

# **No. 13 of 2011**

**Tuesday, 8 November 2011**

**On the**

Business Names  
(Commonwealth Powers) Bill 2011

Independent Broad-based  
Anti-corruption Commission Bill 2011

Justice Legislation  
Further Amendment Bill 2011

Leo Cussen Institute  
(Registration as a Company) Bill 2011

Liquor Control Reform  
Further Amendment Bill 2011

Mines (Aluminium Agreement)  
Amendment Bill 2011

Parks and Crown Land Legislation  
Amendment Bill 2011

Planning and Environment  
Amendment (Schools) Bill 2011

Public Interest Monitor Bill 2011

Public Prosecutions  
Amendment Bill 2011

Sentencing Amendment  
(Community Correction Reform)  
Bill 2011

Serious Sex Offenders  
(Detention and Supervision) Bill 2011

State Taxation Acts  
Further Amendment Bill 2011

Victorian Inspectorate Bill 2011

# The Committee



Chairperson  
Mr Edward O'Donohue MLC  
Member for Eastern Victoria



Deputy Chairperson  
Hon. Christine Campbell MLA  
Member for Pascoe Vale



Mr John Eren MLA  
Member for Lara



Mr Michael Gidley MLA  
Member for Mount Waverley



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## Terms of Reference - Scrutiny of Bills

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

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

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# Useful information

## Role of the Committee

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

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

## Interpretive use of Parliamentary Committee reports

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

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

## When may human rights be limited

Section 7 of the *Charter* provides –

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

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

## Glossary and Symbols

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

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

'*child*' means a person under 18 years of age;

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

'*court*' refers to the Supreme Court, the County Court, the Magistrates' Court or the Children's Court as the circumstances require;

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

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

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

'*VCAT*' refers to the Victorian Civil and Administrative Tribunal;

[ ] denotes clause numbers in a Bill.

# Alert Digest No. 13 of 2011

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## Business Names (Commonwealth Powers) Bill 2011

Introduced	25 October 2011
Second Reading Speech	27 October 2011
House	Legislative Council
Member introducing Bill	Hon. Matthew Guy MLC
Portfolio responsibility	Minister for Planning

### Background

The Bill adopts the proposed *Business Names Registration Act 2011* (Cth) and the proposed *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (Cth) (the national business names laws) and to refer certain matters relating to the amendment of the national laws to the Commonwealth Parliament. [5 to 7]

**Note:** The Bill is to be enacted for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth, which enables State Parliaments to refer matters to the Commonwealth Parliament, or to adopt Commonwealth laws that have been enacted pursuant to such referrals.

Victoria may terminate the adoption and amendment reference. [8]

The Bill repeals the *Business Names Act 1962* [10] and makes consequential amendments to certain Victorian Acts. [Part 5] The Bill includes transitional provisions to facilitate the change from a Victorian to a national business names registration scheme. [Part 4]

Extract from the Explanatory Memorandum:

By adopting the national business names legislation, and providing the Commonwealth with the future power to amend that legislation (an amendment reference), the Bill facilitates the introduction of a new national business names registration scheme and the establishment of a national business names register. The Commonwealth and the States have agreed on certain exclusions to the amendment reference. These exclusions are reflected in this Bill and are recognised under the national business names legislation. Through these exclusions the Bill places a number of limitations on the amendment reference.

### Committee comment

#### Commencement by proclamation – Whether appropriate delegation of legislative power – Referral of powers – Commencement contingent on national legislation

The Committee notes the commencement by proclamation provision. The explanatory memorandum provides that this is necessary as the commencement of the Victorian legislation is contingent upon the commencement of certain provisions of the national business names legislation.

The Committee accepts that the use of a commencement by proclamation provision in such cases is appropriate.

**The Committee makes no further comment**

# Independent Broad-based Anti-corruption Commission Bill 2011

<b>Introduced</b>	26 October 2011
<b>Second Reading Speech</b>	27 October 2011
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Andrew McIntosh MLA
<b>Portfolio responsibility</b>	Minister responsible for the establishment of an anti-corruption Commission

## Background

The Bill establishes the Independent Broad-based Anti-corruption Commission (IBAC) as a body corporate consisting of one Commissioner appointed by the Governor in Council. **[6 to 12]**

The Commissioner is an independent officer of the Parliament and is not subject to the direction or control of the Minister. **[12 and 13]**

Other than the inaugural appointment of a Commissioner, the IBAC Committee of the Parliament may veto a proposed appointment. **[15]**

The Governor in Council may appoint one or more Deputy Commissioners. **[17]**

The Commissioner is appointed for a term of 5 years and is not eligible for re-appointment. A Deputy Commissioner is eligible for re-appointment. **[18]**

The IBAC may at any time present a report to the Parliament that is related to its functions. After presentation to the Parliament the IBAC may publish these reports on the IBAC internet website. Such reports are protected by absolute privilege. **[35]**

The functions of the IBAC include to:

- examine systems and practices in the public sector and public sector legislation
- provide information to, consult with and make recommendations to, the public sector
- assist the public sector to increase capacity to prevent corrupt conduct by providing advice, training and education services
- provide information and education services to the community about the detrimental effects of corruption on public administration and ways in which to assist in preventing corrupt conduct
- publish information on ways to prevent corrupt conduct. **[9]**

## Oversight of the IBAC by the Victorian Inspectorate

The Victorian Inspectorate is to be established to provide oversight of the functions and activities of the IBAC (refer to the Victorian Inspectorate Bill 2011 also reported in this Alert Digest).

## Oversight of IBAC by the IBAC Committee

The Bill also amends the *Parliamentary Committees Act 2003* (new sections 5(f) and 12A) to establish a new Joint House Committee of the Parliament (IBAC Committee) to oversee the IBAC. **[38 to 40]**

## 12A IBAC Committee

The functions of the IBAC Committee are:

- (a) to monitor and review the performance of the duties and functions of the IBAC;
- (b) to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the IBAC that require the attention of the Parliament;
- (c) to examine any reports made by the IBAC;
- (d) to consider any proposed appointment of a Commissioner and to exercise a power of veto in accordance with the *Independent Broad-based Anti-corruption Commission Act 2011*;
- (e) to carry out any other function conferred on the IBAC Committee by or under this Act or the *Independent Broad-based Anti-corruption Commission Act 2011*.

**Note:** The IBAC Committee will also have oversight responsibility over the Victorian Inspectorate (refer to report in this Alert Digest), and in this respect the Victorian Inspectorate Bill 2011 provides additional terms of reference for the IBAC Committee relating to oversight of the Victorian Inspectorate (proposed section 12A(f) to (i)).

**The Committee makes no further comment**

## Justice Legislation Further Amendment Bill 2011

Introduced	25 October 2011
Second Reading Speech	26 October 2011
House	Legislative Assembly
Member introducing Bill	Hon. Robert Clark MLA
Portfolio responsibility	Attorney-General

### Background

The Bill amends:

- section 328 of the *Criminal Procedure Act 2009* to allow a police prosecutor to appear on behalf of a protective services officer acting as the informant in criminal proceedings in the Magistrates Court. [3]
- the *Major Crime (Investigative Powers) Act 2004* to extend the duration of the operation of contempt powers currently available to the Chief Examiner where a person fails without reasonable excuse to answer questions, produce documents, be sworn or make an affirmation, or otherwise behave in a manner that would constitute contempt of the Supreme Court. The extension for a further 4 years to 1 January 2016. [4]

The amendment also extends for a further 4 years to 1 January 2016 a 'no double jeopardy provision so that a person who is guilty of both an offence under the *Major Crime (Investigative Powers) Act 2004* and contempt of the Chief Examiner is only prosecuted once. [5]

- the *Road Safety Amendment (Hoon Driving and Other Matters) Act 2011* to remove the default commencement date to applicable to certain sections of that Act ensure that certain provisions of that Act will not come into operation prior to the provisions of a related Commonwealth Act. The effect will be to provide for commencement by proclamation. [6]

**Note:** The commencement of the *Personal Property Securities Act 2009* (Cth) has been delayed from October 2011 to late January 2012. This delay is relevant to certain unproclaimed provisions in the *Road Safety Amendment (Hoon Driving and Other Matters) Act 2011* (the 'Act') which will amend the *Road Safety Act 1986* and the *Police Regulation Act 1958*. The Bill will remove the default commencement date to ensure that the relevant provisions of the Act will not commence operation until the Commonwealth Personal Property Securities Register commences operation.

### Committee comment

#### Commencement by proclamation – Delegation of legislative power – Commencement to coincide with Commonwealth legislation

The Committee notes the explanatory memorandum and the Second reading Speech concerning the reasons for removing a default commencement provision of 1 February 2012 for certain sections of the amending legislation. The Committee is satisfied that commencement by proclamation to coincide with Commonwealth laws is necessary.

#### The Committee makes no further comment

## Leo Cussen Institute (Registration as a Company) Bill 2011

<b>Introduced</b>	25 October 2011
<b>Second Reading Speech</b>	26 October 2011
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Robert Clark MLA
<b>Portfolio responsibility</b>	Attorney-General

### Background

The Bill provides for the registration of the Leo Cussen Institute (the 'Institute') as a company limited by guarantee under section 5H of the *Corporations Act 2001* (Cth) ('the Corporations Act'). The Institute will be a company limited by guarantee with charitable purposes, providing education for legal practitioners, prospective legal practitioners and others concerned with the application of the law.

The Institute was established by the *Leo Cussen Institute Act 1972* (the '1972 Act'). Once registered under the *Corporations Act*, the company will be taken for all purposes to be a continuation of, and the same legal entity as, the Institute established by the 1972 Act. Following registration the 1972 Act will no longer serve any purpose and will be repealed by the Bill.

**The Committee makes no further comment**

# Liquor Control Reform Further Amendment Bill 2011

Introduced	25 October 2011
Second Reading Speech	26 October 2011
House	Legislative Assembly
Member introducing Bill	Hon. Michael O'Brien MLA
Portfolio responsibility	Minister for Consumer Affairs

## Background

The Bill amends the *Liquor Control Reform Act 1998* (the Act) to:

1. introduce a five star rating system that will reward responsible liquor licensees with discounts on their annual liquor licensing renewal fees.
2. introduce a demerit points system applicable to liquor licensees where demerit points are incurred for nominated offences, and once a demerit point threshold is met the licence will be automatically suspended for a set period of time.
3. introduce a new category of licence for wine and beer producers to simplify and modernise the existing regulatory regime for vigneron.
4. reflect in the objects section of the Act (s.4(1)(c)) the importance of live music to the hospitality industry and the broader community.
5. ensure that licensees that exclusively supply packaged liquor obtain a packaged liquor licence.
6. make a number of other minor and technical amendments.

The Bill also makes a consequential amendment to the *Infringements Act 2006*.

Extract from the Second Reading Speech:

The details of the 5-star rating system are not contained in the Bill. Rather, the Bill creates a new regulation-making power so that the details of the 5-star rating scheme can be prescribed in the *Liquor Control Reform Regulations 2009*.

Under the demerit points system, liquor licences will be automatically suspended when a venue accumulates sufficient demerit points.

Demerit points will be applied for 'non-compliance incidents', which are defined as paid infringements, successful prosecutions and infringements that are unpaid and in respect of which enforcement orders have been issued, for the same relevant offences that apply to the 5-star rating system. One non-compliance incident will incur one demerit point.

... The Bill will clarify that a packaged liquor licence and a late night (packaged liquor) licence may authorise trading on Christmas Day and/or Good Friday. This power was unintentionally removed following amendments to the Act that commenced on 1 January 2010. The amendment will also validate any decision made by the Commission or the former Director of Liquor Licensing since 1 January 2010 that relied on this power. **[8 and 27]**

**The Committee makes no further comment**

# Mines (Aluminium Agreement) Amendment Bill 2011

<b>Introduced</b>	25 October 2011
<b>Second Reading Speech</b>	26 October 2011
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Michael O'Brien MLA
<b>Portfolio responsibility</b>	Minister for Energy and Resources

## Background

A Bill amends the *Mines (Aluminium Agreement) Act 1961* to provide for amendments to the agreement in the Schedule to that Act and repeals the *Mines (Aluminium Agreement) (Brown Coal Royalties) Act 2005*.

**Note:** For further background refer to the preamble to the Bill.

Extracts from the Second reading Speech:

The Bill ratifies, validates and approves the mines aluminium agreement entered into by Alcoa and the State in 1961 by amending and restating the agreement. The Bill reflects the extension of the agreement for a further term of 50 years, a legal option provided to Alcoa by the 1961 agreement and which Alcoa advised the State of Victoria in 2008 that it is exercising.

... The Bill makes it clear that the *Occupational Health and Safety Act 2004* applies to Alcoa's Anglesea mining operations in the same manner that the Act applies to all other mines in Victoria.

... The Bill also includes a new section 7A in the principal Act that enables Alcoa to apply to the Minister for approval to compulsorily acquire an interest in land for the purposes of the agreement. This provision has been inserted to preserve Alcoa's existing rights under the agreement. The agreement currently refers to powers of compulsory acquisition contained in section 26 of the *State Electricity Commission Act 1958*. That section has been repealed, and the new section 7A of the principal Act effectively replicates what was previously in section 26 of the *State Electricity Commission Act 1958*.

## Committee comment

The power of compulsory acquisition of an interest in land referred to in the Second Reading Speech extract above is subject to the provisions of the *Land Acquisition and Compensation Act 1986*. [9]

**The Committee makes no further comment**

## **Parks and Crown Land Legislation Amendment Bill 2011**

<b>Introduced</b>	25 October 2011
<b>Second Reading Speech</b>	26 October 2011
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Ryan Smith MLA
<b>Portfolio responsibility</b>	Minister for Environment and Climate Change

### **Background**

The Bill will:

1. create Lake Tyers State Park and Gippsland Lakes Reserve (Raymond Island) and add areas to the Alpine, Chiltern-Mount Pilot, French Island, Grampians, Kinglake, Lower Goulburn, Mitchell River, Mornington Peninsula and Warby-Ovens national parks, Gippsland Lakes Coastal Park, Macedon Regional Park and Otway Forest Park.
2. change the name of St Arnaud Range National Park to Kara Kara National Park in recognition of its history and aboriginal heritage.
3. extend the maximum lease term for the Arthurs Seat chairlift from the current 20 year term to a 50 year maximum term. The Bill also adds several areas of airspace where the proposed chairlift passes over the Arthurs Seat Road.
4. extend the period in which firewood can be collected from former logging coupes in Barmah and Gunbower national parks to 30 June 2015.
5. reclassify Frankston Natural Features Reserve as a nature conservation reserve.
6. streamline the approvals process for fire prevention works on certain Crown land.
7. enable regulations to continue to be made for the care, protection, management and use of reservoir parks.
8. make other amendments of a minor or technical nature, including repealing spent provisions.

**The Committee makes no further comment**

## Planning and Environment Amendment (Schools) Bill 2011

<b>Introduced</b>	25 October 2011
<b>Second Reading Speech</b>	26 October 2011
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Robert Clark MLA
<b>Portfolio responsibility</b>	Minister for Finance

### Background

The Bill amends the *Planning and Environment Act 1987* to the effect that the subdivision of land for the purpose of establishing or acquiring a site for a primary or secondary school or carrying out building work relating to such a school including ancillary purposes, will not be an action which will give rise to the liability to pay a Growth Areas Infrastructure Contribution (GAIC). **[4 and 5]**

**Note:** The GAIC scheme establishes a requirement for persons subdividing, purchasing or undertaking building work on land in Melbourne's growth areas to contribute to the provision of essential infrastructure in those areas.

**The Committee makes no further comment**

## Public Interest Monitor Bill 2011

<b>Introduced</b>	13 October 2011
<b>Second Reading Speech</b>	25 October 2011
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Andrew McIntosh MLA
<b>Portfolio responsibility</b>	Minister responsible for the establishment of an anti-corruption Commission

### Background

The Bill establishes a Principal Public Interest Monitor and Deputy Public Interest Monitors (PIMs) to provide public interest advocacy and oversight concerning the use of covert investigation and coercive powers in Victoria. PIMs will have a public interest role prior to, and at hearings of applications for:

1. surveillance device warrants by Victoria Police, the Office of Police Integrity (OPI), the departments of primary industries and sustainability and environment, and the Australian Crime Commission under the *Surveillance Devices Act 1999*.
2. a retrieval warrant, an assistance order and an approval of an emergency authorisation for surveillance devices.
3. telecommunications interception warrants by Victoria Police and the Office of Police Integrity under the *Telecommunications (Interception and Access) 1979 (Cth)*.
4. covert search warrants, preventative detention orders and prohibited contact orders by Victoria Police under the *Terrorism (Community Protection) Act 2003*.
5. coercive powers orders by Victoria Police under the *Major Crime (Investigative Powers) Act 2004*.
6. an extension, variation, renewal or revocation of an order, warrant or approval for these powers.

Extract from the Second Reading Speech:

The Bill provides for PIMs to have a role at hearings of applications for these powers. At the application hearing, a PIM will represent the public interest by testing the content and sufficiency of material relied upon in the application and the circumstances of the application.

... PIMs will also have a role at applications for extensions, variations and revocations of such warrants. At a hearing, a PIM will be able to ask questions of any person providing information about the application. A PIM will make submissions to the judge, magistrate or AAT member on the appropriateness of the application.

PIM will appear at applications made by the OPI, and subsequently the IBAC when it is authorised to apply for such warrants.

#### Requirement to notify

An officer of an integrity or law enforcement body will be required to notify a PIM about an application to exercise one of these powers. This obligation includes giving a PIM a copy of the application and any affidavit.

The Bill amends the enabling Acts under which these powers may be applied for to introduce a positive obligation on an applicant to provide full disclosure of all matters relevant that are

adverse to the application. A breach of this obligation to provide full disclosure will be an offence. The offence highlights the critical role of PIMs, and the importance of the applicant providing all information to the PIM as part of the application process. The offence will not be a strict liability offence it will require a knowing or reckless failure. ...

#### Reporting

The Principal PIM will report annually to the Minister on the performance of the functions of all PIMs. The Minister will cause the report to be laid before the Parliament within 14 days of receiving it.

The Bill makes amendments to the:

- *Surveillance Devices Act 1999*
- *Major Crime (Investigative Powers) Act 2004*
- *Terrorism (Community Protection) Act 2003*
- *Telecommunications (Interception)(State Provisions) Act 1988*

### **Committee comment**

#### **Commencement by proclamation – Delegation of legislative power – Need for complimentary Commonwealth legislation**

The provisions in the Bill are proposed to commence operation on proclamation. The explanatory memorandum provides that the reason for not including a default commencement day is the need to wait until the enactment of complementary Commonwealth legislation.

In the circumstances the Committee accepts that a commencement by proclamation provision is justified.

**The Committee makes no further comment**

## Public Prosecutions Amendment Bill 2011

<b>Introduced</b>	25 October 2011
<b>Second Reading Speech</b>	27 October 2011
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Robert Clark MLA
<b>Portfolio responsibility</b>	Attorney-General

### Background

The Bill amends the *Public Prosecutions Act 1994* (the 'Act') to refine the existing arrangements in the Act so as to clarify the role relationships between the Director of Public Prosecutions (DPP), Chief Crown Prosecutor (CCP) and the Solicitor for Public Prosecutions (SPP). The Bill also revises the role of Associate Crown Prosecutor (ACP). The Bill removes the minimum term of reappointment for Senior Crown Prosecutors in certain circumstances.

The Bill provides the DPP with new functions under the Act and transfers functions from the Committee for Public Prosecutions, which is to be abolished, to a Director's Committee comprising the DPP, CCP and the SPP.

The Bill makes consequential amendments to the act and the *Public Administration Act 2004* and provides necessary transitional arrangements.

Extracts from the Second Reading Speech:

#### Director of Public Prosecutions

... The Bill continues all of the existing powers and functions of the DPP and gives the DPP new functions in relation to Victoria's public prosecutions service. The public prosecution service is defined for the first time by the Bill to include the DPP, the CCP, Crown prosecutors (CPs -- which includes senior Crown prosecutors), associate Crown prosecutors (ACPs), the SPP and the Office of Public Prosecutions (OPP).

The Bill makes clear that the DPP is the head of the public prosecutions service. The Bill provides that the performance of functions of the CCPs, SPPs, CPs and ACPs are subject to the general direction and control of the DPP, while continuing the independent prosecutorial discretions of the CCP and CPs.

... Those provisions of the Act which provide for the independence of the DPP and define the relationship between the DPP and the Attorney-General continue unchanged.

#### Chief Crown Prosecutor

Currently there is no provision in the Act for a standing deputy to Act as DPP when the DPP is on leave or during vacancy in the office of DPP. The Bill provides that the CCP is the standing deputy for the DPP and will Act as DPP when the office of DPP is vacant or the DPP is absent from duty or otherwise unable to carry out the duties of office.

#### Crown Prosecutors and Senior Crown Prosecutors

... the Bill will alter the current process for making recommendations to the Attorney-General for the removal from office of a CP. This function will transfer from the Committee for Public Prosecutions to the DPP following consultation with the Director's committee comprising the DPP, the CCP and the SPP.

#### Associate Crown Prosecutors

... Future appointments to the role of ACP will be made by the DPP after consultation with the Director's Committee. ACPs will be employed as Part 3 employees under the *Public Administration Act 2004* (PAA). The SPP will exercise the functions of a public service body head in relation to the ACPs, including the function of termination in accordance with the PAA.

#### Office of Public Prosecutions and solicitor for public prosecutions

The SPP will retain administrative responsibility for the OPP, so as to enable the DPP to focus on the role of chief prosecutorial decision-maker in the State. However, the Bill will provide that the SPP manages the OPP on behalf of the DPP. The Bill will recast the role of the SPP as an executive appointed and removable by the DPP under Part 3 of the PAA.

#### Director's Committee

The Bill retains the Director's Committee, which must be convened by the DPP if he or she is making a special decision. The primary role of the Director's Committee is an advisory one which enables the Director to consult with the Director's Committee before making particular decisions.

... The Committee for Public Prosecutions, which has been largely inactive in recent years, will be abolished...

#### Amendments to the *Public Administration Act 2004* (the PPA)

The Bill will make some consequential amendments to the PAA. ... The PAA will also be applied to the DPP for the limited purpose of employing the SPP and the ACPs. This will ensure that principles of merit and equity are applied to relevant processes and decisions.

#### Transitional arrangements

In order to ensure the seamless ongoing operation of the public prosecutions service, the Bill includes transitional arrangements to preserve the basis and terms of appointment of the current SPP and ACPs for the duration of their appointments ...

**The Committee makes no further comment**

# Serious Sex Offenders (Detention and Supervision) Bill 2011

<b>Introduced</b>	25 October 2011
<b>Second Reading Speech</b>	26 October 2011
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Andrew McIntosh MLA
<b>Portfolio responsibility</b>	Minister for Corrections

## Background

The Bill amends the *Serious Sex Offenders (Detention and Supervision) Act 2009* (the 'Act') to:

1. apply provisions of the Act relating to the calculation of the period of a supervision order and when an offender is subject to the conditions of a supervision order to interim supervision orders
2. remove the requirement to conduct a periodic review of a supervision or detention order if an application to renew the order has been made
3. remove requirements for the review of a supervision or detention order if the offender is in custody on remand
4. amend provisions relating to the court's consideration of disputed reports when the court is determining an application for an interim supervision order or interim detention order
5. enable the Registrar of the Sex Offenders Register or a member of the police force of or above the rank of inspector, in certain circumstances, to dispense with notice requirements when filing a charge-sheet charging a person with failing to comply with a condition of a supervision order
6. update provisions relating to information sharing
7. apply additional provisions of the Act to offenders who are subject to extended supervision orders made under the *Serious Sex Offenders Monitoring Act 2005*

The Bill amends the *Civil Procedure Act 2010* to provide that that Act does not apply to proceedings under the *Sex Offenders (Detention and Supervision) Act 2009*.

The Bill also amends the *Disability Act 2006* so that treatment plans under that Act must be consistent with supervision orders made under the *Sex Offenders (Detention and Supervision) Act 2009*.

**The Committee makes no further comment**

# State Taxation Acts Further Amendment Bill 2011

Introduced	25 October 2011
Second Reading Speech	26 October 2011
House	Legislative Assembly
Member introducing Bill	Hon. Kim Wells MLA
Portfolio responsibility	Treasurer

## Background

The Bill amends the:

1. *Payroll Tax Act 2007* as a result of a recent High Court decision, to restore and limit the scope of the exemption available to non-profit organisations for wages paid for work which supports the charitable purposes of the organisation and clarify the exemption available in respect of wages paid or payable in respect of maternity or adoption leave. **[3 and 4]**
2. *Duties Act 2000* to —
  - reduce the period of time available for the payment of duty after the liability arises from 3 months to 30 days. **[5 to 24]**
  - clarify the starting point for calculating the pensioner exemption and concession from duty for properties purchased off the plan. **[26]**
  - remove an outdated reference to the *Income Tax Assessment Act 1936* (Cth). **[25]**
3. *Land Tax Act 2005* to—
  - enable the managers of title-based time-sharing schemes to be assessed for land tax. **[27 to 29]**
  - enable a part of a zone to be declared as an urban zone. **[32]**
  - amend the ownership requirements for the primary production exemption. **[30 to 33]**
  - make miscellaneous amendments in relation to the use of land valuations to assess land tax. **[34 to 36]**
4. *Taxation Administration Act 1997* to—
  - apply the Acts administration and enforcement provisions to the collection of livestock duty which will empower the Commissioner of State Revenue to impose interest and penalty tax in relation to livestock duty. **[38]**
  - clarify the objection process in relation to the valuation of land. **[39 to 41]**
5. *Livestock Disease Control Act 1994* to—
  - allow the Secretary to the Department of Primary Industries to disclose certain information in relation to the administration of livestock duty to the Commissioner of State Revenue. **[46]**
  - ensure any interest and penalty tax collected by the Commissioner of State Revenue in relation to livestock duty is paid into the appropriate compensation funds. **[42 to 44]**
  - make two minor statute law revision amendments correcting grammatical errors. **[47]**
6. *Valuation of Land Act 1960* to improve certain provisions as a result of the new valuation system. **[48 to 60]**

**The Committee makes no further comment**

## Victorian Inspectorate Bill 2011

<b>Introduced</b>	26 October 2011
<b>Second Reading Speech</b>	27 October 2011
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Andrew McIntosh MLA
<b>Portfolio responsibility</b>	Minister responsible for the establishment of an anti-corruption Commission

### Background

This Bill establishes the Victorian Inspectorate to provide oversight of the Independent Broad-based Anti-corruption Commission (IBAC). The Victorian Inspectorate is a body corporate consisting of one inspector appointed by Governor in Council. **[6 to 8]**

The Inspector is an independent officer of Parliament and is not subject to the direction or control of the Minister. **[12 and 13]**

The appointment of the Inspector (other than the inaugural Inspector) is subject to the veto of the Joint Parliamentary Committee (the IBAC Committee) which is established by the IBAC Bill (also reported in this Alert Digest). **[14 and 15]**

The Inspector holds office for 5 years and is eligible for re-appointment. **[17]**

The Victorian Inspectorate may report to Parliament at any time in respect to its functions. After presentation to Parliament the Victorian Inspectorate may publish the report on its Internet website and such reports are absolutely privileged. **[36]**

The Victorian Inspectorate is subject to oversight by the IBAC Committee of the Parliament which is to be established by the IBAC Bill 2011 (reported in this Alert Digest). **[44]**

The Victorian Inspectorate and officers of the Inspectorate are provided immunity for acts performed in good faith and the provisions of the *Freedom of Information Act 1982* do not apply in respect to documents in the possession of a relevant person as defined by the Act. **[39 and 40]**

Extracts from the Second Reading Speech:

The Victorian Inspectorate will have broad-ranging functions to monitor the compliance of IBAC with its own Act and other laws. In addition, the Victorian Inspectorate will have powers to investigate complaints, assess policies and procedures and make reports and recommendations. When IBAC is vested with investigation powers, a key role of the Victorian Inspectorate will be to oversee the use of those powers.

... Initially, the Victorian Inspectorate will oversee IBAC and the Special Investigations Monitor (SIM) will continue to oversee the Office of Police Integrity (OPI). Once IBAC's investigation powers are operational it is intended that the Victorian Inspectorate will take over and build upon the SIM's powers – in addition to the inspectorate's IBAC oversight role – so that there will be a single body monitoring the use of special covert investigation and coercive powers by Victorian investigative agencies.

... The Victorian Inspectorate will:

- monitor the compliance of IBAC and IBAC personnel with the law;
- assess the effectiveness and appropriateness of IBAC's policies and procedures;

- receive complaints about IBAC and investigate and assess the conduct of IBAC and IBAC personnel; and
- make recommendations and reports.

... The Victorian Inspectorate itself will be subject to oversight by the Joint House Committee – the IBAC Committee.

#### The Inspector

The Victorian Inspectorate will be led by an Inspector, who will have responsibility for the strategic leadership of the organisation. The Bill ensures the independence of the Inspector, establishing the role as an independent officer of Parliament not subject to the direction or control of the Government.

... The Inspector will be appointed by the Governor in Council. Apart from the first appointment, the appointment of the Inspector will be subject to the approval of the IBAC Committee, which will have a veto power. For the first appointment, the Premier will consult with the Leader of the Opposition.

... The Government intends to introduce further legislation that will provide the Victorian Inspectorate with functions and powers commensurate with the investigative powers intended for IBAC. This includes overseeing the use by IBAC of covert and coercive investigation tools, such as telecommunication interception warrants issued under the *Telecommunications (Interception and Access) Act 1979* (Cth).

#### The IBAC Committee

The Bill inserts further IBAC Committee functions in proposed section 12A of the *Parliamentary Committees Act 2003* (to be inserted by clause 40 of the IBAC Bill (also in this Alert Digest report)). The proposed additional functions in proposed section 12A(1) are:

- (f) to monitor and review the performance of the duties and functions of the Victorian Inspectorate;
  - (g) to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the Victorian Inspectorate that require the attention of the Parliament;
  - (h) to examine any reports made by the Victorian Inspectorate;
  - (i) to consider any proposed appointment of an Inspector and to exercise a power of veto in accordance with the *Victorian Inspectorate Act 2011*.
- (2) Despite anything to the contrary in subsection (1), the IBAC Committee cannot—
- (a) investigate a matter relating to particular conduct the subject of any report made by the Victorian Inspectorate;
  - (b) review any decision to investigate, not to investigate, or to discontinue the investigation of a particular complaint made to the Victorian Inspectorate in accordance with the *Victorian Inspectorate Act 2011*;
  - (c) review any findings, recommendations, determinations or other decisions of the Victorian Inspectorate in relation to a particular complaint made to, or investigation conducted by, the Victorian Inspectorate in accordance with the *Victorian Inspectorate Act 2011*;
  - (d) disclose any information relating to the performance of a function or exercise of a power by the Victorian Inspectorate which may—
    - (i) prejudice any criminal investigation or criminal proceedings; or

- (ii) prejudice an investigation being conducted by the IBAC; or
- (iii) contravene any secrecy or confidentiality provision in any relevant Act. **[44]**

The Bill provides that relevant documents (defined in section 40) held by the VI are not subject to the *Freedom of Information Act 1982*. **[40]**

**The Committee makes no further comment**

# Ministerial Correspondence

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## Sentencing Amendment (Community Correction Reform) Bill 2011

The Bill was introduced into the Legislative Assembly on 14 September 2011 by the Hon. Robert Clark MLA. The Committee considered the Bill on 10 October 2011 and made the following comments in Alert Digest No. 11 of 2011 tabled in the Parliament on 11 October 2011.

### Committee's Comments

#### **Delayed commencement – Delegation of legislative power – One year rule**

The Bill provides that some of the provisions of Bill may not commence until 30 June 2013. The Committee once again draws attention to Practice Note No. 1 of 2005 concerning delayed commencement of legislation of more than one year from introduction. Where delayed commencement is considered necessary or desirable SARC would prefer some explanation to be provided in either the explanatory memorandum or the second reading speech. [2]

**The Committee will seek further advice from the Minister.**

### Minister's Response

Thank you for your letter dated 11 October 2011 concerning the Sentencing Amendment (Community Correction Reform) Bill 2011 (the Bill).

The Committee has noted that the default commencement date of the Bill is 30 June 2013 and sought further explanation for the delayed commencement beyond the usual 12 months.

The Bill represents the most significant reform to community-based sentences that Victoria has seen in 20 years. The reforms are far-reaching and must be implemented in stages to ensure a smooth and orderly implementation.

Accordingly, the Second Reading Speech advised Parliament that the principal reforms will commence early next year, with specific reforms in the Bill to commence later in 2012. The specific reforms that will commence later are the Bond Condition under the Community Correction Order, the expanded driver licence penalties and the new powers for Corrections Victoria to deal with compliance in community sentencing.

The stage two reforms will commence later as they involve complex operational and logistical coordination between several agencies including the courts, Corrections Victoria, VicRoads and Victoria Police. In addition to creating new powers and procedures, the reforms require additional staff, training and changes to IT systems.

I am told that all agencies expect to be ready for these reforms to commence in 2012. The Bill, however, provides some additional time in the event that any unforeseen issues need to be resolved prior to commencement.

**ROBERT CLARK MP**  
Attorney-General

Received 3 November 2011

**The Committee thanks the Attorney-General for this response.**

**Committee Room**  
**7 November 2011**

# Appendix 1

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## 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 further correspondence with the appropriate Minister or Member.*

#### Alert Digest Nos.

#### Section 17(a)

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

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

Emergency Management Legislation Amendment Bill 2011 11

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

Justice Legislation Amendment Bill 2011 2

**(iv) unduly requires or authorise 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 authorise 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**

Sentencing Amendment (Community Correction Reform) Bill 2011 11

Transport Legislation Amendment (Public Transport Development Authority) Bill 2011 11

**(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***

Building Amendment Bill 2011 1

Children, Youth and Families Amendment (Security of Youth Justice Facilities) Bill 2011 11

Education and Training Reform Amendment (School Safety) Bill 2010 1

Gambling Regulation Amendment (Licensing) Bill 2011 11

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**Section 17(b)**

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

Commercial Arbitration Bill 2011

## Appendix 3

### Ministerial Correspondence 2011

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**Table of correspondence between the Committee and Ministers during 2011**

<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>
Building Amendment Bill 2011	Minister for Planning	01.03.11 21.03.11	1 of 2011 2 of 2011
Education and Training Reform Amendment (School Safety) Bill 2010	Minister for Education	01.03.11 28.03.11	1 of 2011 3 of 2011
Justice Legislation Amendment Bill 2011	Minister for Consumer Affairs	22.03.11 04.04.11	2 of 2011 3 of 2011
Sentencing Amendment Act 2010	Attorney-General	01.03.11 05.04.11	1 of 2011 4 of 2011
Liquor Control Reform Amendment Bill 2011	Consumer Affairs	05.04.11 21.04.11	3 of 2011 4 of 2011
State Taxation Acts Amendment Bill 2011	Treasurer	25.05.11 09.06.11	5 of 2011 6 of 2011
Justice Legislation Amendment (Infringement Offences) Act 2011	Attorney-General	28.06.11 12.08.11	7 of 2011 8 of 2011
Resources Legislation Amendment Bill 2011	Minister for Energy and Resources	30-08-11 15-09-11	9 of 2011 12 of 2011
Children, Youth and Families Amendment (Security of Youth Justice Facilities) Bill 2011	Minister for Community Services	11-10-11 21-10-11	11 of 2011 12 of 2011
Gambling Regulation Amendment (Licensing) Bill 2011	Minister for Gaming	11-10-11 21-10-11	11 of 2011 12 of 2011
Sentencing Amendment (Community Correction Reform) Bill 2011	Attorney-General	11-10-11 03-11-11	11 of 2011 13 of 2011

**Table of Ministers responses still pending**

<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>
Emergency Management Legislation Amendment Bill 2011	Minister for Police and Emergency Services	11-10-11	11 of 2011
Sentencing Amendment (Community Correction Reform) Bill 2011	Attorney-General	11-10-11	11 of 2011

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Transport Legislation Amendment (Public Transport Development Authority) Bill 2011	Minister for Public Transport	11-10-11	11 of 2011
<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>
Water Legislation Amendment (Water Infrastructure Charges) Bill 2011	Minister for Water	25-10-11	12 of 2011