provisions are incorporated in legislative instruments outside its scrutiny. The Subcommittee prefers department and agency officers not to use Guidelines and Codes of Practice. Where Guidelines and Codes of Practice are used the Subcommittee would like those Guidelines and Codes of Practice to be published and available to the public at the same time as the regulation commences operation.

PROVISION OF DOCUMENTATION TO REGULATION REVIEW SUBCOMMITTEE

The Subcommittee needs to receive Explanatory Memoranda, all certificates, Regulation Impact Statements and comments and submissions made in relation to Regulation Impact Statements within 10 days after a regulation or legislative instrument has been made. The Subcommittee has a limited time within which to review regulations. If the Committee wants to move for disallowance of a regulation it must do so within 18 sitting days of that regulation or legislative instrument being tabled in Parliament. Prior to the Committee moving a motion for disallowance, the Subcommittee corresponds and negotiates with the particular Minister. The Subcommittee needs sufficient time for this process to take place. The Subcommittee notes that pursuant to sections 15A and 16C of the Act, documentation must be forwarded to the Committee within 10 days of its making.⁶⁶

Paragraph 202 of the Guidelines also provides that: -

⁶⁶ See sections 15A and 16C of the Act.

202. Sections 15A (statutory rules) and 16C (legislative instruments) of the Act require new statutory rules and legislative instruments to be sent to SARC. The Act also specifies documents which must accompany the new statutory rule or legislative instrument when sent to SARC.⁶⁷

RECOMMENDATIONS

The Subcommittee notes that some regulations are made on the recommendation of a Minister or some other authorised body. If the Subcommittee is provided with a copy of the recommendation, it can certify that the regulations have been validly made in accordance with that recommendation. The Subcommittee would appreciate receiving copies of all recommendations.

LEGISLATIVE INSTRUMENTS – RECOMMENDATIONS

(1) Scrutiny – Timing Provision of Documents

It is important that the Committee receives the material in sufficient time to scrutinise it prior to relevant events. The Committee is supportive of initiatives by any agency to inform applicants for exemptions of the necessary lead time to process such applications. The Committee notes that a time period of three months prior to an event, in line with other government agency websites may be appropriate. The Committee therefore recommends that all material be forwarded to it in sufficient time so that it can perform its scrutiny role in accordance with the Act.

(2) Explanatory Memoranda

An earlier version of the Premier's Guidelines required the provision of an explanatory memorandum to the Committee in respect of regulations⁶⁸. However, the current guidelines appear to be silent on the matter in relation to regulations and legislative instruments. The Committee's experience is that the provision of an explanatory memorandum to it in respect of both regulations and legislative instruments is of great assistance to it. Accordingly, the Committee recommends the preparation of explanatory memoranda in relation to regulations and legislative instruments. The Committee recommends that any explanatory memorandum be forwarded to it with the other accompanying documentation in respect of regulations and legislative instruments. The Committee also recommends that the next version of the Premier's Guidelines incorporate a paragraph requiring the provision of an explanatory memorandum to it in respect of regulations and legislative instruments.

⁶⁷ Section 202, Premier's Guidelines, July, 2011.

⁶⁸ Paragraph 8.09, *Premier's Guidelines*, 2004.

APPENDIX 7
SARC REGULATIONS CHECKLISTS

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

EXEMPTION CERTIFICATES

CHECKLIST:

S. 8(1)(a),
S. 8(1)(c),
S. 8(1)(d),
S. 8(1)(f),
S. 8(1)(g),
S. 8(1)(h)

- Recommendation to make Regulations (Letter signed by Minister) *(Optional)*
- Explanatory Memorandum
- Section 6 Certificate (Consultation)(Optional)
- Section 8 (Exemption Certificate)
- Section 12A Human Rights Certificate
- Section 13 Certificate (Parliamentary Counsel) ****
- Copy of draft regulations *(Optional)*

Court Rules –
S. 8(1)(b)

- Explanatory Memorandum
- Section 8 (Exemption Certificate)
- Section 12A(3)(a) Human Rights Exemption Certificate

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

- Recommendation to make Regulations (Letter signed by Minister) *(Optional)*
- Explanatory Memorandum
- Section 8(1)(d)(iii) Exemption Certificate
- Section 5(3) Certificate (Minister certifies insufficient time to make new regulations)
- Section 12A(3)(b) Human Rights Exemption Certificate
- Section 13 Certificate (Parliamentary Counsel) ****
- Copy of draft regulations *(Optional)*

Premier's Certificate –
Special Circumstances
S. 9

- Recommendation to make Regulations (Letter signed by Minister) *(Optional)*
- Explanatory Memorandum
- Section 6 Certificate (Consultation) *(Optional)*
- Section 9 Exemption Certificate
- Section 12A Human Rights Certificate
- Section 13 Certificate (Parliamentary Counsel) ****
- Copy of draft regulations *(Optional)*

****Note Section 13 certificates are not required for court rules or for regulations which are not made by Governor-in-Council. For example the Regulations may be exempt under section 9(1)(a) and made by the Council of Legal Education. No s. 13 certificate is required in these circumstances.

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

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

REGULATION IMPACT STATEMENTS

CHECKLIST:

- Explanatory Memorandum
- Section 6 Certificate (Consultation)
- Section 10(4) Certificate (Compliance with requirements of SLA)
- Section 10(3) Certificate (Letter of Independent Assessment) *(Optional)*
- Section 12A Human Rights Certificate
- Section 13 Certificate (Parliamentary Counsel)
- Recommendation to make Regulations (Letter signed by Minister) *(Optional)*
- Regulation Impact Statement
- Copy of all submissions
- Summary of all submissions
- Copy of letters sent to those who made submissions
- Copy of draft regulations (usually part of RIS)
- Copy of RIS newspaper advertisement - invitation for public comment*
- Copy of Government Gazette advertisement - invitation for public comment*
- Copy of RIS newspaper advertisement – Notice of Decision*
- Copy of RIS Government Gazette advertisement – Notice of Decision*

*see paragraph 10.03 of Premier's Guidelines

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

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

LEGISLATIVE INSTRUMENTS

CHECKLIST:

**Section 16C of
Subordinate Legislation
Act 1994**

- Legislative Instrument
- Explanatory Memorandum
- Section 12C Consultation
- Section 12D Human Rights Certificate
- Section 12E Regulatory Impact Statement
- Section 12F Exemption Certificate
- Section 12G Premier's exemption
- Section 12H Content of Regulatory Impact Statement
- Section 12I Comments and Submissions

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