



SCRUTINY OF ACTS AND
REGULATIONS COMMITTEE

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Annual Review 2010
Regulations 2010

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TERMS OF REFERENCE

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

17. Scrutiny of Acts and Regulations Committee

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

- (a) To consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly –
 - (i) trespasses unduly on rights or freedoms;
 - (ii) makes rights, freedoms or obligations dependent on insufficiently defined administrative powers;
 - (iii) makes rights, freedoms or obligations dependent on non-reviewable administrative decisions;
 - (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000*;
 - (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2001*;
 - (vi) inappropriately delegates legislative power;
 - (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
 - (viii) is incompatible with the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006*;
- (b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament –
 - (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the *Constitution Act 1975*, or raises an issue as to the jurisdiction of the Supreme Court;
 - (ii) if a Bill repeals, alters or varies section 85 of the *Constitution Act 1975*, whether this is in all the circumstances appropriate and desirable;
 - (iii) if a Bill does not repeal, alter or vary section 85 of the *Constitution Act 1975*, but an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;
- (c) to consider any Act that was not considered under paragraph (a) or (b) when it was a Bill–
 - (i) within 30 days immediately after the first appointment of members of the Committee after the commencement of each Parliament; or
 - (ii) within 10 sitting days after the Act receives Royal Assent –whichever is the later, and to report to the Parliament with respect to that Act or any matter referred to in those paragraphs;
- (d) the functions conferred on the Committee by the *Subordinate Legislation Act 1994*;
- (e) the functions conferred on the Committee by the *Environment Protection Act 1970*;
- (f) the functions conferred on the Committee by the *Co-operative Schemes (Administrative Actions) Act 2001*;

- (fa) the functions conferred on the Committee by the *Charter of Human Rights and Responsibilities Act 2006*;
- (g) to review any Act in accordance with the terms of reference under which the Act is referred to the Committee under this Act.

PRINCIPLES OF REGULATION REVIEW

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

21. Review of statutory rules by the Scrutiny Committee

- (1) The Scrutiny Committee may report to each House of the Parliament if the Scrutiny Committee considers that any statutory rule laid before Parliament –
 - (a) does not appear to be within the powers conferred by the authorising Act;
 - (b) without clear and express authority being conferred by the authorising Act –
 - (i) has a retrospective effect; or
 - (ii) imposes any tax, fee, fine, imprisonment or other penalty; or
 - (iii) purports to shift the onus of proof to a person accused of an offence; or
 - (iv) provides for the sub-delegation of powers delegated by the authorising Act;
 - (c) appears to be inconsistent with the general objectives of the authorising Act;
 - (d) makes unusual or unexpected use of the powers conferred by the authorising Act having regard to the general objectives of that Act;
 - (e) contains any matter or embodies any principles which should properly be dealt with by an Act and not by subordinate legislation;
 - (f) unduly trespasses on rights and liberties of the person previously established by law;
 - (g) makes rights and liberties of the person unduly dependent upon administrative and not upon judicial decisions;
 - (ga) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000*;
 - (gb) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2001*;
 - (h) is inconsistent with principles of justice and fairness;
 - (ha) is incompatible with the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006*;
 - (i) requires explanation as to its form or intention;
 - (j) has been prepared in contravention of any of the provisions of this Act or of the guidelines with respect to the statutory rule and the contravention is of a substantial or material nature;
 - (k) is likely to result in administration and compliance costs which outweigh the likely benefits sought to be achieved by the statutory rule.

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

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CHAIRPERSON'S FOREWORD

I am proud to present the Annual Review of the operations of the Regulation Review Subcommittee to the Parliament of Victoria. The report reviews the activity of the Subcommittee during the final year of the 56th Parliament and the commencement of the 57th Parliament. It incorporates the entire 2010 statutory rule series. The majority of the work undertaken was performed by the Subcommittee in the 56th Parliament.

It is appropriate to acknowledge the work of those distinguished members who served on the Subcommittee in the 56th Parliament. The Chairperson of the Subcommittee was Mr Ken Jasper MLC. Mr Carlo Carli MLA also served on the Subcommittee and as Chairperson of the Scrutiny of Acts and Regulations Committee. The other hard working members of the Subcommittee were Mr Colin Brooks MLA, Mr Neale Burgess MLA and Mr Khalil Eideh MLC. The Subcommittee extends its appreciation to these distinguished members.

I also wish to thank the current members of the Regulation Review Subcommittee. The members are Ms Christine Campbell MLA, Mr Don Nardella MLA, Mr Edward O'Donohue MLC and Mr Graham Watt MLA. Their constant attendance at meetings and commitment to the process is greatly appreciated as the Subcommittee works under a strict legislative timetable. The Subcommittee(s) worked assiduously and carefully through the 2010 series. Every statutory rule was considered in accordance with the requirements of the Subordinate Legislation Act 1994 and in the context of human rights.

I also thank our staff for their commitment and dedication. Ms Helen Mason performs the legal scrutiny of the regulations. We thank her for the provision of timely, informative legal advice. We thank Ms Victoria Kalapac and Ms Sonya Caruana for the efficient administrative support. Mr Simon Dinsbergs has also kindly provided additional administrative support when required. We thank Dr Jeremy Gans, a legal consultant for the provision of human rights advice.

The area of regulation review continues to evolve. This year, in July the Subcommittee's work will expand to include the scrutiny of legislative instruments. The Subcommittee looks forward to the additional role and will use its best endeavours to meet the new challenges.

Mr Michael Gidley MLA
Chairperson
Regulation Review
Subcommittee
May 2011

CHAPTER 1 – INTRODUCTION

This *Annual Review* examines the major issues arising out of the scrutiny of regulations made in Victoria in 2010 by the Regulation Review Subcommittee (the Subcommittee).

WHAT IS THE REGULATION REVIEW SUBCOMMITTEE?

The Scrutiny of Acts and Regulations Committee (the Committee) is a joint investigatory Committee of the Parliament of Victoria. It has members from the Upper and Lower Houses, the Government and the Opposition. The Regulation Review Subcommittee is a subcommittee of the Committee. The Subcommittee scrutinises regulations and conducts inquiries related to regulations.¹

WHAT ARE ‘REGULATIONS’?

Regulations are often referred to as ‘subordinate legislation’ or ‘statutory rules’. Legislation made by Parliament is referred to as primary legislation or Acts of Parliament. Legislation cannot be made by bodies other than Parliament unless Parliament authorises those bodies (by means of an Act of Parliament) to make ‘subordinate legislation’ or ‘statutory rules’. The Subcommittee prefers the word ‘regulations’ to ‘subordinate legislation’ or ‘statutory rules’. It is of the view that this is a more commonly understood term. In this *Annual Review* ‘regulations’ will be used to refer to all ‘statutory rules’ or ‘subordinate legislation’.

The term ‘regulations’ encompasses a variety of legislative instruments such as statutory rules, court rules, local laws, orders-in-council, proclamations, notices, guidelines, ministerial directions, codes of practice and so on. The power to make regulations is delegated by Parliament to the Executive and other non-Parliamentary bodies including government departments, statutory authorities and agencies. The powers delegated to the Executive by Parliament are contained in Acts of Parliament.

PARLIAMENTARY OVERSIGHT

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

While regulations are sometimes perceived to be of lesser importance than Acts of Parliament, regulations do control and prohibit the conduct of citizens and may adversely affect the rights and liberties of citizens in much the same way as Acts of

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

Parliament. The potential for abuse of the regulation-making power and erosion of citizens' rights always exists. As Mr Justice Stephen commented in *Watson v. Lee*² the history of delegated legislation:–

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

Parliamentary scrutiny committees, with power to examine regulations made by the Executive, are one of the most important safeguards against the misuse of Executive power. Since the 1930s most Westminster style Parliaments have kept control over regulations through the use of scrutiny committees. Scrutiny committees exist in all Australian states and territories. Some of these scrutiny committees examine bills and regulations, while others examine only regulations.³

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

SCOPE OF THE SUBORDINATE LEGISLATION ACT 1994

The *Subordinate Legislation Act 1994* (Vic) (the Act) contains the procedures for making regulations. It sets out the scrutiny functions of the Subcommittee. Only those regulations which come within the definition of ‘statutory rule’ as contained in section 3 of the Act are subject to the Act. Section 3 defines ‘statutory rule’ to include:–⁵

- Regulations made, approved or consented to by the Governor -in-Council;
- Regulations which may be disallowed by the Governor-in-Council excluding regulations made by local authorities;

² (1979) 155 CLR 374 at 394.

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

⁴ *Subordinate Legislation Act 1956* (Vic).

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

- Rules relating to a court or tribunal or the procedure, practice or costs of a court or tribunal;
- Instruments prescribed to be statutory rules by the Governor-in-Council; and
- Instruments deemed to be statutory rules by their own authorising Act.

Regulations in the form of statutory rules constitute only a small portion of the continually growing number of different types of regulations made each year. Some examples of regulations which fall outside the definition of 'statutory rule' are – guidelines, ministerial directions, local laws, codes of practice, notices, declarations and licences. Regulations which fall outside the definition of 'statutory rule' are not subject to:–

- The procedures of the Act. However they remain subject to any requirements contained in legislation under which they are made;
- Scrutiny by the Subcommittee and generally not subject to Parliamentary review. However it should be noted that some regulations which fall outside the definition of 'statutory rule' are subject to specific Parliamentary review requirements. For example, planning schemes (and amendments) must be tabled in Parliament within 10 sitting days after being approved.⁶

The Committee remains concerned about regulations which fall outside the definition of 'statutory rule' because it means that they are not subject to consistent regulation-making procedures nor generally to Parliamentary review, allowing the potential for powers to be used improperly and for rights to be adversely affected. This issue is discussed in detail in the Committee's *Report on the Subordinate Legislation Act 1994*.⁷

ROLE OF THE SUBCOMMITTEE

The Subcommittee examines and reviews:–

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

The Subcommittee generally meets once each month to discuss regulations. Meetings of the Subcommittee are not open to the public. However the Subcommittee may invite members of the public or representatives from various organisations or government departments and agencies to address it at one of its meetings. At its meetings the legal adviser presents the Subcommittee with written and verbal advice in respect of each regulation. The Subcommittee members discuss each regulation and any issues and concerns. When the Subcommittee is satisfied that a regulation complies with the Act, it passes a motion of approval.

Where the Subcommittee is dissatisfied with any matters or needs clarification, it corresponds with the responsible Minister. The Subcommittee will highlight its concerns to the Minister. It will seek in the first instance an explanation or amendment of the regulation. If the Subcommittee does not receive a satisfactory explanation it may prepare a report to Parliament. This report is submitted to all

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

⁷ Scrutiny of Acts and Regulations Committee, Inquiry into the *Subordinate Legislation Act 1994*, September 2002. This Report was tabled in Parliament in September 2002.

members of the Committee for formal approval and adoption.⁸ The Committee may adopt or reject the report or part of it or make any changes it deems necessary.⁹ A report to Parliament may include a recommendation that a regulation be amended or disallowed in whole or in part. Alternately a report provided by way of information to the Parliament may simply outline the Committee's concerns. As a regulation has already commenced operation by the time it comes before the Subcommittee, the power to recommend disallowance is only used in exceptional circumstances. Generally, such a power would be used where all other efforts to resolve the issue have failed.

Where the Committee decides to report to Parliament it may also recommend that a regulation be suspended whilst Parliament considers the issues contained in the report.¹⁰ Such a course may be undertaken in the interests of justice and fairness. When regulations are suspended in this manner they are deemed not to have been made. This means they have no effect. People are not required to comply with them during the period of suspension.¹¹

DISALLOWANCE

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

SCRUTINY OF REGULATIONS

The Subcommittee scrutinises regulations after they have been made to determine whether they comply with the legislative principles specified in the Act.¹² These principles require the Subcommittee to ensure that regulations do not unduly trespass on rights and freedoms and comply with the procedural and practical requirements of the Act. The Subcommittee does not comment on matters involving government policy. The review focuses on the technical criteria contained in the Act. More specifically, under section 21 of the Act the Subcommittee ensures that regulations:–

- Are within the powers of the authorising Act;
- Do not, without clear and express authority;
 - have a retrospective effect;
 - impose a tax, fee, fine, imprisonment or other penalty;
 - purport to shift the onus of proof to a person accused of an offence;
 - provide for the sub-delegation of powers delegated by the authorising Act;
- Are consistent with the general objectives of the authorising Act;

⁸ The Regulation Review Subcommittee has all the powers and privileges of the full Committee. However it cannot report directly to Parliament.

⁹ *Parliamentary Committees Act 1968* (Vic), s. 4L(5).

¹⁰ *Subordinate Legislation Act 1994* (Vic), s. 22(1).

¹¹ *Ibid.*, s. 22(5).

¹² *Subordinate Legislation Act 1994* (Vic), s. 21.

- Do not make unusual or unexpected use of the powers conferred by the authorising Act having regard to the general objectives of the authorising Act;
- Do not contain any matters which should be contained in an Act of Parliament rather than subordinate legislation;
- Do not unduly trespass on rights and liberties of the person previously established by law;
- Do not make rights and liberties of the person unduly dependent on administrative rather than judicial decisions;
- Do not authorise or require any acts or practices which may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000* (Vic);
- Do not authorise or require any acts or practices which may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2000* (Vic);
- Are consistent with principles of justice and fairness;
- Is incompatible with the human rights set out in the *Charter of Human Rights and Responsibilities*;
- Do not require explanation as to form or intention;
- Do not substantially or materially contravene the practical requirements of the Act or the Premier's Guidelines;¹³ and
- Are not likely to result in administration and compliance costs which outweigh the benefits sought to be achieved.

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

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

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

- the regulation is correctly exempted or excepted or whether it should have been made with a RIS;
- the regulation is exempted or excepted under the appropriate category in the Act;

¹³ Department of Premier and Cabinet, Premier's Guidelines, December 2004.

- the exemption or exception certificate specifies the section under which the exemption or exception was granted;
- the exemption or exception certificate is signed and dated by the responsible Minister;
- the exemption certificate contains reasons for granting the exemption as required by section 9(2);
- a regulation exempted by a Premier's certificate sunsets within twelve months.

The Subcommittee also ensures that:–

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

SCRUTINY OF ENVIRONMENT PROTECTION AND WASTE MANAGEMENT POLICIES

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

More specifically State Environment Protection Policies include:–

- policies concerning the environment generally;¹⁴
- policies concerning the removal, disposal or reduction of litter in the environment;¹⁵
- policies concerning the re-use and recycling of substances.¹⁶

Until recently waste management policies made under the *Environment Protection Act 1970* (Vic) applied only to industrial waste. With changes brought about by the *Environment Protection (Resource Efficiency) Act 2002* (Vic) waste management policies now apply to waste generally.¹⁷ Waste management policies are now enacted under s. 16A of the *Environment Protection Act 1970* (Vic).¹⁸

Waste Management Policies include policies dealing with:–¹⁹

- the generation, storage, treatment, transport and disposal and general handling of waste;
- the procedures to be implemented in the recycling, recovery, reclamation and re-use of waste and recycled substances;
- the methods of disposal of specified substances;
- the routes and methods of transportation of waste;

¹⁴ *Environment Protection Act 1970* (Vic), s. 16(1).

¹⁵ *Ibid.*, s. 16(1B).

¹⁶ *Ibid.*, s. 16(1C).

¹⁷ See definition of 'waste' in the *Environment Protection Act 1970* (Vic), s. 4.

¹⁸ Previously Industrial Waste Management Policies were made under section 16(1A) of the *Environment Protection Act 1970* (Vic).

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

- the location of treatment and disposal plants;
- the allocation of responsibility for waste management operations and disposal; and
- the use and disposal of notifiable chemicals.

State Environment Protection Policies and Waste Management Policies are made by the Governor-in-Council on the recommendation of the Environment Protection Authority (EPA) by publishing an Order declaring the policy in the *Victorian Government Gazette*.²⁰ These policies must be tabled in each House of Parliament on or before the sixth sitting day after the Order is published in the *Victorian Government Gazette*.²¹

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

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

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

- the purposes of the policy;
- the alternatives for achieving the objectives, including consideration of not declaring the policy or varying the existing policy; and

²⁰ Ibid., s. 16(1).

²¹ Ibid., s. 18D(1).

- an assessment of the possible financial, social and environmental impacts of each alternative in qualitative and, where practicable, in quantitative terms.

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

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

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

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

Initial reviews of State Environment Protection Policies and Waste Management Policies are carried out by the Subcommittee. Where the Subcommittee is unable to resolve any issues, it may recommend to the Committee that a report be made to Parliament. A report to Parliament by the Committee may make any recommendations considered appropriate including that a policy be disallowed in whole or in part.²²

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

THE CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006

The *Charter of Human Rights and Responsibilities 2006* (the Charter) commenced operation on 1 January 2006. Pursuant to the Charter the Subcommittee is required to consider every statutory rule in the context of human rights. The compatibility of each statutory rule with the Charter is examined. This applies to all statutory rules in the 2008 series, the subject of this report. Mention is made here of this area of scrutiny for the sake of completeness. It is discussed in further detail in Chapter 2.

HISTORY - AMENDMENT OF THE SUBORDINATE LEGISLATION ACT 1994

²² Ibid., s. 18D(4).

²³ Ibid., s. 18D(6).

In 1985, Victoria introduced a range of regulatory reforms including a regulatory impact statement (RIS) process for the making of statutory rules and the automatic sunseting of regulations after 10 years of operation.²⁴ In 1995 changes were made to the Act which imposed stronger RIS requirements on the regulation making process, specifically targeting regulation likely to impose an appreciable economic or social burden.²⁵

The Committee tabled a report in September 2002 '*Inquiry into the Subordinate Legislation Act 1994*'²⁶. In that Report the Committee examined the effectiveness of the regulation making system in Victoria. It made a number of recommendations to improve the system to enable Victoria to achieve best practice standards set by the Organisation for Economic Co-operation and Development (OECD). The Government's response to the Committee's Report was tabled in the Legislative Assembly in 2003. In 2004 the Victorian Competition and Efficiency Commission (VCEC) was created to act as an independent regulatory review body. VCEC's role includes reviewing regulatory impact statements and advising on the economic impact of significant new legislation.²⁷

In December 2009 the *Subordinate Legislation Amendment Bill Discussion Paper*²⁸ was released seeking submissions. The Committee carefully considered many issues raised by the Discussion Paper. The Committee considered the implications of Appendix B of the Discussion Paper including those instruments for prescription as a legislative instrument exempt from the operation of the draft Bill. The Committee also considered the proposed changes in respect of the definition of 'legislative instrument' and its implications in terms of resources. Of interest to the Committee is the impact of the Charter on its scrutiny of regulations. The Committee sent a written submission to the Department of Premier & Cabinet. In addition, the Committee had several productive and informative meetings with representatives of the Department of Premier & Cabinet to discuss various matters.

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

The scrutiny of legislative instruments commences on 1 July 2011. The Committee's first year of the scrutiny of legislative instruments will therefore be from 1 July 2011 to 1 July 2012. The Committee will report on these matters in its next Annual Review. It has been mentioned here for the sake of completion.

The Committee has appreciated the opportunity to be involved in this matter and is happy to provide further input when required.

²⁴ Scrutiny of Acts and Regulations Committee, *Inquiry into the Subordinate Legislation Act 1994*, September 2002

²⁵ Department of Premier and Cabinet, *Subordinate Legislation Amendment Bill Discussion Paper*, December 2009, page 7

²⁶ Op. cit

²⁷ Op. cit, p.7

²⁸ Department of Premier and Cabinet, *Subordinate Legislation Amendment Bill Discussion Paper*, December 2009

CHAPTER 2 – SIGNIFICANT ISSUES

In 2010 and the early part of 2011, the Subcommittee held 11 meetings. During those meetings it considered 152 statutory rules made during 2010. Of those rules 12 were accompanied by Regulatory Impact Statements.

The Subcommittee did not make any reports to Parliament during 2010. However, the Subcommittee sought further clarification in relation to four statutory rules. In each instance, it wrote to the responsible Minister. Generally, the Subcommittee received satisfactory responses to the issues raised. The Subcommittee thanks the Ministers for their responses.

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

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

(a) The statutory rule has been prepared in contravention of any of the provisions of the act or of the guidelines with respect to the statutory rule and the contravention is of a substantial or material nature	12
(b) Consultation	12
(c) Consideration of submissions – General expectation – Response required	13
(d) Technical matters – Incomplete certificates – Dates of publication in the Government Gazette and newspaper – Premier's Certificate – Details of 'special circumstances'	14
(e) Setting a package of fees – 'The Basket Approach' – The Premier's Guidelines	14
(f) Sighting of material incorporated by reference	15
(g) Section 9(1)(a) – Section 21(1)(l) – Requires explanation as to its form or intention	17
(h) Other matters – The 'Balanced Scorecard Approach' – What is it?	20
(i) Section 9(1)(a) – Is there any appreciable economic or social burden on any sector of the public?	20
(j) Commendation	21
(k) Human rights	21

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

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

This year no statutory rules came within this category.

(B) CONSULTATION

Section 6 of the Act sets out the requirements for consultation. These requirements apply to regulations made with or without RISs. Responsible Ministers must ensure that there is consultation "where the guidelines require consultation"²⁹ with "any sector of the public on which an appreciable economic or social burden may be imposed."³⁰

The Premier's Guidelines³¹ provide as follows:–

5.19 If the proposed statutory rule is likely to impose any appreciable burden, cost or disadvantage on any sector of the public, consultation must take place with that sector, eg business groups, community groups, special interest groups. That consultation should include discussion of the need for and method of the proposed regulation.

The Premier's Guidelines indicate that the "nature and degree of consultation that is appropriate for any particular rule will vary with the nature of that rule".³² This places the final responsibility on Ministers to ensure that appropriate consultation takes place and includes all those affected by a proposed regulation.

While the Premier's Guidelines provide assistance with the consultation process, the Subcommittee acknowledges that some sections are unclear and ambiguous. This makes it difficult for department and agency officers to determine in what circumstances consultation should take place. There is, for example, an inconsistency between the Act and the Premier's Guidelines as to whether consultation **must** or **should** occur in accordance with the Premier's Guidelines. It is the strong preference of the Subcommittee that consultation take place with all those affected by a particular regulation and that the current ambiguities be resolved.

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

²⁹ Section 6, *Subordinate Legislation Act 1994*.

³⁰ *Ibid*, Section 6(b).

³¹ Paragraph 5.19, Premier's Guidelines, December 2004.

³² *Ibid*, Paragraph 5.13

(C) CONSIDERATION OF SUBMISSIONS – GENERAL EXPECTATION – RESPONSE REQUIRED

General Expectations

Section 11(3) of the Act imposes a duty on Ministers “to consider all submissions and comments received on a draft statutory rule where a RIS has been prepared”.³³ The Premier’s Guidelines also emphasise the need for proper consultation³⁴ before a regulation is made.

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

Submissions received by the Subcommittee

The Subcommittee understands that occasionally there may be a large number of submissions in respect of a particular regulation. However, the Subcommittee’s view is that the number of submissions does not alter the expectation that an appropriate response should be sent. It simply means that there are a large number of people who have issues with the proposed regulation. Whilst this may mean an increased workload occasionally, the Subcommittee’s strong view is that this is simply a part of the democratic regulatory process. Appropriate weight and consideration ought to be given to the submissions sent in. Transparency is a critical part of the process. The Minister is required to perform his or her duty in accordance with section 11(3) of the Act. The Subcommittee’s firm view is that publication of a response to issues on a website is a quite inadequate response.

The Subcommittee has frequently been provided with a thorough summary of the issues raised during the RIS process. The Subcommittee’s view is that transparency is an important part of the regulatory statement process. To that end, the Subcommittee’s view is that an appropriate response ought to be communicated to those members of the public involved in the process. Frequently, the labour already undertaken has borne fruit in terms of illuminating issues. The Subcommittee is of the firm view that this needs to be shared to add a further degree of transparency.

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

³³ Section 11(3), *Subordinate Legislation Act 1994*.

³⁴ Sections 5.12 - 5.17, Premier’s Guidelines, December, 2004.

Email

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

(D) TECHNICAL MATTERS – INCOMPLETE CERTIFICATES – DATES OF PUBLICATION IN THE GOVERNMENT GAZETTE AND NEWSPAPER – PREMIER’S CERTIFICATE – DETAILS OF ‘SPECIAL CIRCUMSTANCES’

The Subcommittee is concerned to ensure technical compliance with the Act. Pursuant to section 11(a) and (b) of the Act, the RIS must be published in the Government Gazette and a daily newspaper circulating generally throughout Victoria. All relevant certificates should accompany the regulations and be signed and dated. Failure to do so will ensure a letter from the Subcommittee requesting rectification of the matter.

(E) SETTING A PACKAGE OF FEES – ‘THE BASKET APPROACH’ – THE PREMIER’S GUIDELINES

The Premier’s Guidelines³⁵ provide as follows: -

5.25 It is acceptable to make a statutory rule setting a package of fees. This is known as the ‘basket approach’. However, the exception available in section 8(1)(a) does not apply if any individual fee component in the package exceeds the Treasurer’s annual rate. It does not matter if the average fee increase across the package is less than the annual rate. If any individual fee is increased above the annual rate, a RIS process needs to be undertaken as the fee increase may have a significant and adverse impact on the community and business.

By way of example in SR No. 57 – *Plumbing (Fees Amendment) Regulations 2005*³⁶ increased a number of fees. This was done using the ‘basket’ approach. In this instance, four of the seventeen fee increases exceeded the Treasurer’s approved rate of 2.25% although the actual monetary increases were extremely small. In addition, the package as a whole fell within the Treasurer’s approved rate. The increases were 0.03% above the approved rate. The table set out below illustrates the dollar value of the four fee increases which were marginally above the approved rate. In real terms, the largest monetary amount above an increase of 2.5% was eight cents. The smallest monetary amount above an increase of 2.5% was three cents.

³⁵ Sections 5.12 - 5.17, Premier’s Guidelines, December, 2004.

³⁶ Annual Review 2005 – Regulations; p. 21

Item	Current Fee	Proposed Fee	Dollar Increase Based on 2.5%	% Increase	Actual Increase
For registration under section 221O or a renewal of registration under section 2221ZB	\$237.00	\$243.00	\$5.92	2.53%	\$6.00
For provisional registration or renewal of provisional registration	\$79.00	\$81.00	\$1.97	2.53%	\$2.00
For restricted registration or a renewal of restricted registration	\$237.00	\$243.00	\$5.92	2.53%	\$6.00
For an application to modify the plumbing regulations under section 221ZZO	\$79.00	\$81.00	\$1.97	2.53%	\$2.00

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

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

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

(F) SIGHTING OF MATERIAL INCORPORATED BY REFERENCE

Regulations often include a table of applied, adopted or incorporated matter in accordance with the requirements of regulation 6 of the *Subordinate Legislation Regulations 1994*. Such a table lists all the material applied, adopted or incorporated by reference in the regulations. Occasionally, the Subcommittee is placed in the position where it has to consider and or approve regulations without sighting the material which is incorporated into them. Where the Subcommittee does not sight the material it cannot form a view as to whether it conforms with the requirements of the Act.

The Premier's Guidelines provide some assistance:—³⁷.

7.03 *Section 32 of the Interpretation of Legislation Act 1984 prescribes the procedural requirements which must be fulfilled whenever a statutory rule applies, adopts or incorporates material by reference. Section 32(5) of the Interpretation of Legislation Act 1984 provides that a failure to comply with the tabling requirements does not affect the validity, operation or effect of a statutory rule but agencies should nevertheless ensure compliance with the requirements of section 32 as amended by the Subordinate Legislation Act 1994.*

7.04 *When considering whether to incorporate a particular document in a statutory rule it should be remembered:*

that the provisions of the rule will only refer to the incorporated material and members of the public affected by the rule must see the incorporated document before they can understand the contents and effect of the rule;

that the incorporated material may not be readily available at a reasonable cost;

that the procedures set out in section 32 are designed to facilitate Parliamentary oversight of incorporation of material and to ensure that such material is publicly available so that members of the public affected by the rule can have access to the rules with which they must comply.

7.05 *It needs to be remembered that the incorporated material may not be a single document. The problem is exacerbated by the drafting style adopted by the Standards Association of Australia as these standards are frequently not self contained but adopt the provisions of other standards. This can create a chain of material incorporated by reference leading to the possibility that the need to table a particular document will be overlooked.*

7.06 *Consideration should also be given in drafting statutory rules as to whether the reference to an Australian Standard should be to a specific standard (eg AS 1234) or to a specific version of a standard by reference to its date (eg AS 1234, 1997). The latter approach means that if a later amended version of a standard is to be adopted it will require the amendment of the statutory rule and the undertaking of the RIS process. The former approach may result in significant changes to the effect of the statutory rule with no automatic mechanism to review the changes to the costs and benefits of the statutory rule.*

7.07 *The aim of the procedures set out in section 32 of the Interpretation of Legislation Act 1984 is to guarantee the availability of any material which is incorporated into a statutory rule by reference, to ensure that citizens may have access to the laws with which they must comply.*

7.08 *In deciding whether to incorporate material by reference, agencies need to take care to balance the drafting convenience with ease of access to the incorporated material and understanding of it by those affected by it or required to comply with it. Agencies should reserve the use of incorporated detailed and extensive technical material to regulations*

³⁷ Sections 7.03 – 7.08, Premier's Guidelines, December 2004.

concerning industries familiar with and using the material. The use of the material then has the benefit of removing duplication. In such cases agencies should also consider whether performance standards are the more appropriate means of regulations.

The Subcommittee's preference is that all material is provided to it simultaneously so that it can all be considered in the context of the regulation.

This year the Subcommittee has again noticed that generally material incorporated by reference has been provided to it with the original material in respect of the regulation. This certainly makes the Subcommittee's task easier. The Subcommittee wishes to acknowledge and thank those Departments who make the effort to forward to it additional material.

(G) SECTION 9(1)(A) – SECTION 21(1)(L) – REQUIRES EXPLANATION AS TO ITS FORM OR INTENTION

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

Example 1:

SR No. 1 – Associations Incorporation Amendment (Fees and Other Matters) Regulations 2010

Subcommittee's Letter³⁸

The Regulation Review Subcommittee (the Subcommittee) carefully considered the above Regulations at its meeting on 19 May 2010.

The Subcommittee notes the comments made by Clubs Victoria Inc. in its submission: -

'In our experience, fines are most commonly imposed in cases where the breach of the rules or unbecoming conduct has resulted in a direct financial cost such as damage to Club property. In such circumstances, Clubs will often resolve the matter by imposing a fine equal to the repair costs and warn the member that future conduct of a similar nature may result in the suspension or expulsion'.

The Subcommittee also notes that a second round of reforms to the Associations Incorporation Act 1981 (the Act) are under development and that it is proposed to postpone any detailed consideration of any change to the current regulations until after these reforms have been completed.

Nevertheless the Subcommittee would appreciate your further explanation and rationale as to why it is necessary to prescribe a maximum fine of \$500 which can be imposed by an incorporated association on its members.

³⁸ Letter dated 24 May 2010 to the Hon. Tony Robinson MP, Minister for Consumer Affairs, from the Regulation Review Subcommittee

Minister's Response³⁹

I refer to your letter dated 24 May 2010 concerning the Associations Incorporation Amendment (Fees and Other Matters) Regulations 2010 ("the Amendment Regulations"), in particular, the prescription of a maximum fine of \$500 that can be imposed upon members of an incorporated association.

The Associations Incorporation Act 1981 ("the AIA") was developed following a recommendation by the Chief Justice's Law Reform Committee (CJLRC) report on Unincorporated Associations (1980). The CJLRC report included a draft Bill and draft Model Rules for an Incorporated Association. The draft Model Rules included provision for the committee of an incorporated association to fine a member an amount not exceeding \$100 for a "breach of any rule or by-law of the association" (Rule 42(b)).

The AIA was introduced into Parliament in 1981 and commenced operation in 1982. The AIA included from the outset power to make regulations to prescribe the maximum fine that may be imposed by the committee of an incorporated association for a breach of the rules of the association. This power is provided in section 54(2)(d) of the AIA. The original (1981) provision provided for a maximum fine of \$100. This was amended in 1995 to one penalty unit and in 1997 to five penalty units.

Provision for an incorporated association to impose a fine on a member for a breach of the rules has long been included in the Model Rules for an Incorporated Association. The current Model Rules are found in Schedule 4 of the Associations Incorporation Regulations 2009. Rule 7(1)(c) allows the committee by resolution to (inter alia) fine a member an amount not exceeding \$500 for refusing or neglecting to comply with the rules of the association.

As at 31 May 2010 there were 35,980 incorporated associations on the Register of Incorporated Associations maintained by Consumer Affairs Victoria (CAV). Of those associations, in excess of 80% have adopted the Model Rules for an Incorporated Association. CA V has no record of any complaints concerning the operation of the provision allowing for imposition of a fine on a member. This suggests that there is no problem in the operation of this provision.

Incorporated associations in Victoria range in size from small community of interest based groups to large service delivery organisations with annual revenue in excess of \$100 million. Membership is open to both individual persons and to incorporated entities. The purpose of this power is to provide an incentive for members of an incorporated association to comply with the rules of their association, provide a deterrent for misconduct and to set a reasonable limit on the amount of any such fine imposed by an incorporated association upon a member.

An additional advantage of allowing an incorporated association to impose a fine upon a member for a breach of the rules is that it provides a simple internal disciplinary mechanism for resolving disputes. In the absence of such a provision, an incorporated association would need to consider other legal redress.

³⁹ Letter dated 22 July 2010 to the Regulation Review Subcommittee from the Hon. Tony Robinson MP, Minister for Consumer Affairs

The Amendment Regulations inserted Regulation 18A into the Associations Incorporation Regulations 2009. Regulation 18A (which replicates the equivalent provision in the Associations Incorporation Regulations 1998) provides for the committee of an incorporated association to impose on a member a fine not exceeding \$500 for a breach of the rules of the association. This enables those associations that have not adopted the Model Rules to also have the option of imposing a fine upon members. Commonly, it is the larger incorporated associations that operate under their own rules rather than the Model Rules.

Prescribing a maximum fine of \$500 seeks to achieve a reasonable balance between the needs and interests of both small and large incorporated associations and their members. As I have noted earlier, members range from individual persons with limited means to corporate entities, potentially with substantial assets and income.

I confirm that CAV is currently commencing a detailed review of the Associations Incorporation Regulations 2009 which will include consideration of the rationale and operation of regulation 18A. The intent is to revise and update the regulations (including the Model Rules) to incorporate new requirements and processes contained in the Associations Incorporation Amendment Act 2009 and further revisions consequent upon the anticipated passage of the Associations Incorporation Amendment Bill 2010 (currently before Parliament). I am advised that the proposed revised regulations will be subject to a RIS process and formal public consultation.

Example 2:

Minister's Response⁴⁰

SR No. 42 – Health Practitioner Regulation National Law Regulation

I am writing to provide background information in relation to the making of SR 42-2010 Health Practitioner Regulation National Law Regulation ('Regulation'). This information was requested by Ms Helen Mason on 3 August 2010.

The Regulation was made under section 245 of the Health Practitioner Regulation National Law ('National Law') by the Australian Health Workforce Ministerial Council ('Ministerial Council') on 17 June 2010.

The Health Practitioner Regulation National Law establishes a new national scheme for the registration and accreditation of health practitioners in Australia. The scheme commenced on 1 July 2010.

The Regulation modifies the application of the Commonwealth Privacy Act, Freedom of Information Act and Ombudsman Act, so that these statutes may operate in the context of the national scheme. It also includes provisions with respect to privately practicing midwives and provides for other transitional matters.

The Victorian Act, which adopts the national scheme, is the Health Practitioner Regulation National Law (Victoria) Act 2009. The Act excludes the application of the Subordinate Legislation Act 1994 to the instruments made under that Act, including the Regulation.

⁴⁰ Letter dated 26 August 2010 to the Regulation Review Subcommittee from the Hon. Daniel Andrews MP, Minister for Health

The Regulation was published by the Victorian Government Printer on 22 June 2010, as required by section 245(3) of the National Law.

I tabled the Regulation in both Houses of Parliament on 24 June 2010. Whilst the National Law did not require me to do so, I took this step, as did my fellow members of the Ministerial Council, in order to enhance Parliamentary scrutiny and awareness that the Regulation had been made.

As the Regulation was not made in Victoria, it was neither necessary nor possible to provide the Scrutiny of Acts and Regulations Committee with the usual certificates that accompany proposed statutory rules. I have been advised that Parliamentary Counsel has no power to issue a certificate under section 13 of the Subordinate Legislation Act 1994 and also have no power with respect to the certificates issued under sections 9 and 12A of that Act.

Enclosed is an explanatory note prepared by the Department of Health which contains further information on the making of the Regulations.

(H) OTHER MATTERS – THE ‘BALANCED SCORECARD APPROACH’ – WHAT IS IT?

The ‘Balanced Scorecard Approach’ – What is it?

Generally a RIS which accompanies the regulations includes a summary of alternatives. Often the summary of alternatives includes a Table. The Table contains a subjective assessment of the proposed regulations and the alternatives compared to the ‘Base Case’ using the ‘Balanced Scorecard Approach’.

The Subcommittee does not always find that the use of such a Table provides great illumination in the context of an assessment of alternatives. On one view, the inclusion of such a Table to the average reader of the RIS adds little in terms of understanding and clarity. If such a Table is to be used, then there ought to be appropriate commentary which explains it.

However, the Subcommittee notes that many of the RISs this year have included a much more detailed explanation. This is of assistance to the Subcommittee. However it is also of more assistance to the average reader of the RIS. The Subcommittee acknowledges these efforts and hopes this trend will continue.

(I) SECTION 9(1)(A) – IS THERE ANY APPRECIABLE ECONOMIC OR SOCIAL BURDEN ON ANY SECTOR OF THE PUBLIC?

Many regulations are accompanied by a section 9(1)(a) certificate of exemption which states that they do not impose an appreciable economic or social burden on any sector of the public.

Paragraph 5.33 of the Premier's Guidelines⁴¹ set out the particular requirements in respect of the exemption certificates.

The Minister must include in the exemption certificate detailed reasons as to why the proposed rule does not impose an appreciable economic or social burden on a sector of the public under section 9(2). It will not be sufficient to

⁴¹ Section 5.33, Premier's Guidelines, December 2004.

simply assert that there is no appreciable economic or social burden on a sector of the public in the exemption certificate.

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

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

(J) COMMENDATION

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

(K) HUMAN RIGHTS

History

SARC has a considerable history in terms of the protection of human rights. The review of subordinate legislation has been conducted in the Victorian Parliament since 1956. The scrutiny of bills⁴² was first mooted and indeed recommended in 1987 in a “Report on the Desirability or Otherwise of Legislation Defining and Protecting Human Rights”⁴³ prepared by the Legal and Constitutional Committee, the predecessor to this Committee. The scrutiny of bills commenced in Victoria in 1993. Section 21(f) of the *Subordinate Legislation Act 1994* uses the language of human rights. For several years, the Subcommittee has had to consider whether a regulation:–

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

Rights

The Chair’s introduction to the First Annual Report⁴⁴ is useful in considering the concept of rights. It demonstrates the complexities associated with rights.

⁴⁵Human rights have been generally argued to include civil and political rights and legal and political rights⁴⁶. There is much greater division on the status of

⁴² Scrutiny of Acts and Regulations Committee, First Annual Report, April 1994, p. vii.

⁴³ Legal and Constitutional Committee, Report on the Desirability or otherwise of Legislation Defining and Protecting Human Rights, April 1987 pp. 123.

⁴⁴ Scrutiny of Acts and Regulations Committee, First Annual Report, April 1994, p. ix.

⁴⁵ Ibid.

socio-economic rights and cultural rights.....The legislative charter of the Committee is broad. The word 'rights' include natural rights and other moral rights established by the writings of the philosophers, jurists and churchmen. It most certainly includes the positive, empirical category of legal rights – rights whose existence is established by examining existing statutes, codes and decisions comprising the common law of Victoria. There are also internationally acknowledged human rights which can be found in the instruments of international and domestic law.

It is now some fifteen years since the Committee was required to grapple with the concept of rights. The Australian Capital Territory introduced a statutory Bill of Rights in 2004. The idea of a Bill of Rights for Victoria was floated in 2004. The Victorian Government appointed a Human Rights Consultation Committee in 2005. During 2005 that Committee heard submissions and compiled a report. The report recommended a Bill of Rights in December 2005. The *Charter of Human Rights and Responsibilities 2006* (the Charter) was enacted in July 2006 and commenced operation on 1 January 2007. As a result of the introduction of the Charter and other legislative amendments there are now defined human rights which the Subcommittee must consider in the scrutiny of subordinate legislation.

Legislative Scheme and Requirements

The Charter of Human Rights and Responsibilities Act 2007

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

30. Scrutiny of Acts and Regulations Committee

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

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

The Subordinate Legislation Act 1994 – section 21(ha)

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

Section 21. Review of statutory rules by the Scrutiny Committee

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

.....

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

⁴⁶ Legal and Constitutional Committee, Report on the Desirability or otherwise of Legislation Defining and Protecting Human Rights, April 1987, Chapter 2 pp. 8-18.

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

12A. Human Rights Certificate

- (1) *The responsible Minister must ensure that a human rights certificate is prepared in respect of a proposed statutory rule, unless the proposed statutory rule is exempted under sub-section (3)*
- (2) *A human rights certificate must-*
 - (a) *certify whether, in the opinion of the responsible Minister, the proposed statutory rule does or does not limit any human right set out in the Charter of Human Rights and Responsibilities; and*
 - (b) *if it certifies that, in the opinion of the rule does limit a human right set out in the Charter of Human Rights and Responsibilities, set out -*
 - (i) *the nature of the human right limited; and*
 - (ii) *the importance of the purpose of the limitation; and*
 - (iii) *the nature and extent of the limitation; and*
 - (iv) *the relationship between the limitations and its purpose; and*
 - (v) *any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.*
- (3) *Sub-section (1) does not apply if the responsible Minister certifies in writing that in his or her opinion –*
 - (a) *The proposed statutory rule is a rule which relates only to a court or tribunal or the procedure, practice or costs of a court or tribunal; or*
 - (b) *The proposed statutory rule only –*
 - (i) *prescribes under section 4(1)(a) an instrument or class of instrument to be a statutory rule; or*
 - (ii) *exempts under section 4(1)(b) an instrument or class of instrument from the operation of this Act; or*
 - (iii) *extends under section 5(4) the operation of a statutory rule that would otherwise be revoked by virtue of section 5.*

Subcommittee's obligations – What are human rights?

Compatibility – Ensure that human rights protected and promoted by the Charter are protected in subordinate legislation.

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

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

- Recognition and equality before the law.

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

These human rights are based in part on the International Covenant on Civil and Political Rights (ICCPR). The Subcommittee needs to consider whether there is any possibility that these human rights may be breached.

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

The Subcommittee is required to consider the compatibility of the regulations with the Charter and to report to Parliament where it considers a statutory rule to be incompatible with the Charter. The Subcommittee must consider the section 12A Human Rights certificate provided by each Minister in respect of each statutory rule. First, the Subcommittee must consider whether it agrees an assessment that a particular regulation does not limit any human right set out in the Charter. However, if there is some limitation in respect of a human right, the Subcommittee must consider:-

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

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

The Operation of the Charter in Relation to Statutory Rule Series 2010

The Subcommittee has considered the Charter in relation to two statutory rules this year. Where necessary, the relevant section 12A Human Rights certificate accompanies a regulation. The Subcommittee then considers the regulation, the section 12A certificate and any issues raised.

Example 1:

SR No. 9 – Road Safety (Driving Instructors) Regulations 2010

Subcommittee's Letter^{A7}

The Regulation Review Subcommittee (the Subcommittee) carefully considered the above Regulations at its meeting on 19 May 2010.

Regulation 15 provides:-

It is a condition of an authority that the holder must notify the Secretary of any change in the information provided by the holder to the registered medical practitioner for the purposes of issuing the certificate provided to the Secretary under regulation 6(1)(b).

Regulation 15 obviously serves a reasonable purpose of ensuring that licence holders continue to remain fit to drive. The Subcommittee is concerned that the regulation as drafted goes beyond this purpose by requiring holders to notify any change in information including transient and even beneficial changes, regardless of whether or not these are relevant to the practitioner's assessment or the holder's fitness to instruct unlicensed drivers.

The Subcommittee seeks your advice as to whether the obligation in regulation 15 should be confined by reference to the relevance of the information and a minimum period of time during which the change in information has operated.

Minister's Response⁴⁸

Thank you for your letter of 24 May 2010 concerning the Road Safety (Driving Instructors) Regulations 2010 ("the Regulations").

The Road Safety Act 1986 and the Regulations establish a mandatory registration scheme which requires relevant persons to meet minimum standards of fitness and competence before being authorised as driving instructors.

Medical conditions are a risk factor for all drivers, but driving instructors particularly because of the time they spend driving or supervising the driving of others.

⁴⁷ Letter dated 24 May 2010 to the Hon. Tim Pallas MP, Minister for Roads and Ports, from the Regulation Review Subcommittee

⁴⁸ Letter dated 21 July 2010 to the Regulation Review Subcommittee from the Hon. Tim Pallas MP, Minister for Roads and Ports

The requirement to notify changes in medical information under the Regulations is consistent with a similar requirement which all motor vehicle drivers must meet. All drivers must notify VicRoads about changes in medical conditions which may impair their ability to drive safely (regulation 67(2) of the Road Safety (Drivers) Regulations 2009).

I note the Committee's concerns that regulation 15 appears to go beyond the purpose of ensuring that authority holders continue to remain fit to act as driving instructors by requiring holders to notify changes in information about medical conditions including transient and beneficial changes.

However, I am advised that the obligation in regulation 15 is already confined by reference to the medical information sought, which is solely for the purpose of assessing the person's medical fitness to act as a driving instructor.

Confining regulation 15 by reference to a minimum period of time during which the change in information has operated is also not appropriate as some medical conditions may be so serious or may deteriorate within a short space of time so as to make it dangerous for a person to continue acting as a driving instructor. Examples of conditions include blindness, brain cancer, epilepsy or chronic psychosis.

Changes in information about transient and beneficial medical conditions should be notified as this information may still be relevant to the assessment of the holder's fitness to act as a driving instructor. For example, transient conditions like chronic fatigue syndrome or glandular fever can last for years and have a significant effect on a person's ability to drive or instruct others safely.

In addition, if a person had an existing medical condition that required conditions to be imposed on the authority but later had a beneficial change so that the medical condition no longer existed or has been minimised with medication or treatment, this change of information may be relevant in reassessing the conditions on the authority.

I trust this information addresses your concerns. If you have any queries in relation to this matter please contact Ian Shepherd of DOT Legal on 9655 1701.

Example 2

SR No. 44 – Land Acquisition and Compensation Regulations 2010

Subcommittee's Letter⁴⁹

The Regulation Review Subcommittee (the Subcommittee) carefully considered the above regulations at a meeting on 18 August 2010.

The Subcommittee has a query about the compatibility of Regulation 6 with the Charter of Human Rights and Responsibilities Act 2006 (the Charter).

The accompanying Human Rights Certificate states that the Regulations 'do not limit any human rights set out in the Charter of Human Rights and Responsibilities'. However, in East Melbourne Group Inc v Minister for Planning &

⁴⁹ Letter dated 18 August 2010 to the Hon. Rob Hulls MP, Attorney General, from the Regulation Review Subcommittee

Anor [2008] VSCA 217, [163], Warren CJ stated that 'consideration may be required in future of the ramifications of the Charter of Human Rights and Responsibilities Act 2006 (Vic) to the application of s 20(4) of the [Planning and Environment] Act'. Like Regulation 6, section 20(4) of the Planning and Environment Act 1987 provides an exception to the general requirement of public consultation on planning matters.

Whilst the Chief Justice did not specify the Charter right or rights she had in mind, the Subcommittee is of the view there may be two possible relevant rights:-

- Charter s. 18(1)'s right to 'participate in the conduct of public affairs, directly' and
- Charter s. 20's right 'not be deprived of... property other than in accordance with law'.

The Subcommittee seeks further information about the compatibility of Regulation 6 with these rights.

Minister's Response⁵⁰

Thank you for your letter dated 18 August 2010 in relation to the Land Acquisition and Compensation Regulations 2010 which are made under the Land Acquisition and Compensation Act 1986 (LAC Act).

The Regulation Review Subcommittee has requested further information about the compatibility of Regulation 6 with two rights in the Charter of Human Rights and Responsibilities Act 2006, particularly in light of comments made by Warren CJ in *East Melbourne Group Inc v Minister for Planning & Anor* [2008] VSCA 217 in relation to section 20(4) of the Planning and Environment Act 1987 (PE Act).

In particular, the Subcommittee has requested further information about:

- Charter right section 20 - the right not to be deprived of property other than in accordance with law
- Charter right section 18(1) - the right to participate in the conduct of public affairs directly.

Section 20 - Property right

Regulation 6 engages the right to property in section 20 of the Charter as it involves depriving people of their property. However, in my view the right is not limited as the deprivation of property is lawful.

What is the scope of Regulation 6?

As set out in the Regulatory Impact Statement (RIS) which accompanies the Regulations, Regulation 6 is an exception to the general requirement set out in section 5 of the LAC Act to reserve land under a planning scheme. Regulation 6 exempts this requirement where:

- the acquisition is for a minor road widening or deviation and the area to be acquired and the value are both less than 10% of total, or

⁵⁰ Letter dated 20 September 2010 to the Regulation Review Subcommittee from the Hon. Rob Hulls MP, Attorney General

- *the acquisition is of an easement which will not reduce the overall value of the land by more than 10%.*

By removing the requirement to reserve the land under a planning scheme, one effect of Regulation 6 is that the landowner has no right to object to the acquisition. However, the landowner is entitled to be paid compensation for the acquisition according to the processes set out in the LAC Act. In addition, the processes for notifying landowners about the acquisition which are set out in the LAC Act continue to apply. These processes include that the acquiring authority:

- *serve a Notice of Intention to Acquire on each person with an interest in the land. The Notice is accompanied by a statement which briefly explains what the notice is about and the acquisition and compensation process. It also encourages people to seek their own advice on the compulsory acquisition and explains that reasonable expenses for this will be paid by the acquiring authority.*
- *publish a Notice of Acquisition in the Government Gazette. This is the formal acquisition of the land and this must not occur until two months after the Notice of Intention to Acquire has been served. Within 14 days of the Notice of Acquisition being published, a copy of the Notice and a statement of rights and obligations (similar to the type of statement which accompanies a Notice of Intention to Acquire) must be served on the people who received the Notice of Intention to Acquire.*

Is the deprivation of property lawful under Regulation 6?

To be lawful, the power to deprive must occur under powers that are conferred by law and if discretionary, should be confined and structured, rather than arbitrary and unclear. Regulation 6 is made under the LAC Act and contains little discretion. It is both accessible and formulated precisely to guide those who apply the law. As explained in the RIS, by exempting certain categories of minor acquisitions from the reservation requirements, Regulation 6 serves an important public purpose by achieving a balance between the rights of landowners and the need for acquiring authorities to carry out their public functions in a timely and cost effective way. It is therefore neither arbitrary nor unclear.

While I make no comment about section 20(4) of the PE Act in relation to the Charter, I note that the section confers a discretion on the Planning Minister to determine whether the interests of Victoria or part of it make exemption from the notice provisions in the PE Act appropriate. Warren CJ noted in her judgement that this is a broad power exercised in the public interest. She further noted at paragraph 126 that the expression 'in the public interest' has been interpreted as importing a discretionary value judgement to be made by reference to undefined facts confined only by the subject matter, scope and purpose of the legislation.

The formulation of section 20(4) of the PE Act, which contains a broad discretion, therefore differs from Regulation 6 which is precisely formulated.

It is my view that while Regulation 6 engages the right in section 20, it does not limit that right.

Section 18(1) - the right to participate in the conduct of public affairs

Does Regulation 6 engage the right to participate in the conduct of public affairs?

Section 18(1) of the Charter states that every person in Victoria has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. The expression 'public affairs' is a broad concept which covers all aspects of public administration, and the formulation of policy at international, national, regional and local levels. It includes examples such as:

- *exercising power as members of Parliament or by holding executive office*
- *voting in an election or a referendum to change a Constitution*
- *taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a local community*
- *taking part in bodies established to represent citizens in consultation with Government*
- *exerting influence through public debate and dialogue with elected representatives.*

The right in section 18(1) of the Charter has the connotation of exerting influence and being able to participate in broad public policy and debate. However, Regulation 6 deals with the affairs of individual property owners, part of whose property is to be acquired under specific circumstances and under processes established by the LAC Act as outlined above. Further, Regulation 6 does not prevent affected residents from expressing their views on the process.

It is therefore my view that the right to participate in public affairs in section 18(1) is not engaged by Regulation 6.

I trust that this information is of assistance to your Committee.

APPENDIX 1 — REGULATIONS 2010⁵¹

ALPHABETICAL LISTING

SR No. 61	Accident Compensation Amendment Regulations 2010
SR No. 128	Accident Compensation Further Amendment Regulations 2010
SR No. 63	Accident Towing Services Amendment (Licence Fees) Regulations 2010
SR No. 29	Agricultural and Veterinary Chemicals (Control of Use)(Infringement Notices) Amendment Regulations 2010
SR No. 74	Assisted Reproductive Treatment Amendment Regulations 2010
SR No. 1	Associations Incorporation Amendment (Fees and Other Matters) Regulations 2010
SR No. 121	Bail Amendment Regulations 2010
SR No. 15	Building Amendment (Bushfire Construction - Short-term Requirements) Regulations 2010
SR No. 82	Building Amendment (Bushfire Safety) Regulations 2010
SR No. 50	Building Amendment (Fees) Regulations 2010
SR No. 32	Building Amendment (Private Bushfire Shelter Construction) Interim Regulations 2010
SR No. 110	Bus Safety Regulations 2010
SR No. 75	Cemetaries and Crematoria Amendment Regulations 2010
SR No. 36	Chattel Securities (Registration) Amendment (Fees) Regulations 2010
SR No. 151	Children, Youth and Families (Children's Court Family Division)(Amendment No. 2) Rules 2010
SR No. 67	Children, Youth and Families Amendment Regulations 2010
SR No. 105	Children, Youth and Families Further Amendment Regulations 2010
SR No. 96	Children's Services Amendment Regulations 2010
SR No. 11	Conservation, Forests and Lands (Contracts) Regulations 2010
SR No. 37	Conservation, Forests and Lands (Infringement Notice) Amendment Regulations 2010
SR No. 58	Conservation, Forests and Lands (Infringement Notice) Further Amendment Regulations 2010
SR No. 46	Conveyancers (Professional Conduct and Trust Account and General) Amendment Regulations 2010

⁵¹ This Appendix lists all regulations made during 2010. Appendix 2 categorises regulations according to whether they were made with a Regulation Impact Statement or whether they were exempted or excepted from those requirements. The Committee did not move for disallowance of any of the regulations made in 2010, however the Regulation Review Subcommittee did correspond with responsible Ministers concerning some regulations.

Scrutiny of Acts and Regulations Committee

SR No. 107	Conveyancers (Professional Conduct and Trust Account and General) Amendment (Infringements) Regulations 2010
SR No. 66	Country Fire Authority Amendment Regulations 2010
SR No. 145	County Court (Chapter I Amendment No. 2) Rules 2010
SR No. 146	County Court (Chapter I Scale of Costs Amendment) Rules 2010
SR No. 85	Court Security Amendment Regulations 2010
SR No. 120	Crown Proceedings Amendment Regulations 2010
SR No. 130	Drugs, Poisons and Controlled Substances (Precursor Supply) Regulations 2010
SR No. 131	Drugs, Poisons and Controlled Substances Amendment Regulations 2010
SR No. 87	Electoral Amendment (Electoral Participation) Regulations 2010
SR No. 111	Electricity Safety (Bushfire Mitigation) Amendment Interim Regulations 2010
SR No. 47	Electricity Safety (Electric Line Clearance) Regulations 2010
SR No. 86	Electricity Safety (Equipment Efficiency) Amendment Regulations 2010
SR No. 21	Electricity Safety (Registration and Licensing) Regulations 2010
SR No. 70	Electronic Transactions (Victoria) Regulations 2010
SR No. 98	Environment Protection (Distribution of Landfill Levy Regulations 2010
SR No. 45	Fair Trading (Information Standard)(Cosmetics) Regulations 2010
SR No. 124	Fair Trading Amendment and Revocation Regulations 2010
SR No. 138	First Home Owner Grant Amendment Regulations 2010
SR No. 13	Fisheries (Fees, Royalties and Levis) Amendment Regulations 2010
SR No. 118	Fisheries Amendment Regulations 2010
SR No. 57	Forests (Fire Protection) Amendment Regulations 2010
SR No. 30	Forests (Recreation) Regulations 2010
SR No. 129	Gambling Regulation (Pre-commitment) Interim Regulations 2010
SR No. 69	Guardianship and Administration (Fees) Amendment Regulations 2010
SR No. 42	Health Practitioner Regulation National Law Regulation
SR No. 88	Health Services (Private Hospitals and Day Procedure Centres)(Amendment) Regulations 2010
SR No. 76	Health Services (Supported Residential Services) Amendment Regulations 2010
SR No. 65	Heritage (Infringement Notice) Amendment Regulations 2010
SR No. 92	Infringement (General) Further Amendment Regulations 2010
SR No. 2	Infringements (General) Amendment (Fees Waiver) Regulations 2010
SR No. 17	Infringements (General) Amendment Regulations 2010
SR No. 44	Land Acquisition and Compensation Regulations 2010
SR No. 123	Legal Profession Practising Certificate Fees Interim Regulations 2010
SR No. 89	Library Purposes Trusts Regulations 2010
SR No. 149	Liquor Control Reform Amendment (Fees) Regulations 2010

SR No. 125	Liquor Control Reform Amendment Regulations 2010
SR No. 39	Livestock Disease Control Amendment Regulations 2010
SR No. 99	Local Government (General) Amendment Regulations 2010
SR No. 43	Magistrates' Court (Arbitration) Regulations 2010
SR No. 6	Magistrates' Court (Judicial Registrars) Amendment Rules 2010
SR No. 141	Magistrates' Court (Miscellaneous Civil Proceedings) Rules 2010
SR No. 25	Magistrates' Court Civil Procedure (Amendment No. 1) Rules 2010
SR No. 122	Magistrates' Court General Amendment Regulations 2010
SR No. 152	Magistrates' Court General Civil Procedure (Amendment No. 1) Rules 2010
SR No. 140	Magistrates' Court General Civil Procedure Rules 2010
SR No. 27	Marine Amendment Regulations 2010
SR No. 81	Mental Health Amendment Regulations 2010
SR No. 126	Metropolitan Fire Brigades (General) Amendment Regulations 2010
SR No. 3	Mineral Resources (Sustainable Development)(Extractive Industries) Regulations 2010
SR No. 56	Mineral Resources Development (Mining) Amendment Regulations 2010
SR No. 108	Mineral Resources Development Amendment (Miner's Right and Other Amendments) Regulations 2010
SR No. 101	Motor Car Traders Amendment (Infringements) Regulations 2010
SR No. 40	Motor Car Traders Amendment Regulations 2010
SR No. 60	National Parks (Fees and Charges) Amendment Regulations 2010
SR No. 78	Non-Emergency Patient Transport Amendment Regulations 2010
SR No. 18	Occupational Health and Safety Amendment (Hazardous Substances Classification) Regulations 2010
SR No. 93	Occupational Health and Safety Amendment (Miscellaneous) Regulations 2010
SR No. 51	Plumbing Amendment (Fees) Regulations 2010
SR No. 115	Port Management (Port of Melbourne Safety and Property) Regulations 2010
SR No. 97	Prostitution Control (Fees) and Prostitution Control Amendment Regulations 2010
SR No. 106	Prostitution Control Amendment Regulations 2010
SR No. 79	Public Health and Wellbeing Amendment Regulations 2010
SR No. 5	Public Transport Competition Amendment Regulations 2010
SR No. 12	Racing (Racing Integrity Assurance) Regulations 2010
SR No. 114	Rail Safety Amendment Regulations 2010
SR No. 49	Residential Tenancies (Caravan Park and Movable Dwellings Registration and Standards) Regulations 2010
SR No. 132	Residential Tenancies (Caravan Park and Movable Dwellings Registration and Standards) Amendment Regulations 2010

Scrutiny of Acts and Regulations Committee

SR No. 150	Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Further Amendment Regulations 2010
SR No. 77	Residential Tenancies Amendment (Student Accommodation) Regulations 2010
SR No. 91	Retail Leases Amendment Regulations 2010
SR No. 135	Road Safety (Drivers) Amendment (Drug-Driving) Regulations 2010
SR No. 28	Road Safety (Drivers) Amendment (Repeat Speeders Trial) Regulations 2010
SR No. 35	Road Safety (Drivers) and Road Safety (Vehicles) Amendment (Fees) Regulations 2010
SR No. 9	Road Safety (Driving Instructors) Regulations 2010
SR No. 52	Road Safety (General) Amendment (Application of Fees) Regulations 2010
SR No. 16	Road Safety (General) Amendment Regulations 2010
SR No. 134	Road Safety (General) Further Amendment Regulations 2010
SR No. 116	Road Safety (Vehicles) Amendment (Club Permit) Regulations 2010
SR No. 80	Road Safety (Vehicles) Amendment (Electronic Stability Control) Regulations 2010
SR No. 136	Road Safety (Vehicles) Amendment (Fees) Regulations 2010
SR No. 33	Road Safety (Vehicles) Amendment (Heavy Vehicle Charges) Regulations 2010
SR No. 26	Road Safety (Vehicles) Amendment Regulations 2010
SR No. 7	Road Safety Road Rules (Enforcement Vehicles and Escort Vehicles) Amendment Rules 2010
SR No. 137	Road Safety Road Rules (Exemption and Other Matters) Amendment Rules 2010
SR No. 94	Subordinate Legislation (Control of Weapons Regulations 2000 - Extension of Operation) Regulations 2010
SR No. 38	Subordinate Legislation (Dangerous Goods (Explosives) Regulations 2000 - Extension of Operation) Regulations 2010
SR No. 112	Subordinate Legislation (Dangerous Goods (Storage and Handling) Regulations 2000 - Extension of Operation) Regulations 2010
SR No. 64	Subordinate Legislation (Magistrates' Court General Regulations 2000 - Extension of Operation) Regulations 2010
SR No. 48	Subordinate Legislation (Petroleum Regulations 2000 - Extension of Operation) Regulations 2010
SR No. 19	Subordinate Legislation (Planning and Environment (Fees) Regulations 2000 - Extension of Operation Regulations 2010
SR No. 20	Subordinate Legislation (Subdivision (Permit and Certification Fees) Regulations 2000 - Extension of Operation Regulations 2010
SR No. 103	Subordinate Legislation (Subdivision (Procedures) Regulations 2000 - Extension of Operations Regulations 2010
SR No. 104	Subordinate Legislation (Victims of Crime Assistance (Special Financial Assistance) Regulations 2000 - Extension of Operation) Regulations 2010
SR No. 22	Supreme Court (Chapter I Amendment No. 17) Rules 2010
SR No. 53	Supreme Court (Chapter I Amendment No. 18) Rules 2010
SR No. 100	Supreme Court (Chapter I Amendment No. 19) Rules 2010

SR No. 142	Supreme Court (Chapter I Amendment No. 20) Rules 2010
SR No. 143	Supreme Court (Chapter I Amendment No. 21) Rules 2010
SR No. 147	Supreme Court (Chapter I Amendment No. 22) Rules 2010
SR No. 83	Supreme Court (Chapter V Amendment No. 7) Rules 2010
SR No. 54	Supreme Court (Chapter VI Amendment No. 5) Rules 2010
SR No. 55	Supreme Court (Criminal Procedure Amendment) Rules 2010
SR No. 148	Supreme Court (Judicial Registrars Further Amendment) Rules 2010
SR No. 144	Supreme Court (Judicial Registrars Amendments) Rules 2010
SR No. 23	Supreme Court (Subpoena, Search Order and Freezing Order Amendment) Rules 2010
SR No. 24	Supreme Court Admiralty Rules 2010
SR No. 102	Surveying (Registrations Fees) Amendment Regulations 2010
SR No. 113	Tabacco Amendment Regulations 2010
SR No. 10	Taxation Administration Amendment Regulations 2010
SR No. 62	Tobacco (Victorian Health Promotion Foundation) Amendment Regulations 2010
SR No. 34	Transfer of Land (Fees) Amendment Regulations 2010
SR No. 31	Transport (Accident (Impairment) Regulations 2010
SR No. 41	Transport (Infringements) Amendment Regulations 2010
SR No. 4	Transport (Infringements) Regulations 2010
SR No. 133	Transport (Passenger Vehicles) and Transport (Infringements) Amendment Regulations 2010
SR No. 90	Transport (Passenger Vehicles) and Transport (Taxi-Cabs) Amendment (Passenger Numbers) Regulations 2010
SR No. 95	Transport (Ticketing) Amendment (Portable Devices) Regulations 2010
SR No. 8	Transport Accident Amendment (Home Modification Agreement) Regulations 2010
SR No. 84	Victims of Crime Assistance Rules 2010
SR No. 68	Victorian Civil and Administrative Tribunal (Amendment No. 1) Rules 2010
SR No. 73	Victorian Civil and Administrative Tribunal (Amendment No. 2) Rules 2010
SR No. 117	Victorian Civil and Administrative Tribunal (Amendment No. 3) Rules 2010
SR No. 14	Victorian Civil and Administrative Tribunal (Fees) Amendment Regulations 2010
SR No. 109	Victorian Energy Efficiency Target Amendment (Assignment of Right) Regulations 2010
SR No. 127	Victorian Energy Efficiency Target Amendment Regulations 2010
SR No. 72	Water (Notice of Disposition of Land) Regulations 2010
SR No. 71	Water (Register of Interests) Regulations 2010
SR No. 139	Water (Resource Management) Amendment Regulations 2010
SR No. 119	Working with Children Amendment Regulations 2010
SR No. 59	Zoological Parks and Gardens Amendment (Fees) Regulations 2010

APPENDIX 2 — REGULATIONS 2010

REGULATION IMPACT STATEMENTS

SR No. 1	Associations Incorporation Amendment (Fees and Other Matters) Regulations 2010
SR No. 110	Bus Safety Regulations 2010
SR No. 130	Drugs, Poisons and Controlled Substances (Precursor Supply) Regulations 2010
SR No. 21	Electricity Safety (Registration and Licensing) Regulations 2010
SR No. 47	Electricity Safety (Electric Line Clearance) Regulations 2010
SR No. 30	Forests (Recreation) Regulations 2010
SR No. 44	Land Acquisition and Compensation Regulations 2010
SR No. 3	Mineral Resources (Sustainable Development)(Extractive Industries) Regulations 2010
SR No. 56	Mineral Resources Development (Mining) Amendment Regulations 2010
SR No. 115	Port Management (Port of Melbourne Safety and Property) Regulations 2010
SR No. 49	Residential Tenancies (Caravan Park and Movable Dwellings Registration and Standards) Regulations 2010
SR No. 9	Road Safety (Driving Instructors) Regulations 2010

EXCEPTIONS UNDER SECTION 8

S. 8(1)(a) — Fee Increases

SR No. 50	Building Amendment (Fees) Regulations 2010
SR No. 36	Chattel Securities (Registration) Amendment (Fees) Regulations 2010
SR No. 66	Country Fire Authority Amendment Regulations 2010
SR No. 126	Metropolitan Fire Brigades (General) Amendment Regulations 2010
SR No. 51	Plumbing Amendment (Fees) Regulations 2010
SR No. 35	Road Safety (Drivers) and Road Safety (Vehicles) Amendment (Fees) Regulations 2010
SR No. 34	Transfer of Land (Fees) Amendment Regulations 2010
SR No. 59	Zoological Parks and Gardens Amendment (Fees) Regulations 2010

S. 8(1)(b) — Court Rules

SR No. 151	Children, Youth and Families (Children's Court Family Division)(Amendment No. 2) Rules 2010
SR No. 67	Children, Youth and Families Amendment Regulations 2010
SR No. 105	Children, Youth and Families Further Amendment Regulations 2010
SR No. 145	County Court (Chapter I Amendment No. 2) Rules 2010
SR No. 146	County Court (Chapter I Scale of Costs Amendment) Rules 2010
SR No. 43	Magistrates' Court (Arbitration) Regulations 2010
SR No. 6	Magistrates' Court (Judicial Registrars) Amendment Rules 2010
SR No. 141	Magistrates' Court (Miscellaneous Civil Proceedings) Rules 2010
SR No. 25	Magistrates' Court Civil Procedure (Amendment No. 1) Rules 2010
SR No. 152	Magistrates' Court General Civil Procedure (Amendment No. 1) Rules 2010
SR No. 140	Magistrates' Court General Civil Procedure Rules 2010
SR No. 104	Subordinate Legislation (Victims of Crime Assistance (Special Financial Assistance) Regulations 2000 - Extension of Operation) Regulations 2010
SR No. 22	Supreme Court (Chapter 1 Amendment No. 17) Rules 2010
SR No. 53	Supreme Court (Chapter I Amendment No. 18) Rules 2010
SR No. 100	Supreme Court (Chapter I Amendment No. 19) Rules 2010
SR No. 142	Supreme Court (Chapter I Amendment No. 20) Rules 2010
SR No. 143	Supreme Court (Chapter I Amendment No. 21) Rules 2010
SR No. 147	Supreme Court (Chapter I Amendment No. 22) Rules 2010
SR No. 83	Supreme Court (Chapter V Amendment No. 7) Rules 2010
SR No. 54	Supreme Court (Chapter VI Amendment No. 5) Rules 2010
SR No. 55	Supreme Court (Criminal Procedure Amendment) Rules 2010
SR No. 148	Supreme Court (Judicial Registrars Further Amendment) Rules 2010
SR No. 144	Supreme Court (Judicial Registrars Amendments) Rules 2010
SR No. 23	Supreme Court (Subpoena, Search Order and Freezing Order Amendment) Rules 2010
SR No. 24	Supreme Court Admiralty Rules 2010
SR No. 84	Victims of Crime Assistance Rules 2010
SR No. 68	Victorian Civil and Administrative Tribunal (Amendment No. 1) Rules 2010
SR No. 73	Victorian Civil and Administrative Tribunal (Amendment No. 2) Rules 2010
SR No. 117	Victorian Civil and Administrative Tribunal (Amendment No. 3) Rules 2010

S. 8(1)(d)(iii) — Extension by 12 Months

SR No. 94	Subordinate Legislation (Control of Weapons Regulations 2000 - Extension of Operation) Regulations 2010
SR No. 38	Subordinate Legislation (Dangerous Goods (Explosives) Regulations 2000 - Extension of Operation) Regulations 2010

S. 8(1)(d)(iii) — Extension by 12 Months (cont.)

SR No. 112	Subordinate Legislation (Dangerous Goods (Storage and Handling) Regulations 2000 - Extension of Operation) Regulations 2010
SR No. 64	Subordinate Legislation (Magistrates' Court General Regulations 2000 - Extension of Operation) Regulations 2010
SR No. 48	Subordinate Legislation (Petroleum Regulations 2000 - Extension of Operation) Regulations 2010
SR No. 19	Subordinate Legislation (Planning and Environment (Fees) Regulations 2000 - Extension of Operation) Regulations 2010
SR No. 20	Subordinate Legislation (Subdivision (Permit and Certification Fees) Regulations 2000 - Extension of Operation) Regulations 2010
SR No. 103	Subordinate Legislation (Subdivision (Procedures) Regulations 2000 - Extension of Operations) Regulations 2010

EXEMPTIONS UNDER SECTION 9**S. 9(1)(a) — No Economic Burden**

SR No. 61	Accident Compensation Amendment Regulations 2010
SR No. 128	Accident Compensation Further Amendment Regulations 2010
SR No. 63	Accident Towing Services Amendment (Licence Fees) Regulations 2010
SR No. 29	Agricultural and Veterinary Chemicals (Control of Use)(Infringement Notices) Amendment Regulations 2010
SR No. 82	Building Amendment (Bushfire Safety) Regulations 2010
SR No. 96	Children's Services Amendment Regulations 2010
SR No. 58	Conservation, Forests and Lands (Infringement Notice) Further Amendment Regulations 2010
SR No. 86	Electricity Safety (Equipment Efficiency) Amendment Regulations 2010
SR No. 70	Electronic Transactions (Victoria) Regulations 2010
SR No. 98	Environment Protection (Distribution of Landfill Levy) Regulations 2010
SR No. 138	First Home Owner Grant Amendment Regulations 2010
SR No. 13	Fisheries (Fees, Royalties and Levis) Amendment Regulations 2010
SR No. 118	Fisheries Amendment Regulations 2010
SR No. 57	Forests (Fire Protection) Amendment Regulations 2010
SR No. 69	Guardianship and Administration (Fees) Amendment Regulations 2010
SR No. 65	Heritage (Infringement Notice) Amendment Regulations 2010
SR No. 92	Infringement (General) Further Amendment Regulations 2010
SR No. 2	Infringements (General) Amendment (Fees Waiver) Regulations 2010
SR No. 17	Infringements (General) Amendment Regulations 2010
SR No. 149	Liquor Control Reform Amendment (Fees) Regulations 2010

S. 9(1)(a) — No Economic Burden (cont.)

SR No. 125	Liquor Control Reform Amendment Regulations 2010
SR No. 122	Magistrates' Court General Amendment Regulations 2010
SR No. 27	Marine Amendment Regulations 2010
SR No. 108	Mineral Resources Development Amendment (Miner's Right and Other Amendments) Regulations 2010
SR No. 60	National Parks (Fees and Charges) Amendment Regulations 2010
SR No. 18	Occupational Health and Safety Amendment (Hazardous Substances Classification) Regulations 2010
SR No. 93	Occupational Health and Safety Amendment (Miscellaneous) Regulations 2010
SR No. 12	Racing (Racing Integrity Assurance) Regulations 2010
SR No. 150	Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Further Amendment Regulations 2010
SR No. 91	Retail Leases Amendment Regulations 2010
SR No. 135	Road Safety (Drivers) Amendment (Drug-Driving) Regulations 2010
SR No. 116	Road Safety (Vehicles) Amendment (Club Permit) Regulations 2010
SR No. 80	Road Safety (Vehicles) Amendment (Electronic Stability Control) Regulations 2010
SR No. 136	Road Safety (Vehicles) Amendment (Fees) Regulations 2010
SR No. 7	Road Safety Road Rules (Enforcement Vehicles and Escort Vehicles) Amendment Rules 2010
SR No. 137	Road Safety Road Rules (Exemption and Other Matters) Amendment Rules 2010
SR No. 10	Taxation Administration Amendment Regulations 2010
SR No. 14	Victorian Civil and Administrative Tribunal (Fees) Amendment Regulations 2010
SR No. 109	Victorian Energy Efficiency Target Amendment (Assignment of Right) Regulations 2010
SR No. 127	Victorian Energy Efficiency Target Amendment Regulations 2010
SR No. 139	Water (Resource Management) Amendment Regulations 2010
SR No. 119	Working with Children Amendment Regulations 2010

S. 9(1)(b) — National Uniform Legislation

SR No. 15	Building Amendment (Bushfire Construction - Short-term Requirements) Regulations 2010
SR No. 45	Fair Trading (Information Standard)(Cosmetics) Regulations 2010
SR No. 42	Health Practitioner Regulation National Law Regulation
SR No. 33	Road Safety (Vehicles) Amendment (Heavy Vehicle Charges) Regulations 2010

S. 9(1)(c) — Fundamentally Declaratory

SR No. 74	Assisted Reproductive Treatment Amendment Regulations 2010
SR No. 121	Bail Amendment Regulations 2010
SR No. 11	Conservation, Forests and Lands (Contracts) Regulations 2010
SR No. 37	Conservation, Forests and Lands (Infringement Notice) Amendment Regulations 2010
SR No. 46	Conveyancers (Professional Conduct and Trust Account and General) Amendment Regulations 2010
SR No. 107	Conveyancers (Professional Conduct and Trust Account and General) Amendment (Infringements) Regulations 2010
SR No. 85	Court Security Amendment Regulations 2010
SR No. 120	Crown Proceedings Amendment Regulations 2010
SR No. 131	Drugs, Poisons and Controlled Substances Amendment Regulations 2010
SR No. 124	Fair Trading Amendment and Revocation Regulations 2010
SR No. 88	Health Services (Private Hospitals and Day Procedure Centres)(Amendment) Regulations 2010
SR No. 76	Health Services (Supported Residential Services) Amendment Regulations 2010
SR No. 89	Library Purposes Trusts Regulations 2010
SR No. 99	Local Government (General) Amendment Regulations 2010
SR No. 81	Mental Health Amendment Regulations 2010
SR No. 101	Motor Car Traders Amendment (Infringements) Regulations 2010
SR No. 40	Motor Car Traders Amendment Regulations 2010
SR No. 78	Non-Emergency Patient Transport Amendment Regulations 2010
SR No. 97	Prostitution Control (Fees) and Prostitution Control Amendment Regulations 2010
SR No. 106	Prostitution Control Amendment Regulations 2010
SR No. 79	Public Health and Wellbeing Amendment Regulations 2010
SR No. 5	Public Transport Competition Amendment Regulations 2010
SR No. 114	Rail Safety Amendment Regulations 2010
SR No. 77	Residential Tenancies Amendment (Student Accommodation) Regulations 2010
SR No. 52	Road Safety (General) Amendment (Application of Fees) Regulations 2010
SR No. 16	Road Safety (General) Amendment Regulations 2010
SR No. 113	Tabacco Amendment Regulations 2010
SR No. 62	Tobacco (Victorian Health Promotion Foundation) Amendment Regulations 2010
SR No. 41	Transport (Infringements) Amendment Regulations 2010
SR No. 4	Transport (Infringements) Regulations 2010
SR No. 133	Transport (Passenger Vehicles) and Transport (Infringements) Amendment Regulations 2010

S. 9(1)(c) — Fundamentally Declaratory (cont.)

SR No. 90	Transport (Passenger Vehicles) and Transport (Taxi-Cabs) Amendment (Passenger Numbers) Regulations 2010
SR No. 95	Transport (Ticketing) Amendment (Portable Devices) Regulations 2010
SR No. 72	Water (Notice of Disposition of Land) Regulations 2010
SR No. 71	Water (Register of Interests) Regulations 2010

S. 9(1)(d) – Administration Procedures within or Between Departments

SR No. 132	Residential Tenancies (Caravan Park and Movable Dwellings Registration and Standards) Amendment Regulations 2010
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S. 9(3) — Premier’s Certificate

SR No. 32	Building Amendment (Private Bushfire Shelter Construction) Interim Regulations 2010
SR No. 111	Electricity Safety (Bushfire Mitigation) Amendment Interim Regulations 2010
SR No. 129	Gambling Regulation (Pre-commitment) Interim Regulations 2010
SR No. 123	Legal Profession Practising Certificate Fees Interim Regulations 2010

EXCEPTIONS AND EXEMPTIONS UNDER COMBINED SECTIONS

S. 8(1)(a) Fee Increase and S. 9(1)(a) No Economic Burden

SR No. 102	Surveying (Registrations Fees) Amendment Regulations 2010
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S. 9(1)(a) — No Economic Burden and S. 9(1)(c) — Fundamentally Declaratory

SR No. 8	Transport Accident Amendment (Home Modification Agreement) Regulations 2010
SR No. 75	Cemetaries and Crematoria Amendment Regulations 2010
SR No. 87	Electoral Amendment (Electoral Participation) Regulations 2010
SR No. 39	Livestock Disease Control Amendment Regulations 2010
SR No. 28	Road Safety (Drivers) Amendment (Repeat Speeders Trial) Regulations 2010
SR No. 134	Road Safety (General) Further Amendment Regulations 2010
SR No. 26	Road Safety (Vehicles) Amendment Regulations 2010
SR No. 31	Transport (Accident (Impairment) Regulations 2010

ADDITIONAL INSTRUMENTS

Code of Practice

Code of Pracative for Worksite Safety – Traffic Management

APPENDIX 3

MINISTERIAL CORRESPONDENCE

This Appendix contains a list of correspondence sent to responsible Ministers by the Subcommittee regarding regulations made in 2010. The Appendix categorises correspondence in accordance with the nature of the issue raised by the Subcommittee

Regulation	Minister	Issue
SR No. 1 – <i>Associations Incorporation Amendment (Fees and Other Matters Regulations 2010)</i>	Minister for Consumer Affairs	Sought further explanation from the Minister as to why it is necessary to prescribe a maximum fine of \$500 which can be imposed by an incorporated association on its members.
SR No. 9 – <i>Road Safety (Driving Instructors) Regulations 2010</i>	Minister for Roads and Ports	Sought clarification from the Minister as to whether the obligation in regulation 15 should be confined by reference to the relevance of the information and a minimum period of time during which the change in formation has operated.
SR No. 42 – <i>Health Practitioner Regulation National Law Regulation</i>	Minister for Health	Sought background information from the Minister.
SR No. 44 – <i>Land Acquisition and Compensation Regulations 2010</i>	Attorney-General	Query about the compatibility of Regulation 6 with the Charter of Human Rights and Responsibilities Act 2006.

APPENDIX 4

COMMITTEE PRACTICE NOTES

EXEMPTIONS AND EXCEPTIONS

- **Dating Certificates.** The Subcommittee has occasionally been presented with undated exemption and exception certificates. The Subcommittee expects all certificates to be dated.
- **Reasons for Exemption.** The Subcommittee has occasionally received regulations exempted under section 9 with certificates of exemption which fail to adequately explain the reasons for granting the exemption or with reasons for granting the exemption contained in the Explanatory Memorandum. It should be noted that it is a requirement of section 9(2) of the *Subordinate Legislation Act 1994* (Vic) that certificates of exemption 'specify the reasons for the exemption'. The Subcommittee expects all exemption certificates to contain adequate explanations of the reasons for granting the exemptions.
- **Extension of Regulations for Periods up to 12 months.** Regulations expire 10 years after they have been made. The Subcommittee has been presented with a number of regulations made under sections 8(1)(d)(iii) and 5(3) extending regulations due to expire for periods up to 12 months. Before an extension of time can be granted, the Minister must certify that due to 'special circumstances' there is insufficient time available to comply with the formal regulation-making requirements of the *Subordinate Legislation Act 1994*. The Subcommittee expects details of the 'special circumstances' to be contained in the section 5(3) certificate itself as required by the *Subordinate Legislation Act 1994*. Please see additional general comments below.
- **Using Appropriate Exemption and Exception Categories.** Department and agency officers need to be careful when determining which category to use when exempting and excepting regulations from the Regulation Impact Statement process. The Subcommittee has occasionally received regulations which are incorrectly exempted and excepted.
- **Typographical Errors.** Department and agency officers need to be careful when preparing certificates to ensure that they do not contain typographical errors.

EXTENSION OF TIME

The Subcommittee is often presented with regulations which require an extension of time for a period of twelve months. Such regulations are accompanied by a section 5(3) certificate of special circumstances which outlines the particular reasons for the extension. It is difficult for the Subcommittee to know whether any particular regulation has been accompanied by a previous extension of time certificate. Ongoing extensions of time in respect of a particular regulation are clearly matters upon which the Subcommittee would make adverse comment.

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

EXPLANATORY MEMORANDA

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

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

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

Regulations increasing fees made under section 8(1)(a) of the *Subordinate Legislation Act 1994* (Vic) must not increase fees by more than the percentage set by the Treasurer. For each financial year a percentage increase is set by the Treasurer. The Treasurer notifies the Subcommittee in writing of the relevant percentage increase.

A regulation may increase a number of fees, with some individual fee increases falling outside the rate set by the Treasurer. However when the total average of fee increases for that regulation is calculated, it falls within the rate fixed by the Treasurer. This practice is referred to as the 'basket approach'. Paragraph 5.25 of the Premier's Guidelines provides that:-

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

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

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

The Subcommittee will examine each regulation carefully. The Subcommittee is conscious of its statutory obligations. The Subcommittee's view is that it is a matter of balance. The 'basket' of fees in its entirety must not exceed the Treasurer's approved annual rate. However if, in a package of a number of fees, three or four slightly exceed the Treasurer's annual rate then that may not necessarily be an immediate cause for concern. Rather, the Subcommittee will examine each fee increase, the monetary amount and what the fee is for. Each Regulation will be examined on its merits and in context.

At this stage, the Guidelines have only been in operation for over a year. The Subcommittee will continue to carefully scrutinise the Regulations and the Guidelines.

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

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

INDEPENDENT ADVICE CERTIFICATES: 10(3)

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

LEGISLATIVE INSTRUMENTS OUTSIDE THE SUBORDINATE LEGISLATION ACT 1994

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

PROVISION OF DOCUMENTATION TO REGULATION REVIEW SUBCOMMITTEE

The Subcommittee needs to receive Explanatory Memoranda, all certificates, Regulation Impact Statements and comments and submissions made in relation to Regulation Impact Statements within 7 days after a regulation has been made. The Subcommittee has a limited time within which to review regulations. If the Committee wants to move for disallowance of a regulation it must do so within 18 sitting days of that regulation being tabled in Parliament. Prior to the Committee moving a motion for disallowance, the Subcommittee corresponds and negotiates with the particular Minister. The Subcommittee needs sufficient time for this process to take place.

Paragraph 5.51 of the Guidelines provides that: -

All certificates required under the Act are to be signed and dated with the date of the day of signing. Copies of all certificates prepared in the course of making statutory rules are to be forwarded to SARC within 7 days of the making of the statutory rule, or within 7 days of the establishment of SARC (whichever is the longer period of time).

RECOMMENDATIONS

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

APPENDIX 5
SARC REGULATIONS CHECKLISTS

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

EXCEPTIONS AND EXEMPTIONS

CHECKLIST:

Exception Certificate – Section 8

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

Court Rules – Section 8(1)(b)

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

Extension of Time – Section 8(1)(d)(iii)

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

Exemption Certificate – Section 9

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

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

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

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

REGULATION IMPACT STATEMENTS

CHECKLIST:

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

*see paragraph 10.03 of Premier's Guidelines

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