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# Useful information

## Role of the Committee

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

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

## Interpretive use of Parliamentary Committee reports

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

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

## When may human rights be limited

Section 7 of the *Charter* provides –

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

(2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—

(a) the nature of the right; and

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

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

(d) the relationship between the limitation and its purpose; and

(e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

## Glossary and Symbols

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

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

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

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

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

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

*'penalty units'* refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (as at 1 July 2014 one penalty unit equals $147.61 )

*'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. 1 of 2016

## Access to Medicinal Cannabis Bill 2015

| | |
|---|---|
| **Introduced** | 8 December 2015 |
| **Second Reading Speech** | 10 December 2015 |
| **House** | Legislative Assembly |
| **Member introducing Bill** | Hon. Jill Hennessy MLA |
| **Minister responsible** | Hon. Jill Hennessy MLA |
| **Portfolio responsibility** | Minister for Health |

## Purpose

The main purposes of the Bill include making provision for:

- the medicinal use of products derived from cannabis by an 'eligible patient' **[3]** ***(Refer to Charter Report below)*** or in 'exceptional circumstances'
- the lawful cultivation of cannabis for such products by the Resources Secretary
- the lawful manufacture of medicinal cannabis products by the Health Secretary
- consequential amendments to the *Drugs Poisons and Controlled Substances Act 1981* (Part 15)
- related amendments to certain other Acts (Part 16).

Cultivation licences

Part 5 of the Bill establishes a scheme, to be administered by the Resources Secretary, in relation to 'cultivation research' licences and 'general cultivation' licences.

As discussed in the ***Charter Report***, clause 31 sets out the circumstances in which the Resources Secretary may issue a cultivation licence, while clause 40 sets out the circumstances in which the Resources Secretary may renew a cultivation licence. Both clauses provide that an application must not be granted unless the Chief Commissioner of Police has decided to support it, and the Secretary is satisfied about certain matters relating to the applicant, the applicant's associates (which is defined to include immediate family members of the applicant) and the relevant premises. ***(Refer to Charter Report below)***

Under clauses 29, 30, 38 and 39, the Chief Commissioner of Police must investigate an application for the issue or renewal of a cultivation licence and may oppose the application based on 'protected information'.[1] As discussed in the **Content** section below, the applicant is not entitled to the written record of the Chief Commissioner's reasons for decision where it is wholly or partly based on such information.

[1] Protected information is defined in clause 3 as including information, documents or any other thing which is likely to: reveal the identity of a person under investigation or who has given evidence in an investigation, reveal an investigation method, jeopardise the safety of any person, risk an ongoing investigation or otherwise not be in the public interest.

Manufacturing licences

Part 6 of the Bill establishes a scheme, to be administered by the Health Secretary, in relation to 'manufacturing research' licences and 'general manufacturing' licences.

As discussed in the ***Charter Report***, clause 52 sets out the circumstances in which the Health Secretary may issue a manufacturing licence, while clause 61 sets out the circumstances in which the Health Secretary may renew a manufacturing licence. Both clauses provide that an application must not be granted unless the Chief Commissioner of Police has decided to support it, and the Secretary is satisfied about certain matters relating to the applicant, the applicant's associates (which is defined to include immediate family members of the applicant) and the relevant premises. ***(Refer to Charter Report below)***

Under clauses 50, 51, 59 and 60, the Chief Commissioner of Police must investigate an application for the issue or renewal of a manufacturing licence and may oppose the application based on 'protected information'. As discussed in the **Content** section below, the applicant is not entitled to the written record of the Chief Commissioner's reasons for decision where it is wholly or partly based on such information.

The Bill would also:

- establish a scheme, to be administered by the Health Secretary, for the registration of contracts between licensed cultivators and manufacturers (Part 7)
- authorise a specialist medical practitioner to apply for a 'practitioner medicinal cannabis authorisation—eligible patient' and set out the requirements for the application **[78]** and
- authorise a registered medical practitioner to apply for a 'practitioner medicinal cannabis authorisation—exceptional circumstances' for a person who is not an eligible patient and set out the requirements for the application **[80]** ***(Refer to Charter Report below)***
- provide for the authorisation of patients, registered medical practitioners, pharmacists, carers, and parents or guardians in relation to the use of medicinal cannabis by patients or participants (Part 10)
- establish a scheme for the review of decisions relating to licences (Part 11)
- establish a number of offences in relation to licensed cultivators and licensed manufacturers (Part 12)
- provide for the authorisation, powers and procedures of cultivation inspectors and manufacturing inspectors (Part 13).

## Content

***Delayed commencement — commencement by proclamation or by 1 March 2017***

Clause 2 of the Bill provides that the Bill will come into operation on a day or days to be proclaimed and that there is no default date by which the Bill must be proclaimed.

The Bill may therefore come into operation on a day that is more than 12 months after the introduction of the Bill.

The Committee notes the following statement in the Explanatory Memorandum:

> There is no default date by which the Bill must be proclaimed because the Commonwealth has indicated an intention to legislate in relation to cultivation of cannabis for medicinal

> purposes. It may be necessary to delay the commencement of this Bill in order to resolve any issues that arise as a result of that legislation.

***Rights or freedoms – Fair hearing – Review by VCAT – Protected information unavailable to applicant – Special counsel process – Right to know facts relevant to decision to refuse application – Public interest in protecting law enforcement information***

The Bill requires that the Chief Commissioner of Police investigate an application for the issue or renewal of a cultivation licence (clauses 29, 30, 38 and 39) or the issue or renewal of a manufacturing licence (clauses 50, 51, 59 and 60) and provides that the Chief Commissioner may oppose the application based on 'protected information'. Where the Chief Commissioner opposes an application based on protected information, neither the relevant Secretary nor the applicant is entitled to the written record of the reasons for their decision. (The Committee also respectfully notes that the statement of compatibility appears to incorrectly refer to clauses 28, 37, 49 and 59, instead of clauses 29, 38, 50 and 59).

Part 11 of the Bill (clauses 91 to 96) deals with the review by VCAT of decisions relating to cultivation and manufacturing licences. Under clause 91, a person who has been refused the issue or renewal of a cultivation or manufacturing licence (or whose licence has been suspended or cancelled — see clauses 42 and 63), may apply to VCAT for a review of the Secretary's decision.

Where the decision is based on protected information, a special counsel procedure is provided in clause 93. The procedure requires VCAT to appoint a special counsel to represent the interests of the person seeking the review. VCAT must also determine whether or not the information is protected information, and may decide to hold part or all of the hearing in private (clause 94). If VCAT determines that the information is not protected information, the person seeking review must be admitted to the remainder of the proceeding (clause 94). VCAT may publish reasons for its decision to the extent that those reasons do not relate to information it has determined to be protected information (clause 95).

The statement of compatibility remarks that:

> While the procedure limits a person's access to information that will be before VCAT, I consider that the provisions are compatible with the right to a fair hearing in section 24 of the charter as the provisions achieve an appropriate balance between providing the applicant a reasonable opportunity to be heard and the need to protect such information. VCAT will have the power to determine whether in fact the information is protected information (section 94(1)), the applicant's interests are represented through the special counsel procedure (sections 93–96), and it will ultimately be up to VCAT as to what weight should be placed upon that information.

**The Committee draws attention to the special counsel procedure scheme provided in the Bill and observes that similar special counsel procedures are provided in other legislation where, on public interest grounds, sensitive criminal intelligence and law enforcement information is not made available to applicants on review or renewal of a licence application.**

***Right to be presumed innocent — legal burden to prove defence***

Part 15 of the Bill would amend a number of existing offences in the *Drugs, Poisons and Controlled Substances Act 1981* to provide that a person is deemed to be authorised under the Act if they are authorised or licensed under the provisions of the Bill. As a result, section 104 of the Act would apply so that the accused would bear the legal burden of establishing on the balance of probabilities that they are authorised under the provisions of the Bill.

The statement of compatibility provides:

> While this amounts to a limitation upon the right to be presumed innocent, it is reasonable and justified under section 7(2) of the charter. The bill provides for a scheme of authorisation which will make it relatively easy for a person to establish that they are authorised or licensed. In other jurisdictions, it has been held that the right is not breached where an act is generally prohibited save in specified circumstances or by persons of specified classes or with specified qualifications or with the licence or permission of specified authorities.

***Entry, search and seizure without a warrant***

Part 13 of the Bill provides cultivation and manufacturing inspectors with a range of powers to monitor compliance with licences, including the powers in clauses 113, 116, and 118:

- to enter premises occupied by a licensed cultivator or manufacturer, other than premises used as a residence
- to intercept, inspect and examine vehicles which an inspector reasonably believes is being used in connection with the cultivation or transport of cannabis
- to require production of, examine and seize documents
- to take samples
- to obtain or copy information from a storage device
- to seize cannabis if the inspector believes on reasonable grounds that the licensee has contravened the act or licence, or the licence has been suspended or cancelled (seized cannabis can be disposed of or destroyed pursuant to section 127).

The Committee notes that while the above powers are able to be exercised without obtaining a warrant, they are for the purpose of determining compliance with the act or a licence by a person who elects to engage in activities regulated by the Act.

***Self-incrimination – production of documents – justification for abrogation of privilege***

New sections 113(2)(d) and 116(2)(d) would abrogate the privilege against self-incrimination. Under the provisions, a person may be required to produce any document that an inspector reasonably requires for determining compliance with a licence, the Act and the regulations.

The Committee notes the following statement in the Statement of Compatibility:

> The ability to require a person to produce documents means that a person may be required to produce documents that are incriminating. Those documents may reveal a criminal offence and may be used in criminal proceedings. However, to the extent that this may engage the right in section 25(2)(k), it is limited to documents being produced for the purposes of monitoring compliance with a regulatory scheme. It does not require a person to make a written or oral statement.

## Charter report

***Age and disability discrimination – Medicinal cannabis authorisation – Eligible patient includes person under 18 with seizures from an epileptic condition***

Summary: *The effect of clauses 3, 78 and 80 is that children with an epileptic condition will be the only people who can be lawfully supplied with medicinal cannabis in Victoria in the absence of either further regulations or exceptional circumstances. The Committee will write to the Minister seeking further information.*

The Committee notes that clauses 78 and 80 bar a specialist medical practitioner from applying for a practitioner medicinal cannabis authorisation for a patient unless the practitioner is satisfied that either the patient is an eligible patient or that exceptional circumstances exist to justify the patient being treated with an approved medicinal cannabis product. Clause 3 provides that an 'eligible patient' means a patient who is either:

- 'under 18 years of age' and 'experiences severe seizures resulting from an epileptic condition'; or
- 'has a prescribed medical condition'

and 'meets the prescribed criteria in respect of that condition (if any)'.

**The Committee observes that the effect of clauses 3, 78 and 80 is that children with an epileptic condition will be the only people who can be lawfully supplied with medicinal cannabis in Victoria in the absence of either further regulations or exceptional circumstances.**

The Statement of Compatibility remarks:

> Section 8 of the charter recognises the right to be equal before the law and to equal and effective protection against discrimination. In basing eligibility upon a medical condition or symptoms, the bill engages the right to equality in section 8. However, I consider that basing eligibility for medical cannabis upon medical need does not amount to discrimination or, if it does, that discrimination is reasonable and justifiable for the purposes of section 7(2) of the charter. A person who does not have a medical condition or symptoms that are appropriate to treat with cannabis, cannot be regarded as being treated less favourably by reason of their disability or lack of it. Imposing a medical need requirement before being authorised to use cannabis is entirely reasonable, given the potentially harmful consequences of cannabis use.

The Committee notes that the Statement of Compatibility does not address why only particular people with a medical condition – children under 18 with an epileptic condition – will be able to lawfully receive medicinal cannabis without further regulations or exceptional circumstances.

The Committee considers that clause 3's definition of 'eligible patient' may engage the Charter's rights against discrimination, which include rights against age discrimination and discrimination on the basis of a disability.[2]

The Second Reading Speech remarks:

> As a priority, the bill provides that children with severe epilepsy will be eligible to access government-produced medicinal cannabis from a date to be proclaimed, most likely in early 2017. It empowers the Victorian government to prescribe other eligible patient groups to access commercially produced products on a later date to be proclaimed (most likely in 2018).

[2] Charter s. 8 and see *Equal Opportunity Act 2010*, s. 6(a), (e).

**The Committee will write to the Minister seeking further information as to the compatibility of clause 3's definition of 'eligible patient' (which distinguishes between children with epileptic conditions and all others) with the Charter's rights against discrimination on the basis of age and disability.**

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***Arbitrary interference in family – Licence to cultivate or manufacture medicinal cannabis – Immediate family members of some criminals may be ineligible for licence***

Summary: *The effect of clauses 31, 40, 52 and 61 may be to bar the immediate family of some criminals from obtaining or retaining a licence to cultivate or manufacture medicinal cannabis, even if the family member's crime has no connection to the applicant or licence-holder's fitness to cultivate or manufacture medicinal cannabis. The Committee will write to the Minister seeking further information.*

The Committee notes that clauses 31(1)(b)(i), 40(1)(b)(i), 52(1)(b)(ii) and 61(1)(b)(i) bar the Resources and Health Secretaries from issuing or renewing a cultivation or manufacturing licence unless they are satisfied that no 'associate' of the applicant or licence holder 'has been found guilty of a serious offence' in the last 10 years (for applications) or 3 years (for renewals). Clause 4 defines an 'associate' of an applicant or licence holder to include a spouse, domestic partner, parent, sibling or child[3] who 'is of or over the age of 18 years'. A 'serious offence' is defined to include 'an indictable offence involving dishonesty, fraud or assault' or 'an indictable offence involving possession, or cultivation of, or trafficking in, a drug of dependence'.

**The Committee observes that the effect of clauses 31, 40, 52 and 61 may be to bar the immediate family of some criminals from obtaining or retaining a cultivation or manufacturing licence, even if the family member's crime has no connection to the applicant or licence-holder's fitness to cultivate or manufacture medicinal cannabis.** The Committee notes that these clauses may even bar a person from receiving or holding a licence because a family member:

- who is now an adult committed a serious offence when that family member was a child (e.g. if a licence-holder's child or sibling possessed drugs or committed a petty theft aged 17); or
- committed a serious offence against the applicant or licence holder (e.g. if the licence-holder was a victim of domestic violence committed by a family member.)

The Committee considers that clauses 31, 40, 52 and 61 may engage the Charter's right against arbitrary interference with family.[4]

The Statement of Compatibility remarks:

> The provisions in the bill may indirectly discriminate against persons who are married or have a domestic partner, or are a parent or a carer. It requires that their close family members are fit and proper persons and do not have criminal histories. However, I consider that in the context of cultivating and manufacturing drugs, it is appropriate to impose such a restriction. It is critical that all risks of illegal activity are minimised as far as possible. Those who have associates, be it immediate family members or persons with shared business or financial interests, are at risk of being subject to pressure or exploitation by those associates. While it cannot be assumed that a person will necessarily be influenced by an associate, the risk of that occurring is higher where there is a close family relationship or shared financial or business interests. It is a very difficult risk to monitor. Accordingly, I consider it is reasonable

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3 The definition includes step-parents, step-siblings, step-children and adopted children.

4 Charter s. 13(a). See also Charter s. 17(1), which provides that families are entitled to be protected by society and the State.

and justified to restrict the ability of persons to obtain a licence based upon the criminal history and suitability of the licensee's immediate family members.

The Committee observes that, while clauses 31, 40, 52 and 61 are identical to existing provisions governing the grant of poppy cultivation and processing licences,[5] they are more restrictive than existing provisions governing the grant of low-THC cannabis cultivation and processing licences, which exclude offences involving assault or possession of drugs or that carry a maximum sentence of less than three months imprisonment.[6]

The Committee notes that the Statement of Compatibility for the previous Bill that introduced the similar licensing scheme for poppy cultivation stated that 'a person may also apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of a decision of the secretary to refuse to issue or renew a licence on the basis of the person's associates.' However, there is no similar statement in the Statement of Compatibility for this Bill. The Committee observes that clause 91 provides that VCAT may review a decision to refuse to issue or renew a licence.

**The Committee will write to the Minister seeking further information as to whether or not clause 91 permits VCAT to grant or renew a licence of an otherwise suitable person despite that person having a family member who committed a serious offence in the relevant period.**

5 Existing ss. 69NB(1)(a) & (2)(a)(i).

6 Section 61(1).

# Building Legislation Amendment (Consumer Protection) Bill 2015

| | |
|---|---|
| **Introduced** | 8 December 2015 |
| **Second Reading Speech** | 10 December 2015 |
| **House** | Legislative Assembly |
| **Member introducing Bill** | Hon. Richard Wynne MLA |
| **Minister responsible** | Hon. Richard Wynne MLA |
| **Portfolio responsibility** | Minister for Planning |

## Purpose

The Bill would amend the *Domestic Building Contracts Act 1995* (the DBCA) to improve consumer protection in relation to domestic building and the general operation of the Act. Key changes would include:

- the establishment of Domestic Building Dispute Resolution Victoria (DBDRV) and new processes for the resolution of domestic building disputes
- enabling the issue of dispute resolution orders to domestic builders and consumers to require the rectification of defective work and the payment of money.

The Bill would amend the *Building Act 1993* to:

- improve the regulation of building practitioners, particularly builders carrying out domestic building work and building surveyors
- provide for further regulation of owner-builders
- abolish the Building Practitioners Board (BPB) and provide for its functions to be carried out by the Victorian Building Authority (VBA)
- make general improvements to the operation of the Act.

The Bill would also make consequential amendments to the *Victorian Civil and Administrative Tribunal Act 1998*.

***Delayed commencement — commencement by proclamation or by 1 July 2017***

Clause 2 of the Bill provides that the Bill will come into operation on a day or days to be proclaimed and that if a provision of the Bill is not proclaimed by 1 July 2017, it will come into operation on that date.

The Bill, or a provision of the Bill, may therefore come into operation on a day that is more than 12 months after the introduction of the Bill.

The Committee notes the statement in the Explanatory Memorandum that the delayed default commencement date is intended to ensure that the VBA and Consumer Affairs Victoria (CAV) have adequate time to prepare for the implementation of the measures contained in the Bill.

## Charter report

The Building Legislation Amendment (Consumer Protection) Bill 2015 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

# Gene Technology Amendment Bill 2015

| | |
|---|---|
| **Introduced** | 8 December 2015 |
| **Second Reading Speech** | 9 December 2015 |
| **House** | Legislative Assembly |
| **Member introducing Bill** | Hon. Jill Hennessy MLA |
| **Minister responsible** | Hon. Jill Hennessy MLA |
| **Portfolio responsibility** | Minister for Health |

## Purpose

The Bill would introduce amendments to the *Gene Technology Act 2001,* which are required following the passage of the *Gene Technology Amendment Act 2015* of the Commonwealth and for other purposes.

The Explanatory Memorandum states that the aim of the Bill is to ensure that Victoria maintains consistent gene technology legislation with the Commonwealth and with other States and Territories as part of the existing national gene technology regulatory scheme.

## Content

***Delayed commencement — commencement by proclamation or by 1 March 2017***

Clause 2 of the Bill provides that the Bill will come into operation on a day to be proclaimed — there is no default commencement date.

The Bill may therefore come into operation on a day that is more than 12 months after the introduction of the Bill.

The Explanatory Memorandum provides the following explanation:

> Each State and Territory is required to pass equivalent gene technology legislation before commencement of the Commonwealth *Gene Technology Act 2015* on 11 March 2016. To allow for any contingencies that may occur in other jurisdictions passing their gene technology legislation, no default commencement date is set.

## Charter report

The Gene Technology Amendment Bill 2015 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

# Integrity and Accountability Legislation Amendment (A Stronger System) Bill 2015

| | |
|---|---|
| **Introduced** | 8 December 2015 |
| **Second Reading Speech** | 10 December 2015 |
| **House** | Legislative Assembly |
| **Member introducing Bill** | Hon. Jacinta Allan MLA |
| **Minister responsible** | Hon. Gavin Jennings MLC |
| **Portfolio responsibility** | Special Minister of State |

## Purpose

The Bill would amend the *Independent Broad-based Anti-corruption Commission Act 2011* to:

- include the identification, investigation and exposure of any corrupt conduct (as opposed to 'serious corrupt conduct') among the functions of the Independent Broad-based Anti-corruption Commission (IBAC), while requiring it to prioritise the investigation and exposure of corrupt conduct that may be serious or systemic **[8]**
- amend the definition of 'corrupt conduct' in section 4 to remove the requirement that the IBAC, when deciding whether to conduct an investigation about corrupt conduct, first consider whether the relevant facts would be proved beyond reasonable doubt at trial and replace it with a 'suspects on reasonable grounds' threshold **[4]**
- expand the definition of 'corrupt conduct' in section 4 to include conduct by any person that is intended to adversely affect the effective performance or exercise of a public function or power by a public officer or public body, that results in monetary, financial or other gain for the person or their associate **[4]**
- include the offence of misconduct in public office in the IBAC's corrupt conduct jurisdiction by amending the definition of 'relevant offence' in the IBAC Act **[3]**
- provide the IBAC with explicit power to conduct preliminary inquiries (new Division 3A in Part 3) **[22]**
- provide that, subject to any exemption notices issued by the IBAC, the relevant 'principal officer' of a government body must notify the IBAC of any matter that they suspect on reasonable grounds involves corrupt conduct occurring or having occurred. The new obligation would not apply to the Chief Commissioner of Police or to specified persons or bodies subject to a mandatory notification requirement under another Act **[19]**
- make a range of technical amendments to the IBAC Act, including allowing the IBAC to apply to the Magistrates' Court for a search warrant except in limited circumstances.

The Bill would amend the *Audit Act 1994* to:

- extend the power of the Auditor-General during a performance audit to take into account information called for from an associated entity (i.e. a non-government entity that delivers government services for, or on behalf of, an authority or the State) (amended section 15) **[97]** ***(Refer to Charter report below)***
- amend the process for consultation by the Auditor-General of the Public Accounts and Estimates Committee (PAEC) before conducting a performance audit and in relation to comments by the PAEC on performance audit specifications **[97]**
- enable the Auditor-General to share information with Auditor-Generals of other Australian jurisdictions (i.e. the Auditor-General of another state, territory or the Commonwealth) **[99]**

- provide for the mandatory notification of possible corrupt conduct to IBAC **[51]**
- broaden the range of specified persons and bodies to whom the Auditor-General would be authorised to share appropriate information **[53]**
- make various technical amendments.

The Bill would amend the *Ombudsman Act 1973* to:

- provide for the mandatory notification, by the Ombudsman to IBAC, of possible corrupt conduct **[63]**
- specify additional persons and bodies to which the Ombudsman may provide information where it is relevant and appropriate to do so **[65]**
- provide the Ombudsman with the discretion to refuse to conduct or to discontinue an investigation into a protected disclosure complaint referred by the IBAC **[60, 61, 67]**
- make various technical amendments.

The Bill would amend the *Victorian Inspectorate Act 2011* to:

- clarify the Victorian Inspectorate's powers for the purpose of monitoring IBAC's compliance with legislation, its performance under the *Protected Disclosure Act 2012*, the effectiveness of its policies and procedures and its interaction with other integrity bodies **[75]**
- provide the Victorian Inspectorate with the power to conduct a preliminary inquiry to determine whether to investigate a complaint or conduct an own motion investigation **[76]**

The Bill would amend the *Public Interest Monitor Act 2011* to:

- clarify confidentiality requirements in relation to both persons who assist a Public Interest Monitor (PIM) and to a person who is or was a PIM **[73]**
- establish an immunity provision for PIMs to provide that they are not personally liable for acts or omissions done in good faith under the Act **[74]**

The Bill would also amend a number of additional Acts to establish consistent requirements for the mandatory notification of possible corrupt conduct to the IBAC by other bodies in the integrity framework. **[78-89]**

## Charter report

***Self-incrimination – extension of audit powers to associated entities – failure to answer 'lawful questions'.***

Summary: *The effect of clause 97 is to extend the coverage of the audit powers in s. 11 of the Audit Act 1994 beyond public bodies to "associated entities". Section 14 of the Audit Act 1994 makes it an offence to fail to attend for examination or produce documents or to fail to answer any lawful question of the Auditor-General, with no exception for self-incrimination. The Committee refers to Parliament for its consideration the question of whether or not clause 97 is a reasonable limit on the self-incrimination right in s 25(2)(k) of the Charter.*

The Committee notes that clause 97, amending existing s. 15 of the *Audit Act 1994*, provides that the Auditor-General, when conducting a performance audit, may consider the services provided by an associated entity of the body being audited. The clause extends existing information gathering powers and offences in ss. 11 and 14 of the Act to 'associated entities'. Section 14 of the *Audit Act 1994* makes it an offence to fail to attend for examination or produce documents or to fail to answer any lawful question of the Auditor-General. The term 'lawful question' is not defined in the

Act. The Act does not excuse a person from answering a lawful question if the answer may tend to incriminate them, which (depending on the interpretation of the phrase 'lawful question') may limit the right in s. 25(2)(k) not to be compelled to testify against oneself or to confess guilt.

**The Committee observes that the effect of clause 97 is to extend the coverage of the offence provision in s. 14 of the *Audit Act 1994* (a section which may limit the right to protection from self-incrimination) beyond public bodies to 'associated entities' (defined private bodies that expend public funds).**

The Statement of Compatibility remarks:

> Section 25(2)(k) of the charter provides that a person charged with a criminal offence is entitled not to be compelled to testify against himself or herself or to confess guilt. In my view, section 11 of the Audit Act does not limit the right to protection against self-incrimination. This is because the common law privilege against self-incrimination is not abrogated. While there is an offence for refusing to answer questions when required to do so, it is only an offence to fail to answer 'lawful' questions. Consistently with the principle of legality, sections 11 and 14 will be interpreted narrowly so as not to abrogate the privilege against self-incrimination at common law. Accordingly, as a person can refuse to answer questions on the grounds that to do so would incriminate himself or herself, the right to protection against self-incrimination is not limited. Additionally, I note that existing section 11C provides that a person may be represented by a legal practitioner and section 11G provides that a person appearing has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

The Committee notes that whilst the Act only penalises failures to answer 'lawful questions', the protection against self-incrimination relates to the incriminating nature of any answers, not to the nature of the questions asked. The answer to a lawful question may well be incriminating, and the right in s. 25(2)(k) could be limited when such an answer is compelled in circumstances involving exposure to criminal charges. Whilst the Statement of Compatibility indicates that s. 14 will be read down by the courts to ensure that the right to self-incrimination is not limited, the section as drafted may not, on its face, be compatible with the right if it is necessary for the courts to read common law protections into it to make it compatible. The Committee observes that an express protection in the text of the statute for the privilege against self-incrimination may be a less restrictive alternative reasonably available to achieve clause 97's purpose of extending the Auditor-General's powers to associated entities without abridging witnesses' rights against self-incrimination.

**The Committee refers to Parliament for its consideration the question of whether or not clause 97 is a reasonable limit on the self-incrimination right in s 25(2)(k) of the Charter.**

**The Committee makes no further comment**

# Judicial Commission of Victoria Bill 2015

| | |
|---|---|
| **Introduced** | 8 December 2015 |
| **Second Reading Speech** | 10 December 2015 |
| **House** | Legislative Assembly |
| **Member introducing Bill** | Hon. Martin Pakula MLA |
| **Minister responsible** | Hon. Martin Pakula MLA |
| **Portfolio responsibility** | Attorney-General |

## Purpose

The Bill would amend the *Constitution Act 1975* to establish the Judicial Commission of Victoria (the Commission) to investigate complaints and concerns involving judicial officers (including judicial registrars) and members of the Victorian Civil and Administrative Tribunal (VCAT).

Under the Bill, any member of the public would have the right to complain to the Commission about the conduct of a judicial officer or member of VCAT. The Commission would also be empowered to receive and investigate referrals from the Attorney-General, the Independent Broad-based Anti-Corruption Commission (IBAC) and complaints from the Law Institute of Victoria and the Victorian Bar on behalf of their members. Heads of jurisdiction within a court or VCAT would also be able to refer complaints and concerns directly to the Commission.

The Commission would have the power to establish an 'investigating panel' to investigate matters that could, if substantiated, amount to proved misbehaviour or incapacity such as to warrant the removal of a judicial officer or VCAT member from office (see Parts 4 to 6).

The Bill would also make consequential amendments to a number of other Acts, including the:

- *Court Services Victoria Act 2014*
- *Independent Broad-based Anti-corruption Commission Act 2011*
- *Protected Disclosure Act 2012*
- *Victorian Inspectorate Act 2011*

## Content

***Delayed commencement — Commencement by proclamation or by 1 June 2018***

Clause 2 of the Bill provides that the Bill will come into operation on a day or days to be proclaimed and that the bill, other than Part 12, has a default commencement date of 1 July 2017. Division 1 of Part 12 has a default commencement date of 1 June 2017 and Division 2 of Part 12 has a default commencement date of 1 June 2018.

The Bill, or a provision of the Bill, may therefore come into operation on a day that is more than 12 months after the introduction of the Bill.

The Explanatory Memorandum provides the following explanation in relation to the possible delayed commencement of the Bill:

> This allows time for the Judicial Commission to be fully established before it starts receiving complaints and referrals. Establishment tasks include appointing the non-judicial members of the Board, appointing the Director, employing and training staff, making guidelines, developing procedures for complaints-handling, and appointing people to the pool of persons who can be appointed to an investigating panel.

The Explanatory Memorandum provides the following explanation in relation to the possible delayed commencement of Part 12 of the Bill:

> Division 1 of Part 12 of the Bill makes amendments to the Bill that—
>
> - are required if the *Justice Legislation Further Amendment Bill 2015* is passed and comes into force;
> - would be inappropriate if that Bill does not receive passage.
>
> Part 9 of the *Justice Legislation Further Amendment Bill 2015* provides for—
>
> - a Chief Judge to also be a judge of the Supreme Court; and
> - a Chief Magistrate to also be a judge of the County Court.
>
> It is proposed that—
>
> - if the Justice *Legislation Further Amendment Bill 2015* is passed and comes into force, Division 1 of Part 12 of the Bill would (if passed) be proclaimed to come into force and make the required amendments to the Bill.
>
> Division 2 of Part 12 would come into force on 1 June 2018 and, in accordance with section 15(1) of the *Interpretation of Legislation Act 1984*, the repeal of Division 1 of Part 12 would not affect the continuing operation of the amendments made by that Division.
>
> - If the *Justice Legislation Further Amendment Bill 2015* is not passed by Parliament, Division 2 of Part 12 would be proclaimed early and would come into operation before 1 June 2017 and repeal Division 1 of Part 12 before the amendments in that Division came into force or had any effect.

***Privilege against self-incrimination – Direct use immunity – Abrogation of privilege — Derivative use permissible***

Clause 90 abrogates the privilege against self-incrimination. The clause provides that a person would not be excused from answering a question, giving information or producing a document in accordance with a requirement under clause 69(1), a search warrant under clause 84 or witness summons on the grounds that to do so might tend to incriminate the person or make them liable to penalty.

Clause 90 also provides for direct use immunity by prohibiting the use of any information, answer, document or thing against the person before any court or person acting judicially except in proceedings for:

- perjury or giving false information
- an offence against the Bill
- an offence against the *Independent Broad-based Anti-corruption Commission Act 2011* or the *Victorian Inspectorate Act 2011*
- an offence against section 72 or 73 of the *Protected Disclosure Act 2012*
- a disciplinary process or action.

Clause 90 provides that there is no 'derivative' use immunity for the judicial officer or VCAT member under investigation. However, the clause does preserve derivative use immunity for persons other than the judicial officer or VCAT member who are concerned to give evidence or produce documents to an investigating panel.

Derivative use occurs when, as a result of the compelled statement, further evidence is obtained that may incriminate the maker of the statement. The derivative evidence is permitted to be used in a criminal prosecution against the person.

The following extract from the statement of compatibility provides a justification for the absence of a derivative use immunity in the case of judicial and VCAT officers:

> An absolute prohibition on the use of derivative material could encourage the admission of wrongdoing to 'sterilise' any future criminal investigation concerning disclosed misconduct. Admissions made during formal investigating panel hearings will often be the only source of information available to law enforcement to initiate a criminal investigation. The purpose of limiting the right in relation to judicial officers and members of VCAT is to ensure that those officers can be held accountable in a criminal proceeding, and it is therefore in the public interest to ensure evidence is available in such a proceeding.
>
> Where incriminating material is elicited through a process that has, as its aim, the broader advancement of the administration of justice, there would be serious ramifications in seeking to require law enforcement bodies to ignore evidence relating to judicial misconduct that came to light.
>
> By not extending the derivative use of compelled material to judicial officers and VCAT members, the bill recognises that those who hold high public office should be subject to a higher level of scrutiny. The right is limited only to the extent necessary to achieve this scrutiny. The limitation does not extend to removing the protections given to other witnesses, who may be the judge's family, friends, neighbours or colleagues.
>
> The power to compel incriminating material balances the public interest in protecting the administration of justice with the public interest in the right of an accused to a fair trial.

***Adverse effect on personal privacy within the meaning of the Information Privacy Act 2000 and on the privacy of health information within the meaning of the Health Records Act 2001***

Under section 17(a) of the *Parliamentary Committees Act 2003*, the Committee is required to consider and report to Parliament on whether a provision in a bill:

- 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* (section 17(a)(iv))
- 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* (section 17(a)(v)).

Clause 144 of the Bill provides that Part 5 and Health Privacy Principle 6 of the *Health Records Act 2001* do not apply to a document or any information held by the Judicial Commission or investigating panel which relates to complaint handling functions or an investigation, recommendation or referral under Part 2, 3, 4 or 5.

Similarly, clause 145 provides that Information Privacy Principle 6 under the *Privacy and Data Protection Act 2014* does not apply to a document or any information held by the Judicial Commission or an investigating panel which relates to complaint handling functions or an investigation, recommendation or referral under Part 2, 3, 4 or 5.

The explanatory memorandum states that the excluded provisions under clauses 144 and 145 relate to access to documents and that their exclusion 'avoids the potential for overlapping and potentially inconsistent information access regimes'. It also states that the Judicial Commission and an investigating panel would need to comply with the other Health Privacy Principles of the *Health Records Act 2001* and the other Information Privacy Principles of the *Privacy and Data Protection Act 2014*.

**The Committee notes the very brief explanation in the Explanatory Memorandum and considers that additional information would assist in determining whether or not clauses 144 and 145 would have an adverse effect on personal privacy and on the privacy of health information under the *Health Records Act 2001* and the *Privacy and Data Protection Act 2014*. The Committee will write to the Minister to request further explanation of the effects of clauses 144 and 145.**

## Charter report

The Judicial Commission of Victoria Bill 2015 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

# National Electricity (Victoria) Further Amendment Bill 2015

| | |
|---|---|
| **Introduced** | 8 December 2015 |
| **Second Reading Speech** | 9 December 2015 |
| **House** | Legislative Assembly |
| **Member introducing Bill** | Hon. Lily D'Ambrosio MLA |
| **Minister responsible** | Hon. Lily D'Ambrosio MLA |
| **Portfolio responsibility** | Minister for Energy and Resources |

## Purpose

The Bill would amend the *National Electricity (Victoria) Act 2005*, to apply certain provisions of the National Electricity Law (NEL) in Victoria, which would include the establishment of a new governing framework for the process for connecting retail customers, including small-scale renewable energy generation proponents, to the electricity grid in Victoria.

The framework is contained in chapter 5A of the National Electricity Rules (NER) and currently applies in those states and territories that participate in the national electricity market.

The national electricity connections framework:

- sets out the information that must be exchanged between an electricity distributor and customer to enable a connection
- requires electricity distributors to respond to, and process, requests for connection in a timely manner
- requires that each electricity distributor publish standard terms and conditions for connection, which must be approved by the national energy sector regulator, the Australian Energy Regulator
- contains a formal dispute resolution process for disputes that arise between a person wishing to connect to the electricity grid and their electricity distributor
- provides for the monitoring and enforcement by the Australian Energy Regulator of electricity distributor compliance with the new framework.

The Bill would also insert a regulation making power into the Act, which would include the power to make Victoria-specific provisions for the connection of distribution units and the undergrounding, relocation, modification or removal of electricity distribution systems.

## Charter report

The National Electricity (Victoria) Further Amendment Bill 2015 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

# Racing and Other Acts Amendment (Greyhound Racing and Welfare Reform) Bill 2015

| | |
|---|---|
| **Introduced** | 8 December 2015 |
| **Second Reading Speech** | 9 December 2015 |
| **House** | Legislative Assembly |
| **Member introducing Bill** | Hon. Martin Pakula MLA |
| **Minister responsible** | Hon. Martin Pakula MLA |
| **Portfolio responsibility** | Minister for Racing |

## Purpose

The Bill would amend the *Racing Act 1958* to:

- further provide for the functions and the rules of Greyhound Racing Victoria
- provide for changes to the constitution of Greyhound Racing Victoria and the Greyhound Racing Victoria Racing Appeals and Disciplinary Board
- further provide for the functions of the Racing Integrity Commissioner in relation to animal welfare
- further provide for the offences relating to greyhound races that involve the use of an animal as a lure, including the introduction of strict liability offences for the occupier of the ground and the promoter of the race **[4]** ***(Refer to Charter Report below)***
- further provide for enforcement powers under Part III of the *Racing Act 1958*
- provide for the use and disclosure of information for the purposes of enforcing Part 4AA of the *Domestic Animals Act 1994* or any regulations made under that part **[9]**
- provide for the appointment of an administrator to manage the greyhound racing industry in certain circumstances.

The Bill would amend the *Domestic Animals Act 1994* to:

- ensure that greyhounds registered with Greyhound Racing Victoria are kept in accordance with the proposed greyhound code of practice made under the *Domestic Animals Act 1994*
- insert an offence for non-compliance with the proposed greyhound code of practice
- require that Greyhound Racing Victoria makes payments to the Treasurer with respect to each registered Greyhound Racing Victoria greyhound to support the administration of the *Domestic Animals Act 1994*

The Bill would also amend the *Prevention of Cruelty to Animals Act 1986* to extend the time limit for commencing proceedings for offences relating to baiting, luring and encouraging animals to fight.

## Content

***Delayed commencement — commencement by proclamation or by 1 March 2017***

Clause 2 of the Bill provides that the Bill will come into operation on a day or days to be proclaimed and gives a default commencement date of 1 August 2017.

The Bill, or a provision of the Bill, may therefore come into operation on a day that is more than 12 months after the introduction of the Bill.

The Explanatory Memorandum provides the following explanation:

> The forced commencement date of 1 August 2017 has been set to ensure that there is adequate time to develop a code of practice relating to the keeping of GRV greyhounds prior to the commencement of offences relating to failure to comply with the code of practice.

***Entry to land and buildings without a warrant***

Clause 8 of the Bill would amend section 77A(1) and (2) of the *Racing Act 1958* to remove the requirement that a member of the Board, or any officer authorised by the Board, may only enter premises at a reasonable hour.

Clause 8 would also introduce new subsection 77A(2A) to provide that a member of the Board, or any officer authorised by the Board, may enter premises and exercise any power under the section:

- between one hour before sunrise and one hour after sunset and
- at any other time if the Board believes on reasonable grounds that a person has contravened or is contravening the Act or the rules at or on the premises.

The Committee notes that clause 8 amends an existing provision (section 77A) that authorises entry to land and buildings without a warrant. This power is only exercisable by a Member of the Board or any officer authorised in writing by the Board. The Statement of Compatibility provides the following reasons for the inclusion of these changes to the entry without warrant powers in 77A of the *Racing Act 1958*:

> The section 77A power to enter and inspect premises engages but does not limit the right to privacy, as the power is neither arbitrary nor unlawful. The use of the power to inspect premises must be undertaken in accordance with the provisions of the Racing Act.
>
> The bill removes the reference to 'reasonable hours' to align the hours during which the board or authorised officers may conduct inspections with that of the common hours of operation of the industry. Where an inspection takes place outside of those hours, the board must believe on reasonable grounds that a person has contravened or is contravening the Racing Act or the rules at or on the premises.

## Charter report

***Presumption of innocence – strict liability offence – races involving the use of an animal as a lure.***

Summary: *The effect of clause 4 is that certain people involved with a greyhound race in which an animal is used as a lure will be guilty of an offence regardless of their knowledge of the use of that animal as a lure. The Committee will write to the Minister seeking further information.*

The Committee notes that clause 4 substitutes a new s. 55 into the *Racing Act 1958*. New subsections 55(2) and 55(3) enact strict liability offences. When a greyhound race involves the use of an animal as a lure for pursuit by a greyhound the occupier of the ground on which the race is held, and the promoter of the race, will each be guilty of an offence. The imposition of strict liability may limit the presumption of innocence, protected in s. 25(1), because a person can be found guilty without being aware of the acts giving rise to the offence (that is, without the prosecution having to prove they have a guilty mind).

The Committee notes that the current s. 55(2) also provides for a strict liability offence against promoters, occupiers, starter stewards and judges of greyhound races involving live quarry. To the extent that clause 4 makes provision for strict liability in relation to a reduced range of people, the new section will engage the relevant right in a narrower range of cases than the current section.

**The Committee observes that clause 4 replaces a strict liability offence with another strict liability offence, which may limit the right to be presumed innocent.**

The Committee notes that the Statement of Compatibility does not address the Charter compatibility of clause 4.

The Commonwealth Government's Parliamentary Joint Committee on Human Rights Guidance Note 2 discusses strict and absolute liability offences:[7]

> Strict liability and absolute liability offences engage and limit the presumption of innocence. This is because they allow for the imposition of criminal liability without the need to prove fault.
>
> The effect of applying strict liability to an element or elements of an offence therefore means that the prosecution does not need to prove fault. However, the defence of mistake of fact is available to the defendant. Similarly, the effect of applying absolute liability to an element or elements of an offence means that no fault element needs to be proved, but the defence of mistake of fact is not available.
>
> Strict liability and absolute liability offences will not necessarily be inconsistent with the presumption of innocence where they are reasonable, necessary and proportionate in pursuit of a legitimate objective.

**The Committee will write to the Minister seeking further information as to the compatibility of clause 4 with the Charter's right to be presumed innocent.**

**The Committee makes no further comment**

[7] Parliamentary Joint Committee on Human Rights, *Guidance Note 2: Offence Provisions, civil penalties and human rights*, December 2014.

# Rooming House Operators Bill 2015

| | |
|---|---|
| **Introduced** | 8 December 2015 |
| **Second Reading Speech** | 10 December 2015 |
| **House** | Legislative Assembly |
| **Member introducing Bill** | Hon. Jane Garrett MLA |
| **Minister responsible** | Hon. Jane Garrett MLA |
| **Portfolio responsibility** | Minister for Consumer Affairs, Gaming and Liquor Regulation |

## Purpose

The purpose of the Bill is to improve the operation of rooming houses and to reduce exploitative and undesirable practices by establishing a licensing scheme for rooming house operators.

Under the Bill, only 'fit and proper persons' would be eligible to hold a licence to operate a rooming house.

The scheme would be administered by the Business Licensing Authority (the Authority) and would be monitored and enforced by the Director of Consumer Affairs Victoria (the Director).

Disciplinary and protective orders

Under Part 4 of the Bill, the Director may apply to VCAT to conduct a hearing to determine whether there are grounds for taking disciplinary action against a licensee. **[31, 32]** Disciplinary orders by VCAT may include:

- a requirement that the licensee comply with a requirement within a specified time
- a requirement that the licensee enter into an undertaking or pay a penalty
- the imposition of licence conditions
- the making of a protective order (see below)
- the cancellation of the licence. **[33]**

Part 4 of the Bill also provides for the making of protective orders by VCAT to protect residents of rooming houses. Such orders may impose one or more of the following requirements on the licensee, i.e., that they:

- comply with a requirement within, or for, a certain time
- enter into an undertaking
- notify each resident about the closure, or a change in operator, of a rooming house
- issue each resident with a notice to vacate by a specific date (being not more than 120 days after the notice)
- refund payments of rent made in advance. **[34]**

The effect of clauses 33 and 34 (and the related consequential amendments to the *Residential Tenancies Act 1997*) with respect to the issuing of a notice to vacate are discussed in the Charter Report below. ***(Refer to Charter Report below)***

## Content

***Delayed commencement — commencement by proclamation or by 1 July 2017***

Clause 2 provides that the provisions of the Bill will come into operation on a day or days to be proclaimed and provides a default commencement date for all provisions of 1 July 2017.

The Bill may therefore come into operation on a day that is more than 12 months after the introduction of the Bill.

The Committee notes the following statement in the Explanatory Memorandum:

> Applications for licences and for renewals of licences will be made online, and a system to enable this must be developed before the scheme can commence. An extended default commencement date will enable sufficient time for the online system to be built.
>
> An extended default commencement date also ensures operators of existing rooming houses are provided with sufficient time to understand the new scheme and determine whether they wish to exit the sector or re-organise their affairs, if necessary, to ensure they are eligible to be granted a licence.

***Self-incrimination – production of documents – justification for abrogation of privilege***

Clause 46(1) of the Bill (in Part 6) would make it an offence for a licensee to fail to keep all documents relating to the rooming house business available for inspection by an inspector, in a form in which they can be readily inspected, at all reasonable times at each place at which the licensee conducts the business of operating a rooming house.

Under clause 46(2) it would also be an offence for a former licensee whose license has expired, has not been renewed or has been cancelled in the last 3 years to fail to make all documents relating to the former business available for inspection by an inspector in a form and at a place where they can be readily inspected.

Part 6 contains a number of other provisions under which persons may be required to produce documents to an inspector (clauses 47(1)(c), 48, 49, 51, 53, 68(1)(b)).

Clause 72(1) of the Bill (also in Part 6) provides that it is a reasonable excuse for a person to refuse to give information or do any other thing required to be done under the Part on the grounds of self-incrimination. However, clause 72(2) provides that the reasonable excuse of self-incrimination does not extend to the production of documents required under the Part 6.

The provisions in Part 6 under which a person may be required to produce documents therefore abrogate the privilege against self-incrimination. As the statement of compatibility remarks 'the answers, records and documents may, however, be used to provide investigative clues to finding other evidence that incriminates the person.'

In respect to the abrogation of the privilege against self-incrimination, the statement of compatibility provides:

> The primary purpose of the abrogation of the privilege in relation to documents is to facilitate compliance with the scheme by assisting inspectors to access information and evidence that is difficult or impossible to ascertain by alternative evidentiary means. Taking into account the protective purpose of the bill, there is significant public interest in ensuring that rooming houses are being operated in compliance with the provisions of the bill and the regulations.

There is no accompanying 'use immunity' that restricts the use of the produced documents to particular proceedings. However, any limitation on the right in section 25(2)(k) that is occasioned by the limited abrogation of the privilege in respect of produced documents is directly related to its purpose. The documents that an inspector can require to be produced are those connected with a licensee's business of operating a rooming house, and for the purpose of monitoring compliance with the bill or regulations. Importantly, the requirement to produce a document to an inspector does not extend to having to explain or account for the information contained in that document. If such an explanation would tend to incriminate, the privilege would still be available.

Further, clause 46 of the bill creates an obligation for licensees to keep all documents relating to the business available for inspection, and for former licensees to make documents relating to the former business available for inspection. The duty to provide those documents is consistent with the reasonable expectations of persons who operate a business within a regulated scheme. Moreover, it is necessary for the regulator to have access to documents to ensure the effective administration of the regulatory scheme.

There are no less restrictive means available to achieve the purpose of enabling inspectors to have access to relevant documents. To excuse the production of such documents where a contravention is suspected would allow persons to circumvent the record-keeping obligations in the bill and significantly impede authorised officers' ability to investigate and enforce compliance with the scheme. Any limitation on the right against self-incrimination is therefore appropriately tailored and the least restrictive means to achieve the regulatory purpose.

***Entry and search of premises without warrant***

The Bill would provide inspectors with powers to enter and search any premises at which a licensee is conducting a rooming house business without consent or warrant. The powers are exercisable at any time between the hours of 9.00 am and 5.00 pm and would empower the inspector to seize or secure anything found on the premises, which the inspector believes on reasonable grounds to be connected with a contravention of the Bill or the regulations and to inspect and make copies of documents. **[58]** The Statement of Compatibility provides the following explanation:

> Entry and seizure without consent or warrant is only permitted in the case of premises at which a licensee is conducting a business of operating a rooming house, and the powers of inspectors are appropriately circumscribed to only permit seizure of, or secure against interference, material necessary to investigate breaches of the bill.

## Charter report

***Interference with home – notice to vacate rooming house – exercise of VCAT's powers.***

Summary: *The effect of clauses 33, 34, 88 and 90 are that a notice to vacate may be issued to residents of a rooming house when VCAT makes disciplinary orders or protective orders under the Act, which will evict them from their homes despite no wrongdoing by them. The Committee will write to the Minister seeking further information.*

The Committee notes that clauses 33 and 34 provide the Victorian Civil and Administrative Tribunal (VCAT) with discretion to make disciplinary orders and protective orders that require licensees to issue a notice to vacate to each resident of a rooming house operated by the licensee. Clauses 88 and 90 consequently require the rooming house owner to issue a notice to vacate where VCAT has made such an order.

A notice to vacate could potentially limit the right not to have one's home unlawfully or arbitrarily interfered with in s. 13 of the Charter. Protective orders to vacate made under clause 34(3) are required to be made for the purpose of protecting residents, which is likely to ensure that any interference with a resident's home is not arbitrary and does not limit the right in s. 13. Further, VCAT is likely to be acting in an administrative rather than judicial capacity when making orders under clauses 33 and 34 and would therefore be bound by s. 38 of the Charter, which would also ensure the s. 13 rights of residents were considered when issuing notices to vacate. However when disciplinary orders (as opposed to protective orders) include an order to vacate, VCAT is required by clause 33(2) to regard the 'paramount consideration' as being:

(a) the need to reduce exploitative and undesirable practices within the rooming house sector; and

(b) the need to hold licensed rooming house operators to account for their conduct and the conduct of persons involved in the management or operation of their rooming houses.

The 'paramount consideration' requirement in clause 33(2) may prevent compliance with VCAT's obligations under s. 38(1) of the Charter, so that the exemption in s. 38(2) of the Charter applies. An order to vacate could then be issued by VCAT without it having considered the need for protection of the residents or the residents' rights under s. 13 of the Charter. In those circumstances the interference with the residents' rights to non-interference with their homes could be arbitrary and the right in s. 13 could be limited. Where residents are evicted as a means of punishing a licensee and without considering the residents' interests, such evictions could be considered arbitrary.

It is not clear whether the 'punitive' power in clause 33(1)(b) to make 'a protective order referred to in section 34(3)' is limited by the requirement that it be made for the purpose of protecting residents, in the same way as the 'protective' power in clause 34(3) is. If that were the case, VCAT would be required to consider the residents' interests when making orders under clause 33(1)(b) as well. Even so, it remains unclear how this requirement would interact with the 'paramount consideration' governing decision making in relation to the 'punitive' power and what the implications of this are for s. 38 of the Charter.

**The Committee observes that the effect of clauses 33, 34, 88 and 90 is to allow interference with the homes of the residents of rooming houses.**

The Statement of Compatibility does not address how clauses 33, 34, 88 and 90 impact on the rights of residents of rooming houses to non interference with their homes, and the manner in which subclause 33(2) interacts with the obligations in s. 38(1) of the Charter.

**The Committee will write to the Minister seeking further information as to whether or not clauses 33, 34, 88 and 90 limit the Charter's rights to non-interference with home and whether subclause 33(2) allows VCAT to rely on the exception in s. 38(2) of the Charter.**

**The Committee makes no further comment**

# Transparency in Government Bill 2015

| | |
|---|---|
| **Introduced** | 8 December 2015 |
| **Second Reading Speech** | 10 December 2015 |
| **House** | Legislative Assembly |
| **Member introducing Bill** | Hon. Jacinta Allan MLA |
| **Ministers responsible** | Hon. Jill Hennessy<br>Hon. Jane Garrett |
| **Portfolio responsibilities** | Minister for Health, Minister for Ambulances<br>Minister for Emergency Services |

## Purpose

The Bill would create a new legislative framework for the regular release of government information about the performance of Victoria's ambulance and fire services, public health services and denominational hospitals. It would provide for:

- the quarterly release of emergency response times for Ambulance Victoria, the Country Fire Authority (CFA) and the Metropolitan Fire and Emergency Services Board (MFESB)
- the annual publication of statements of priorities (the key accountability agreements between the Victorian Government and Victoria's ambulance services, public health services and denominational hospitals)
- the quarterly release of health performance data based on key performance indicators in the statements of priorities.

## Charter report

The Transparency in Government Bill 2015 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

# Ministerial Correspondence

## Assisted Reproductive Treatment Amendment Bill 2015

The Bill was introduced into the Legislative Assembly on 24 November 2015 by Hon Jill Hennessy MLA, Minister for Health. The Committee considered the Bill on 7 December 2015 and made the following comments in Alert Digest No. 16 of 2015 tabled in the Parliament on 8 December 2015.

### Committee comments

**Charter report**

**Privacy – Freedom of conscience – Magistrate may require person to produce records relating to a pre-1988 donor treatment procedure – Requirement overrides medical professional privilege, professional ethics, medical patient confidentiality and sexual offence victim confidentiality**

Summary: *The effect of new sections 56H and 56I is that a person who is ordered to provide records relating to a pre-1988 donor treatment procedure may be required to breach medical professional privilege, professional rules and ethics or the confidentiality of patients or sexual offence victims. The Committee will write to the Minister seeking further information.*

The Committee notes that clause 15, inserting new section 56F, provides that, if:

- the Victorian Assisted Reproductive Treatment Authority has asked a person to locate and give it records relating to a pre-1988 donor treatment procedure that resulted in the birth of someone who (or whose parent or child, or a donor) has requested information;
- the person did not provide all the requested records within 90 days;
- the Authority believes on reasonable grounds that the person is in possession or has control of the requested records; and
- the Magistrates' Court is satisfied that there are reasonable grounds for believing that the person is in possession or has control of the requested records;

'the court may make a production order requiring the person to produce to the Authority… the records specified in the order'.

New Section 56H provides that it is an offence (punishable by a fine of up to 50 penalty units, or about $7500) to fail to comply with the order without a reasonable excuse. New section 56I provides that:

- the grounds of medical professional privilege or that compliance would constitute unprofessional conduct or a breach of professional ethics are not reasonable excuses; and
- existing statutory provisions that bar:
    - physicians or surgeons from divulging any information in a civil suit, action or proceeding that they have necessarily acquired in attending a patient without that

patient's consent (or, if the patient is deceased, the consent of any legal personal representative, spouse or child of the patient);[i] and

- anyone producing a document containing a communication made in confidence by an alleged sexual offence victim to a registered medical practitioner or counsellor in a legal proceeding unless a court finds that the information in the document would have substantial probative value and that disclosure is in the public interest[ii]

do not apply to prevent the production of documents under the order.

**The Committee observes that the effect of new sections 56H and 56I is that a person who is ordered to provide records relating to a pre-1988 donor treatment procedure may be required to breach medical professional privilege, professional rules and ethics or the confidentiality of patients or sexual offence victims.**

The Statement of Compatibility remarks:

> The enquiry and production powers contained in the bill will engage the right of privacy of the donor, the donor's family and any other person whose information is disclosed as a result of the exercise of the powers by VARTA. However, the bill ensures that the interference is neither unlawful nor arbitrary by clearly setting out the procedures that will govern the disclosure of the information and providing appropriate safeguards which protect the privacy of personal and health information.
>
> In the case of applications to the Magistrates' Court for production orders, they must be supported by an affidavit which sets out the grounds on which VARTA holds the belief that the person against whom the order is sought holds the relevant records. The application and affidavit must be served on the person holding the records (the respondent) prior to the hearing, and the respondent will have an opportunity to attend court and present their case. It is the court, rather than VARTA, who will decide whether the records a person has refused to provide must be produced, and the court will make its decision having regard to the matters contained in VARTA's affidavit and any other evidence before it. Applications for production orders will be heard in closed court, given the sensitivity of the information involved.

However, the Committee notes that:

- new section 56F provides that a magistrate who is satisfied that a person has a requested record 'may' require that person to produce that record to the Authority. The Committee observes that the section does not specify any criteria for how the magistrate should exercise this apparent discretion.
- new section 56I(1) provides that the grounds that compliance 'would constitute unprofessional conduct or a breach of professional ethics' are not a reasonable excuse for non-compliance with an order to produce a record of a pre-1988 donor treatment procedure. The Committee observes that this may mean that a lawyer may be required to produce a document containing confidential information supplied by a client (for example, where the client sought legal advice about his or her possible liability for child support as a result of the donation) even though that would breach ethical, professional and legal rules protecting lawyer-client confidentiality.
- new section 56I(2) may mean that a document relating to a pre-1988 donor treatment procedure that contains a communication made in confidence by an alleged sexual offence victim (for example, a questionnaire where a donor revealed, as part of his or her medical history or pre-donation counselling, that he or she was a rape victim) may

[i] *Evidence (Miscellaneous Provisions) Act 1958*, s. 28.

[ii] *Evidence (Miscellaneous Provisions) Act 1958*, s. 32C.

> be produced in a legal proceeding without a court first finding that the disclosure would have substantial probative value and would be in the public interest.

The Committee observes that new section 56I(1), to the extent that it may require doctors, counsellors or other professionals to act in breach of their profession's ethics or personal promises (for example, by requiring them to divulge information about a patient that they had promised would be kept confidential) may engage the Charter's right to freedom of conscience, including the freedom to demonstrate that belief in practice and not to be coerced in a way that limits that freedom.[iii]

The Statement of Compatibility does not address the Charter's right to freedom of conscience, but does address the compatibility of new section 56F with the Charter's right to privacy as follows:

> The enquiry and production powers contained in the bill will engage the right of privacy of the donor, the donor's family and any other person whose information is disclosed as a result of the exercise of the powers by VARTA. However, the bill ensures that the interference is neither unlawful nor arbitrary by clearly setting out the procedures that will govern the disclosure of the information and providing appropriate safeguards which protect the privacy of personal and health information.
>
> In the case of applications to the Magistrates Court for production orders, they must be supported by an affidavit which sets out the grounds on which VARTA holds the belief that the person against whom the order is sought holds the relevant records. The application and affidavit must be served on the person holding the records (the respondent) prior to the hearing, and the respondent will have an opportunity to attend court and present their case. It is the court, rather than VARTA, who will decide whether the records a person has refused to provide must be produced, and the court will make its decision having regard to the matters contained in VARTA's affidavit and any other evidence before it. Applications for production orders will be heard in closed court, given the sensitivity of the information involved.

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

- **what criteria govern a magistrate's discretion under new section 56F to refuse to order a person (who the magistrate is satisfied has possession or control of a document relating to a pre-1988 donor treatment procedure) to produce a record to the Victorian Assisted Reproductive Treatment Authority;**
- **whether a lawyer can refuse to produce a document under new section 56H on the ground that doing so would breach lawyer-client confidentiality; and**
- **the purpose of new section 56I(2)'s provision that existing s. 32C of the *Evidence (Miscellaneous Provisions) Act 1958*, which limits when documents containing certain communications made in confidence by alleged sexual offence victims can be produced in legal proceedings, does not apply to prevent the disclosure of a document relating to a pre-1988 donor treatment procedure that a magistrate has ordered to be produced.**

**The Committee refers to Parliament for its consideration the question of whether or not new section 56I(1), to the extent that it may require doctors, counsellors or other professionals to act in breach of their professional ethics, is compatible with the right to freedom of conscience in Charter s. 14.**

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[iii] Charter s. 14.

**Freedom of expression – Person requested to provide documents or information must not disclose that request to most others**

Summary: *The Committee will write to the Minister seeking further information as to whether or not new sections 56C and 56K, which generally bar a recipient of a request from the Victorian Assisted Reproductive Treatment Authority for reports or information about donors or donor treatment procedures from disclosing to any other person that the Authority has made that request, are compatible with the Charter's right to freedom of expression.*

The Committee notes that clause 15, inserting new sections 56C and 56K, makes it an offence (punishable by 50 penalty units, or approximately $7500) for a person who receives a request from the Victorian Assisted Reproductive Treatment Authority:

- to locate and give to the Authority records relating to a pre-1988 donor treatment procedure (section 56C) or
- for information relating to a pre-1998 donor or donor treatment procedure (section 56K)

to 'disclose, whether directly or indirectly, to any other person that the Authority has made such a request unless':

- 'the disclosure is reasonably necessary for the purposes of locating the' records or information 'that is the subject of the request'; or
- in the case of a request for records, 'the disclosure is made to the person to whom the requested records relate.'

The Committee observes that new sections 56C and 56K may engage the Charter's right to freedom of expression.[iv] The Statement of Compatibility does not discuss the Charter's right to freedom of expression.

The Committee notes that new sections 56C and 56K appear to bar a person who receives a request from the Victorian Assisted Reproductive Treatment Authority for records or information relating to a donor or a donor treatment procedure from disclosing the fact or nature of that request to:

- the donor or a donor-conceived person, to the extent that the request is for information that is not part of a record.
- a non-donor who is potentially affected by the request (for example the donor's family.)
- a family member, counsellor, advisor or confidant of the recipient of the request (for example, a person who the recipient wishes to consult with about the ramifications of complying with the request.)
- a lawyer (for example, where the person who receives the request wishes to seek legal advice about the request, or wishes to engage a lawyer to represent him or her in court proceedings relating to the request).
- a court (for example, where the person wishes to challenge the legality of the request in the Supreme Court.)
- the media (for example, as part of a political campaign against the new legal rules contained in the Bill).

The Committee observes that new sections 56C and 56K apply even if the making of the request is no longer confidential.

[iv] Charter s. 15(2).

**The Committee will write to the Minister seeking further information as to whether or not new sections 56C and 56K, which generally bar a recipient of a request from the Victorian Assisted Reproductive Treatment Authority for reports or information about donors or donor treatment procedures from disclosing to any other person that the Authority has made that request, are compatible with the right to freedom of expression in Charter s. 15(2), including whether or not there are any less restrictive alternatives reasonably available to achieve the purposes of new section 56C and 56K.**

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**Medical or scientific treatment without full, free and informed consent – Disclosure of information that will or may identify a donor – Removal of requirement for donor consent – Donations made on basis of anonymity**

Summary: *The effect of clauses 18 and 19 may be to require the disclosure of information about a donor of gametes on a basis that is inconsistent with the basis on which the donor consented to donate those gametes. The Committee will write to the Minister seeking further information.*

The Committee notes that clauses 18 and 19, substituting existing ss. 59 and 60, provide that, on receipt of an application from a person born as a result of a donor treatment procedure or a descendant of such a person for the disclosure of information recorded on the Central Register, the Victorian Assisted Reproductive Treatment Authority must disclose to the applicant information that will or may disclose the identity of another person, such as a donor. This replaces an existing provision that, in the case of donations made before 31 December 1997, the information can only be disclosed if 'the donor gives consent to the disclosure'.

The Statement of Compatibility remarks:

> Section 8 of the charter protects the right of all people, including a child, to enjoy his or her human rights without discrimination.
>
> As noted in the submission of the Victorian Equal Opportunity and Human Rights Commission to the Law Reform Committee Inquiry into Access by Donor-Conceived People to Information about Donors (Law Reform Committee Inquiry) this right is engaged when donor-conceived children are provided with different rights to obtain information about their donors based on when they were conceived.

However, the Committee observes that the Charter defines 'discrimination' as meaning discrimination on the basis of an attribute set out in s. 6 of the *Equal Opportunity Act 2010*. That list of attributes includes neither the date of a person's conception nor the date of the relevant donation of gametes (which is the criterion stated in existing s. 59(b)).[v]

The Committee also notes that the purpose of existing s. 59's requirement for the donor's consent to any disclosure in the case of any donation prior to 31 December 1997 is that, prior to that date, it was lawful to make donations of gametes for assisted reproductive treatment on the basis of anonymity. **The Committee observes that the effect of clauses 18 and 19 may be to require the disclosure of information about a donor of gametes on a basis that is inconsistent with the basis on which the donor consented to donate those gametes.**

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[v] The list of attributes in s. 6 of the *Equal Opportunity Act 2010* are: age, breastfeeding, employment activity, gender identity, disability, industrial activity, lawful sexual activity, marital status, parental or carer status, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, sexual orientation, an expunged homosexual conviction, or personal association with a person who is identified by reference to any of these attributes.

Charter s. 10(c) provides that a person must not be 'subjected to medical or scientific… treatment without his or her full, free and informed consent.' The Committee notes that this right was recommended by the Human Rights Consultation Committee because of '[o]ther Victorian laws concerning medical consent [which] stress that consent must be both voluntary and that the person must have been given sufficient information for an informed decision to be made.'[vi]

The Statement of Compatibility does not address the Charter's right against medical or scientific treatment without full, free and informed consent, but does address the compatibility of clauses 18 and 19 with donors' Charter right to privacy as follows:

> [T]he interference with privacy and family life of a donor and their family is not arbitrary because it is balanced against the rights that the bill seeks to promote, namely the rights of the donor-conceived person to recognition and equality before the law, privacy (in the broader sense), protection of families and children, and cultural rights.
>
> The Law Reform Committee Inquiry found that 'while the release of identifying information to donor-conceived people may potentially cause discomfort and distress to donors (although this will not always be the case), it is certain that donor-conceived people are actually suffering from their lack of knowledge about their donors'. The committee noted that 'knowledge about parentage and heredity often forms a substantial part of the person's sense of identity, and donor-conceived people who want this information but are unable to obtain it, experience significant stress and frustration. Where people learn as youths or adults that they are donor-conceived, and are consequently forced to evaluate who they are through newly perceived relationships, the stress and frustration of not being able to find out more about their donor can be exacerbated. Unlike their parents, their donor, or the treating physician, the children are passive participants in donor conception, and have no influence over agreements made between those parties, even though they are substantially affected by those agreements.
>
> The recognition of the right of a donor-conceived person to have access to identifying information about their donor, despite the competing right of the donor to privacy, is consistent with the principle of the best interests of the child set out in section 17(2) of the charter. This best interest principle is also contained in the guiding principles of the Assisted Reproductive Treatment Act 2008 (the act) which provide that the welfare and interests of persons born or to be born as a result of treatment procedures are paramount, and children born as a result of the use of donated gametes have a right to information about their genetic parents (sections 5(a) and (c)).

**The Committee will write to the Minister seeking further information as to which attribute of discrimination listed in s. 6 of the *Equal Opportunity Act 2010* is engaged when donor-conceived children are provided with different rights to obtain information about their donors based on when they were conceived or when the donation that led to their conception occurred.**

**The Committee refers to Parliament for its consideration the question of whether or not clauses 18 and 19, to the extent that they require the disclosure of information about a donor of gametes on a basis that is inconsistent with the basis on which the donor consented to donate those gametes, are compatible with the right against being subjected to medical or scientific treatment without full, free and informed consent in Charter s. 10(c).**

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[vi] Human Rights Consultation Committee, *Rights, Responsibility and Respect: The Report of the Human Rights Consultation Committee* (Melbourne, 2005), p. 42.

## Minister's response

**The Committee thanks the Minister for the attached response.**

Hon Jill Hennessy MP

Minister for Health
Minister for Ambulance Services

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e4072017

Lizzie Blandthorn MLA
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
Spring Street
EAST MELBOURNE VIC 3002

Dear Ms ~~Blandthorn~~ Lizzie

Thank you for your letter regarding the matters raised by the Scrutiny of Acts and Regulations Committee in relation to the amendments to the *Assisted Reproductive Treatment Act 2008* contained in the Assisted Reproductive Treatment Amendment Bill 2015.

You have asked me to respond to various questions raised in the Committee's Charter report on the Bill in Alert Digest No 16, 2015 tabled in Parliament on 8 December 2015. My response to these questions is set out in the attachment to this letter, in addition to my views on the two questions that you have referred to Parliament.

I note that the Committee received a submission on the Bill from Monash University's Castan Centre for Human Rights Law, reproduced at Appendix 5 to Alert Digest No 16, 2015. In response to that submission, I have also set out my view that a criminal penalty should be imposed where a donor-conceived person breaches a contact preference lodged by a donor.

I trust that this information is of assistance to the Committee. Should the Committee require any additional information or clarification of the effect of the amendments, please do not hesitate to contact my office.

Thank you again for taking the time to writing to me about this matter.

Yours sincerely

**Hon Jill Hennessy MP**
**Minister for Health**
**Minister for Ambulance Services**
5/12/2016

Enc.

VICTORIA State Government

**ATTACHMENT**

**New sections 56H and 56I - Freedom of thought, conscience, religion and belief**

**Magistrates' discretion under section 56F**

**Question to the Minister for Health: What criteria govern a Magistrate's discretion under new section 56F to refuse to order a person (who the Magistrate is satisfied has possession or control of a document relating to a pre-1988 donor treatment procedure) to produce a record to the Victorian Assisted Reproductive Treatment Authority?**

It is anticipated that there will be very few applications for production orders made to the Magistrates' Court under new section 56D. While the exact numbers and location of all records relating to pre-1988 donor treatment procedures are not known, it is expected that most available records have already been transferred to the Central Register or are at the Public Records Office of Victoria and are able to be accessed. Given the unique and sensitive nature of the proceedings, it is considered appropriate that the Court be given discretion to consider an application on its merits and to determine the relevant considerations according to the individual circumstances of the case.

However, the Court will be guided by the legislative scheme (for example, new section 56B prescribes when the Victorian Assisted Reproductive Treatment Authority may request records, and new section 56D prescribes the requirements that must be met before it may bring an application for a production order) and framework of the *Assisted Reproductive Treatment Act 2008*, including the guiding principles contained in section 5 of the Act. Some general matters relevant to the exercise of the Court's discretion under section 56F are as follows:

- In determining whether to grant a production order, the standard of proof to be applied by the Magistrates' Court is the civil standard;
- As stated in the Statement of Compatibility to the Bill, the Court will make its decision having regard to the matters contained in the affidavit of the Victorian Assisted Reproductive Treatment Authority (including the matters required under section 56D (3)), and any other evidence before it; and
- The Court can also require the Victorian Assisted Reproductive Treatment Authority to provide it any additional information it requires concerning the grounds on which the order is sought.

**Freedom of conscience or belief**

**Question to Parliament: To the extent that new section 56I(1) may require doctors, counsellors or other professionals to act in breach of their professional ethics, is this compatible with the right to freedom of conscience in Charter s.14?**

New section 56H creates an offence for a person against whom a production order has been made to fail to comply with the order without reasonable excuse; and, pursuant to new section 56I, it is not a reasonable excuse to refuse or fail to comply with a production order on the ground of 'medical professional privilege' or on the ground that complying with the order would constitute unprofessional conduct or a breach of professional ethics. Although a production order may require

a medical professional to produce to the Victorian Assisted Reproductive Treatment Authority records which, without legislative intervention, would ordinarily be kept confidential, sections 56H and 56I do not engage the right to freedom of conscience or belief in s 14(1) of the Charter.

Section 14(1) of the Charter protects the rights to freedom of conscience or belief, and is not necessarily limited to matters of religion. Freedom of conscience is the ability to freely hold an internal or private recognition of the right and wrong as regards one's actions and motives. In the public sphere, one's conscientious actions and motives will only be protected by section 14(1) if those actions and motives represent a practice or some other form of public manifestation of a belief. Such a belief must be honestly held and have some fundamental, philosophical basis that is consistent with the basic standards of human dignity or integrity, and compatible with other human rights.

Professional ethical obligations, which routinely give way to the law, are not in the nature of 'beliefs' that are protected by the Charter. Although conscientious objection - based on religious belief - to providing certain medical treatment has been recognised by courts, what is in issue here is the maintenance of a patient's confidence regarding the fact of their donation, not the mandatory performance of a medical procedure.

Further, the provision of assisted reproductive treatment is a regulated industry and participants in that industry must comply with changes to the regulatory landscape as they occur. Although it is conceivable that an individual doctor or service provider may hold a personal view about the release of donor information, in this regulatory context, such a belief is not of such a degree of seriousness and importance to be considered consistent with the basic standards of human dignity or integrity that the Charter seeks to protect. Finally, I note that freedom of belief or conscience are rights that attach to a person, and therefore will not be relevant where production orders are issued against facilities or companies that provide assisted reproductive treatment services.

**Legal professional privilege**

**Question to the Minister for Health: Can a lawyer refuse to produce a document under new section 56H on the ground that doing so would breach lawyer-client confidentiality?**

I confirm that the effect of section 56I is that a lawyer could not refuse to comply with a production order on the ground that to do so would breach legal professional privilege. It is, however, difficult to envisage how records relating to a pre-1988 donor treatment procedure could be subject to legal professional privilege. These records are medical records and do not constitute communications between a lawyer and a client for the dominant purpose of seeking or providing legal advice.

The example given by the Committee concerning a lawyer being required to produce a document relating to a communication with a client who sought advice about his liability for child support following a donation is not relevant. This is because such a document could not be subject to a production order as it is not a record relating to a pre-1988 donor treatment procedure.

**Question to the Minister for Health: What is the purpose of new section 56I(2)'s provision that existing section 32C of the *Evidence (Miscellaneous Provisions) Act 1958*, which limits when documents containing certain communications made in confidence by alleged sexual offence victims can be produced in legal proceedings, does not apply to prevent the disclosure of a**

**document relating to a pre-1988 donor treatment procedure that a magistrate has ordered to be produced?**

New sections 56I(1) and (2) are based on section 200 of the *Children Youth and Families Act 2005* and section 44 of the *Commissioner for Children and Young People Act 2012*. The purpose of section 56I(2) is to make clear that the limitations contained in the existing section 32C of the *Evidence (Miscellaneous Provisions) Act 1958* do not apply to prevent the production of records required by a production order.

The Committee has explained its concern regarding section 56I(2) by giving the example of a questionnaire in which a donor disclosed that they were raped as part of their medical history or pre-donation counselling, which it considers could be required to be produced pursuant to a production order. In response to that example, I note that such a document would be unlikely to constitute a 'record relating to a pre-1988 donor treatment procedure'. Even if it was considered to be such a record, the respondent to the application could claim there is 'a reasonable excuse' under section 56H(1) for failing to provide the document on the grounds that the document is not relevant to the donor-conceived person's application under section 56(1) for identifying information about their donor. The purpose of a production order is for the Victorian Assisted Reproductive Treatment Authority to obtain information to respond to an application made under section 56(1).

**New sections 56C and 56K – Freedom of expression**

**Question to the Minister for Health: Are new sections 56C and 56K, which generally bar a recipient of a request from the Victorian Assisted Reproductive Treatment Authority for reports or information about donors or donor treatment procedures from disclosing to any other person that the Victorian Assisted Reproductive Treatment Authority has made that request, compatible with the right to freedom of expression in s 15(2) of the Charter, and are there are any less restrictive alternatives reasonably available to achieve the purposes of new sections 56C and 56K?**

Sections 56C and 56K are confidentiality provisions that prohibit persons who receive a request from the Victorian Assisted Reproductive Treatment Authority from disclosing to any other person that the request has been made, unless the disclosure is reasonably necessary for the purposes of locating the information that is the subject of the request, or, in the case of records, the disclosure is made to the person to whom the requested records relate. The purpose of these provisions is to ensure that the confidentiality of an investigation of the Victorian Assisted Reproductive Treatment Authority into the identity of a donor is preserved.

Section 15(2) of the Charter protects the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds. Under section 15(3)(a) of the Charter, the right to freedom of expression may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons. To the extent that the right to freedom of expression could be considered relevant to new sections 56C and 56K, in my opinion, the prohibition on disclosing information about receiving a request from the Victorian Assisted Reproductive Treatment Authority would fall within the internal limitation in section 15(3)(a) of the Charter, as being reasonably necessary to protect the privacy and reputations of donors and donor-conceived people. Therefore, the right in section 15(2) of the Charter is not limited.

In my view, it is also reasonably necessary that failure to comply with sections 56C and 56K constitutes an offence, in order to ensure effective enforcement of the confidentiality provisions. For example, without an enforcement mechanism to act as a deterrent, the contact preference regime may be undermined through information being disclosed beyond the extent that is reasonably necessary to ensure the Central Register contains records to achieve the Bill's purpose, and before there is an opportunity for donors to lodge a contact preference. The Bill protects against inadvertent breach of the confidentiality provisions by providing that the offence can only be committed where the Victorian Assisted Reproductive Treatment Authority has first warned the person that it is an offence to disclose to another person that the Victorian Assisted Reproductive Treatment Authority has made the request.

**Clauses 18 and 19 - Equality and consent to medical treatment**

**Right to equality**

**Question for the Minister for Health: Which attribute of discrimination listed in s.6 of the *Equal Opportunity Act 2010* is engaged when donor-conceived children are provided with different rights to obtain information about their donors based on when they were conceived or when the donation that led to their conception occurred?**

The ART Act in its current form confers on donor-conceived persons different rights to obtain information about their donors, depending on when the donors donated their gametes. Because, in most cases, there is a nexus between the date of donation and date of conception, the practical effect is that whether a donor-conceived person has the right to obtain information about their donor will depend to some extent on when they were conceived, which could arguably amount to an age-based distinction. Accordingly, for the purposes of the Charter definition of discrimination, the relevant protected attribute under s 6 of the *Equal Opportunity Act 2010* is age.

The factors that lead to there being a nexus between date of donation and date of conception are as follows:

- In the early phases of fertility treatment in Victoria (pre-1980s), fresh sperm donations were frequently used;
- Since improvements in techniques for freezing sperm, it can now be stored indefinitely. However, posthumous use of donations is regulated by section 46 of *the Assisted Reproductive Treatment Act 2008* and is only permitted in very limited circumstances. This creates the effect of limiting the use of gametes obtained from a donor or embryos formed using donor gametes after that donor dies.

The reference in the Statement of Compatibility to the right to equality is to the Bill's promotion of that right. Accordingly, even if the differential treatment of donor-conceived persons based on either date of conception or date of donation, which is removed by the Bill's amendments, did not amount to age-based discrimination, this does not affect the conclusion that the Bill does not limit any human rights and is compatible with the Charter.

**Consent to medical treatment**

**Question to Parliament: Are clauses 18 and 19, to the extent that they require the disclosure of information about the donor of gametes on a basis that is inconsistent with the basis on which the donor consented to donate those gametes, compatible with the right against being subjected to medical or scientific treatment without full, free and informed consent in charter s.10(c)?**

The Committee has referred to Parliament the issue of whether the right in section 10(c) of the Charter is engaged. Section 10(c) of the Charter provides that a person must not be subject to medical treatment without his or her full, free and informed consent. It is acknowledged that the amendments contained in the Bill constitute, for some donors, a significant departure from the conditions as to disclosure of identifying information that were in place at the time of their donation. However, the right in s 10(c) of the Charter is not relevant to the Bill because:

- the amendments affect certain donors' lack of consent to the release of their identifying information, not their consent to provide the donation; and
- in any event, donation of gametes does not constitute 'medical treatment' within the meaning of the Charter.

The right in s 10(c) of the Charter reflects a modified article 7 of the *International Covenant on Civil and Political Rights*. According to the extrinsic materials for the Charter, this modification was intended to reflect the requirements for consent outlined in the *Medical Treatment Act 1988*. Section 3 of that Act defines 'medical treatment' to mean:

> the carrying out of—
>
> (a) an operation; or
>
> (b) the administration of a drug or other like substance; or
>
> (c) any other medical procedure—
>
> but does not include palliative care;

'Medical procedure' is an intentionally broad term, but has been held to generally describe a procedure that is based upon the science of the diagnosis, treatment or prevention of disease or injury, or of the relief of pain, suffering and discomfort. The above definition indicates that 'medical treatment' should be interpreted to mean an active therapeutic intervention in the care of a patient, and is not met by a voluntary donation of gametes performed in the absence of any operation or medical procedure.

**Issue raised by the Castan Centre for Human Rights**

**Why is a criminal penalty imposed for a breach of the proposed contact preference regime?**

I note that the Committee also received a submission on the Bill from Monash University's Castan Centre for Human Rights Law, reproduced at Appendix 5 to Alert Digest No 16, 2015. That submission, whilst generally endorsing the contact preference regime contained in the Bill,

recommends against imposing a criminal penalty where a donor-conceived person breaches a contact preference lodged by a donor.

Pursuant to new section 63G(2), where a person has applied for information about a pre-1998 donor and has given an undertaking to comply with any contact preference lodged by that donor, it is an offence for the applicant to knowingly contact the donor in contravention of the contact preference, unless the contact is a continuation of, or a similar kind to, contact that the applicant had with the donor before the applicant knew of the contact preference. The offence carries a fine of 50 penalty units, which presently equates to a maximum fine of $7,583.50. This penalty is consistent with the offence in new section 63O which applies to contact preferences lodged by donor-conceived people.

In my view, it is appropriate to impose a financial penalty of 50 penalty units for a breach of a contact preference, as contact preferences are intended to effectively deter unwanted contact and to be legally enforceable. Without a meaningful deterrent that ensures donors and donor-conceived people can be confident that their contact preferences will be complied with, there is a risk that the contact preference scheme will be undermined. The offence is also tailored to protect against the risk of inadvertent breach: a donor-conceived person who is subject to a no contact preference will be required to first sign an undertaking indicating that they understand the nature and effect of the contact preference, prior to being provided with the donor's contact details. Where some form of contact, not facilitated by the Victorian Assisted Reproductive Treatment Authority, may have already occurred, it is a defence that the contact is a continuation of, or a similar kind to, contact that the applicant had with the donor before the applicant knew of the contact preference. The amount of the financial penalty is appropriate taking into account the seriousness of the offence, in circumstances where a person will have knowingly breached the undertaking they have given. This is also consistent with the penalty for breach of other offences under the *Assisted Reproductive Treatment Act 2008*.

# Bail Amendment Bill 2015

The Bill was introduced into the Legislative Assembly on 24 November 2015 by Hon Martin Pakula MLA, Attorney-General. The Committee considered the Bill on 7 December 2015 and made the following comments in Alert Digest No. 16 of 2015 tabled in the Parliament on 8 December 2015.

## Committee comments

**Charter report**

***Automatic detention of people awaiting trial – People charged with obstructing special police powers – Court must refuse bail unless exceptional circumstances proved***

Summary: *The Committee refers to Parliament for its consideration the question of whether or not clause 4, by requiring that most people charged with obstructing, hindering or disobeying police exercising special police powers be detained until their trial, is a reasonable limit on the Charter right of persons awaiting trial to not be automatically detained.*

The Committee notes that clause 4, amending existing s. 4, provides that a court shall refuse bail to a person charged with offences under:

- existing s. 4B(1) of the *Terrorism (Community Protection) Act 2003*, which makes it an offence (punishable by up to ten years imprisonment) to provide information to anyone with an intent to facilitate preparation for a terrorist act;[vii] or
- existing s. 21W of the *Terrorism (Community Protection) Act 2003*, which makes it an offence (punishable by up to two years imprisonment) to obstruct or hinder a police officer, where that police officer is exercising a special police power to search a person, vehicle or premises or seize a thing, or to fail to comply with a direction given by a police officer as a special police power, without a reasonable excuse;[viii]

unless the court is satisfied that exceptional circumstances exist which justify the grant of bail.

The Committee observes that the effect of clause 4 is that most people charged with obstructing, hindering or disobeying a police officer exercising special police powers will be detained until that charge comes to trial.

The Committee considers that clause 4 may limit the Charter right of persons awaiting trial to 'not be automatically detained in custody'.[ix]

The Statement of Compatibility remarks:

> The inclusion of terrorism related offences in the list of offences that require an accused to show exceptional circumstances is a reasonable limitation on the right to liberty, as it is required to protect the community. Terrorism, by its very definition poses an increased risk to community safety.
>
> Further, as with all offences that attract the exceptional circumstances exception the proposed insertion of this new category of offence into section 4(2) of the Bail Act will not result in an automatic refusal of bail. An accused person still has the ability to argue that exceptional circumstances exist, and if the court is convinced by such arguments, will be granted bail.

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[vii] See the discussion of this offence by this Committee in *Alert Digest No. 14 of 2015* (reporting on the Terrorism (Community Protection) Amendment Bill 2015), pp. 18-19.

[viii] See the discussion of special police powers by this Committee in *Alert Digest No. 14 of 2015* (reporting on the Terrorism (Community Protection) Amendment Bill 2015), pp. 25-28.

[ix] Charter s. 21(6).

However, the Committee observes that the offence in s. 21W of the *Terrorism (Community Protection) Act 2003* does not require proof of any connection to terrorism or any risk to community safety.

The Committee notes that the ACT Supreme Court has declared that a provision requiring the detention until trial of people charged with murder, attempted murder or commercial drug offences except in exceptional circumstances is incompatible with the right under the *Human Rights Act 2004* (ACT) of a person awaiting trial 'not to be detained in custody as a general rule'.[x] The Statement of Compatibility remarks that:

> the reasoning in that decision is not transferable to the Victorian Bail Act for two reasons.
>
> Firstly, the court held that the underlying purpose of s 9C of the ACT Bail Act was not apparent, as it applied only to murder and not other serious crimes. In contrast, the Victorian exceptional circumstances provision applies to a number of very serious crimes.
>
> Secondly, the right to liberty in the ACT Human Rights Act is drafted differently from section 21 of the charter. The relevant provision in the ACT Human Rights Act states that that 'anyone who is awaiting trial must not be detained as a general rule'. In contrast, section 21 of the charter prohibits 'automatic' detention rather than a 'general rule'. Requiring certain classes of accused to establish exceptional circumstances in order to be granted bail may constitute a 'general rule', but does not mean that their detention is 'automatic'. Their circumstances must still be considered by the court in making a determination about bail and in every case the Court retains the discretion to grant an accused bail. Further, the ACT Supreme Court acknowledged that the right to liberty in the ACT Human Rights Act is 'not protected in an equivalent form in any other human rights instrument'.

However, the Committee observes that the ACT law barring bail except in exceptional circumstances does not apply 'only to murder' but also covers serious drug offences, all punishable by life imprisonment.[xi] The present Victorian provision similarly covers murder, treason or drug offences punishable by either life imprisonment or 25 years imprisonment. By contrast, the offence of obstructing, hindering or disobeying police exercising special police powers is a summary offence punishable by a maximum of two years imprisonment.

**The Committee refers to Parliament for its consideration the question of whether or not clause 4, by requiring the detention until their trial of people charged with obstructing, hindering or disobeying police exercising special police powers (a summary offence punishable by a maximum of two years imprisonment) unless they can prove that there are exceptional circumstances which justify their release, reasonably limits the Charter right of persons awaiting trial to not be automatically detained.**

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***Expression – Bail – Court shall have regard to accused's public support for a terrorist act or organisation – Whether less restrictive alternative reasonably available***

Summary: *The effect of clause 5 may be to make it more likely that a person charged with any criminal offence will be detained until his or her trial if the person has made a public statement in support of a terrorist act or organisation. The Committee will write to the Attorney-General seeking further information.*

The Committee notes that clause 5, amending existing s. 4, provides that a court, in assessing whether or not there is an unacceptable risk that an accused will fail to surrender, commit a

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[x] *In the matter of an application for bail by Islam* [2010] ACTSC 147, [403].

[xi] *Bail Act 1992* (ACT), s. 9C(1)(b).

further offence, endanger public safety or obstruct the course of justice if released on bail, shall have regard, as appears relevant, to:

> whether or not the accused has expressed publicly support for—
>
> (i) a terrorist act or a terrorist organisation; or
>
> (ii) the provision of resources to a terrorist organisation.

The Committee observes that:

- the term 'expressed publicly support for' may include statements made as part of public political debate about a terrorist act or organisation.
- as noted in *Alert Digest No. 14 of 2015*, the term 'terrorist act' may include military actions that are lawful under the international law of war, such as attacks on government infrastructure as part of a civil war, including by a group that is supported by the Australian government.[xii]
- the term 'terrorist organisation' introduced into existing s. 3 by clause 3 may be broader in one respect than the equivalent term in the federal Criminal Code. The federal definition includes an organisation 'preparing… the doing of a terrorist act',[xiii] while clause 3's definition includes an organisation 'preparing for… the doing of a terrorist act'.
- the term 'resources' may include neutral humanitarian support or legal services.

The Statement of Compatibility remarks:

> Clause 5 does not limit the right to freedom of expression in section 15… as it does not prohibit expressions of support for terrorism, but merely points to such expressions as a relevant consideration to take into account when assessing risk for the purposes of a bail decision.
>
> Further, to the extent that clause 5 could be said to limit section 15, the limitation would fall within the internal limitation in section 15(3) that allows for lawful restrictions that are reasonably necessary for the protection of national security or public order. This limitation recognises that special duties and responsibilities are attached to the right of freedom of expression.

However, the Second Reading Speech remarks that '[t]he inclusion of a terrorism specific factor will make it clear that this heightens the risk of a person's release into the community'.

**The Committee notes that the effect of clause 5 may be to make it more likely that a person charged with any criminal offence will be detained until his or her trial if he or she has made a public statement in support of a terrorist act or organisation**, potentially including political statements, statements about acts that are lawful under international law and statements supporting the provision of humanitarian aid or legal services to a terrorist organisation.

The Committee observes that a similar provision recently introduced in New South Wales requires that bail authorities in that state consider 'whether the accused person has made statements or carried out activities advocating support for terrorist acts'.[xiv]

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[xii] See Scrutiny of Acts and Regulations Committee, *Alert Digest No. 14 of 2015* (reporting on the Terrorism (Community Protection) Amendment Bill 2015), p. 19.

[xiii] *Criminal Code Act 1995* (Cth), Schedule, s. 102.1.

[xiv] *Bail Act 2013* (NSW), s. 18(1)(r). The provision also includes actions and statements in support of 'violent extremism'. Sub-sections (q) and (s) provide for consideration of associations with terrorist groups and groups advocating support for terrorist acts or violent extremism.

**The Committee will write to the Attorney-General seeking further information as to whether or not there are less restrictive alternatives reasonably available to achieve clause 5's purpose.**

## Minister's response

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

# Attorney-General

Scrutiny of Acts and Regulations Committee
24 DEC 2015

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23 DEC 2015

Ms Lizzie Blandthorn MLA
Chairperson, Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Our ref: CD/15/579231

Dear Ms ~~Blandthorn~~ Lizzie

Thank you for your letter enclosing matters raised by the Scrutiny of Acts and Regulations Committee on the Bail Amendment Bill 2015 (the Bill). I am pleased to provide the following information in relation to the Committee's queries.

**Section 4(3) – Factors relevant to unacceptable risk**

Clause 5 of the Bill inserts a new consideration into the list of factors in section 4(3) of the *Bail Act 1977* that a Court may take into account when deciding whether an accused poses an unacceptable risk of:

- failing to appear on bail;
- committing further offences; or
- otherwise interfering with witnesses or the administration of justice.

The new consideration is:

> "Whether or not the accused has expressed publicly support for –
> (i) a terrorist act or a terrorist organisation; or
> (ii) the provision of resources to a terrorist organisation."

The Committee observes that:

- this may include public political debate, such as statements about lawful military actions and humanitarian support or legal services provided to terrorist organisations;
- similar bail laws were recently introduced in New South Wales (although their wording differs from the Bill before Parliament); and
- this provision may make it more likely that a person will be detained until his or her trial if he or she has made a public statement in support of a terrorist act or organisation, including the broad category of statements noted above.

The Committee seeks further information as to whether there are less restrictive alternatives reasonably available to achieve clause 5's purpose.

Section 4(3) of the *Bail Act 1977* provides that the court should have regard to 'all matters appearing to be relevant' in deciding whether an accused poses an unacceptable risk and lists a number of matters 'without in any way limiting the generality' of the provision. The non-exhaustive list includes the character, antecedents, associations, home environment and background of the accused.

The new factor inserted by clause 5 confirms that links to terrorism may be relevant, without limiting the existing discretion. These matters would arguably have been able to be taken into account previously. By contrast, the New South Wales provision provides an exhaustive list of matters. Therefore, a specific provision is required in New South Wales legislation to allow a court to take into account where an accused person has advocated support of a terrorist attack.

The new factor is intended to have a broad interpretation and may even encompass, as the Committee observes, statements made as part of public political debate. However, the court retains a broad discretion to assess the relevance and weight to be placed on such statements. If an accused has made a public statement, for example, in support of military actions or the provision of legal advice to alleged terrorists, whether or not his would increase the likelihood of the accused being found by a court to be an unacceptable risk of failing to appear, committing further offences or interfering with witnesses, would depend on circumstances of the case. These statements would only be taken into account where relevant.

As such, it is not necessarily more likely that a person who has made such a statement will be refused bail, in particular in the types of situations to which SARC refers.

Clause 5 has been drafted carefully and, in my opinion, is the least restive approach to achieve the purpose of the amendment.

**Matters referred to Parliament**

Clause 4 of the Bill inserts section 21W of the *Terrorism (Community Protection) Act 2003* into the list of offences that require exceptional circumstances justifying the grant of bail. Section 21W is the offence of obstructing, hindering or disobeying police exercising special police powers.

The Committee has referred to Parliament for its consideration the question of whether or not clause 4 reasonably limits the Charter right of persons awaiting trial to not be automatically detained.

Special police powers may only be authorised for specific purposes including:

- to protect persons attending events from a terrorist act (section 21B);
- to prevent or reduce the impact of a terrorist act (section 21D);
- for the investigation of or recovery from a terrorist act (section 21E); and
- to protect essential services from a terrorist act (section 21F).

Obstructing, hindering or disobeying police officers in such high risk circumstances poses a clear risk to community safety. It is not the seriousness of the offending that places the accused in the exceptional circumstances category, but the high risk circumstances and the accused's attempts to frustrate the special operation which justifies the inclusion of section 21W into this category.

A person charged with section 21W will not be automatically detained. The court retains discretion to consider whether the person's circumstances are exceptional and may grant bail where justified.

Thank you for your input into this important issue.

Yours sincerely

**THE HON MARTIN PAKULA MP**
**Attorney-General**

# Appendix 1
## Index of Bills in 2016

# Appendix 2
# Committee Comments classified by Terms of Reference

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

**Alert Digest Nos.**

## Section 17(a)

**(iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the Privacy and Data Protection Act 2014**

Judicial Commission of Victoria Bill 2015 — 1

**(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**

Judicial Commission of Victoria Bill 2015 — 1

**(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities Act 2006**

Assisted Reproductive Treatment Amendment Bill 2015 — 16 of 2015, 1
Bail Amendment Bill 2015 — 16 of 2015, 1
Road Legislation Amendment Bill 2015 — 14 of 2015
Access to Medicinal Cannabis Bill 2015 — 1
Racing and Other Acts Amendment (Greyhound Racing and Welfare Reform) Bill 2015 — 1
Rooming House Operators Bill 2015 — 1

# Appendix 3
## Ministerial Correspondence 2016

### Table of correspondence between the Committee and Ministers or Members during 2016

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.

| **Bill Title** | **Minister/ Member** | **Date of Committee Letter / *Minister's Response*** | **Alert Digest No. Issue raised / *Response Published*** |
|---|---|---|---|
| Road Legislation Amendment Bill 2015 | Roads and Road Safety | 10.11.15 | 14 of 2015 |
| Assisted Reproductive Treatment Amendment Bill 2015 | Health | 08.12.15<br>05.02.16 | 16 of 2015<br>1 of 2016 |
| Bail Amendment Bill 2015 | Attorney-General | 08.12.15<br>24.12.15 | 16 of 2015<br>1 of 2016 |
| Access to Medicinal Cannabis Bill 2015 | Health | 09.02.16 | 1 of 2016 |
| Judicial Commission of Victoria Bill 2015 | Attorney-General | 09.02.16 | 1 of 2016 |
| Racing and Other Acts Amendment (Greyhound Racing and Welfare Reform) Bill 2015 | Racing | 09.02.16 | 1 of 2016 |
| Rooming House Operators Bill 2015 | Consumer Affairs, Gaming and Liquor Regulation | 09.02.16 | 1 of 2016 |