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Mr Robert Clark MP
Shadow Attorney General

05 August 2010

Dear Robert,

RE: Subordinate Legislation Amendment Bill 2010

Thank you for the opportunity to comment on the Subordinate Legislation Amendment Bill 2010 (the Bill). Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. Liberty works to defend and extend human rights and freedoms in Victoria.

Liberty Victoria writes to express its concern at the Bill's proposed amendments to the Subordinate Legislation Act 1994 (the Act).

The Bill presents a number of concerns for Liberty Victoria.

1. Section 8 - Substantial Burden

Section 8 of the Bill seeks to provide a mechanism whereby the Minister would be able to avoid the regulatory framework in circumstances where, in the Minister's opinion, "the statutory instrument would not impose a significant economic or social burden on a sector of the public." Currently the Act demands that where a statutory rule imposes an "appreciable" burden the Minister must create a regulatory impact statement. Liberty Victoria submits that the threshold concept of "an appreciable burden" is adequate to protect the interests of the community and that the amendment provides too wide an opportunity for a future Minister to avoid the regulatory framework setup by the Act. Liberty Victoria submits that all statutory instruments that impose an appreciable burden on a sector of the community should be subject to the scrutiny of the regulatory framework setup by the Act.

Section 30 - Human Rights Exemption

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Section 30 of the Bill provides for the inclusion in the Act of a framework relating to the creation of a “human rights certificate.” Whilst Liberty Victoria applauds the government for its extension of the Victorian human rights framework, Liberty is concerned that the exemptions provided for at the proposed section 12D (3) are too wide. The proposed section 12D (3) would exempt a minister from creating a human rights certificate where that Minister is of the opinion that the legislative instrument will not last longer than 12 months and is in response to a “public emergency or likely or actual significant damage to... the economy.” Liberty Victoria submits that this provision provides to wide an opportunity for the avoidance of the human rights framework envisaged by the Bill.

Liberty Victoria submits that if limitations are to be imposed on the human rights under the Victorian Charter of Human Rights and Responsibilities 2006 those limitations should be scrutinised fully. As such, Liberty Victoria is of the opinion that the suggested amendment does not adequately protect the community from the creation of legislative instruments that may impose human rights limitations on people in Victoria.

While Liberty Victoria sees the merit in modernizing the Subordinate Legislation Act 1994, we hold serious concerns that the current Bill is likely to make important elements of the process by which subordinate legislation is created less transparent.

Please do not hesitate to contact Michael Pearce SC (President) or Hugh Crosthwaite (Committee) should you require further information or clarification.

Yours faithfully,

LIBERTY VICTORIA