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# Useful information

## ***Role of the Committee***

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

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

## ***Interpretive use of Parliamentary Committee reports***

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

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

## ***When may human rights be limited***

Section 7 of the *Charter* provides –

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

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

## ***Glossary and Symbols***

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

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

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

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

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

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

'PCA' refers to the *Parliamentary Committees Act 2003*

'penalty units' refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (as at 1 July 2019 one penalty unit equals \$165.22)

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

'VCAT' refers to the Victorian Civil and Administrative Tribunal

[ ] denotes clause numbers in a Bill

# Alert Digest No. 10 of 2019

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## Children Legislation Amendment Bill 2019

<b>Member</b>	Hon Luke Donnellan MP	<b>Introduction Date</b>	14 August 2019
<b>Portfolio</b>	Child Protection	<b>Second Reading Date</b>	15 August 2019

### Summary

The purposes of the Bill are to:-

- Amend the *Children, Youth and Families Act 2005* to include persons in religious ministry as mandatory reporters under that Act;
- Clarify that a mandatory reporter is not able to rely on the religious confession privilege in the *Evidence Act 2008* to avoid the reporting requirement imposed by section 184 of the *Children, Youth and Families Act 2005*;
- Amend the *Crimes Act 1958* to provide that information that would be privileged under the religious confessions privilege in the *Evidence Act 2008* is no longer exempt for the purposes of section 327;
- Amend the *Evidence Act 2008* to provide that the religious confessions privilege does not apply in proceedings for an offence against section 184 of the *Children, Youth and Families Act 2005* or section 327(2) of the *Crimes Act*;
- Make various amendments to the *Children, Youth and Families Act 2005* including to confer powers on the Secretary to make authorisations in relation to non-Aboriginal children in certain circumstances, to amend powers to share information between the Secretary and community-based child and family services and between those services, to clarify that routine medical care includes immunisation in certain circumstances,<sup>1</sup>[8] and to make other minor amendments;
- Amend the *Working with Children Act 2005* to clarify and limit the grounds on which a person who has been given a negative notice on a category A application or a category A re-assessment may apply to VCAT for review of the negative notice or for an assessment notice to be given to the person;
- Amend the *Limitation of Actions Act 1958* to allow for certain actions in relation to death or personal injury arising from child abuse to be brought despite being dismissed due to the expiry of a limitation period or settled prior to the removal of limitation periods on 1 July 2015 and to provide for certain judgements and settlement agreements to be set aside.

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<sup>1</sup> See the Statement of Compatibility:- 'Clause 8 clarifies that the Secretary may authorise a person who has care of a child in out of home care to make decisions about immunisation (on the recommendation of a registered medical practitioner, nurse, midwife or pharmacist... these provisions apply in a context of out of home care where the Secretary has a statutory responsibility to ensure that children in out of home care receive appropriate health care.'

## Comments under the PCA

### ***Removal of statutory exemption for religious privilege – right to freedom of religion – when it may be limited (section 17(a)(i), PCA)***

#### Existing statutory exemption – privilege – religious confessions

Section 127<sup>2</sup> of the *Evidence Act* 2008 sets out the privilege which attaches to a religious confession or the contents of a confession made to a person when a member of a clergy. Note it does not apply if the communication involved in a religious confession was made for a criminal purpose. The Explanatory Memorandum<sup>3</sup> which accompanied the introduction of section 127 described the privilege as promoting the right to freedom of religion for the clergy of religious denominations which include the ritual of confession.

#### Effect of amendments

Section 16<sup>4</sup> of the *Constitution Act* 1975 provides for the legislative power of the Parliament. Clause 9 of the Bill amends section 182(1) of the *Children, Youth and Families Act* 2005 to include a person in religious ministry as a mandatory reporter for the purposes of that Act.<sup>[9]</sup> Clause 10 inserts additional provisions in relation to mandatory reporting into the *Children, Youth and Families Act* 2005.<sup>[10]</sup> It inserts new subsection (2A) into section 184<sup>5</sup> and subsection (3A) into section 184(3)<sup>6</sup> of that Act. Clause 16 amends section 327(7)(b) of the *Crimes Act* 1958<sup>7</sup> to exclude section 127 of the *Evidence Act* 2008 from the reference to Part 3.10 of Chapter 3 of that Act.<sup>[16]</sup> Clause 18 substitutes section 127(2) of the *Evidence Act* 2008.<sup>[18]</sup>

The effect of the amendments is set out in the Statement of Compatibility:-

The effect of this provision is that clergy members who form a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child under 16 years must disclose that information to a police officer as soon as practicable even if the information was obtained

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<sup>2</sup> Part 3.10 of the *Evidence Act* 2008, Division 2 provides for other privileges. Section 127 provides:- 'Religious confessions (1) A person who is or was a member of the clergy of any church or religious denomination is entitled to refuse to divulge that a religious confession was made, or the contents of a religious confession made, to the person when a member of the clergy. (2) Subsection (1) does not apply if the communication involved in the religious confession was made for a criminal purpose. (3) This section applies even if an Act provides— (a) that the rules of evidence do not apply or that a person or body is not bound by the rules of evidence; or (b) that a person is not excused from answering any question or producing any document or other thing on the ground of privilege or any other ground. (4) In this section, religious confession means a confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the church or religious denomination concerned.'

<sup>3</sup> Explanatory Memorandum, Evidence Bill 2008, Introduction Print 25/6/2008, Division 2—Other privileges, p. 47. The Explanatory Memorandum provides: 'This privilege is based on an acknowledgment that some religions have a ritual of confessing one's sins to a member of the clergy as God's human intermediary, in circumstances where the member of the clergy is bound to keep the contents of the confession confidential. The privilege acknowledges that members of clergy, whose faith requires absolute confidentiality of a confession, would be placed in an intolerable situation if required to choose between compliance with a strict provision of their faith and an order of a court. Consequently, this privilege promotes the right to freedom of religion for the clergy of religious denominations which include the ritual of confession.'

<sup>4</sup> Section 16 of the *Constitution Act* 1975 provides that:- 'The Parliament shall have power to make laws in and for Victoria in all cases whatsoever.'

<sup>5</sup> New section 2A inserted after section 184(2) provides that:- 'To avoid doubt, a person is not exempt from the requirement to report under subsection (1) merely because the information would be privileged under section 127 of the *Evidence Act* 2008.'

<sup>6</sup> New section 3A inserted after section 184(3) provides that:- 'The requirement imposed by subsection (1) applies to a person in religious ministry, even if the person's belief was first formed before the commencement of section 9 of the Children Legislation Amendment Act 2019, provided the person continues to hold that belief on or after that commencement.'

<sup>7</sup> Section 327 of the *Crimes Act* 1958 provides it is an offence to fail to disclose sexual offences committed against a child under the age of 16 years.

in confession, unless they have a reasonable excuse or another exemption in section 327 applies. These amendments are reinforced by clause 18, which amends section 127 of the Evidence Act to provide that the religious confessions privilege does not apply in proceedings for the above 'failure to disclose' offence in the Crimes Act or the mandatory reporting offence under the Children, Youth and Families Act 2005.

Article 18 – United Nations International Covenant on Civil and Political Rights (ICCPR) – Freedom of religion – may be limited by law

Article 18 of the United Nations ICCPR<sup>8</sup> is set out:-

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

The right to freedom of religion was considered by the Royal Commission<sup>9</sup> (the Commission) into Institutional Responses to Child Sexual Abuse. The Commission's view was that it was important that the right of a person to freely practise their religion in accordance with their beliefs be upheld but that right is not absolute. The right may be limited by law, where necessary to protect public safety, order, health or morals to ensure the fundamental rights and freedoms of others. The relevant part of the Commission's report<sup>10</sup> is set out:-

We have considered whether people in religious ministry should be exempted from mandatory reporting to child protection authorities where they know or suspect that a child is at risk of harm on the basis of information disclosed in or in connection with a religious confession. We have considered the treatment of religious confession in detail in our Criminal Justice Report, which recommends against an exemption from 'failure to report' offences for information communicated during or in connection with a religious confession. Our detailed consideration of this issue is set out in Chapter 16<sup>11</sup> of that report... We understand the significance of religious confession, in particular the inviolability of the confessional seal to people of some faiths, particularly the Catholic faith...

...In a civil society, it is important that the right of a person to freely practise their religion in accordance with their beliefs is upheld. However, that right is not absolute. This is recognised in Article 18 of the United Nations International Covenant on Civil and Political Rights regarding freedom of religion, which provides that the freedom to manifest one's religion or beliefs may be limited by law, where necessary to protect public safety, order, health or morals, or to

<sup>8</sup> Australia signed the International Covenant on Civil and Political Rights in 1972 and ratified it in 1980.

<sup>9</sup> Letters Patent, Royal Commission into Institutional Responses to Child Sexual Abuse, Governor-General, 11th January 2013. The Commissioners were The Hon Justice Peter McClellan AM, Justice Jennifer Coate, Commissioner Bob Atkinson AO APM, Commissioner Robert Fitzgerald AM, Commissioner Helen Milroy and Commissioner Andrew Murray.

<sup>10</sup> *Final Report Improving Institutional Responding and Reporting – Volume 7*, 15 December 2017, Royal Commission into Institutional Responses to Child Sexual Abuse, pp. 98-99.

<sup>11</sup> Transcript of T Ladogna, Multi-disciplinary and specialist policing responses public roundtable, Sydney, 15 June 2016 at T48:38-43.

ensure the fundamental rights and freedoms of others.<sup>12</sup> Although it is important that civil society recognise the right of a person to practise a religion in accordance with their own beliefs, that right cannot prevail over the safety of children. The right to practise one's religious beliefs must accommodate civil society's obligation to provide for the safety of all individuals.

The Committee also notes the comments in the Second Reading Speech:-

Following these recommendations [from the Royal Commission], the Bill will remove the religious confession exemption from the failure to disclose offence. This means that if religious ministers hear information in confession that leads them to form a reasonable belief that child sexual abuse has occurred, they will have a clear legal duty to report that belief to police, even where this means breaking the seal of confession... The Government accepts the views and findings of the Commission on this matter and these amendments give effect to the resulting recommendations. The outcome will be to offer better protection for children from abuse.

**The Committee notes the above and refers to the Charter report.**

***Limitation of right of appeal at VCAT (section 17(a)(i), PCA)***

Clause 25 inserts new section 26A(1A) into section 26A of the *Working with Children Act 2005*. It provides that despite section 26A(1), a person who has been given a negative notice referred to in that subsection may not apply to VCAT for an assessment notice to be given to the person, if the person has at any time been charged with or convicted or found guilty of a category A<sup>13</sup> offence and the person was an adult at the time of the commission of the offence.

The Committees notes the Second Reading Speech:-

Under the Act the Secretary to the Department of Justice and Community Safety must give a negative notice to any person who is charged with, convicted or found guilty of a category A offence. These offences include murder, rape, sexual offences committed by an adult against a child and child abuse material offences. However, a category A applicant can currently apply to VCAT for an assessment notice to be given to them, in spite of their serious offending. Of course, any person subject to a sex offender order or reporting obligation does not have this right. This Bill will limit that right of appeal. Any person who has, as an adult, been charged with, convicted or found guilty of a category A offence, will no longer be able to apply to VCAT for a working with children check.

This new limitation will not extend to a person charged with a category A offence and later acquitted, or in circumstances where the charges are dropped. A person will be able to reapply for a working with children check in these circumstances. Nor does the limitation extend to a person who was under 18 years of age at the time the offence was committed. This is consistent with the way we treat child offenders in the criminal justice system... Category A applicants and working with children check holders will retain a limited right of appeal of judicial review in the Supreme Court, which provides a more narrow right to address fundamental errors with category A decisions such as jurisdictional error, unlawful delegation of power and human rights issues...

**The Committee notes the above and refers to the Charter report.**

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<sup>12</sup> New South Wales Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Consultation paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts, 2016, p. 9.

<sup>13</sup> A category A offence are those offences listed in Schedule 1 of the *Working with Children Act 2005*.

**Retrospectivity – set aside past judgments (section 17(a)(i), PCA)**

Clause 32 inserts new sections 27QA to 27QF after section 27A of the *Limitation of Actions Act 1958*.<sup>14</sup> Division 5 of Part IIA of that Act makes provisions for actions for personal injury resulting from child abuse. The effect of the new provisions is that an application may be made (only) to the Supreme Court for a judgement or an order in a previously barred cause of action to be set aside. New section 27QA(2) provides that an action may be brought on a previously settled cause of action.<sup>15</sup>

The Committee notes the Second Reading Speech:-

The proposed amendments will allow the court to take into account any amounts paid or payable as compensation, damages or costs under a previous judgment relating to the cause of action or the previous voided settlement agreement, if the court is satisfied that it is just and reasonable to do so.

**The Committee is of the view that the provision is justified.**

**Charter Issues*****Religion – Compelled divulgence of a religious confession – Disclosure of risks to children – Disclosure of child sexual offences – Proceedings for non-disclosure offences***

*Summary: The effect of clauses 9, 10, 16 and 18 is that a member of the clergy who receives a religious confession in his or her professional capacity according to the ritual of his or her church or religious denomination must divulge the relevant contents of that confession in some circumstances. The Committee will write to the Minister about the possible retrospective effect of these clauses.*

**Relevant provisions****Mandatory reporting (clauses 9 and 10)**

The Committee notes that clause 9, amending existing s. 182 of the *Children, Youth and Families Act 2005*, provides that ‘a person in religious ministry’ is a ‘mandatory reporter’. Existing s. 184(1) provides:

A mandatory reporter who, in the course of practising his or her profession or carrying out the duties of his or her office, position or employment as set out in section 182, forms the belief on reasonable grounds that a child is in need of protection on a ground referred to in section 162(1)(c) or 162(1)(d) must report to the Secretary that belief and the reasonable grounds for it as soon as practicable—

- (a) after forming the belief; and
- (b) after each occasion on which he or she becomes aware of any further reasonable grounds for the belief.

Penalty: 10 penalty units.

<sup>14</sup> Note the Second Reading Speech: ‘In 2015, Victoria became the first jurisdiction in Australia to completely remove the statute of limitations for civil claims founded on child abuse. Amendments to the Limitation of Actions Act 1958 removed the limitation period for all relevant child abuse claims regardless of the time or context of the alleged abuse.’

<sup>15</sup> Note new section 27QA(1) provides that an action may be brought on a previously barred cause of action even if an action on the cause of action was dismissed by the court on the ground that the action was brought after the expiry of an applicable limitation period or by refusing to extend an applicable limitation period. New section 27QA(2) provides that an action may be brought on a previously settled cause of action. Note the Explanatory memorandum: ‘This refers to settlement agreements made before 1 July 2015 to ensure that it captures settlement agreements entered into prior to the removal of limitation periods that applied to actions in respect of causes of action that relate to death or personal injury resulting from child abuse.’

Existing s. 3(1) relevantly defines a 'child' as 'a person who is under the age of 17 years or, if a protection order... continues in force in respect of him or her, a person who is under the age of 18 years'. Existing sub-ss. 162(1)(c) & (d) refer to a child who has suffered, or is likely to suffer, significant harm as a result of physical injury or sexual abuse where the child's parents have not protected, or are unlikely to protect, the child from harm of that type. Clause 10(1), amending s. 184, provides that 'a person is not exempt from the requirement to report under subsection (1) merely because the information would be privileged under section 127 of the Evidence Act 2008'.

The Explanatory Memorandum remarks (in relation to clause 18):

[I]f the perpetrator of child sexual abuse discloses that abuse to a minister during religious confession, the minister may still rely on the religious confession privilege in sexual offence proceedings initiated against the perpetrator.

However, the Committee observes that existing s. 190 provides that '[i]n any legal proceeding evidence may be given as to the grounds contained in... a report under section... 184'. While existing sub-s. 190(3) provides that a witness cannot be asked and is permitted to refuse to answer a question identifying the reporter or 'as to whether a particular matter is contained in a report', a court or tribunal can lift that restriction if 'it is satisfied that the interests of justice require that the evidence be given.' Accordingly, where a minister has reported the contents of a religious confession under amended s. 184, a court or tribunal in any legal proceedings may, if 'the interests of justice require', require him or her to answer a question as to whether he or she reported a particular matter, even where that would require a member of the clergy to divulge a religious confession.<sup>16</sup> For example, if sexual offence proceedings are initiated against the alleged perpetrator of a child sexual offence and the minister is called as a witness in the case, the prosecutor may ask him or her to reveal any prior involvement in the case, including that he or she reported the accused's religious confession to the Secretary.

#### **Failure to disclose a child sex offence (clause 16)**

The Committee also notes that clause 16, amending existing s. 327 of the *Crimes Act* 1958, narrows an exemption to the offence in existing s. 327(2). Existing s. 327(2) provides that:

a person of or over the age of 18 years (whether in Victoria or elsewhere) who has information that leads the person to form a reasonable belief that a sexual offence has been committed in Victoria against a child under the age of 16 years by another person of or over the age of 18 years must disclose that information to a police officer as soon as it is practicable to do so, unless the person has a reasonable excuse for not doing so.

Existing sub-ss. 327(5) & (7) provide for exceptions to this offence, including where the victim was born before 27<sup>th</sup> October 1998; where the information came from a competent victim aged over 16 who requested that the information not be disclosed; or where the information would be privileged under evidence law. Clause 16 narrows the latter exception (in existing sub-para 327(7)(b)) by excluding existing s. 127 of the *Evidence Act* 2008.

The Explanatory Memorandum explains:

The intention of this amendment is to ensure that relevant information is disclosed to police, even if that information is obtained during a religious confession. Accordingly, the fact that information was received during a religious confession should not be considered a "reasonable excuse" for failing to comply with section 327(2).

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<sup>16</sup> Existing s. 8 of the *Evidence Act* 2008 provides: 'This Act does not affect the operation of the provisions of any other Act.'

However, the Committee observes that amended s. 327 does not expressly state that the fact that information is obtained during a religious confession cannot be a reasonable excuse. Rather, existing sub-s. 327(4) only limits the meaning of reasonable excuse as follows:

For the purposes of subsection (2) and without limiting that subsection, a person does not have a reasonable excuse for failing to comply with that subsection only because the person is concerned for the perceived interests of—

- (a) the person reasonably believed to have committed, or to have been involved in, the sexual offence; or
- (b) any organisation.

This restriction may not prevent a member of the clergy from having a reasonable excuse for not disclosing information received during a religious confession because he or she is concerned for his or her own perceived interests in not breaching a religious rule.

### **Narrowing of religious confession privilege (clause 18)**

The Committee further notes that clause 18, amending existing s. 127 of the *Evidence Act 2008*, narrows the statutory privilege for religious confessions. Existing s. 127 provides:

- (1) A person who is or was a member of the clergy of any church or religious denomination is entitled to refuse to divulge that a religious confession was made, or the contents of a religious confession made, to the person when a member of the clergy.
- (2) Subsection (1) does not apply if the communication involved in the religious confession was made for a criminal purpose.
- (4) In this section, "religious confession" means a confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the church or religious denomination concerned.

Clause 18 provides that existing s. 127 does not apply in proceedings for offences against existing s. 184 of the *Children, Youth and Families Act 2005* and existing s. 327 of the *Crimes Act 1958*.

The Second Reading Speech remarks:

This will not force religious ministers to give evidence of information obtained in confession during proceedings for the failure to disclose offence. As the minister would be the accused person in such proceedings, the privilege against self-incrimination will continue to operate to ensure that he or she could not be compelled to give evidence. If, however, a minister decides to give evidence, this reform would ensure that the minister could not invoke the privilege in court.

However, the Committee observes that the terms of clause 18 are not limited to non-disclosure proceedings where the minister is the accused person. In particular, the minister may be called as a witness at a proceeding where another person is accused of failing to disclose a sexual offence (e.g. so that the minister can be asked whether the perpetrator of a sexual offence had confessed to disclosing or not disclosing his or her offending to any other person.)

### Summary

**The Committee observes that the effect of clauses 9, 10, 16 and 18 is that a member of the clergy who receives a religious confession in his or her professional capacity according to the ritual of his or her church or religious denomination must divulge the relevant contents of that confession:**

- to the Secretary of the Department of Human Services (and possibly in subsequent legal proceedings where the report's contents are relevant), if the confession causes the member to believe on reasonable grounds that a child has been or possibly will be seriously harmed by physical abuse or sexual assault.
- to a police officer, if the confession causes him or her to believe on reasonable grounds that a sexual offence has been committed in Victoria by an adult against a child under 16, unless he or she has a reasonable excuse, the child was born before 27<sup>th</sup> October 1998 or the confession's contents are sourced from a competent victim aged over 16 who requests that the information not be disclosed.
- to a court hearing any proceeding for an offence of failing to make a mandatory report or failing to disclose a child sexual offence, if the member of the clergy testifies, is asked to disclose any relevant religious confession and the member's answer is admissible.

### Charter analysis

#### The Statement of Compatibility remarks:

The practice of confession is a fundamental aspect of some religious practices, and maintaining confidentiality is instrumental in supporting those religious confessions. The practice of confession therefore falls within the scope of the right to practise one's religion, and will be limited by the mandatory reporting requirements, as these requirements will mean that certain parts of confessions can no longer be kept confidential.

Section 7(2) of the Charter provides that a human right may be subject under law to reasonable and demonstrably justified limitations. There is an issue as to whether this limitation on the right to exercise religious freedom is proportionate, having regard to the nature of the right, the importance and purpose of the limitation, the nature and extent of the limitation, and the relationship between the limitation and its purpose (including whether there are any less restrictive means reasonably available to achieve the purpose). The amendments in clauses 9, 10, 16 and 18 are intended to give effect to two recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. They serve an important purpose of protecting children from physical and sexual abuse and, in this context, must be balanced against the right of every child under section 17 of the Charter to such protection as is in their best interests and is needed by them by reason of being a child.

However, the Committee notes that, while clauses 9 and 10 only apply when a child is reasonably believed to be at current risk of abuse, the terms of clauses 16 and 18 may not be expressly limited in this way. In particular, clause 16 may require a member of the clergy to divulge a religious confession about a child sexual offence even when no child is at risk of abuse, for example when the offender makes a deathbed confession.

#### The Statement of Compatibility remarks:

I note that the confidentiality of confessions is affected only with respect to information that a sexual offence has been committed against a child (under the Crimes Act) and information that a child is in need of protection (as set out in the mandatory reporting requirements of the Children, Youth and Families Act). Consequently, the majority of confessions, and the content of such confessions, are likely to remain confidential.

However, the Committee notes that, while the terms of clauses 9, 10 and 16 are limited to information that supports a belief that a child is in need of protection or a child sexual offence has occurred, the terms of clause 18 may not be expressly limited in this way. In particular, clause 18's exclusion of the religious confession privilege in proceedings for non-disclosure offences may not be limited to proceedings relating to the non-disclosure of the religious confession. For example, a member of the

clergy could be called by the prosecution to testify at proceedings against a person charged with failing to disclose a child sexual offence and be required to divulge the person's religious confession that he or she had known that a child was being sexually abused.

The Statement of Compatibility remarks:

Further, the Crimes Act provisions only apply in respect of information obtained after the date of commencement.

However, the Committee notes that, while clause 10(2) expressly provides that the new mandatory reporting requirement for children at risk applies 'even if the person's belief was first formed before the commencement' of clause 9, there is no provision expressly addressing the timing of the formation of the person's belief in amended s. 327. Rather, clause 17, inserting a new section 636 into the *Crimes Act 1958*, provides:

- (1) The amendment to section 327 of this Act made by section 16 of the Children Legislation Amendment Act 2019 applies to an offence alleged to have been committed on or after the commencement of that section of that Act.
- (2) For the purposes of subsection (1), if any of the conduct constituting the offence set out in section 327(2) of this Act is alleged to have occurred between 2 dates, one before and one on or after the commencement of section 16 of the Children Legislation Amendment Act 2019, all of the conduct constituting the offence is taken to have occurred before that commencement.

The Explanatory Memorandum explains:

The effect of this provision is that the amendment to section 327(7) will only apply prospectively. In other words, the offence will not apply to information received or a reasonable belief formed prior to commencement of the reforms.

However, the terms of new section 636 do not refer to 'information received' or 'a reasonable belief formed'. Rather, they refer to when the offence is 'committed' and when the 'conduct constituting the offence' occurred, terms that may only cover the alleged conduct of failing to 'disclose' the information. Accordingly, clause 16 may require a member of the clergy who received a confession about a child sexual offence before the commencement of clause 16 to divulge that confession to a police officer as soon as practicable after clause 16 commences.

The Statement of Compatibility remarks:

In my view, the mandatory reporting requirements strike an appropriate balance between the freedom to practice one's religion and the rights of children to protection from abuse. I do not consider there to be any less restrictive means reasonably available to achieve this purpose. For these reasons, I consider that any limitation imposed by clauses 9, 10, 16 and 18 are justifiable and therefore compatible with the freedom of religion under the Charter.

The Committee notes that the impact of clauses 9, 10(1), 16 and 18 on a member of the clergy's Charter right not to 'be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching'<sup>17</sup> may vary depending on whether the confession he or she is required to divulge was made after or before the Bill's commencement. Once the Bill has commenced, the member will be aware that he or she may be legally obliged to divulge a confession and can choose to either not receive a confession or to warn the confessor that confidentiality may be breached. These options may limit the member's future practice of his or her religion, but will not require the member to breach a religious promise of confidentiality. By contrast, for religious

<sup>17</sup> Charter s. 14(2).

confessions that have already been made before the Bill commenced, the member's only lawful option may be to breach a religious promise of confidentiality, arguably a much more significant limit on the member's Charter right not to be restrained or coerced in a way that limits his or her religious freedoms.

The Committee observes that, according to the Royal Commission into Institutional Responses to Child Abuse, Catholic canon law currently provides:<sup>18</sup>

Canon 983§1: The sacramental seal is inviolable. Therefore, it is absolutely wrong for a confessor in any way to betray the penitent, for any reason whatsoever, whether by word or in any other manner.

Canon 1388§1: A confessor who directly violates the sacramental seal incurs a *latae sententiae* excommunication reserved to the Apostolic See – that is, an automatic penalty of excommunication, which can only be lifted by the Pope.

The effect of this and similar religious laws is that clauses 9, 10, 16 and 18 may require a member of the clergy who is subject to such laws – except to the extent that he or she can rely on a common law or statutory privilege against self-incrimination or self-exposure to penalties<sup>19</sup> – to incur automatic excommunication from his or her church or denomination. Such an outcome may limit his or her Charter right to 'worship as part of a community'.<sup>20</sup>

### Conclusion

**The Committee will write to the Minister seeking further information as to whether or not clauses 9, 10, 16 and 18, in their application (or, in the case of clause 16, possible application) to religious confessions made before the Bill's commencement, are compatible with the Charter right of members of the clergy to freedom of religion.**

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### ***Privacy – Permanent bans from child-related work – Offenders who did not receive a sentence of full time custody – Offending that has been decriminalised***

*Summary: The effect of clause 25(2) is that a person who has been convicted or found guilty of murder, rape, a child sexual offence, a child abuse material offence or bestiality can never engage in child-related work. The Committee will write to the Minister seeking further information.*

### Relevant provisions

The Committee notes that clause 25(2), amending existing s. 26A of the *Working with Children Act 2005*, provides that '[a] person who has been given a negative notice on a category A application... may not apply to VCAT for an assessment notice to be given to the person if the person has at any time been charged with or convicted or found guilty of a category A offence and the person was an adult at the time of the commission or alleged commission of the offence.' Existing s. 33 makes it an offence to engage in child-related work without an assessment notice. Existing s. 12 provides that '[t]he Secretary must refuse to give an assessment notice on a category A application'.

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<sup>18</sup> Royal Commission into Institutional Responses to Child Abuse, *Criminal Justice Report*, p. 171. See also *Code of Canon of the Eastern Churches*, 1456§1.

<sup>19</sup> See *Evidence Act 2008*, s. 127(1), referring to an offence under 'a law of a foreign country' and liability to 'a civil penalty', and see also the Dictionary, cl. 3. See also, in the case of amended s. 327 of the *Crimes Act 1958*, the possibility that such laws may provide a 'reasonable excuse' for not disclosing a child sexual offence.

<sup>20</sup> Charter s. 14(1)(b).

A 'category A application' includes an application in respect of a person 'who... has at any time been convicted or found guilty of' murder, rape, a sexual offence against a child, a child abuse material offence or an offence of bestiality against an animal,<sup>21</sup> attempts to commit those offences, and various past versions of those offences in Victorian law. Existing s. 4(2) provides that 'a finding of guilt' 'does not include a finding of guilt that is subsequently quashed or set aside by a court'. (The Act does not expressly address the quashing or setting aside of a conviction or a pardon.)

**The Committee observes that the effect of clause 25(2) is that a person who has ever been convicted or found guilty of murder, rape, a child sexual offence, a child abuse material offence or bestiality (including various past versions of those offences in Victorian law) can never engage in child-related work in Victoria, unless the finding of guilt is quashed or set aside by a court.**

#### Charter analysis

The Statement of Compatibility remarks:

A recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse, in its Working with Children Checks report, forms the basis of these amendments to the Working with Children Act. Recommendation 29 calls on states and territories, as a minimum standard, to restrict the appeal rights of individuals who have committed certain serious offences. The Royal Commission based this recommendation on a view that a person convicted of certain offences will always pose an unacceptable risk to children. These recommended offences are murder of a child, indecent or sexual assault of a child, child pornography offences and incest where the victim was a child, and are narrower in scope than the category A offences in the Working with Children Act.

The Royal Commission's Recommendation 29 states:

All state and territory governments should ensure that any person the subject of an adverse WWCC decision can appeal to a body independent of the WWCC screening agency, but within the same jurisdiction, for a review of the decision, except persons who have been convicted of one of the following categories of offences:

- murder of a child
- indecent or sexual assault of a child
- child pornography-related offences
- incest where the victim was a child

and

- a. received a sentence of full time custody for the conviction, such persons being permanently excluded from an appeal; or
- b. by virtue of that conviction, the person is subject to an order that imposes any control on the person's conduct or movement, or excludes the person from working with children, such persons being excluded from an appeal for the duration of that order.

The Statement of Compatibility remarks:

The Working with Children Act only applies to individuals who engage in child-related work, through which their contact with children is direct and at or for a service, body, place or that involves an activity listed in section 9(3) of the Act. The limitation of appeal rights for this small cohort of individuals will be specified in legislation and will apply to VCAT only. The changes

<sup>21</sup> Clause 28(2)(ii), amending existing Schedule 1, clause 1.

do not impact on an individual's right to seek remedy in the Supreme Court on matters such as jurisdictional error, unlawful delegation of power and human rights issues.

However, the Committee notes that only VCAT (and a court hearing an appeal from a VCAT decision) can currently give an assessment notice to a category A applicant. Neither the Secretary nor the Supreme Court currently has or will have any power to permit a person who falls within the terms of new sub-section 26(1A) to engage in child-related work in Victoria.

The Committee observes that existing s. 26A provides that VCAT can only order the giving of an assessment notice to a category A applicant if it is satisfied that—

- (a) a reasonable person would allow his or her child to have direct contact with the applicant while the applicant was engaged in any type of child-related work; and
- (b) the applicant's engagement in any type of child-related work would not pose an unjustifiable risk to the safety of children.

Existing sub-s. 26A(3) provides that, when assessing whether giving a notice would involve an unjustifiable risk to the safety of children, VCAT must consider:

- (a) the nature and gravity of the offence and its relevance to child-related work; and
- (b) the period of time since the applicant committed the offence; and
- (c) whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending; and
- (d) the sentence imposed for the offence; and
- (e) the ages of the applicant and of any victim at the time the applicant committed the offence; and
- (f) whether or not the conduct that constituted the offence has been decriminalised since the applicant engaged in it; and
- (g) the applicant's behaviour since he or she committed the offence; and
- (h) the likelihood of future threat to a child caused by the applicant; and
- (i) any information given by the applicant in, or in relation to, the application; and
- (j) any other matter that VCAT considers relevant to the application.

The Committee notes that existing sub-paras 26A(3)(c) & (d) provide that VCAT must have regard to whether or not a conviction was recorded any sentence that was imposed. The Royal Commission limited its recommendation for a permanent ban on child-related work to offenders who 'received a sentence of full-time custody' for the specified offences. By contrast, clause 25(2) applies to anyone found guilty of a category A offence committed as an adult, regardless of whether a conviction was recorded or a sentence of imprisonment was imposed. The Committee observes that some 'category A offences' may cover minor offending. The Committee also observes that, in rare circumstances, non-custodial sentences can be imposed for very serious crimes, such as attempted murder.<sup>22</sup>

The Committee also notes that existing s. 25A(3)(f) provides that VCAT must have regard to 'whether or not the conduct that constituted the offence has been decriminalised since the applicant engaged

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<sup>22</sup> E.g. *DPP v Karaca & Price* [2007] VSC 190, where a man pressured two 18-year-olds to assist in his attempted suicide, who (following a concession by the Crown) each received a three-year suspended sentence for attempted murder; *R v Clark* [2009] VSC 602, where a 50-year-old choked her comatose, dying mother and received a two-year suspended sentence for attempted murder.

in it'. The Committee observes that past offences within the definition of 'category A offence' may now have been partly decriminalised.<sup>23</sup>

### Relevant comparisons

The Committee notes that, at present, two Australian jurisdictions permanently bar anyone from obtaining permission to engage in child-related work from a tribunal. In both cases, the permanent ban only applies to people who received a custodial sentence for a relevant offence.

In New South Wales, the people who cannot seek permission from a tribunal to engage in child-related work include those found guilty of murder, attempted murder, child abuse material offences or, where the victim is a child, any sexual offence; however, the ban is only permanent for offenders who 'received a sentence of full time custody for the offence'.<sup>24</sup>

In Queensland, the people who cannot seek permission from a tribunal to engage in child-related work include those found guilty of murder, attempted murder, rape, other sexual or violent offences where the victim is a child and child abuse material offences; however, only people convicted of an offence 'for which an imprisonment order was or is imposed' cannot ask the Chief Executive of the Department of Child Safety, Youth and Women for an 'eligibility declaration' permitting them to apply to the tribunal.<sup>25</sup>

### Conclusion

**The Committee will write to the Minister seeking further information as to whether or not clause 25(2), to the extent that it may permanently bar people from engaging in child-related work because they have been found guilty of an offence where either:**

- **the offender did not receive a sentence of full time custody; or**
- **the conduct that constituted the offence has since been decriminalised**

**is compatible with the Charter's right to privacy.**

<sup>23</sup> For example, it is presently lawful for an 18-year-old to take an image of her and a 17-year-old having sex and text that image to that 17-year-old, so long as the 17-year-old consented to the sex, taking of the image and the texting (*Crimes Act 1958*, ss. 51D & 51P (inserted by the *Crimes Amendment (Sexual Offences) Act 2016*, s. 16.). However, between 2005 and 2016, an 18-year-old who did these same acts may have been found guilty of the category A offence (See *Working with Children Act 2005*, s. 3 (definition of 'category A offence' and (c) of the definition of 'child abuse material') & Schedule 1, cl. 2;) of publishing or transmitting child pornography (*Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*, s. 57A (inserted by the *Classification (Publications, Films and Computer Games) (Enforcement) Amendment Act 2001*, s. 16; amended by the *Classification (Publications, Films and Computer Games) (Enforcement) Amendment Act 2005*, s. 10(3); and repealed by the *Crimes Amendment (Sexual Offences) Act 2016*, s. 34.)) and the effect of clause 25(2) may be that she will not be permitted to engage in child-related work in Victoria for the rest of her life.

<sup>24</sup> *Child Protection (Working with Children) Act 2012* (NSW), s. 26(2)(a). The offences do not include bestiality.

<sup>25</sup> *Working with Children (Risk Management and Screening) Act 2000* (Qld), s. 353 and see ss. 168-170 & 180.

# Rail Safety Legislation Amendment (National Services Delivery and Related Reforms) Bill 2019

## Bill Information

<b>Member</b>	Hon Melissa Horne MP	<b>Introduction Date</b>	13 August 2019
<b>Portfolio</b>	Public Transport	<b>Second Reading Date</b>	14 August 2019

## Summary

The Bill amends the *Rail Safety National Law Application Act 2013*:-

- It provides for the safety of all rail infrastructure and rolling stock operations carried out in Victoria and for all rail safety work carried out in Victoria to be regulated under the Rail Safety National Law (Victoria). Note the comments in the Second Reading Speech:- ‘The Bill will complete the national reform of the regulation of rail safety, a process that began in 2011 when the Council of Australian Governments signed an Intergovernmental Agreement to establish a national scheme of rail safety regulation... Under the Rail Safety national law, the Office of the National Rail Safety Regulator (ONRSR) was established in July 2012 to administer rail safety regulation and enforcement across Australia. ONRSR commenced operations on 20 January 2013... The Bill implements the transfer of all rail safety service delivery and regulatory functions from TSV to ONRSR... The Bill also... provides for trams and tourist and heritage railways to be regulated by ONRSR.’
- It provides for the Office of the National Rail Safety Regulator to be the sole rail safety regulator for the Victorian rail transport industry.
- It repeals the *Rail Safety (Local Operations) Act 2006* and as a consequence re-enact the provisions for the alcohol and drug testing of rail safety workers in the *Rail Safety National Law Application Act 2013*.
- It inserts new Part 4A regarding evidentiary and procedural matters relating to drug and alcohol controls for rail safety workers.<sup>26</sup>[17] Additional regulation making powers relating to drug and alcohol testing are inserted.[19] Regulations may be made to deal with transitional matters.[18] New Part 8 contains savings and transitional provisions.[19] New section 190 provides for the transition of an application for internal review of a decision to take disciplinary action.[19]
- Part 3 amends the *Transport (Safety Schemes Compliance and Enforcement) Act 2014* to remove references relating to rail safety and the *Rail Safety (Local Operations) Act 2006* and references to the *Rail Safety National Law Application Act 2013*. [20-25] Note the Explanatory memorandum:- ‘The Transport (Safety Schemes Compliance and Enforcement) Act 2014 will no longer apply to rail safety. That Act will only deal with marine safety and bus safety matters following the transition of the regulation of rail safety to the Office of the National Rail Safety Regulator. Upon the transition to the national scheme, transport safety officers appointed under the *Transport (Safety Schemes Compliance and Enforcement) Act 2014* will no longer exercise enforcement and compliance powers in relation to rail safety. Instead, rail safety enforcement and compliance work will be undertaken by officers of the National Regulator under the Rail Safety National Law (Victoria).’

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<sup>26</sup> Note the Explanatory Memorandum: ‘Clause 17 inserts a new Part 4A... regarding evidentiary and procedural matters relating to drug and alcohol controls for rail safety workers. ...Victoria’s laws on drug and alcohol testing are broadly consistent across road, rail and marine regulation. Each State and Territory maintains its own drug and alcohol procedures in their own statutes with respect to rail safety, while the offences are contained in the Rail Safety National Law (Victoria). This allows each State and Territory to maintain consistent drug and alcohol testing procedures across all modes of transport.’

## Comments under the PCA

### ***Retrospective effect (section 17(a)(i), PCA)***

Regulations may be made to deal with transitional matters. New section 213 inserted by clause [18] specifies that regulations made under it may have a retrospective effect to a day on or after a date not earlier than the day on which the *Rail Safety Legislation Amendment (National Services Delivery and Related Reforms) Act 2019* receives Royal Assent. The Explanatory Memorandum states:- ‘New section 213(1) provides that the Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature arising as a result of the enactment of the Rail Safety Legislation Amendment (National Services Delivery and Related Reforms Act) 2019, including any repeals and amendments made by or as a result of the enactment of that Act.’ New section 213(3) provides that the provision does not operate so in a manner prejudicial to any person or to impose liabilities on any person.<sup>27</sup> Pursuant to section 213(6) the ability to make retrospective regulations will be repealed on the second anniversary of the day on which section 213 comes into operation.

**The Committee is of the view that the provision is justified.**

### ***Reverse onus (section 17(a)(i), PCA)***

Clause 17 inserts new section 48D which provides for certain presumptions that apply in relation to offences relating to the presence of prescribed concentrations of alcohol or other drugs in a rail safety worker’s blood, breath or oral fluid. Subsection (1) of new section 48D provides that ‘if it is established that any time within 3 hours after an alleged offence... a certain concentration of alcohol was present in the blood or breath of the rail safety worker charged with the offence it must be presumed, until the contrary is proven, that not less than that concentration of alcohol was present in the worker’s blood...’

The Committee notes the Statement of Compatibility:-

As they impose a legal burden of proof on the accused, these provisions limit the presumption of innocence... In this case, the reverse onus only affects persons who are working as rail safety workers in a regulated industry – the provisions do not apply to the general public... The reverse onus only arises where a breath, blood or oral fluid test has demonstrated the presence of a certain drug or a certain concentration of drugs or alcohol. In such circumstances, the matters to be proved by the accused are matters that fall particularly within the knowledge of the accused... Imposing a burden of proof on the accused... ensures that these offences can be prosecuted effectively and that they operate as a deterrent...

**The Committee is of the view the provision is justified.**

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<sup>27</sup> Section 213(3) provides that: ‘To the extent to which any provision of the regulations under this section takes effect from a date that is earlier than the date of its making, the provision does not operate so as (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its making; or (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its making.’

## **Charter Issues**

The Rail Safety Legislation Amendment (National Services Delivery and Related Reforms) Bill 2019 is compatible with the rights set out in the *Charter of Human Rights and Responsibilities Act 2006*.

# Renewable Energy (Jobs and Investment) Amendment Bill 2019

## Bill Information

<b>Member</b>	Hon Lily D'Ambrosio MP	<b>Introduction Date</b>	13 August 2019
<b>Portfolio</b>	Energy, Environment and Climate Change	<b>Second Reading Date</b>	14 August 2019

## Summary

The Bill establishes a renewable energy target of 50% for 2030. It also provides for a determination of the minimum amounts of renewable energy generation capacity required to meet the renewable energy target for 2030.<sup>28</sup>

## Comments under the PCA

The Committee makes no comment with respect to its terms of reference under section 17 of the *Parliamentary Committees Act 2003*.

## Charter Issues

The Renewable Energy (Jobs and Investment) Amendment Bill 2019 is compatible with the rights set out in the *Charter of Human Rights and Responsibilities Act 2006*.

<sup>28</sup> See the Second Reading Speech:- 'We legislated progressive yet achievable Victorian Renewable Energy Targets (VRET) of 25 per cent by 2020 and 40 percent by 2025 in 2017. The... Bill ... will increase the legislated VRET target to 50 per cent by 2030... The REJI Act also requires the Minister to determine the minimum renewable energy generation capacity required to meet the VRET target. The Amendment Bill will require the Minister to determine the minimum generation capacity necessary to meet the 2030 target by 31 December 2025.'



## Ministerial Correspondence

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The Committee received responses on the Bills listed below.

Responses are reproduced here – please refer to Appendix 3 for additional information.

### ***Flora and Fauna Guarantee Amendment Bill 2019***



Hon Lily D'Ambrosio MP

Minister for Energy, Environment and Climate Change  
Minister for Solar Homes

8 Nicholson Street  
East Melbourne, Victoria 3002  
Telephone: 03 9637 9504  
DX210098

Mr Mark Gepp MP  
Chairperson  
Parliament of Victoria  
Scrutiny of Acts and Regulations Committee  
Spring Street  
EAST MELBOURNE VIC 3002

Ref: MIN062052



Dear Mr Gepp

**FLORA AND FAUNA GUARANTEE AMENDMENT BILL 2019**

Thank you for your letter of 13 August 2019 about the Flora and Fauna Guarantee Amendment Bill 2019. I would also like to thank the Scrutiny of Acts and Regulations Committee for convening on 12 August 2019 to consider the Bill.

In response to your query, I can advise that new section 32, which provides that it is an offence to contravene a habitat conservation order, is not intended to be a strict liability or absolute liability offence. I note that there is a presumption that a statutory offence is not a strict liability or absolute liability unless it can be shown otherwise, such as through the language of the legislation and its subject matter. As such, only the offences intended to be strict liability offences (new sections 47, 47B and 52) have been stated in the Explanatory Memorandum as being strict liability.

The conditions of habitat conservation orders may vary significantly according to the circumstances in which they are made. As a result, any contravention should be assessed on a case-by-case basis. The contravention of a habitat conservation order carries a substantial penalty of 240 penalty units, or two years imprisonment or both, in the case of a natural person. I note that offences with greater complexity and substantial penalties are generally unsuitable as strict liability or absolute liability offences.

Please accept my apologies for any ambiguity. I trust this information will be of assistance.

If you would like more information about this matter, please contact Martin Spence, Manager, Regulatory Design, Biodiversity Division, Department of Environment, Land, Water and Planning, on (03) 9637 9722 or email [martin.j.spence@delwp.vic.gov.au](mailto:martin.j.spence@delwp.vic.gov.au).

Thank you again for writing.

Yours sincerely

Hon Lily D'Ambrosio MP  
Minister for Energy, Environment and Climate Change  
Minister for Solar Homes

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# Appendix 1

## Index of Bills in 2019

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Births, Deaths and Marriages Registration Amendment Bill 2019	9
Children Legislation Amendment Bill 2019	10
Disability (National Disability Insurance Scheme Transition) Amendment Bill 2019	8
Energy Legislation Amendment (Victorian Default Offer) Bill 2019	3
Environment Protection Amendment Bill 2019	9
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Fair Work (Commonwealth Powers) Amendment Bill 2018	2
Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2019	8, 9
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Statute Law Revision Bill 2018	3
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Water and Catchment Legislation Amendment Bill 2019	5
West Gate Tunnel (Truck Bans and Traffic Management) Bill 2019	3, 5



## Appendix 2

# Committee Comments classified by Terms of Reference

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

**Alert Digest Nos.**

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

#### **(i) trespasses unduly upon rights or freedoms**

Flora and Fauna Guarantee Amendment Bill 2019	9, 10
Justice Legislation Miscellaneous Amendment Act 2018 (House Amendment)	1, 5
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Spent Convictions Bill 2019	2, 3
State Taxation Acts Amendment Bill 2019	7, 9
West Gate Tunnel (Truck Bans and Traffic Management) Bill 2019	3, 5

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

Professional Engineers Registration Bill 2019	4, 5
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#### **(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities**

Assisted Reproductive Treatment Amendment (Consent) Bill 2019	8, 9
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Legal Profession Uniform Law Application Amendment Bill 2019	8, 9
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Open Courts and Other Acts Amendment Bill 2019	3, 4
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Sale of Land Amendment Bill 2019	5, 6
Spent Convictions Bill 2019	2, 3
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## **Section 17(b)**

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

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## Appendix 3

### Table of Ministerial Correspondence

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***Table of correspondence between the Committee and Ministers or Members***

This Appendix lists the Bills where the Committee has written to the Minister or Member seeking further advice, and the receipt of the response to that request.

<b>Bill Title</b>	<b>Minister/ Member</b>	<b>Date of Committee Letter / Minister's Response</b>	<b>Alert Digest No. Issue raised / Response Published</b>
Audit Amendment Bill 2018	Special Minister of State	05.02.19 14.02.19	1 of 2019 2 of 2019
Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Bill 2018	Special Minister of State	05.02.19 14.02.19	1 of 2019 2 of 2019
Justice Legislation Miscellaneous Amendment Act 2018 (House Amendment)	Attorney-General	05.02.19 27.03.19	1 of 2019 5 of 2019
Spent Convictions Bill 2019	Fiona Patten MP	19.02.19 21.02.19	2 of 2019 3 of 2019
Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Bill 2019	Special Minister of State	19.02.19 01.03.19	2 of 2019 3 of 2019
Open Courts and Other Acts Amendment Bill 2019	Attorney-General	05.03.19 18.03.19	3 of 2019 4 of 2019
West Gate Tunnel (Truck Bans and Traffic Management) Bill 2019	Transport Infrastructure	05.03.19 28.03.19	3 of 2019 5 of 2019
Primary Industries Legislation Amendment Bill 2019	Agriculture Fishing and Boating	19.03.19 19.03.19	4 of 2019 4 of 2019
Professional Engineers Registration Bill 2019	Treasurer	19.03.19 23.04.19	4 of 2019 5 of 2019
Sale of Land Amendment Bill 2019	Consumer Affairs, Gaming and Liquor Regulation	30.04.19 23.05.19	5 of 2019 6 of 2019
State Taxation Acts Amendment Bill 2019	Treasurer	06.06.19 18.06.19	7 of 2019 9 of 2019
Assisted Reproductive Treatment Amendment (Consent) Bill 2019	Health	18.06.19 09.08.19	8 of 2019 9 of 2019
Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2019	Police and Emergency Services	18.06.19 20.06.19	8 of 2019 9 of 2019

<b>Bill Title</b>	<b>Minister/ Member</b>	<b>Date of Committee Letter / Minister's Response</b>	<b>Alert Digest No. Issue raised / Response Published</b>
Legal Profession Uniform Law Application Amendment Bill 2019	Attorney-General	18.06.19 01.08.19	8 of 2019 9 of 2019
Births, Deaths and Marriages Registration Amendment Bill 2019	Attorney-General	13.08.19	9 of 2019
Flora and Fauna Guarantee Amendment Bill 2019	Energy, Environment and Climate Change	13.08.19 28.08.19	9 of 2019 10 of 2019
Local Government (South Gippsland Shire Council) Act 2019	Local Government	13.08.19	9 of 2019
Children Legislation Amendment Bill 2019	Child Protection	27.08.19	10 of 2019