



Scrutiny of Acts and Regulations Committee

Practice Note

10 August 2026

The Committee's terms of reference are set out in section 17 of the *Parliamentary Committees Act 2003* (Act) and section 30 of the *Charter of Human Rights and Responsibilities Act 2006* (Charter). Generally, the Committee meets on the Monday of a Sitting week to consider the Bills introduced into the Parliament. The report on the Bills (otherwise referred to as the 'Alert Digest') is tabled on the Tuesday of a Sitting week.

The Practice Note provides advice to government legal and legislation officers. It sets out information which should be provided to the Parliament in relation to a Bill which engages the terms reference. It provides general guidance as to the Committee's expectations.

A Terms of reference – Section 17 of the Act

Practices of concern to the Committee include provisions in Bills which inadequately explain or justify:

- (i) retrospective commencement on a particular date and whether any person may be adversely affected by the retrospectivity
- (ii) wide or undefined delegation of administrative powers or functions
- (iii) commencement by proclamation or delayed commencement which is longer than 12 months after introduction
- (iv) where the Bill provides insufficient or unhelpful explanatory material in relation to rights or freedoms and other key provisions. Examples include;
 - Powers of arrest, detention and deprivation of liberty
 - Search and seizure powers without judicial warrant
 - Creation of strict or absolute liability offences
 - Reversal of onus of proof in criminal (or civil penalty) offences
 - Abridgment of the right to silence or the privilege against self-incrimination
 - Freedom of communication, assembly, movement, association, religion or conscience
 - Infringement of the right to vote
 - Denial of or failure to advise of, judicial or merits review of administrative decisions
 - Denial or abridgment of the principle of 'fair trial' or the principles of natural justice
 - Acquisition of property without adequate compensation
 - Privacy of information and health records
 - Is characterised as a 'statute law revision amendment'
 - Inappropriately delegates legislative power [Examples: allow regulations to alter the provisions of an Act, or allow regulations to establish a tax (as distinct from a fee for service or penalty)].

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A provision in a Bill may be of concern in relation to the foregoing practices. In those circumstances the Committee expects the Parliament will be provided with additional information. This may include an explanation as to why the provision is necessary or desirable.

For example, an explanation should include the reasons:-

- why a specific retrospective date is chosen and whether any person may be adversely affected by its retrospective application;
- why a wide or undefined delegation of administrative powers or functions is desirable;
- why a delayed commencement or commencement by proclamation is necessary or desirable.

The Committee may report to the Parliament or write to the relevant Minister seeking further explanation where insufficient information is provided. The Alert Digest records the advice which will be sought from the responsible Minister or Member introducing the Bill. The response is published in the Alert Digest at the earliest opportunity.

B Terms of reference – Section 30 of the Charter

Section 28 of the Charter provides a member of Parliament who proposes to introduce a Bill into a House of Parliament must cause the preparation and tabling of a ‘statement of compatibility’ (SoC). The Committee has determined it will characterise a SoC as a form of explanatory memorandum, equivalent in status to an explanatory memorandum accompanying a Bill.

The Committee considers where House Amendments are proposed for a Bill which are unrelated to the Bill’s purpose as introduced, supplementary information should be provided to Parliament as to the compatibility of those amendments with the Charter’s rights.

Where the SoC is inadequate, unhelpful or there is insufficient information in describing the purpose or effect of provisions in a Bill that may engage or infringe a Charter right or affect an operative provision of the Charter, the Committee may report the matter to the Parliament, or write to the relevant Minister seeking a further explanation.¹ The Committee provides additional comments about how a SoC or other explanatory material should address the following types of provisions:

(i) Spent convictions (Charter ss. 8, 17, 18 & 25, and s. 6(pb) of the *Equal Opportunity Act 2010*):

The SoC (or explanatory material) for provisions that permit or require the disclosure or use of any part of a person’s criminal record should state whether or not the disclosure or use may include a spent conviction. The explanatory material may address the relationship between the provision and the *Spent Convictions Act 2020* and its regulations. The SoC may address whether or not any disclosure or use of a spent conviction is compatible with the rights against discrimination in Charter ss. 8, 17, 18 and 25.

(ii) Penalties, fines and other burdens (Charter ss. 21(5) & 22-27):

The SoC for provisions which may impose penalties, fines or other burdens on a person who is found to have breached a rule or standard, should state whether or not it is a criminal penalty for the purposes of the Charter. The Committee notes that such a penalty may be a criminal penalty for the purposes of the Charter, even if Victorian law characterises it otherwise, e.g. as a civil, disciplinary or regulatory penalty. The explanatory material may address whether or not the penalty is equivalent in effect to a criminal penalty having regard to its nature or severity. Where a penalty is a criminal penalty for the purposes of the Charter, the explanatory material may address whether or not the legislation that imposes it is compatible with the criminal process rights set out in Charter ss. 21(5) and 22-27.

¹ The Committee may comment under section 17 of the Act and section 30 of the Charter.

(iii) Self-incrimination provisions (Charter ss. 24(1) & 25(2)(k)):

The SoC for a provision of any Bill which provides that a human being must answer questions or provide information or documents that may tend to incriminate that person (or creates new powers or extends existing ones that are subject to such a provision) should state whether and how that provision satisfies the test for reasonable limits on rights in Charter s. 7(2). The Committee would prefer the analysis of reasonable limits set out the demonstrable justification for: the coercive power itself; any removal of the privilege against self-incrimination; any permission to use the answers or information derived from them in later proceedings; and any preconditions on the availability of protections against self-incrimination. The SoC's discussion of less restrictive alternatives reasonably available to achieve the purpose of the provision may address whether the privilege against self-incrimination could be abrogated in a narrower way.

(iv) Reverse onus provisions (Charter s. 25(1)):

The SoC for any Bill that creates a provision that reduces the prosecution's burden to prove the accused's guilt or requires an accused to offer evidence of their innocence (or extends the operation of or increases the applicable penalty in respect of such a provision) should state whether and how that provision satisfies the Charter's test for reasonable limits on rights. Examples of such provisions include ones that place the legal onus of proof on an accused with respect to any issue in a criminal proceeding; deem a fact to be proved in any circumstance; provide that proof of any fact is 'prima facie evidence' of a different fact; or place an evidential onus on an accused with respect to an essential element of an offence. The Committee would prefer that the analysis of reasonable limits assess the risk that the provision may allow an innocent person to be convicted of the offence and set out the demonstrable justification for allowing such a risk. In the case of a provision that places a legal onus on an accused, the analysis may address whether an evidential onus would be a less restrictive alternative reasonably available to achieve the provision's purpose.

In addition, the SoC (or explanatory material) for a provision that introduces or significantly alters an exception to a criminal offence should state whether or not the exception places a legal onus on the accused. Examples of such exceptions include provisions stating that 'It is a defence to a prosecution for an offence if...' or 'A person is not liable to be prosecuted for an offence if...' or 'A person is not guilty of an offence if...' or a particular offence provision 'does not apply if'. For exceptions to summary offences, the explanatory material may address the effect of s.72 of the *Criminal Procedure Act 2009*. For exceptions that impose a legal onus on the accused without express words to that effect, the SoC may address whether or not the inclusion of express words would be a less restrictive alternative reasonably available to achieve the exception's purpose.

(v) Compliance notices for suspected criminals (Charter s. 25(1)):

The explanatory material for any Bill that creates a provision permitting a person suspected of a criminal offence to be given a notice that specifies actions the person should state whether or not the commission of the suspected offence must be proved in any proceedings for breach of the notice. If no such proof is required, then the SoC should examine whether the provision reasonably limits the right to the presumption of innocence in Charter s. 25(1). The discussion may consider whether expressly providing for a court to review the notice, before or after any alleged contravention, is a less restrictive alternative reasonably available to achieve the provision's purpose.

(vi) National uniform legislation schemes (Charter ss. 28, 30, 32, 36 & 38):

The SoC (or explanatory material) for a Bill that applies non-Victorian laws or refers powers to non-Victorian bodies should fully explain those laws' human rights impact. The Committee would prefer that

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the explanation have two components: First, the SoC may assess the human rights compatibility of all existing non-Victorian laws that are to be applied in Victoria. Second, the SoC (or explanatory material) may set out whether, and to what extent, the Charter's operative provisions (including its provisions for scrutiny, interpretation, declarations of inconsistent interpretation and obligations of public authorities) will apply under the national uniform legislation scheme.

This information may be found online at www.parliament.vic.gov.au/practicenote

The Committee may be contacted at sarc@parliament.vic.gov.au