

No. 10 of 2007

Tuesday, 7 August 2007

On the

Crimes (Decriminalisation of
Abortion) Bill 2007

Gene Technology Amendment Bill
2007

Grain Handling and Storage
Amendment Bill 2007

Justice and Road Legislation
Amendment (Law Enforcement)
Bill 2007

Legal Profession Amendment
(Education) Bill 2007

Parliamentary Salaries and
Superannuation Amendment Bill
2007

Royal Children's Hospital (Land)
Bill 2007

Summary Offences Amendment
(Body Piercing) Bill 2007

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Glossary



- ‘**Article**’ refers to an Article of the International Covenant on Civil and Political Rights;
- ‘**Assembly**’ refers to the Legislative Assembly of the Victorian Parliament;
- ‘**Charter**’ refers to the Victorian *Charter of Human Rights and Responsibilities Act 2006*;
- ‘**child**’ means a person under 18 years of age;
- ‘**Committee**’ refers to the Scrutiny of Acts and Regulations Committee of the Victorian Parliament;
- ‘**Council**’ refers to the Legislative Council of the Victorian Parliament;
- ‘**court**’ refers to the Supreme Court, the County Court, the Magistrates’ Court or the Children’s Court as the circumstances require;
- ‘**Covenant**’ refers to the International Covenant on Civil and Political Rights;
- ‘**human rights**’ refers to the rights set out in Part 2 of the Charter;
- ‘**penalty units**’ refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (*currently one penalty unit equals \$107.43*).
- ‘**Statement of Compatibility**’ refers to a statement made by a member introducing a Bill in either the Council or the Assembly as to whether the provisions in a Bill are compatible with Charter rights.
- ‘**VCAT**’ refers to the Victorian Civil and Administrative Tribunal;

Useful provisions

Section 7 of the *Charter* provides –

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

- (2) *A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—*
- (a) *the nature of the right; and*
 - (b) *the importance of the purpose of the limitation; and*
 - (c) *the nature and extent of the imitation; and*
 - (d) *the relationship between the limitation and its purpose; and*
 - (e) *any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.*

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

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



Terms of Reference

Parliamentary Committees Act 2003

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 upon rights or freedoms;
 - (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;
 - (iii) makes rights, freedoms or obligations dependent upon 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*;
- (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;*
- (g) to review any Act in accordance with the terms of reference under which the Act is referred to the Committee under this Act.

The Committee has considered the following Bills–

Crimes (Decriminalisation of Abortion) Bill 2007
Gene Technology Amendment Bill 2007
Grain Handling and Storage Amendment Bill 2007
Justice and Road Legislation Amendment (Law Enforcement) Bill 2007
Legal Profession Amendment (Education) Bill 2007
Parliamentary Salaries and Superannuation Amendment Bill 2007
Royal Children's Hospital (Land) Bill 2007
Summary Offences Amendment (Body Piercing) Bill 2007



Role of the Committee

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

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

Alert Digest No. 10 of 2007

Crimes (Decriminalisation of Abortion) Bill 2007

Introduced	18 July 2007
Second Reading Speech	19 July 2007
House	Legislative Council
Member introducing Bill	Hon. Candy Broad MLC
Portfolio responsibility	Attorney-General

Purpose

The Bill proposes to abolish the offences of unlawful abortion by the repeal of two relevant provisions in the *Crimes Act 1958* (the 'Act'), to abolish any common law offences of unlawful abortion and to ensure the provision of safe and competent health services to women having an abortion.

Content and Committee comment

[Clauses]

[2]. Provides for the Act to come into operation on the day after Royal Assent.

[3]. Makes amendments to section 10 of the Act ('child destruction') consequential on the repeal of section 65.

[4]. Inserts a new section 34AA creating an offence for a person to perform abortions unless they are a medical practitioner; or the person performs the abortion under the direction or supervision of a medical practitioner.

[5]. Repeals sections 65 and 66 to abolish the criminal offences of unlawful abortion (relating to women undertaking abortion and people involved in the performance of abortion) and replaces it with a new subdivision that abolishes any common law offences of unlawful abortion to remove any doubt about the existence of those criminal offences.

The sections sought to be repealed are –

Part I – Division 1 subdivision (11) – Attempts to procure abortion

65. Abortion

Whosoever being a woman with child with intent to procure her own miscarriage unlawfully administers to herself any poison or other noxious thing or unlawfully uses any instrument or other means, and whosoever with intent to procure the miscarriage of any woman whether she is or is not with child unlawfully administers to her or causes to be taken by her any poison or other noxious thing, or unlawfully uses any instrument or other means with the like intent, shall be guilty of an indictable offence, and shall be liable to level 5 imprisonment (10 years maximum).

66. Supplying or procuring anything to be employed in abortion

Whosoever unlawfully supplies or procures any poison or other noxious thing or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent

to procure the miscarriage of any woman, whether with child or not, shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

The proposed new section 65 provides –

65. *Abrogation of common law rule of unlawful abortion*

Any rule of common law that creates an offence of unlawful abortion in relation to procuring a woman's miscarriage is hereby abrogated.

[6]. Provides for the automatic repeal of the Act on the first anniversary of its commencement.



Charter of Human Rights and Responsibilities Act 2006

Keywords: *Right to life – Charter applies to ‘persons’ – Person defined in Charter as ‘human being’ – Charter silent as to when life commences – Whether a foetus is a ‘human being’ – Charter excludes laws concerning abortion*

The Committee notes the following relevant provisions of the Charter –

3. Definitions

‘person’ means a human being;

6. Application

(1) Only persons have human rights. All persons have the human rights set out in Part 2.

9. Right to life

Every person has the right to life and has the right not to be arbitrarily deprived of life.

48. Savings provision

Nothing in this Charter affects any law applicable to abortion or child destruction, whether before or after the commencement of Part 2

Note: Part 2 provides for the civil and political rights in the Charter.

The Committee notes that the Charter is silent whether the ‘right to life’ extends to a foetus and that there is no guidance in the Charter as to the meaning of ‘natural person’. The Committee observes that the use of the term ‘human being’ is intended to make it plain that the Charter does not apply to corporations or other legal entities.

The Committee previously noted in its report on the Infertility Treatment Amendment Bill 2007 the distinction between the Victorian Charter’s treatment of the question of the definition of ‘person’ and the provision in the Human Rights Act 2004 (ACT) which clearly provides that that Act applies ‘to a person from the time of their birth’.

Conclusion

As previously reported the Committee report on the Infertility Treatment Amendment Bill 2007 the Committee considers that it is not useful to define ‘natural person’. Such an attempt would appear to be fruitless given the savings provision found in section 48 of the Charter excises any law in respect to abortion or child destruction from the requirement of compliance with the civil and political rights in the Charter.

Undue trespass to rights or freedoms – Parliamentary Committees Act 2003, section 17(1)(a)(i) – trespases unduly on rights or freedoms.

The Committee considers that for the purposes of the Parliamentary Committees Act 2003 (the ‘Act’) only persons have rights and freedoms within the meaning of section 17(a)(i) and observes that the question of providing a definition of ‘person’ or ‘human being’ ultimately involves fundamental questions of personal belief and conscience. Therefore the Committee has determined

to refer for Parliament's consideration the question whether the provisions of the Bill constitute an undue trespass to rights or freedoms within the meaning of the Act.

The Committee makes no further comment.

Gene Technology Amendment Bill 2007

Introduced	17 July 2007
Second Reading Speech	19 July 2007
House	Legislative Assembly
Minister introducing	Hon. Bronwyn Pike MLA
Portfolio responsibility	Minister for Health

Purpose

This Bill amends the *Gene Technology Act 2001* (the Act) to achieve consistency with amendments made to the *Gene Technology Act 2000* (Cth).

The amendments made to the Act include —

- introducing emergency powers, giving the Minister the ability to expedite the approval of a dealing with a genetically modified organism (GMO) in an emergency;
- improving the mechanism for providing advice to the Gene Technology Regulator (the Regulator) and the Gene Technology Ministerial Council (GTMC) on ethics and community consultations;
- streamlining the processes for the initial consideration of licences;
- reducing the regulatory burden for low risk dealings;
- providing clarification on the circumstances in which licence variations can be made;
- clarifying the circumstances under which the Regulator can direct a person to comply with the Act;
- providing the Regulator with the power to issue a licence to persons who find themselves inadvertently dealing with an unlicensed GMO, for the purpose of disposing of that organism; and
- making technical amendments to improve the operation of the Act.

The Committee notes this extract from the explanatory memorandum –

The Act is the Victorian Government's component of the nationally consistent regulatory scheme for gene technology. Under the Gene Technology Agreement 2001, all States and Territories have committed to maintaining corresponding legislation. The object of the Act is to protect the health and safety of people, and to protect the environment, by identifying risks posed by or as a result of gene technology, and by managing those risks through regulating certain dealings with genetically modified organisms (GMOs).

In 2005–2006, an independent review of the Commonwealth Gene Technology Act 2000 and the intergovernmental Gene Technology Agreement 2001 (the Review) was conducted. The Review found that the national regulatory scheme had worked well in the five years following introduction, and that no major changes were required. However, it suggested a number of minor changes, aimed at improving the operation of the legislation at the margin.

On 27 October 2006, the Gene Technology Ministerial Council (GTMC), an intergovernmental body comprised of State, Territory and Australian Government Ministers, agreed to proposals to implement the recommendations of the Review. Consistently with the Commonwealth Gene Technology Amendment Bill 2007, this Bill proposes to implement the recommendations requiring legislative change.

Content and Committee comment

[2]. The provisions in the Bill come into operation on proclamation but not later than by 1 January 2008.

[10]. Inserts new section 35B strict liability offence provisions for breaching the conditions of an emergency dealing determination. It is similar to the existing section 35 of the Act. In order to have committed an offence under new section 35B the person must have knowledge of the conditions to which the emergency dealing determination is subject, but need not know that he or she is breaching that condition.

Note: The clause creates a new strict liability offence for breaching the conditions of an emergency dealing determination. The application of strict liability to this offence is considered appropriate because any dealings with a GMO conducted in an unauthorised or unregulated manner could cause serious harm to the health and safety of people and the environment. Strong deterrents are needed to discourage persons from dealing with GMOs unless they are fully aware of any relevant regulatory safeguards.

Strict liability offence

The Committee notes the justification in the explanatory memorandum concerning the inclusion of strict liability offence under the new system of emergency dealing determinations.

The Committee notes that the provision of strict liability offences may engage the Charter right of being presumed innocent of a criminal charge until proved guilty. The offence engages the Charter right in the sense that the prosecuting authority does not need to prove mental intent (knowledge or recklessness) as an ingredient of the offence.

The Committee observes that in certain circumstances strict liability offences may be justified particularly where public safety or serious public health issues are at stake. In these circumstances, as the explanatory memorandum recognises, such offences may be appropriate as a strong deterrent to avoid ‘serious harm to the health and safety of people and the environment’.

[22]. Inserts a new section 152(2)(d) to make clear that an inspector may enter premises and exercise monitoring powers set out in section 153 for the purpose of finding out whether the Act or regulations have been complied with, if the occupier of the premises is a person dealing with, or who has dealt with, a GMO specified in an emergency dealing determination and the entry is at a reasonable time.

Search and seizure powers

The Committee notes the justification in the Statement of Compatibility for the inclusion of search and seizure powers in respect to the administration of emergency dealing determinations.

[60]. Provides for the automatic repeal of this amending Act on 1 January 2009.

The Committee makes no further comment.

Grain Handling and Storage Amendment Bill 2007

Introduced	17 July 2007
Second Reading Speech	18 July 2007
House	Legislative Assembly
Minister responsible	Hon. Joe Helper MLA
Portfolio responsibility	Minister for Agriculture

Purpose

The Bill amends the *Grain Handling and Storage Act 1995* (the 'Act') to –

- regulate handling and storage services for grain to be exported from the Port of Melbourne;
- further provide for the application of the intergovernmental Competition Principles Agreement in relation to certain determinations of the Essential Services Commission relating to access to prescribed services;
- further provide for general access determinations relating to access to prescribed services.

The Committee notes this extract from the Second Reading Speech –

The Bill implements the key recommendations of the Commission's final report. Specifically, it will:*

- *reduce regulation of the grains handling and storage sector to a light-handed access regime, where undertakings will become the basis for access to the facilities; and*
- *extend access regulation to the Port of Melbourne, which will remove regulatory discrimination between the terminals.*

In its review, the Commission also proposed that once these undertakings had been prepared and accepted, government should abolish licence fees for export grain-handling facilities, as they would no longer be necessary. Exemption from these fees will be sought when the undertakings are completed and approved by the Commission.

* *Essential Services Commission*

Content and Committee comment

[Clauses]

[2]. Clauses 1, 2, 4 and 9(1) of the Bill to come into operation on the day after Royal Assent. Clauses 3, 5, 6, 7, 8, 9(2), 10 and 11 of the Bill come into operation on proclamation but not later than 1 January 2008.

[13]. Provides for the automatic repeal of this amending Act on 1 January 2009.

The Committee makes no further comment.

Justice and Road Legislation Amendment (Law Enforcement) Bill 2007

Introduced	17 July 2007
Second Reading Speech	19 July 2007
House	Legislative Assembly
Minister introducing Bill	Hon. Bob Cameron MLA
Portfolio responsibility	Minister for Police and Emergency Services, Minister for Corrections, Attorney-General

Purpose

The Bill amends the –

- *Magistrates' Court Act 1989* to make provision to allow certain indictable offences to be heard and determined summarily;
- *Police Regulation Act 1958* to make provision for certain types of photographs to be released to the media and to clarify and strengthen offences relating to release of information by police personnel;
- *Road Safety Act 1986* to create a new offence of failing to stop when directed to do so and make provision for certain matters relating to impoundment, immobilisation and forfeiture of motor vehicles;
- *Sex Offenders Registration Act 2004* to make further provision in relation to registrable offenders, the reporting obligations of registrable offenders, confidentiality of personal information, change of name applications and other matters.

Submissions

The Committee received and considered a written submission from the Victorian Privacy Commissioner. The submission is reproduced as Appendix 4.

Content and Committee comment

[Clauses]

[2]. The Act comes into operation on a day or days to be proclaimed but not later than by 1 June 2008.

Magistrates' Court Act 1989

[3]. Amends the Schedule 4 to the Act to allow the indictable offences under section 127A(1AB) of the *Police Regulation Act 1958* and under section 46(1) of the *Sex Offender Registration Act 2004*, to be heard and determined summarily.

Police Regulation Act 1958

[7]. Inserts a new Part VIC (Agency Photographs) into the Act consisting of new sections 118R to 118Z.

New sections 118R provide that where Victoria Police possesses an agency photograph, the Chief Commissioner may authorise the giving of the agency photograph on application by an authorised media organisation for use in the course of journalism.

The application by the media organisation must be received within 6 months of the relevant finding of guilt against the person photographed. The Chief Commissioner's authorisation must be in writing and may specify conditions.

New section 118T provides that the Chief Commissioner must have regard to certain matters, insofar as they can be ascertained at the time, before authorising the giving of an agency photograph to an authorised media organisation.

New section 118U creates a summary offence with a penalty of 40 penalty units, where a media organisation uses the agency photograph otherwise than in the course of journalism, contrary to any conditions of the authorisation given to the agency, or contrary to any relevant privacy standards published or determined by the Australian Press Council or applicable codes published, or determined by or registered with the Australian Communications and Media Authority.

New section 118V requires the Chief Commissioner to notify the person photographed without delay if they have decided to authorise the giving of an agency photograph of that person to an authorised media organisation.

New section 118W sets out the process whereby a media organisation may apply to be authorised to be given agency photographs. This will allow a media organisation to be authorised on an ongoing basis and not have to apply for authorisation each time it applies for release of a specific agency photograph.

New section 118X provides that an application for authorisation under section 118W must be in the form approved by the Chief Commissioner and accompanied by the prescribed fee (if any).

New section 118Y provides protection against actions in defamation or breach of confidence for the Chief Commissioner and the media organisation that publishes the agency photograph.

New section 118Z provides protection from committing an offence only by reason of authorising the giving of the agency photograph.

[8]. Makes a number of amendments to section 127A of the Act concerning unauthorised disclosure of information and documents by police personnel and former police personnel. The amendments clarify a number of matters, increases penalties and introduces an indictable offence.



Report pursuant to the Charter of Human Rights and Responsibilities Act 2006 and section 17(a)(iii) of the Parliamentary Committees Act 2003, – ‘makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions’ – section 17(a) (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the Information Privacy Act 2000

Keywords: Privacy – Right to community protection (right to life) – Whether powers constitute a form of additional administrative (non-judicial) punishment – Special rights of children in criminal process – Right not to be punished more than once – Right to appeal administrative decision – non-reviewable decision – Reasonable limitations.

The Committee notes that on application by a media organization the Chief Commissioner of police has a discretion to authorize the provision of agency photographs of convicted persons that may have been taken on arrest, at interview or during investigation. The provisions in the Bill include criteria to be considered before the Chief Commissioner may agree to give the photographs, including, amongst others the likely impact on a victim and the family of the convicted person. The Bill also includes a new definition of ‘person who has been found guilty of an offence’ to make allowance for any relevant appeal period that may be

exercised by a person found guilty of an offence. The amendments include offences for misuse of such photographs by media organizations and increased penalties for misuse of information by Members and former Members of the police force. Where media organizations make only authorized use of such photographs they are protected against actions in defamation or breach of confidence.

The Committee notes the amendments are said to overcome the restriction currently found in the Freedom of Information Act 1985 which require the consent of the convicted person before the photographs may be released.

The Committee also notes that the provisions in the Bill may involve access by the media to agency photographs of persons under 18 years of age.

The Committee further observes that the provisions do not appear to allow for a review or appeal of the decision to release photographs by the person photographed or any other person likely to be effected by the decision.

The Committee notes the Statement of Compatibility concerning the competing human rights engaged by the amendments, namely, the positive duty on the criminal justice and law enforcement system to protect life (right to life) and freedom of expression (right to have information concerning the workings of the criminal justice system) and on the other hand the right of privacy of convicted persons.

The Committee observes that the provision of agency photographs may be characterised as the imposition of an additional form of punishment (shaming offenders) and that if it is so characterised it may constitute a punishment imposed by means of an administrative act and not by judicial merits sentencing.

The Committee further observes that once an authorisation is made and an agency photograph is published in a 'generally available publication' then the Information Privacy Principles' as it would appear, will no longer apply to the photograph rendering it amendable to further secondary and unlimited publication.

The Committee will seek further advice from the Minister concerning the following matters –

- 1. Will or should there be additional safeguards or accountabilities where access to an agency photograph involves release of photographs of children?*
- 2. Will the provisions in the Bill apply to persons found guilty of an offence but who have had no formal conviction recorded?*
- 3. Is there any form of review or appeal against a decision to grant access to agency photographs by persons photographed or who may be affected?*
- 4. If the procedure introduced by the Bill may be characterised as an additional form of punishment, one taken through administrative act, should the procedure involve judicial approval or oversight?*
- 5. Once published in a 'generally available publication' within the meaning of the Information Privacy Act 2000 will it be possible for secondary publication by media organisations who are not immediately bound by the authorisation provisions as contained in the provisions of the amendments?*

Pending the Minister's response the Committee draws attention to the provisions and considers that the Parliament must determine whether they achieve a fair and proportionate balance between the public interest, the interests of victims, witnesses and their families and of convicted persons.

Road Safety Act 1986

[9]. Inserts a new section 64A creating an offence of driving a motor vehicle when directed to stop by police. The new section provides that a person must not drive a motor vehicle if he or she knows, or ought reasonably to know, that he or she has been given a direction to stop.

The new section further provides that a finding of guilt for the new offence also leads to mandatory licence or permit cancellation and disqualification.

[10]. Amends section 84C of the Act to provide that the new offence under section 64A(1) is a “relevant offence” for the purposes of Part 6A of that Act i.e. the “hoon” provisions, allowing seizure, immobilisation, impoundment and forfeiture of motor vehicles in certain circumstances.



Charter of Human Rights and Responsibilities Act 2006

The Bill amends the Road Safety Act 1986 to create an offence of failing to stop driving a vehicle where police issue a direction to stop (as defined by the amendments). The offence does not apply if the person stops the vehicle as soon as practicable after the direction. The offence carries other consequences including, in certain circumstances loss of licence and allowing seizure or even forfeiture of the vehicle.

The Committee notes the amendments potentially engage the competing human rights in the Charter on the one hand of right to life (the positive duty to protect life through effective law enforcement) and on the other a persons freedom of movement and property rights.

The Committee considers that in the circumstances the reasonableness and proportionality of these offences engaging human rights must be balanced against other competing public safety issues (the harm sought to be prevented).

Sex Offenders Registration Act 2004

[14]. Amends section 14 to require the details of any phone numbers, email addresses and internet service providers that a registrant might hold to be provided to police.

[16]. Amends section 46 to make failing to report changes in personal details an indictable offence with a penalty of up to 5 years imprisonment.

[19]. Amends section 67(1) to ensure that the definition of “employment” in that section captures persons who are self-employed.

[20]. Inserts a new Part 5A (new sections 70A–70K) to restrict sex offender registrants who may wish to change their names to frustrate and undermine the efforts of police to monitor and manage them under the Act.

The new Part gives the Chief Commissioner the authority to prevent a registered sex offender from applying to have their name changed where s/he believes that the name change is reasonably likely to be regarded as offensive by the community or a victim of crime; or where it might undermine Victoria Police’s ability to supervise and monitor that offender.

Note: The amendments are similar to restrictions on name change provisions in other Acts, namely the Corrections Act 1986 and the Serious Sex Offenders Registration Act 2005. The Part applies despite anything to the contrary in the Births, Deaths and Marriages Act 1996.

New section 70C makes it an offence for a registrable offender (or someone on their behalf) to apply to the Victorian Registrar of Births, Deaths and Marriages to register a change of name, or to apply to an Interstate Registrar, without having first obtained the written approval of the Chief Commissioner of Police.

Section 70D provides that the Chief Commissioner of Police must only approve a change of name application if satisfied that the change of name is necessary or reasonable.



Charter of Human Rights and Responsibilities Act 2006

The provisions in the Bill amending the Sex Offenders Registration Act 2004 engage a number of human rights including freedom of expression (restrictions on offenders changing name) privacy (offender providing additional detail of telephone, e-mail address and internet provider). Other provisions in the Bill prohibit a registrable offender from volunteering to work with children (protection of family and children).

The Committee notes that an identical statutory regime as contemplated by this Bill in respect to name change is already in place in respect to persons on parole under the Corrections Act 1986 and in provisions of the Serious Sex Offenders Monitoring Act 2005.

The Committee notes that no absolute denial of freedom of expression is proposed by the Bill with the Chief Commissioner of Police having a discretion to deny an application for a name change in circumstances where the purposes of the Act may be frustrated were a name change be permitted.

Whether the regime restricting the name change of a registrable offender and requiring additional information by registrable offenders is appropriately confined, proportionate and reasonable having regard to the competing public interests (protection of families and children) is a matter for Parliament to determine.

[22]. Provides for the automatic repeal of this amending Bill on 1 June 2009.

The Committee makes no further comment.

Legal Profession Amendment (Education) Bill 2007

Introduced	17 July 2007
Second Reading Speech	19 July 2007
House	Legislative Assembly
Minister introducing Bill	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General

Purpose

This Bill seeks to amend the *Legal Profession Act 2004* (the 'Act') to modernise the statutory bodies that oversee admission to the legal profession in Victoria. The Bill also amends the powers and procedures used by these bodies in assessing applications and deciding on whether a person is a fit and proper person for admission to the legal profession. In addition, it makes some amendments to the regulatory powers of the Legal Services Board and the Legal Services Commissioner.

Content and Committee comment

[Clauses]

[2]. Other than Part 2 provisions, the Bill comes into operation on the day after Royal Assent. Part 2 commences on 1 July 2008.

[5]. Amends section 2.3.12 of the Act to allow the Council to make procedural rules for admission and allows the admission rules to require police checks to be supplied by applicants for admission.

[6 to 8]. Deal with health assessments that may be required by the Board of Examiners of applicants in order to assess suitability for admission for legal practice. The Board of Examiners must not disclose any health assessment obtained as a consequence of clauses 6 and 7 other than in accordance with the Act, any other law or with the consent of the applicant for admission.



Charter of Human Rights and Responsibilities Act 2006

Keywords: *Recognition of equality before the law – Privacy and reputation – Reasonable limitations.*

The Committee notes the Statement of Compatibility raises the issue of unequal treatment of persons with a mental impairment who may be subject to the health assessments required by the Board of Examiners. The Committee notes the reasoning in the Statement as to why any limitation is reasonable in all the circumstances.*

**Note: 'Mental impairment' includes drug dependence and alcoholism.*

The Committee notes this extract from the Statement of Compatibility –

The limitation supports the need for the Board of Examiners and the Legal Services Board to have a range of information about people seeking to be part of the legal profession to inform their decision making and regulate the legal profession for the benefit of the public.

[20]. Inserts a new section 2.4.42 to set out the procedure to be followed if the Legal Services Board is of the opinion that it is necessary to have a local lawyer struck off the roll of the Supreme Court if a local lawyer's interstate practising certificate has been cancelled or a local lawyer has been found guilty of an offence anywhere in Australia. The lawyer has the right to be heard at the Supreme Court on the application.

[28]. Provides for the automatic repeal of this amending Act on the first anniversary of its forced commencement.

The Committee makes no further comment.

Parliamentary Salaries and Superannuation Amendment Bill 2007

Introduced	17 July 2007
Second Reading Speech	19 July 2007
House	Legislative Assembly
Minister introducing Bill	Hon. Steve Bracks MLA
Portfolio responsibility	Premier

Purpose

The Bill amends the *Parliamentary Salaries and Superannuation Act 1968* to limit the increase in the salary payable to members of the Parliament of Victoria to 3.25% for the 2007/2008 financial year.

Content and Committee comment

[Clauses]

[2]. Other than section 4, the Bill is deemed to have come into operation retrospectively from 1 July 2007 to ensure that the 3.25% salary increase will apply for the whole of the financial year. Section 4 will only come into operation if it is proclaimed at a later date.

Note: In respect to commencement by proclamation of clause 4 see the explanation at [4] below.

[3]. Amends the definition of basic salary in section 3 of the Act by substituting the figure “\$1442” with “\$5733”. This change will increase the gap between the annual salary payable to Members of the House of Representatives and Members of the Victorian Parliament to ensure that the increase for the latter is limited to 3.25%.

[4]. Will only come into operation if it is proclaimed by the Governor in Council at a later date. The clause is intended to provide a safety net in the event that the Federal Parliament disallows the salary increase for Members of the Federal Parliament that was determined by the Federal Remuneration Tribunal. In that event, clause 4 will reverse the proposed change to the definition of basic salary in section 3 so as to ensure that the salaries of Members of the Victorian Parliament are maintained at the rate in place prior to 1 July 2007 and are not adversely affected by the disallowance.

The Committee makes no further comment.

Royal Children's Hospital (Land) Bill 2007

Introduced	17 July 2007
Second Reading Speech	19 July 2007
House	Legislative Assembly
Minister introducing Bill	Hon. John Thwaites MLA
Responsible Minister	Hon. Justin Madden MLC
Portfolio responsibility	Minister for Planning

Purpose

The Bill provides for the revocation of part of the Royal Park reservation to make a site available for the construction of a new Royal Children's Hospital, to provide for the re reservation of that land and the majority of the old Hospital site, and to provide for leasing and licensing arrangements over the new Hospital site.

Content and Committee comment

[Clauses]

[2]. Provides that the Act will commence on the earlier of its proclamation or 1 January 2009.



The Committee reports to Parliament pursuant to a term of reference provided in section 17(a)(vi) of the Parliamentary Committees Act 2003, – 'inappropriately delegates legislative power'

The Committee notes the delayed commencement provision and will seek further information from the Minister concerning the need or desirability for such an extended delay in bringing the Act into force.

Pending the Minister's response the Committee draws attention to the provision.

[11]. Provides that the Order made under clause 10 does not affect the status or continuity of any lease of any part of the new Hospital site entered into after the commencement of Part 2 of the Bill or any lease of part of the old Hospital site (whether or not entered into after the commencement of Part 2 of the Bill). A lease includes an agreement, licence, option or other interest arising in relation to a lease.

[15]. Contains a 30-year licensing power for the committee of management of the new Hospital site. The exercise of the power is subject to the approval of the Minister administering this Act. The Minister may only give his or her approval if satisfied that the purpose of the proposed licence is not inconsistent with the purposes for which the land is reserved.

The Committee makes no further comment.

Summary Offences Amendment (Body Piercing) Bill 2007

Introduced	18 July 2007
Second Reading Speech	18 July 2007
House	Legislative Council
Member introducing Bill	Hon. Damian Drum MLC

Purpose

The Bill inserts a new Division 6 within Part I of the *Summary Offences Act 1966* (the 'Act') to restrict body piercing of a child without the appropriate prior consent of the child's parent or guardian.

Content and Committee comment

[Clauses]

[2]. This provisions in the Bill come into operation on the day after Royal Assent.

[3]. New Division 6 inserted in Part I of the Act and provides a definition for body piercing and child (a person under the age of 18 years). New section 43A provides the new provisions do not apply to body piercing performed in the course of a procedure carried out in good faith by a medical practitioner, nurse or Chinese medicine practitioner registered under the *Health Professions Registration Act 2005*.

New section 44 provides that a person must not perform body piercing on a child without the prior written consent of the child's parent or guardian, given personally by the parent or guardian to the person who is to perform the body piercing. Penalty: 20 penalty units.

[4]. The amending Act is to be repealed on the first anniversary of its commencement.



Charter of Human Rights and Responsibilities Act 2006

Keywords: Freedom of Expression – Protection of families and children – Recognition of equality before the law – Age based limitations/ restrictions

The Committee notes the provisions in the Bill engage a number of Charter rights including 'equality before the law' (discrimination on the basis of age) (section 8), 'freedom of expression' (section 15) and 'protection of families and children' (section 17).

The Committee notes the reasoning given in the Statement of Compatibility for any limitation or restrictions imposed by the provisions in the Bill on persons under the age of 18 years.

The Committee makes no further comment.

**Committee Room
6 August 2007**

Appendix 1

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Scrutiny of Acts and Regulations Committee

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Appendix 2

Committee Comments classified by Terms of Reference

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Section 17(a)

(i) trespasses unduly upon rights and freedoms.

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(iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions;

Justice and Road Legislation Amendment (Law Enforcement) Bill 2007	10
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(vi) inappropriately delegates legislative power.

Accident Towing Services Bill 2007	5
Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007	4
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(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities.

Fair Trading and Consumer Acts Amendment Bill 2007	5
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Appendix 3

Ministerial Correspondence

Table of correspondence between the Committee and Ministers during 2006-07

Bill Title	Minister/ Member	Date of Committee Letter	Date of Minister's Response	Issue Raised in Alert Digest No.	Response Published in Alert Digest No.
Justice Legislation (Further Miscellaneous Amendments) Bill	Attorney-General	31.5.06	13.10.06	5 of 2006	1 of 2007
Water (Governance) Bill	Water	22.8.06	1.11.06	9 of 2006	1 of 2007
Funerals Bill	Attorney-General	22.8.06		9 of 2006	
Public Sector Acts (Further Workplace Protection and Other Matters) Bill	Industrial Relations	13.9.06		10 of 2006	
Road Legislation (Projects and Road Safety) Bill	Transport	13.9.06	18.10.06	10 of 2006	1 of 2007
Serious Sex Offenders Monitoring (Amendment) Bill	Corrections	16.10.06		12 of 2006	
Public Prosecutions Amendment Bill 2006	Attorney-General	13.2.07	26.2.07	1 of 2007	3 of 2007
Senate Elections Amendment Bill 2006	Attorney-General	13.2.07		1 of 2007	
Water Amendment (Critical Water Infrastructure Projects) Bill 2006	Water	13.2.07	20.3.07	1 of 2007	4 of 2007
Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007	Gaming	17.4.07	27.4.07	4 of 2007	5 of 2007
Roads Legislation Amendment Bill 2007	Roads and Ports	17.4.07		4 of 2007	
Infertility Treatment Amendment Bill 2007	Health	28.3.07	3.7.07	4 of 2007	9 of 2007
Accident Towing Services Bill 2007	Roads and Ports	1.5.07	18.5.07	5 of 2007	6 of 2007
Fair Trading and Consumer Acts Amendment Bill 2007	Consumer Affairs	1.5.07	3.5.07	5 of 2007	6 of 2007

Bill Title	Minister/ Member	Date of Committee Letter	Date of Minister's Response	Issue Raised in Alert Digest No.	Response Published in Alert Digest No.
Superannuation Legislation Amendment (Contribution and Other Matters) Bill 2007	Finance	5.6.07	3.7.07	7 of 2007	9 of 2007
Royal Children's Hospital (Land) Bill	Planning	7.8.07		10 of 2007	
Justice and Road Legislation Amendment (Law Enforcement) Bill 2007		7.8.07		10 of 2007	

Appendix 4

Submission to the Justice and Road Legislation Amendment (Law Enforcement) Bill 2007



Office of the Victorian Privacy Commissioner

Review of proposed legislation (SARC)

3 August 2007

SUBMISSION TO THE VICTORIAN PARLIAMENT'S SCRUTINY OF ACTS AND REGULATIONS COMMITTEE IN RELATION TO THE JUSTICE AND ROAD LEGISLATION AMENDMENT (LAW ENFORCEMENT) BILL 2007

The Committee's attention is drawn to the *Justice and Road Legislation Amendment (Law Enforcement) Bill 2007* ("the Bill") and the consequent amendments to the *Police Regulation Act 1958* ("the PRA").

The Victorian Privacy Commissioner makes the following submissions.

The proposed legislative amendments to the PR Act 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 (Vic) ("the IPA") – section 4D(a)(iia), Parliamentary Committees Act 1968.

- Section 13 of the IPA currently permits Victoria Police to use and disclose agency photographs for proper law enforcement and community policing purposes.
- **S. 118R (4)** of the Bill specifically excludes the operation of the IPA in relation to the power to release 'agency photographs' to the media.
- The authorised uses of 'agency photographs' by the media (**ss. 118U** and **118W** of the Bill) are not subject to privacy protections equivalent to the IPA which is contrary to IPP 9 (Transborder Data Flows).
- The IPA will not apply to the use of agency photographs once they have been published in a 'generally available publication' (s. 11(1)(a), IPA) rendering the limit on authorisations sought more than 6 months after conviction in **s. 118R(2)** of the Bill, effectively meaningless. Once an agency photograph is made publicly available it will be available through the internet to the world at large and able to be reproduced at any time.
- **S. 118R** of the Bill provides for release of the agency photograph of a person who is 'found guilty'. This will include persons who have been 'found guilty' but have not had their conviction recorded. This undermines the purpose of s. 8 of the *Sentencing Act 1991*(Vic).

Is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities

Section 13 of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (“the Charter”) states that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with. The infringement of other rights under the Charter is a relevant consideration in determining whether an interference with privacy is arbitrary.

- **S. 4** of the Bill – the definition of ‘agency photograph’ includes a photograph of a child. This envisages authorisation of the release of an agency photograph of a juvenile offender to the media under **ss. 118R** and **118W** of the Bill and potentially infringes on ss. 17(2) and 25 (3) of the Charter relating to the rights of the child. While **s. 118T (a) (vii)** of the Bill provides for consideration of other legal constraints, it does not prevent the release of a child’s photograph. The release of children’s agency photographs should be specifically excluded from the Bill.
- **S.118R** of the Bill potentially infringes s. 26 of the Charter – the right not to be tried or punished more than once because it may be regarded as potentially condoning shaming of offenders as an additional punishment to that imposed by the Sentencing Court.
- **S. 4** of the Bill – as there is no express legislative power for the collection of ‘agency photographs’ by police the collection and use of an agency photograph may infringe s. 13 of the Charter as an ‘unlawful’ infringement on privacy because it is not precise, circumscribed nor accessible to the community.
- **S. 118T(b)** of the Bill may interfere with a victim or witness’ right to privacy because privacy is a personal right and there is no requirement for the decision maker to consult with them prior to releasing an agency photograph that may interfere with their privacy.
- In practical terms, **ss. 118R** and **118T** of the Bill may constitute an arbitrary interference with privacy by virtue of resource and time constraints on police and the implied purpose for the amendments which is to ensure quick and efficient release of agency photographs. There will be insufficient time to properly address the requisite considerations and inadequate information available regarding such matters as the affect on victims’ and witnesses’ rights and the potential for risk of vigilantism to the convicted person and their family.
- The arbitrary interference with the right to privacy is arguably not demonstrably justified in accordance with s. 7(2) of the Charter for the following reasons: -
 1. The amendments were proposed following community concern based on media reports containing erroneous information regarding the Smith case. In particular, that the current *Freedom of Information Act 1982* (“the FOI Act”) requires the **consent** of the person photographed when the requirement is actually to **notify**.
 2. There are less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve by:
 - a) Empowering the Sentencing Court, rather than police to authorise disclosures of agency photographs to the media under s. 118R of the Bill and to consider the matters outlined in s. 118T of the Bill; or
 - b) Notice to the person photographed and an opportunity to object to later disclosure by informing arrestees of the potential disclosure of their agency photograph to the media after conviction (as the police are already obliged to do under IPP 1, IPA) and to alert them to the possibility of informing the police after conviction of any matters that might be relevant to a disclosure decision; or
 - c) Retaining the current provisions which, contrary to the statement made in the Minister’s Statement of Compatibility for the Bill, do not require the consent of the person photographed but rather require that if an agency **decides to grant access** to relevant information that they **shall if practicable notify the affected person of the decision and of the right of appeal available in s. 50(2)(e)** of the FOI Act; or

- d) Aligning the practice with that of other states which, under similar FOI legislation, take reasonably practicable steps to notify an affected person of the decision and rights, obtain their views, and defer the release of information until this is resolved unless the release is for law enforcement or operational purposes.

Makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions

- **Ss. 118Y (a), 118Y (b) and 118Z** of the Bill are unreasonable because they provide unlimited immunity from actions of defamation and breach of confidence relating to the authorisation of and publication of the photograph. This is contrary to the common law principles of natural justice as there is no requirement to notify the person(s) – including the convicted person, victims, family and associates of convicted persons and victims (including children) – whose rights, interests and/or legitimate expectations may be adversely affected by the administrative decision making power in **s. 118R** and no opportunity for the person(s) affected to comment as to why the photograph should not be released prior to it being released.
- There is no recourse for the person(s) affected by the administrative decision making power in **s. 118R** of the Bill to seek a review of the decision nor a requirement for the decision-maker to account for their decision.
- The notification requirement in **s. 118V** of the Bill will have no practical effect because it occurs after the authorisation is given to the media. In particular, where a convicted person is incarcerated, their mail may be delayed and there will be minimal chance of recourse to administrative law remedies.

Helen Versey
Privacy Commissioner