

PARLIAMENT OF VICTORIA

**Freedom of Information and Victorian Inspectorate
Acts Amendment Bill 2014**

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PARLIAMENT OF VICTORIA

Introduced in the Assembly

Freedom of Information and Victorian Inspectorate Acts Amendment Bill 2014

A Bill for an Act to amend the **Freedom of Information Act 1982**
and the **Victorian Inspectorate Act 2011** and for other purposes.

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to amend the **Freedom
of Information Act 1982** and the **Victorian
Inspectorate Act 2011**.

5

2 Commencement

(1) This Act (except section 28) comes into operation
on the day after the day on which it receives the
Royal Assent.

10

(2) Subject to subsection (3), section 28 comes into
operation on a day to be proclaimed.

Freedom of Information and Victorian Inspectorate Acts Amendment Bill
2014

s. 2

Part 1—Preliminary

- (3) If section 28 does not come into operation before 1 August 2015, it comes into operation on that day.
-

PART 2—FREEDOM OF INFORMATION ACT 1982

3 Definitions

In section 5(1) of the **Freedom of Information Act 1982** insert the following definitions—

Assistant Commissioner means an Assistant Freedom of Information Commissioner appointed under Part IA;

business day means a day other than a Saturday, a Sunday or a public holiday or half-holiday appointed under the **Public Holidays Act 1993**;

See:
Act No.
9859.
Reprint No. 8
as at
1 December
2012
and
amending
Act Nos
82/2012,
70/2013,
1/2014 and
17/2014.
LawToday:
www.
legislation.
vic.gov.au

4 Act not to apply to access to certain documents

In section 6AA(a) and (c) of the **Freedom of Information Act 1982**, after "Commissioner" insert "or an Assistant Commissioner".

5 Functions and powers of Freedom of Information Commissioner

(1) In section 6C(1)(b) of the **Freedom of Information Act 1982**, for "under this Act" substitute "in accordance with Division 1 of Part VI".

(2) After section 6C(3) of the **Freedom of Information Act 1982** insert—

"(4) The Freedom of Information Commissioner must perform functions and exercise powers under this or any other Act with as little formality and technicality as possible."

6 New section 6DA, 6DB and 6DC inserted

After section 6D of the **Freedom of Information Act 1982 insert—**

"6DA Appointment of Assistant Commissioners

- 5 (1) The Governor in Council may appoint an eligible person as an Assistant Freedom of Information Commissioner.
- 10 (2) A person is eligible to be appointed as an Assistant Commissioner if the person is eligible to be appointed as the Freedom of Information Commissioner.
- (3) The Governor in Council may appoint as many Assistant Commissioners as are required.

15 **6DB Functions and powers of Assistant Commissioners**

- 20 (1) An Assistant Commissioner has the following functions—
- (a) to conduct reviews of decisions by agencies on requests in accordance with Division 1 of Part VI;
- (b) to handle complaints in accordance with Part VIA;
- 25 (c) to assist the Freedom of Information Commissioner in the management of the office of the Freedom of Information Commissioner;
- (d) any other functions conferred on an Assistant Commissioner by or under this or any other Act.
- 30 (2) An Assistant Commissioner has power to do all things necessary or convenient to be done in connection with the performance of functions under this Act.

(3) An Assistant Commissioner must have regard to the object of this Act in performing functions or exercising powers under this Act.

5

(4) An Assistant Commissioner must perform functions and exercise powers under this or any other Act with as little formality and technicality as possible.

10

6DC Assistant Commissioner is responsible to Freedom of Information Commissioner

15

(1) An Assistant Commissioner is responsible to the Freedom of Information Commissioner for the due performance of the Assistant Commissioner's functions and exercise of the Assistant Commissioner's powers under this or any other Act.

20

(2) Nothing in subsection (1) empowers the Freedom of Information Commissioner to give any direction to an Assistant Commissioner with respect to—

25

- (a) the conduct of a review by the Assistant Commissioner under Division 1 of Part VI; or
- (b) the handling of a complaint by the Assistant Commissioner under Part VIA."

7 Other amendments for Assistant Commissioners

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(1) In sections 6E and 6F of the **Freedom of Information Act 1982**, after "Commissioner" (wherever occurring) **insert** "or an Assistant Commissioner".

(2) In section 6G of the **Freedom of Information Act 1982**, after "Commissioner" **insert** "or an Assistant Commissioner".

(3) After section 6H(5) of the **Freedom of Information Act 1982** insert—

"(6) The Governor in Council may remove an Assistant Commissioner from office on any of the following grounds—

- (a) misconduct;
- (b) neglect of duty;
- (c) inability to perform the duties of the office;
- (d) any other ground on which the Governor in Council is satisfied that the Assistant Commissioner is unfit to hold office."

8 Acting Assistant Commissioners

(1) In the heading to section 6I of the **Freedom of Information Act 1982**, after "**Commissioner**" insert "**and Assistant Commissioners**".

(2) After section 6I(1) of the **Freedom of Information Act 1982** insert—

"(1A) The Minister may appoint a person eligible to be appointed as an Assistant Commissioner to act as an Assistant Commissioner—

- (a) within 6 months after an Assistant Commissioner has ceased to hold office; or
- (b) during any period, or all periods, when an Assistant Commissioner is absent from duty or from the State or, for another reason, cannot perform the functions of the office; or
- (c) during a period when an Assistant Commissioner is acting as the Freedom of Information Commissioner."

(3) In section 6I of the **Freedom of Information Act 1982**—

(a) in subsection (2), for "The appointment" **substitute** "An appointment under subsection (1) or (1A)";

(b) in subsection (3), after "subsection (1)" **insert** "or (1A)".

(4) After section 6I(4) of the **Freedom of Information Act 1982** **insert**—

"(4A) The Minister may at any time remove an Acting Assistant Commissioner from office."

(5) In section 6I(5) of the **Freedom of Information Act 1982**, after "Commissioner" (where twice occurring) **insert** "or Assistant Commissioner".

9 Delegation

(1) In section 6K of the **Freedom of Information Act 1982**—

(a) in paragraph (a), for "decision" **substitute** "fresh decision under section 49P";

(b) in paragraph (b), after "recommendations" **insert** "under section 61L".

(2) At the end of section 6K of the **Freedom of Information Act 1982** **insert**—

"(2) The Freedom of Information Commissioner may by instrument delegate to an Assistant Commissioner any of the Freedom of Information Commissioner's functions and powers except—

(a) the power to prepare a report under Part VII; or

(b) this power of delegation.

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Part 2—Freedom of Information Act 1982

(3) An Assistant Commissioner may by instrument delegate to a person referred to in section 6J any of the Assistant Commissioner's functions and powers except—

- (a) the power to make a fresh decision under section 49P on a review under Part VI; or
- (b) the power to make recommendations under section 61L in relation to a complaint under Part VIA; or
- (c) this power of delegation."

10 Time for applying for review

After section 49B(2) of the **Freedom of Information Act 1982** insert—

"(3) The Freedom of Information Commissioner may accept an application for review made outside the period referred to in subsection (1) or (2) if satisfied that the application is made out of time because of an act or omission of the agency concerned."

11 Notice of application for review

(1) In the heading to section 49D of the **Freedom of Information Act 1982**, after "Notice" insert "and copies".

(2) At the end of section 49D of the **Freedom of Information Act 1982** insert—

"(2) At any time during a review, the Freedom of Information Commissioner, with the consent of the applicant, may provide a copy of the application for review to an agency affected by the review.

- 5 (3) The Freedom of Information Commissioner may provide a copy of the application to an agency under subsection (2) on request by the agency or on the Commissioner's own initiative."

12 New section 49EA inserted and section 49F substituted

For section 49F of the **Freedom of Information Act 1982 substitute—**

10 **"49EA Referral to Assistant Commissioner**

- 15 (1) On receipt of an application for review under this Division, the Freedom of Information Commissioner must—
- (a) refer the application to an Assistant Commissioner to be dealt with by the Assistant Commissioner under this Division; or
- (b) determine to deal with the application under this Division without referring it to an Assistant Commissioner.
- 20 (2) The Freedom of Information Commissioner is not required to consider the subject-matter of an application for review or to make preliminary inquiries or consult with the parties under section 49K before making a referral or determination under subsection (1).

49F Review of Decision

- 30 (1) Subject to this Division, the Assistant Commissioner to whom an application for review has been referred under section 49EA or, if there has been no referral, the Freedom of Information Commissioner may review the decision that is the subject of the
- 35 application.

5

(2) In reviewing a decision, an Assistant Commissioner has all the functions, and may exercise all the powers, of the Freedom of Information Commissioner and, for that purpose, a reference in this Part or in Division 1 or 2 of Part VII to the Freedom of Information Commissioner includes a reference to the Assistant Commissioner.

10

(3) Without limiting subsection (2), a decision of an Assistant Commissioner on a review under this Division is taken to be a decision of the Freedom of Information Commissioner."

13 Procedure on review

15

After section 49H(3) of the **Freedom of Information Act 1982** insert—

"(4) The Freedom of Information Commissioner may rely on advice and assistance provided by a person referred to in section 6J in—

20

- (a) making preliminary inquiries in relation to a review; and
- (b) conducting a review; and
- (c) making a fresh decision under section 49P on a review."

25

14 New sections 49L and 49M substituted and section 49MA inserted

For sections 49L and 49M of the **Freedom of Information Act 1982** substitute—

30

"49L Referral back to agency for reconsideration

(1) After making preliminary inquiries, the Freedom of Information Commissioner, with the agreement of the applicant, may refer the matter that is the subject of the application

- 5 back to the agency for reconsideration if it
appears to the Commissioner reasonably
likely that the agency will be able to make a
fresh decision in a way that is satisfactory to
the applicant and in accordance with law.
- 10 (2) The fresh decision must be made within
45 days after the referral under subsection
(1) unless the agency and the Freedom of
Information Commissioner agree in writing
to another period.
- 15 (3) The required period for completing the
review under section 49J is suspended from
the time the Freedom of Information
Commissioner refers the matter back to the
agency under subsection (1).
- 20 (4) The agency must notify the Freedom of
Information Commissioner within 3 business
days after the end of the period referred to in
subsection (2) that—
- (a) a fresh decision has been made; or
(b) a fresh decision has not been made.
- 25 (5) If the agency makes a fresh decision, the
agency must—
- (a) revoke the earlier decision; and
(b) inform the applicant, when notifying
them of the fresh decision, of the
requirements of subsection (6) and the
effect of subsection (7).
- 30 (6) Within 28 days after being notified of the
fresh decision by the agency, the applicant
must advise the Freedom of Information
Commissioner in writing whether the
applicant agrees or does not agree with the
decision.

5 (7) If the applicant fails to advise the Freedom of Information Commissioner under subsection (6) within the period specified in that subsection, the applicant is taken to agree with the fresh decision.

49M Reconsideration at agency's own initiative

10 (1) During a review under this Division, an agency may notify in writing the Freedom of Information Commissioner and the applicant that the agency is reconsidering the matter that is the subject of the review at the agency's own initiative and, if so, the agency may make a fresh decision.

15 (2) The fresh decision must be made within 45 days after the notification under subsection (1) unless the agency and the Freedom of Information Commissioner agree in writing to another period.

20 (3) The required period for completing the review under section 49J is suspended from the time the agency notifies the Freedom of Information Commissioner under subsection (1).

25 (4) The agency must notify the Freedom of Information Commissioner within 3 business days after the end of the period referred to in subsection (2) that—

- (a) a fresh decision has been made; or
- (b) a fresh decision has not been made.

30 (5) If the agency makes a fresh decision, the agency must—

- (a) revoke the earlier decision; and

(b) inform the applicant, when notifying them of the fresh decision, of the requirements of subsection (6) and the effect of subsection (7).

5

(6) Within 28 days after being notified of the fresh decision by the agency, the applicant must advise the Freedom of Information Commissioner in writing whether the applicant agrees or does not agree with the decision.

10

(7) If the applicant fails to advise the Freedom of Information Commissioner under subsection (6) within the period specified in that subsection, the applicant is taken to agree with the fresh decision.

15

(8) An agency may make a fresh decision under this section only once during a review under this Division.

49MA Procedure after reconsideration under section 49L or 49M

20

(1) If an applicant agrees with a fresh decision made by an agency under section 49L or 49M, the Freedom of Information Commissioner must dismiss the review.

25

(2) Subject to subsection (4), if the applicant does not agree with the fresh decision—

30

(a) the Freedom of Information Commissioner must complete the review on the basis of the fresh decision; and

35

(b) the required period under section 49J for the Freedom of Information Commissioner to complete the review is extended to the end of 30 days after the date on which the applicant advises the Commissioner under section 49L(6)

or 49M(6) that the applicant does not agree with the fresh decision.

(3) Subject to subsection (4), if the agency does not make a fresh decision under section 49L or 49M within the period referred to in section 49L(2) or 49M(2)—

(a) the Freedom of Information Commissioner must recommence the review; and

(b) the required period under section 49J for the Freedom of Information Commissioner to complete the review is extended to the end of 14 days after the earlier of—

(i) the date on which the notice under section 49L(4) or 49M(4) is given; or

(ii) the end of the period within which the notice under section 49L(4) or 49M(4) is required to be given.

(4) A review cannot be completed under this section in relation to a fresh decision if the decision is to refuse to grant access to a document on the basis that the document is claimed to be exempt under section 28 or 29A."

15 New section 49OA inserted

After section 49O of the **Freedom of Information Act 1982** insert—

"49OA Review of decisions under section 25A(5)

(1) In conducting a review of a decision of an agency under section 25A(5) to refuse to grant a request for access to documents, the Freedom of Information Commissioner must determine whether to refuse to grant the

request under section 25A(5) without requesting the agency to search for or otherwise identify the documents to which the request relates.

- 5 (2) Nothing in subsection (1) prevents the Freedom of Information Commissioner exercising a power under section 63C if the Freedom of Information Commissioner determines that the request should not have
10 been refused under section 25A(5)."

16 Decision on review

- (1) In section 49P(5) of the **Freedom of Information Act 1982**, after "must" insert ", if practicable,".
- 15 (2) After section 49P(5) of the **Freedom of Information Act 1982** insert—
- "(6) If the review is conducted by an Assistant Commissioner, the Assistant Commissioner must notify the Freedom of Information Commissioner of the Assistant
20 Commissioner's decision under this section on the review.

Note

See section 49F for reviews conducted by an Assistant Commissioner."

25 17 Application for review by the Tribunal

- (1) Section 50(3E) of the **Freedom of Information Act 1982** is repealed.
- (2) After section 50(3F) of the **Freedom of Information Act 1982** insert—
- 30 "(3FA) If an application for review is made under subsection (1)(b), (c), (d) or (g), the agency concerned must, as soon as practicable, notify the Freedom of Information Commissioner in writing."

18 Complaints—time limit

After section 61A(4) of the **Freedom of Information Act 1982** insert—

5 "(5) The Freedom of Information Commissioner may accept a complaint made outside the period referred to in subsection (4) if satisfied that the complaint is made out of time because of an act or omission of the agency or Minister concerned."

10 **19 New section 61AB inserted**

After section 61A of the **Freedom of Information Act 1982** insert—

"61AB Referral to Assistant Commissioner

15 (1) On receipt of a complaint, the Freedom of Information Commissioner must—

(a) refer the complaint to an Assistant Commissioner to be dealt with by the Assistant Commissioner under this Part; or

20 (b) determine to deal with the complaint under this Part without referring it to an Assistant Commissioner.

25 (2) The Freedom of Information Commissioner is not required to consider the subject-matter of a complaint or to conduct preliminary inquiries or consult under section 61G(1) before making a referral or determination under subsection (1).

30 (3) In dealing with a complaint referred under subsection (1)(a), an Assistant Commissioner has all the functions, and may exercise all the powers, of the Freedom of Information Commissioner and, for that purpose, a reference in this Part or in
35 Division 1 or 2 of Part VII to the Freedom of

Information Commissioner includes a reference to the Assistant Commissioner.

- 5 (4) Without limiting subsection (3), a recommendation of an Assistant Commissioner on a complaint under this Part is taken to be a recommendation of the Freedom of Information Commissioner."

10 **20 Procedure for dealing with complaint if conciliation fails**

After section 61I(4) of the **Freedom of Information Act 1982** insert—

- 15 "(5) The Freedom of Information Commissioner may rely on advice and assistance provided by a person referred to in section 6J in—
- (a) conducting preliminary inquiries into a complaint; and
 - (b) otherwise dealing with a complaint; and
 - (c) making recommendations under section 61L in relation to a complaint."

20 **21 Outcome of complaint**

After section 61L(8) of the **Freedom of Information Act 1982** insert—

- 25 "(9) If the complaint is dealt with by an Assistant Commissioner, the Assistant Commissioner must notify the Freedom of Information Commissioner of the Assistant Commissioner's recommendations in relation to the complaint under this section, and of any referral under subsection (8).

30 **Note**

See section 61AB for complaints dealt with by an Assistant Commissioner."

22 Production of exempt document

In section 63C of the **Freedom of Information Act 1982**—

- 5
- (a) in subsection (2), after "the Commissioner"
insert "or a person referred to in section 6J";
 - (b) in subsection (3)(b), after "Commissioner"
insert "or person referred to in section 6J".

23 New section 63D substituted

10 For section 63D of the **Freedom of Information Act 1982** substitute—

"63D Use of documents claimed to be exempt

- 15
- (1) This section applies to a document that is produced to the Freedom of Information Commissioner in a review under Division 1 of Part VI or in dealing with a complaint under Part VIA and that is claimed to be an exempt document.
 - 20 (2) The Freedom of Information Commissioner must do all things necessary to ensure that only a specified person has access to the document or its contents.
 - 25 (3) A person who is or has been a specified person must not intentionally or recklessly disclose the document or its contents to any person other than—
 - 30 (a) to a specified person in the course of performing the person's functions under this or any other Act or acting for or on behalf of a specified person in the performance of those functions; or

-
- (b) to a representative of the agency or Minister who produced the document; or
- (c) in accordance with section 61N.
- 5 Penalty: 240 penalty units or imprisonment for 2 years or both.
- 10 (4) A specified person may, to the extent practicable without disclosing exempt matter, disclose the nature of the document to the applicant for review or the complainant (as the case requires) if—
- (a) the specified person considers that the disclosure may assist in the resolution of the review or complaint; and
- 15 (b) the agency head, or a person nominated by the agency head, gives prior written consent to the disclosure.
- 20 (5) The Freedom of Information Commissioner may copy the document (unless it is claimed to be exempt under section 28, 29A or 31), but only to the extent necessary for the performance of the Freedom of Information Commissioner's functions in conducting the review or complaint.
- 25 (6) On completion of the review or the complaint process, the Freedom of Information Commissioner must—
- (a) return the document to the agency that produced it; and
- 30 (b) return to that agency, or destroy, any copies of the document.

(7) In this section—

specified person means—

- (a) the Freedom of Information Commissioner; or
- (b) an Assistant Commissioner; or
- (c) an employee, contractor, agent or other person referred to in section 6J."

24 New section 70 inserted

After section 69 of the **Freedom of Information Act 1982** insert—

"70 Transitional provisions—Freedom of Information and Victorian Inspectorate Acts Amendment Act 2014

- (1) If an application has been made for review under Division 1 of Part VI before the commencement day but the Freedom of Information Commissioner has not determined not to accept the application or completed the review before that day, the Freedom of Information Commissioner may, on or after that day, refer the application to an Assistant Commissioner under section 49EA(1)(a).
- (2) If a complaint has been made under Part VIA before the commencement day but the Freedom of Information Commissioner has not determined not to accept the complaint, dismissed the complaint or made recommendations in relation to the complaint before that day, the Freedom of Information Commissioner may, on or after that day, refer the complaint to an Assistant Commissioner under section 61AB(1)(a).

- 5
- 10
- (3) Sections 49L and 49M as substituted by section 14 of the amending Act, and section 49MA as inserted by that section, apply in relation to an application for review under Division 1 of Part VI that is made on or after the commencement day and sections 49L and 49M as in force immediately before the commencement day continue to apply in relation to an application for review made before that day.

- 15
- (4) In this section—

amending Act means the **Freedom of Information and Victorian Inspectorate Acts Amendment Act 2014**;

commencement day means the day after the day on which the amending Act receives the Royal Assent."

PART 3—VICTORIAN INSPECTORATE ACT 2011

25 Definitions

See:
Act No.
70/2011.
Reprint No. 1
as at
5 11 February
2013
and
amending
Act Nos
70/2011,
28/2013,
10 70/2013 and
17/2014.
LawToday:
www.
legislation.
vic.gov.au

Insert the following definitions in section 3(1) of
the **Victorian Inspectorate Act 2011**—

"detained person means—

- (a) a person in prison in the legal custody of the Secretary to the Department of Justice in accordance with the **Corrections Act 1986**; or
- (b) a person in a police gaol in the legal custody of the Chief Commissioner of Police in accordance with the **Corrections Act 1986**; or
- (c) a person in a remand centre, youth justice centre or youth residential centre in the legal custody of the Department of Human Services in accordance with the **Children, Youth and Families Act 2005**; or
- (d) a patient detained in a designated mental health service within the meaning of the **Mental Health Act 2014**; or
- (e) a person detained in a residential service, residential institution or residential treatment facility under Part 8 of the **Disability Act 2006**; or
- (f) a person detained at a treatment centre under a detention and treatment order made under section 20 of the **Severe Substance Dependence Treatment Act 2010**;

person in charge, in relation to a detained person, means the person who is in charge of the place or institution where the person is a detained person;".

5

26 Complaints

At the foot of section 43(1) of the **Victorian Inspectorate Act 2011** insert—

"Note

10

See section 92A for complaints by detained persons.
See section 48A for withdrawal of complaints."

27 New section 48A inserted

After section 48 of the **Victorian Inspectorate Act 2011** insert—

"48A Withdrawal of complaint

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- (1) Subject to subsection (4), a person who makes a complaint may withdraw the complaint at any time after making it.
- (2) If a complaint is withdrawn, the Victorian Inspectorate may continue to investigate the matter that is the subject of the complaint.
- (3) If a complaint is withdrawn and the Victorian Inspectorate continues to investigate the matter that is the subject of the complaint, the investigation is taken to be an investigation conducted by the Victorian Inspectorate on its own motion.
- (4) A complaint that is a protected disclosure complaint may not be withdrawn."

20

25

28 New section 57A inserted

After section 57 of the **Victorian Inspectorate Act 2011** insert—

"57A Witness already held in custody

- 5 (1) If a witness summons is issued to a person who is in a prison or a police gaol, the Victorian Inspectorate may give a written direction that the person be delivered into the custody of a police officer for the purpose of
- 10 bringing the person before the Victorian Inspectorate as required by the witness summons.
- (2) A direction under subsection (1)—
- 15 (a) must be in the prescribed form; and
- (b) must include a statement that, if the person who is the subject of the direction is under the age of 16 years at the date the direction is given, the direction is of no effect and the person
- 20 is not required to attend the Victorian Inspectorate.
- (3) While a person who is the subject of a direction under subsection (1) is absent from a prison or a police gaol, the person is
- 25 deemed to be in the legal custody of the police officer.
- (4) The person is to be detained in the legal custody of the police officer until the person is excused by the Victorian Inspectorate
- 30 from attendance.
- (5) When the person is excused by the Victorian Inspectorate from attendance, the police officer must return the person to the prison or the police gaol from which the person was
- 35 removed."

29 New section 92A inserted

After the heading to Division 1 of Part 8 of the
Victorian Inspectorate Act 2011 insert—

"92A Complaints etc. by detained person

5

(1) This section applies if a detained person
wishes to—

(a) provide information or make a
complaint to the Victorian Inspectorate
under this Act; or

10

(b) make a disclosure to the Victorian
Inspectorate under Part 2 of the
Protected Disclosure Act 2012.

15

(2) The detained person may inform the person
in charge that he or she wishes to
communicate with the Victorian
Inspectorate.

(3) The detained person is not required to inform
the person in charge of the content or
purpose of that communication.

20

(4) On being informed by the detained person of
his or her wish to communicate with the
Victorian Inspectorate, the person in charge
must—

25

(a) take all reasonable steps to facilitate
that communication; and

(b) subject to subsection (6), immediately
forward, unopened, to the Victorian
Inspectorate any letter addressed to the
Victorian Inspectorate by the detained
person.

30

(5) Subject to subsection (6), if a letter from the
Victorian Inspectorate is addressed to the
detained person, the person in charge must

ensure that it is immediately forwarded,
unopened, to the detained person.

5 (6) If a letter referred to in subsection (4)(b)
or (5) is suspected by the person in charge to
contain drugs, weapons or other contraband,
the letter may be opened by the person in
charge, or his or her delegate, in the presence
of—

10 (a) in the case of a letter addressed to the
Victorian Inspectorate—

(i) the person who wrote the letter;
and

15 (ii) a Victorian Inspectorate Officer or
a person approved in writing by
the Inspector; or

(b) in the case of a letter from the Victorian
Inspectorate to the detained person—

(i) the person to whom the letter is
addressed; and

20 (ii) a Victorian Inspectorate Officer or
a person approved in writing by
the Inspector.

25 (7) Subject to subsection (6), a person, including
a person in charge, must not prevent or
hinder the forwarding, unopened, of a
letter—

(a) addressed to the Victorian Inspectorate
from a detained person; or

30 (b) to a detained person from the Victorian
Inspectorate.

Penalty: 120 penalty units or imprisonment
for 12 months or both."

30 New sections 97A and 97B inserted

After section 97 of the **Victorian Inspectorate Act 2011** insert—

"97A Criminal liability of officers of bodies corporate—accessorial liability

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- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer—
 - (a) authorised or permitted the commission of the offence by the body corporate; or
 - (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the body corporate.
 - (2) For the purposes of subsection (1), the following provisions are specified—
 - (a) section 39(1);
 - (b) section 39(4);
 - (c) section 39(5);
 - (d) section 64(1);
 - (e) section 64(2);
 - (f) section 66;
 - (g) section 92(1);
 - (h) section 95;
 - (i) section 96;
 - (j) section 97.
 - (3) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were

charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.

5 (4) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

10 (5) In this section—

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

15 *officer* in relation to a body corporate means—

(a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or

20 (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

25 (6) This section does not affect the operation of section 323 or 324 of the **Crimes Act 1958** or section 52 of the **Magistrates' Court Act 1989**.

30 **97B Maximum fine for body corporate**

35 (1) If a body corporate is found guilty of an offence against this Act or the regulations and the court has power to fine the body corporate, it may, unless the contrary intention appears, impose on the body

5 corporate a fine not greater than 5 times the
amount of the maximum fine that could be
imposed by the court on a natural person
found guilty of the same offence committed
at the same time.

(2) This section has effect despite—

(a) anything to the contrary in the
Sentencing Act 1991; and

10 (b) the prescription of a maximum fine for
the offence applicable to all offenders."

31 Insertion of Notes

(1) At the foot of section 39 of the **Victorian
Inspectorate Act 2011** insert—

"Note

15 Section 97A applies to an offence against subsection (1), (4)
or (5)."

(2) At the foot of section 64 of the **Victorian
Inspectorate Act 2011** insert—

"Note

20 Section 97A applies to an offence against subsection (1)
or (2)."

(3) At the foot of section 66 of the **Victorian
Inspectorate Act 2011** insert—

"Note

25 Section 97A applies to an offence against this section."

(4) At the foot of section 92(1) of the **Victorian
Inspectorate Act 2011** insert—

"Note

Section 97A applies to an offence against this subsection."

s. 31

Part 3—Victorian Inspectorate Act 2011

(5) At the foot of sections 95, 96 and 97 of the
Victorian Inspectorate Act 2011 insert—

"Note

Section 97A applies to an offence against this section."

PART 4—REPEAL OF AMENDING ACT

32 Repeal of amending Act

This Act is **repealed** on 1 August 2016.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

5

ENDNOTES

By Authority. Government Printer for the State of Victoria.
