

No. 11 of 2008

**Tuesday, 9 September
2008**

On the

Abortion Law Reform Bill 2008
Courts Legislation Amendment
(Costs Court and Other Matters)
Bill 2008

Evidence Bill 2008

Family Violence Protection Bill 2008

Medical Research Institutes
Repeal Bill 2008

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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 \$113.42*).
- ‘**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 –

Abortion Law Reform Bill 2008

Courts Legislation Amendment (Costs Court and Other Matters) Bill 2008

Medical Research Institutes Repeal Bill 2008

The Committee notes the following correspondence –

Evidence Bill 2008

Family Violence Protection Bill 2008



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 report to the Parliament whether the Bill is incompatible with human rights.

Alert Digest No. 11 of 2008

Abortion Law Reform Bill 2008

Introduced	19 August 2008
Second Reading Speech	19 August 2008
House	Legislative Assembly
Member introducing Bill	Hon. Maxine Morand MLA
Portfolio responsibility	Minister for Women's Affairs

Purpose

The Bill proposes an Act (sections 1 to 8) relating to abortions and the regulation of health practitioners performing and assisting abortions.

The Bill also amends the *Crimes Act 1958* (the 'Act') (sections 9 to 12) to repeal the provisions relating to abortion and abolishes the common law offences relating to abortion. The amendments also create a new offence relating to abortions performed by unqualified persons.

Submissions received

The Committee received the following submissions and letters which are posted on the Committee's Website at – www.parliament.vic.gov.au/sarc

- Ms. Jo Grainger, Lecturer and Ethicist, School of Nursing and Midwifery (Victoria), Australian Catholic University.
- Associate Professor Nicholas Tonti-Filippini, Associate Dean, John Paul II Institute for Marriage and Family.
- Joint letter/ submission signed by 43 medical practitioners and medical students.
- Mr Malcolm C. Nagle.

Content and Committee comment

[Clauses]

[2]. The Act will commence on the day after Royal Assent.

Abortion where pregnancy not more than 24 weeks

[4]. A registered medical practitioner may perform an abortion (surgical or drug induced) on a woman who is **not more** than 24 weeks pregnant.

Abortion where pregnancy more than 24 weeks

[5]. Sets out the circumstances in which a registered medical practitioner may perform an abortion on a woman who **is more** than 24 weeks pregnant.

Note: *The medical practitioner must have consulted one other medical practitioner who also reasonably believes that the abortion is appropriate in all the circumstances.*

In considering whether the abortion is appropriate in all the circumstances, a registered medical practitioner must have regard to all relevant medical circumstances; and the woman's current and future physical, psychological and social circumstances.

Supplying a drug at not more than 24 weeks of pregnancy

[6]. Declares that a registered pharmacist or a registered nurse who is authorised under the *Drugs Poisons and Controlled Substances Act 1981* to supply a drug or drugs may administer or supply such drug or drugs to cause an abortion in a woman who is not more than 24 weeks pregnant.

Supplying a drug at more than 24 weeks of pregnancy

[7]. Deals with the supply and administration of drugs by registered pharmacists and registered nurses to cause an abortion in a woman who **is more** than 24 weeks pregnant.

Note: *A registered pharmacist or nurse may administer or supply a drug or drugs to cause an abortion in a woman who is more than 24 weeks pregnant only if the pharmacist or nurse is employed or engaged by a hospital and only at the written direction of a registered medical practitioner.*

Obligation to refer woman despite conscientious objection of practitioner

[8]. Imposes a referral obligation on registered health practitioners who have a conscientious objection to abortion. A health practitioner must refer the woman to another registered health practitioner who the practitioner knows does not have a conscientious objection to abortion.

Obligation to perform or assist in emergency abortions to preserve life of pregnant woman despite conscientious objection of practitioner or nurse

Notwithstanding a conscientious objection, a registered medical practitioner is under a duty to perform an abortion, and a registered nurse is under a duty to assist in the performance of an abortion in an emergency where the abortion is necessary to preserve the life of the pregnant woman.

Undue trespass to rights or freedoms – Parliamentary Committees Act 2003, section 17(1)(a)(i) – Abortion– Whether a foetus is a person ('human being') – Right of a woman to terminate pregnancy – Immunity for certain persons assisting abortion – Despite conscientious objection health practitioner must make referral to assist in procuring an abortion or assist in emergency abortion

Clauses 4 to 7

The Committee observes that the proposed Act will allow for the termination of a pregnancy by a registered medical practitioner both before and after 24 weeks of pregnancy and provides legal immunity for registered practitioners, pharmacists and nurses assisting such terminations.

The Committee considers that for the purposes of reporting to Parliament pursuant to section 17(1)(a)(i) of the Parliamentary Committees Act 2003 (the 'Act') only persons have rights and freedoms.

In the particular circumstances the Committee does not consider that it would be helpful or appropriate for it to attempt to provide a definition of 'person' or 'human being' for the purposes of making any comment or observation in respect to rights and freedoms within the meaning of the Act. The Committee observes that such a definition ultimately involves difficult and fundamental considerations of ethics, personal belief and conscience.

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 to any person within the meaning of the Act.

Clause 8

The Committee notes that despite their conscientious objection against abortion, the Bill will compel health practitioners to make a referral to another health practitioner who the practitioner knows does not have a conscientious objection to abortion. Further the provisions in the Bill will compel medical practitioners and nurses despite any conscientious objection to abortion that they may hold, to perform emergency abortions necessary to preserve the life of the pregnant woman.

The Committee observes that these provisions involve the difficult assessment of competing rights and freedoms, that of the right of a woman to choose to terminate a pregnancy and the right in emergency circumstances to reasonable medical treatment in order to preserve a woman's life, and on the other hand the right of health practitioners not to be compelled to assist or act against their conscience.

Whether the Bill strikes an appropriate balance to these competing rights or whether the policy objectives of the Bill may be achieved by less intrusive alternative means is a question for the Parliament to determine.

The Committee refers 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.

Amendments to the Crimes Act 1958 (the 'Act') (Part 3)

Offence of child destruction repealed

[9]. Repeals section 10 of the Act dealing with the offence of child destruction.

Notes:

1. Section 10 of the Crimes Act 1958 provides –

Offence of child destruction

- (1) *Any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act unlawfully causes such child to die before it has an existence independent of its mother shall be guilty of the indictable offence of child destruction, and shall be liable on conviction thereof to level 4 imprisonment (15 years maximum).*
- (2) *For the purposes of this section evidence that a woman had at any material time been pregnant for a period of twenty-eight weeks or more shall be prima facie proof that she was at that time pregnant of a child capable of being born alive.*

2. Refer to Chapter 7 of the Victorian Law Reform Commissions report to the Parliament tabled on 29 May 2008, Law of Abortion: Final Report.

Offence of 'serious injury' amended to include destruction of a foetus

[10]. Amends section 15 of the Act to extend the concept of serious injury to include *'the destruction, other than in the course of a medical procedure, of the foetus of a pregnant woman, whether or not the woman suffers any other harm'*.

Notes:

1. Extract from the Second Reading Speech –

Clause 10 gives effect to the Commission's related recommendation, that the offences directed at conduct which causes serious injury contained in sections 16 and 17 of the

Crimes Act should be expanded to include assaults on pregnant women, late in pregnancy, that are intended to harm the foetus. Clause 10 amends the definition of 'serious injury' contained in section 15 of the Crimes Act so that the definition includes the destruction, other than in the course of a medical procedure, of the foetus of a pregnant woman, whether or not the woman suffers any other harm. Clause 10 also inserts definitions of terms relevant to this amendment, which are consistent with the definitions in Part 1 of the Bill.

2. Sections 16 and 17 of the Crimes Act 1958 provide –

16. Causing serious injury intentionally – A person who, without lawful excuse, intentionally causes serious injury to another person is guilty of an indictable offence. Penalty: Level 3 imprisonment (20 years maximum).

17. Causing serious injury recklessly – A person who, without lawful excuse, recklessly causes serious injury to another person is guilty of an indictable offence. Penalty: Level 4 imprisonment (15 years maximum).

3. *..[If] the parliament wishes to clarify the law concerning assaults upon pregnant women, the Crimes Act should be amended to make it clear that destruction of a foetus caused by assault of a pregnant woman falls within the definition of 'serious injury' to the woman. The current assault provisions in the Act probably cover this behaviour but legislative amendment will remove any doubt.*

Para. 7.95, Chapter 7, Victorian Law Reform Commission, Law of Abortion: Final Report, May 2008.

[11]. Substitutes new sections 65 and 66 in the Act.

Abortion performed by unqualified person

New section 65 makes it an offence for a person who is not a qualified person (defined by the Bill) to perform an abortion on another person and clarifies that a woman who consents to an abortion on herself by an unqualified person is not guilty of an offence against this section.

Rule of common law abolished

New section 66 formally abolishes any rule of common law creating an offence in relation to procuring a woman's miscarriage.

[12]. Repeals Part 3 of the Bill (sections 9 to 12) on the first anniversary of the day on which the Act receives the Royal Assent. The repeal of Part 3 does not affect in any way the operation of the amendments made by Part 3.

Charter Report

Right to life – Legalisation of abortion – Whether foetuses have rights under the Charter – Whether compatible with State's obligation to protect life

The Committee notes that:

- clauses 4 and 6 legalise abortions for women who are up to 24 weeks pregnant;
- clauses 5 and 7 legalise abortions for women who are more than 24 weeks pregnant in some circumstances;
- clause 11, replacing ss. 65 & 66 of the *Crimes Act 1958*, limits the criminal offence of abortion to procedures performed by unqualified persons.

The Committee observes that the compatibility of these clauses with the Charter depends on two issues:

First, whether or not fetuses have rights under the Charter. The Charter provides that 'all persons' have human rights¹ and defines 'person' to mean 'human being'.² Overseas courts have held that the question of defining a human being for the purpose of determining the existence of legal rights is a legal (rather than metaphysical or scientific) one³ and that there is no international consensus on the legal status of fetuses.⁴

Second, whether or not clauses 4 to 7 and 11 are compatible with any rights that fetuses have, including the right to life.⁵ Charter s. 7(2) permits all rights to be subject to reasonable limits to further other interests, such as the rights of pregnant women.⁶ Overseas courts have held that decriminalisation of abortion can be compatible with fetuses' right to life when accompanied by other adequate measures to discourage abortion, such as state programmes to encourage women to bring pregnancies to term.⁷

The Committee refers to parliament for its consideration the questions of:

- 1. Whether or not fetuses have human rights under the Charter; and***
- 2. If so, whether or not clauses 4 to 7 and 11, by legalising many abortions, reasonably limit the rights of fetuses to protection according to the test set out in Charter s. 7(2).***

Privacy – Late abortions – Requirement that two medical practitioners hold reasonable belief that abortion appropriate in all the circumstances – Potential prosecution if belief is unreasonable – Whether unlawful interference in privacy

The Committee notes that clauses 5 and 7 provide that abortions may be performed on women who are more than 24 weeks pregnant 'only' if two medical practitioners each 'reasonably believes that the abortion is appropriate in all the circumstances'. The Committee considers that clauses 5 and 7 may engage the Charter right of pregnant women to make private medical decisions (in consultation with their doctors) without unlawful interference.⁸

The Explanatory Memorandum remarks:

A registered medical practitioner who performed an abortion on a woman who was more than 24 weeks pregnant without considering the relevant circumstances, or without seeking the opinion of a second registered medical practitioner will be liable to be found to have engaged in professional misconduct under the Health Professions Registration Act 2005.

The Committee observes that the consequences of clauses 5 and 7 may go further than this description. An abortion performed on a woman who is more than 24 weeks pregnant will be

¹ Charter s. 6(1).

² Charter s. 3.

³ *Tremblay v. Daigle* [1989] 2 S.C.R. 530.

⁴ *Vo v France* [2004] ECHR 326, [84].

⁵ Charter s. 9 provides that every 'person has the right to life and the right not to be arbitrarily deprived of life.'

⁶ Charter s. 7(2) provides that 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...'

⁷ BVerfG, 2 BvF 2/90 of 05/28/1993, http://www.bverfg.de/entscheidungen/fs19930528_2bv000290en.html [Federal Constitutional Court of Germany]

⁸ Charter s. 13(a).

unlawful if either practitioner reaches an unreasonable belief that an abortion is appropriate in all the circumstances.

The Committee is concerned that such a practitioner may be open to prosecution for causing serious injury. Clause 10(2) expands the definition of 'serious injury' in s. 15 of the *Crimes Act 1958* to include 'the destruction, other than in the course of a medical procedure, of the foetus of a pregnant woman'. In contrast to the equivalent provision in NSW⁹, clause 10(1) restricts 'medical procedure' to procedures done 'in accordance with the *Abortion Law Reform Act 2008*'. The Committee notes that this definition was not part of the recommendations of the Victorian Law Reform Commission.

The Explanatory Memorandum remarks:

A broader definition of medical procedure is not required, as the substantive offences in sections 16 and 17 of the Crimes Act 1958 both include the element of "lawful excuse" such that other forms of medical procedure in which termination of pregnancy is not the primary intention are not caught by the offences.

The Committee observes that, if a doctor forms an unreasonable belief that an abortion on a woman is over 24 weeks' pregnant is appropriate, clauses 5 and 7 appear to render the abortion unlawful and, therefore, may prevent that doctor from relying on any defence of 'lawful excuse' to a charge of intentionally causing serious injury.¹⁰

The Committee considers that the threat of criminal prosecution for wrong decision-making about 'appropriate' medical treatment may amount to an unlawful interference in the privacy of pregnant women and their doctors.

The Committee will write to the Minister seeking further information about whether or not doctors who perform an abortion on a woman who is more than 24 weeks pregnant after forming an unreasonable belief that the abortion was appropriate in all the circumstances may be liable to prosecution. Pending the Minister's response, the Committee draws attention to clauses 5, 7 and 10.

Freedom of belief – Registered health practitioners who hold a conscientious objection to abortion – Requirement to refer patients requesting an abortion to practitioners with no conscientious objection to abortion – Whether reasonable limit

The Committee notes that clause 8 sets out the obligations of health practitioners who hold a conscientious objection to abortion, including (in clause 8(1)(a)) an obligation to refer women who request an abortion to another practitioner who has no conscientious objection. The Committee observes that some practitioners may hold a belief that abortion is murder and may regard a referral to a doctor who will perform an abortion as complicity in murder. The Committee therefore considers that clause 8(1)(a) may engage the Charter right of such practitioners to freedom of belief.¹¹

The Second Reading Speech remarks:

The purpose of requiring the health practitioner to refer the woman to another comparable registered health practitioner promotes the woman's right to make decisions about her own health care, and to receive the highest attainable standard of health care.

While the Committee accepts that providing appropriate care to women is a very important purpose (and one that justifies the other measures in clause 8), the Committee considers

⁹ *Crimes Act 1900* (NSW), s. 4(1) (definition of 'grievous bodily harm').

¹⁰ *Crimes Act 1958*, s. 16.

¹¹ Charter s. 14(2) provides that 'A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.'

that the compatibility of clause 8(1)(a) with the Charter depends on its satisfaction of the test in Charter s. 7(2)¹², including whether or not there are less restrictive means available to achieve the purpose of the clause. The UK Parliament's Joint Committee on Human Rights, in discussing a similar referral requirement in proposed legislation on euthanasia, remarked:¹³

We consider that imposing such a duty on a physician who invokes the right to conscientiously object is an interference with that physician's right to freedom of conscience... because it requires the physician to participate in a process to which he or she has a conscientious objection...

We consider that this problem with the Bill could be remedied, for example by recasting it in terms of a right vested in the patient to have access to a physician who does not have a conscientious objection, or an obligation on the relevant public authority to make such a physician available. What must be avoided, in our view, is the imposition of any duty on an individual physician with a conscientious objection, requiring him or her to facilitate the actions contemplated by the Act to which they have such an objection.

The Committee refers to Parliament for its consideration the questions of:

- 1. Whether or not clause 8(1)(a), by requiring practitioners to refer patients to doctors who hold no conscientious objection to abortion, limits those practitioners' freedom to believe that abortion is murder?**
- 2. If so, whether or not clause 8(1)(a) is a reasonable limit on freedom of belief according to the test set out in Charter s. 7(2) and, in particular, whether or not there are any less restrictive means available to ensure that women receive appropriate health care?**

Operation of Charter's savings provision for abortion and child destruction – Absence of statement of compatibility – Expansion of definition of serious injury to include foetal destruction – Whether existing criminal offences exempted from the Charter

The Committee notes that there is no Statement of Compatibility for the Bill. The Second Reading Speech remarks:

In accordance with section 48 of the Charter of Human Rights and Responsibilities, a statement of compatibility for the Abortion Law Reform Bill 2008 is not required. The effect of section 48 is that none of the provisions of the charter affect the Bill. This includes the requirement under section 28 of the charter to prepare and table a compatibility statement, and the obligation under section 32 of the charter to interpret statutory provisions compatibly with human rights under the charter.

The Committee observes that:

- Charter s. 48 is limited to 'any law applicable to abortion or child destruction'. The Bill is not (yet) law.
- Charter s. 48 provides that nothing in the Charter 'affects' a law. Statements of compatibility have no legal effect.¹⁴
- Clause 10, in extending the definition of 'serious injury' in the *Crimes Act 1958* to cover destruction of a foetus, goes beyond the current definitions of abortion and child

¹² Charter s. 7(2) provides that 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...'

¹³ Joint Committee on Human Rights, *Twelve Report of Session 2003-2004*, [3.14]-[3.15], UK Parliament.

¹⁴ Charter s. 29.

destruction (which are presently limited to intentional conduct¹⁵) to cover reckless destruction,¹⁶ threats to destroy,¹⁷ conduct causing danger of destruction,¹⁸ negligent destruction,¹⁹ and dangerous driving causing destruction of fetuses.²⁰ If clause 10 is classified as a law applicable to abortion or child destruction, then its effect may be to make a number of existing criminal offences applicable to abortion or child destruction and, hence, subject to Charter s. 48, exempting them from the effects of the Charter.

The Committee will write to the Minister seeking further information about the application of Charter s. 48 to the Bill and, in particular, whether or not clause 10 will exempt any existing criminal offences from the effects of the Charter.

The Committee makes no further comment.

¹⁵ *Crimes Act 1958*, ss. 10 (requiring 'intent to destroy the life of a child'), 65 & 66 (requiring 'intent to procure a miscarriage').

¹⁶ *Crimes Act 1958*, s. 17.

¹⁷ *Crimes Act 1958*, s. 21.

¹⁸ *Crimes Act 1958*, s. 23.

¹⁹ *Crimes Act 1958*, s. 24.

²⁰ *Crimes Act 1958*, s. 319(1A).

Courts Legislation Amendment (Costs Court and Other Matters) Bill 2008

Introduced	19 August 2008
Second Reading Speech	20 August 2008
House	Legislative Assembly
Member introducing Bill	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill amends the *Supreme Court Act 1986*, the *County Court Act 1958*, the *Magistrates' Court Act 1989*, the *Victorian Civil and Administrative Tribunal Act 1998* and the *Legal Profession Act 2004* to establish the Costs Court.

Note: *The Costs Court (the 'Court') will have jurisdiction to hear and determine the assessment, settling and taxation of costs in proceedings in the courts and VCAT and will perform the functions currently performed by the taxing master in the Supreme Court and by registrars of the County Court, Magistrates' Court and VCAT with regard to the taxation of costs. The Court will be established within the Trial Division of the Supreme Court and will be presided over by an associate judge, appointed by the Chief Justice. An appeal lies from a decision of a registrar of the Court to a Costs Judge of the court and from a Costs Judge to a Judge of the Supreme Court.*

Content and Committee comment

[Clauses]

[2]. The provisions of the Bill will be in operation by 31 December 2009.

Note: *From the explanatory memorandum – The period is more than 12 months to allow sufficient time for Court Rules to be made and other administrative matters undertaken.*

[5]. Inserts new Division 2B of Part 2 in the *Supreme Court Act 1986* to establish the Costs Court within the Trial Division of the Supreme Court, comprising such Associate Judges as are allocated to the Costs Court by the Chief Justice.

The Costs Court has jurisdiction to hear and determine the assessment, settling, taxation or review of costs in all proceedings in the Supreme Court; in the County Court, Magistrates' Court and VCAT (if provided for under any Act or the Rules of those courts or VCAT). The Costs Court must hear and determine costs reviews under Division 7 of Part 3.4 of Chapter 3 of the *Legal Profession Act 2004* which allows a client including a third party liable to pay costs or a law practice engaged by the respondent law practice to apply to a Costs Judge for a review of costs.

[29]. This amending Act is repealed on 31 December 2010.

The Committee makes no further comment.

Medical Research Institutes Repeal Bill 2008

Introduced	19 August 2008
Second Reading Speech	20 August 2008
House	Legislative Assembly
Member introducing Bill	Hon. Jacinta Allen MLA
Minister responsible	Hon. Gavin Jennings MLC
Portfolio responsibility	Minister for Innovation

Purpose

The Bill repeals the *Baker Medical Research Institute Act 1980* and provides for the transfer to Baker IDI Heart and Diabetes Institute Holdings Limited ACN 131 762 948 of all property, rights, liabilities and staff of the Baker Medical Research Institute; and repeals the *Prince Henry's Institute of Medical Research Act 1988* and provides for the transfer to Prince Henry's Institute of Medical Research ACN 132 025 024 of all property, rights, liabilities and staff of the Prince Henry's Institute of Medical Research.

The Committee notes this extract from the Second Reading Speech –

As part of the State's commitment to regulatory reform and more efficient government, the Baker Medical Research Institute Act 1980 and the Prince Henry's Institute of Medical Research Act 1988 are to be repealed and all property, rights and liabilities held, and staff employed, by the Baker Medical Research Institute and the Prince Henry's Institute of Medical Research are to be transferred to new companies, limited by guarantee, incorporated under the Corporations Act 2001, that are to be the successors in law of those institutes.

...

The Baker Medical Research Institute Act 1980 and the Prince Henry's Institute of Medical Research Act 1988 are the remaining two Victorian Acts governing medical research institutes.

Content and Committee comment

[Clauses]

[2]. The provisions in the Bill come into operation on 1 January 2009.

[4 and 7]. Declares that the *Baker Medical Research Institute Act 1980* is repealed. Any person employed by the former body immediately before the commencement day, including a person holding a Board appointment under section 9(5) or 13(1) of the Act as in force immediately before its repeal, is to be taken, on and from the commencement day, as having been employed by the new body under the same terms and conditions.

[13 and 16]. Declares that the *Prince Henry's Institute of Medical Research Act 1988* is repealed. Any person employed by the former body immediately before the commencement day, is to be taken, on and from the commencement day, as having been employed by the new body under the same terms and conditions.

The Committee makes no further comment.

Ministerial Correspondence

Evidence Bill 2008

The Bill was introduced into the Legislative Assembly on 24 June 2008 by the Hon. Rob Hulls MLA. The Committee considered the Bill on 28 July 2008 and made the following comments in Alert Digest No. 9 of 2008 tabled in the Parliament on 30 July 2008.

Committee's Comments

[2] – Inappropriate delegation of legislative powers – delayed commencement

The Committee notes the delayed commencement and observes that no reasons are given in any of the explanatory material for the reasons for such a delay.

The Committee will seek further advice from the Attorney-General for the need to delay commencement by more than one year.

The Committee once again draws attention to Practice Note No. 1 of 2005 concerning indefinite or delayed commencement of Acts.

Minister's response

Thank you for your letter dated 30 July 2008 regarding your Committee's consideration of the Evidence Bill 2008. You sought further advice on the need to delay the commencement of the legislation for more than a year.

The Victorian Law Reform Commission, in its report Implementing the Uniform Evidence Act, recommended that approximately 12 months should be allowed from enactment of the Bill to the commencement of the operation of its provisions.

With changes of the magnitude encompassed by the Evidence Bill 2008, this delay is essential to ensure adequate time for systems changes, changes to Court Rules and appropriate training for key justice system stakeholders.

I trust this information is of assistance.

*ROB HULLS MP
Attorney-General*

13 August 2008

The Committee thanks the Attorney-General for this response.

Family Violence Protection Bill 2008

The Bill was introduced into the Legislative Assembly on 24 June 2008 by the Hon. Rob Hulls MLA. The Committee considered the Bill on 28 July 2008 and made the following comments in Alert Digest No. 9 of 2008 tabled in the Parliament on 30 July 2008.

Committee's Comments

[2]. Inappropriate delegation of legislative powers – delayed commencement

The Committee notes the delayed commencement and observes that no reasons are given in any of the explanatory material for the necessity or desirability of a delay in commencement of greater than one year.

The Committee will seek further advice from the Attorney-General for the need to delay commencement by more than one year.

The Committee again draws attention to Practice Note No. 1 of 2005 issued by the Committee in October 2005 concerning indefinite or delayed commencement of Acts.

Minister's response

Thank you for your letter dated 30 July 2008 regarding your Committee's consideration of the Family Violence Protection Bill 2008. You sought further advice on the need to delay the commencement of the legislation for more than a year.

Whilst the forced commencement date of the Bill is 1 October 2009, this is a contingency measure only. Subject to passage through Parliament, the Government is working towards commencing the Bill by the end of this year.

*ROB HULLS MP
Attorney-General*

21 August 2008

The Committee thanks the Attorney-General for this response.

**Committee Room
8 September 2008**

Appendix 1

Index of Bills in 2008

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Building Amendment Bill 2008	9
Cancer Amendment (HPV) Bill 2008	5
Children's Legislation Amendment Bill 2008	5, 7
Constitution Amendment (Judicial Pensions) Bill 2007	1, 6
Consumer Credit (Victoria) and Other Acts Amendment Bill 2007	1
Co-operatives and Private Security Acts Amendment Bill 2008	4
Corrections Amendment Bill 2008	10
County Court Amendment (Koori Court) Bill 2008	10
Courts Legislation Amendment (Associate Judges) Bill 2008	3, 6
Courts Legislation Amendment (Costs Court and Other Matters) Bill 2008	11
Courts Legislation Amendment (Juries and Other Matters) Bill 2008	7
Crimes Amendment (Child Homicide) Bill 2007	1, 4
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Education and Training Reform Amendment Bill 2008	4, 5
Energy and Resources Legislation Amendment Bill 2008	5
Environment Protection Amendment (Landfill Levies) Bill 2008	4
Essential Services Commission Amendment Bill 2008	4, 5
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Family Violence Protection Bill 2008	9, 11
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Gambling Regulation Amendment (Licensing) Bill 2008	5, 8
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Labour and Industry (Repeal) Bill 2008	10
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Legislation Reform (Repeals No. 2) Bill 2007	1
Legislation Reform (Repeals No. 3) Bill 2008	5
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Local Government Amendment (Disclosure) Bill 2008	10
Local Government Amendment (Elections) Bill 2008	8
Medical Research Institutes Repeal Bill 2008	11
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Melbourne Cricket Ground Amendment Bill 2008	7
National Gas (Victoria) Bill 2008	6, 9
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Police Integrity Bill 2008	4, 5
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Port Services Amendment (Public Disclosure) Bill 2008	2
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Public Holidays Amendment Bill 2008	9
Public Sector Employment (Award Entitlements) Amendment Bill 2008	5
Professional Boxing and Combat Sports Amendment Bill 2007	1
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Road Safety Amendment (Fatigue Management) Bill 2008	10
State Taxation Acts Amendment Bill 2008	6
Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008	8
Superannuation Legislation Amendment Bill 2008	8
The Uniting Church in Australia Amendment Bill 2008	5
Tobacco (Control of Tobacco Effects on Minors) Bill 2007	8
Unclaimed Money Bill 2008	7
Victoria Law Foundation Bill 2008	9
Victorian Energy Efficiency Target Bill 2007	1
Victorian Water Substitution Target Bill 2007	5
Whistleblowers Protection Amendment Bill 2008	10
Wildlife Amendment (Marine Mammals) Bill 2008	7
Working with Children Amendment Bill 2007	3, 4

Appendix 2

Committee Comments classified by Terms of Reference

Note: This Appendix lists Bills under the relevant Committee terms of reference where the Committee has raised issues requiring further correspondence with the appropriate Minister.

Alert Digest Nos.

Section 17(a)

(i) trespasses unduly upon rights or freedoms

Abortion Law Reform Bill 2008	11
Constitution Amendment (Judicial Pensions) Bill 2007	1
Family Violence Protection Bill 2008	9

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

Relationships Bill 2007	1
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(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

Corrections Amendment Bill 2008	
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(vi) inappropriately delegates legislative power

Essential Service Commission Amendment Bill 2008	4
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(vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny

National Gas (Victoria) Bill 2008	6
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(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities.

Abortion Law Reform Bill 2008	11
Children's Legislation Amendment Bill 2008	5
Constitution Amendment (Judicial Pensions) Bill 2007	1
Corrections Amendment Bill 2008	10
Crimes Amendment (Child Homicide) Bill 2007	1
Drugs, Poisons and Controlled Substances Amendment Bill 2008	3
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Family Violence Protection Bill 2008	9
Gambling Regulation Amendment (Licensing) Bill 2008	5
Justice Legislation Amendment Bill 2008	5
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Section 17(b)

(i) and (ii) repeals, alters or varies the jurisdiction of the Supreme Court

Police Integrity Bill 2008	4
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Appendix 3

Ministerial Correspondence

Table of correspondence between the Committee and Ministers during 2007-08

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.
Working with Children Amendment Bill 2007	Attorney-General	19.09.07	19.03.08	12 of 2007	4 of 2008
Emergency Services Legislation Amendment Bill 2007	Police and Emergency Services	09.10.07	-	13 of 2007	1 of 2008
Animals Legislation Amendment (Animal Care) Bill 2007	Agriculture	31.10.07	12.12.07	14 of 2007	4 of 2008
Liquor Control Reform Amendment Bill 2007	Consumer Affairs	21.11.07	04.12.07	15 of 2007	1 of 2008
Police Regulation Amendment Bill 2007	Police and Emergency Services	21.11.07	06.12.07	15 of 2007	1 of 2008
Victorian Energy Efficiency Target Bill 2007	Energy and Resources	21.11.07	04.12.07	15 of 2007	1 of 2008
Criminal Procedure Legislation Amendment Bill 2007	Attorney-General	04.12.07	30.01.08	16 of 2007	1 of 2008
Crimes Amendment (Child Homicide) Bill 2007	Attorney-General	05.02.08	25.02.08	1 of 2008	4 of 2008
Constitution Amendment (Judicial Pensions) Bill 2007	Attorney-General	05.02.08	21.05.08	1 of 2008	6 of 2008
Professional Boxing and Combat Sports Amendment Bill 2007	Sport, Recreation and Youth Affairs	05.02.08		1 of 2008	
Relationships Bill 2007	Attorney-General	05.02.08	03.03.08	1 of 2008	3 of 2008
Criminal Procedure Legislation Amendment Bill 2007	Attorney-General	28.02.08	07.05.08	2 of 2008	6 of 2008
Port Services Amendment (Public Disclosure) Bill 2008	Hon. David Davis MLC	28.02.08		2 of 2008	

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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.
Courts Legislation Amendment (Associate Judges) Bill 2008	Attorney-General	11.03.08	13.05.08	3 of 2008	6 of 2008
Drugs, Poisons and Controlled Substances Amendment Bill 2008	Health	12.03.08	03.04.08	3 of 2008	4 of 2008
Education and Training Reform Amendment Bill 2008	Education	08.04.08	16.04.08	4 of 2008	5 of 2008
Essential Services Commission (Amendment) Bill 2007	Finance	08.04.08	17.04.08	4 of 2008	5 of 2008
Justice Legislation Amendment (Sex Offenders Procedure) Bill 2008	Attorney-General	08.04.08	21.04.08	4 of 2008	5 of 2008
Police Integrity Bill 2008	Police & Emergency Services	08.04.08	18.04.08	4 of 2008	5 of 2008
Children's Legislation Amendment Bill 2008	Children & Early Childhood Development	07.05.08	28.05.08	5 of 2008	7 of 2008
Gambling Regulation Amendment (Licensing) Bill 2008	Gambling	07.05.08	11.06.08	5 of 2008	8 of 2008
Justice Legislation Amendment Bill 2008	Corrections	07.05.08	23.05.08	5 of 2008	6 of 2008
National Gas (Victoria) Bill 2008	Energy & Resources	27.05.08		6 of 2008	
Evidence Bill 2008	Attorney-General	30.07.08	13.08.08	9 of 2008	11 of 2008
Family Violence Protection Bill 2008	Attorney-General	30.07.08	21.08.08	9 of 2008	11 of 2008