

No. 12 of 2007

Tuesday, 18 September 2007

On the

Crimes Amendment (Rape)
Bill 2007

Firearms Amendment Bill 2007

Fisheries Amendment Bill 2007

Justice and Road Legislation
Amendment (Law Enforcement)
Bill 2007

Justice Legislation Amendment
Bill 2007

Legislation Reform (Repeals No. 1)
Bill 2007

Working with Children Amendment
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 Amendment (Rape) Bill 2007
Firearms Amendment Bill 2007
Fisheries Amendment Bill 2007
Justice Legislation Amendment Bill 2007
Legislation Reform (Repeals No. 1) Bill 2007
Working with Children Amendment Bill 2007Bill 2007

The Committee notes the following correspondence –

Justice and Road Legislation Amendment (Law Enforcement) 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. 12 of 2007

Crimes Amendment (Rape) Bill 2007

Introduced	21 August 2007
Second Reading Speech	22 August 2007
House	Legislative Assembly
Member introducing Bill	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill amends the *Crimes Act 1958* (the 'Act') to further provide for –

- the offence of rape and certain other sexual offences that require the prosecution to prove that the accused was aware that the victim was not consenting or might not have been consenting to a sexual act; and
- the use of jury directions on consent and on the accused's awareness in trials relating to charges for such offences.

Content and Committee comment

[Clauses]

[2]. Provides that the amendments will come into force on proclamation but not later than by 1 January 2008.

Jury Directions

[3]. Substitutes section 37 of the Act concerning jury directions that must be given by a judge at trial. The presiding judge must relate any direction to the facts in issue and the elements of the offence so as to assist the jury's comprehension of the direction.

[4]. Inserts new sections 37AAA and 37AA into the Act which separate out jury directions relating to consent and those directions which relate to the accused's awareness.

New section 37AAA sets out, for the purposes of section 37, the directions which a judge is to give to the jury in relation to consent, where relevant to the facts in the particular case.

New section 37AA sets out, for the purposes of section 37, the directions which a judge is to give to the jury in relation to an accused person's awareness, where relevant to the facts in the particular case.

Amendments to sexual offences requiring person to give thought to whether the victim is not consenting or might not be consenting.

Rape

[5]. Amends the offence of rape under section 38 of the Act by adding a new alternate fault element to ensure that a person is also guilty of the offence of rape in circumstances where that person intentionally sexually penetrates another person (or compels another person to do so) whilst not

turning their mind or giving any thought to whether or not the person is consenting or might not be consenting.

Compelling sexual penetration

[6]. Amends the offence of compelling sexual penetration (section 38A) to add a new alternate fault element to provide that a person is guilty of the offence of compelling sexual penetration if he or she compels (by force or otherwise) another person to engage in a sexual act of the kind referred to in section 38A(2) without the victim's consent while either being aware that the victim is not or might not be consenting or alternatively whilst not giving any thought to whether the person is not consenting or might not be consenting.

Indecent assault

[7]. Amends the offence of indecent assault (section 39) by adding a new alternate fault element to ensure that a person is also guilty of the offence of indecent assault where that person assaults another person in indecent circumstances whilst not turning their mind or giving any thought to whether or not the person is consenting or might not be consenting.

Incest

[8]. Amends section 44(6A) which sets out the circumstances when a person compels another person to take part in sexual penetration for the purposes of the crime of incest under section 44 of the Act. The amendment will add that a person compels another person (the victim) when the person is not giving any thought to whether the victim is not consenting or might not be consenting.

Transitional provisions

[9]. Provides transitional provisions –

- The modified jury directions apply to any trial that commences on or after the commencement of this Bill regardless of when the offence to which the trial relates is alleged to have been committed.
- The amended offence provisions apply only to offences alleged to have been committed on or after the commencement of this Bill.

[10]. Provides for the automatic repeal of this amending Bill on 1 January 2009.

Charter Report

Keywords – Explanatory memorandum – Clause amending crime of incest – Misleading description – “adding a new alternative fault element” – Clause widens defence to crime

The Committee notes that the Explanatory Memorandum incorrectly describes the effect of clause 8 as ‘adding a new alternative fault element’ to the offence of incest. To the contrary, its effect is to widen a defence to that crime.

Keywords – Right to privacy – Presumption of innocence – Sexual conduct – Obligation to think about consent – Not unlawful or arbitrary – Increased tactical pressure on defendants – No burden of proof on the defendant

Charter s13(a) gives people the right not to have their ‘privacy... unlawfully or arbitrarily interfered with’. Charter s25(1) gives criminal defendants the ‘right to be presumed innocent until proved guilty according to law.’

The Committee observes that clauses 5, 6 & 7 (respectively amending ss 38 (rape), 38A (compelling sexual penetration) and 39 (indecent assault) of the *Crimes Act 1958*) effectively impose an obligation on any person who engages in sexual conduct to think about whether or not

the other person is consenting. Whilst the Committee notes that sexual conduct is amongst the most private of human activities and that the offences that are amended carry very high penalties, the Committee considers that any interference in the privacy of sexual conduct is neither unlawful nor arbitrary. The new obligations are contained in the definition of each offence and are clearly set out in plain language, as are the matters that juries will be asked to consider. Also, the obligation imposed is directed to respecting the rights of other people to choose whether or not to engage in sexual conduct. The Charter's right to privacy is therefore not infringed.

The Committee further observes that the Bill's various provisions increase the tactical pressure on sexual offence defendants to adduce evidence at their trials about what they were thinking at the time of the alleged offences. However, as the Statement of Compatibility explains, the evidential and legal burdens of proof for the alternative element of these offences remain on the prosecution. The Charter's presumption of innocence is therefore not infringed.

Keywords – Protection of families – Incest – Defence of compulsion – Widening of defence – Whether a law fails to protect families in some circumstances – Prospective law – Defence of compulsion limited by other party's incorrect belief

Charter s17(1) provides that families 'are entitled to be protected by society and the State.' The Committee observes that Charter s17(1) obliges the State to protect families and that a Bill may be incompatible with this obligation if it fails to protect families in some circumstances.

The Committee notes that s44(6) of the *Crimes Act 1958* provides that people who are compelled to engage in an act of sexual penetration with a family member are not guilty of incest. The Committee considers that this defence protects families, by reducing stigma and the threat of punishment for non-consenting participants in incest. However, the Committee observes that this protection is limited by s44(6A)(b), which provides that the defence of compulsion is only available when the person who compelled the victim to engage in incest was aware that the victim might not be consenting to it.

The Committee notes that clause 8 amends s44(6A)(b) to make the defence available when the person who compelled the victim to engage in incest gave no thought as to whether or not the victim was consenting. While the Committee considers that this change extends the protection offered by the law to non-consenting participants in incest, the Committee is concerned that clause 8 is restricted (by clause 9, inserting a new s609 into the *Crimes Act 1958*) to incest alleged to occur after the commencement of clause 8. The Committee is further concerned that the defence of compulsion will remain (under the amended s44(6A)(b)) unavailable to non-consenting participants in incest where the other person mistakenly believed that the victim was consenting.

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

1. Should clause 8, which widens a defence to the crime of incest, be applied retrospectively, rather than (as clause 9 presently provides) only prospectively?
2. Should s44(6A)(b) of the *Crimes Act 1958*, which has the effect of making some non-consenting participants in incest guilty of that offence, be removed, rather than (as clause 8 presently provides) retained with amendments?

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

Keywords – Retrospective criminal laws – Prospective widening of the definition of crimes – Re-enactment of retrospective provisions – Retrospective provisions on directions explaining the existing law

Charter s27(1) prohibits criminal convictions for 'conduct that was not a criminal offence when it was engaged in.' As the Statement of Compatibility explains, clause 9 (inserting a new s609 into the *Crimes Act 1958*), provides that amendments widening the crimes of rape, compelling sexual penetration and indecent assault are not retrospective. However, the Committee notes that clause 3

and 4, inserting new sections 37, 37AAA & 37AA into the *Crimes Act 1958*, will apply in trials for offences committed before their commencement.

The Committee observes that the new section 37AAA (d) & (e) of the *Crimes Act 1958* (inserted by clause 4) are re-enactments of the existing s37(a) & (b) , which already operate retrospectively (as a result of s606A(1) of the *Crimes Act 1958* and s9(1) of the *Crimes (Rape) Amendment Act 1991*.)

The Committee further observes that that the new sections 37, 37AAA (a), (b) & (c) and 37AA explain the existing law to juries and impose a requirement of relevance on the delivery of those directions. The Committee considers that these changes do not alter the definition of any crime.

The Committee therefore considers that clauses 3, 4 and 9 do not infringe the Charter's prohibition against retrospective criminal laws.

The Committee makes no further comment.

Firearms Amendment Bill 2007

Introduced	21 August 2007
Second Reading Speech	22 August 2007
House	Legislative Assembly
Member introducing Bill	Hon. Bob Cameron MLA
Portfolio responsibility	Minister for Police and Emergency Services

Purpose

The Bill amends the *Firearms Act 1996* (the 'Act') to provide for various matters relating to the regulation of firearms in Victoria, including –

- licences under Part 2;
- reporting requirements for handgun target shooting and approved handgun target shooting clubs;
- applications for firearms and the private security industry;
- the storage of firearms;
- hunting on Crown land;
- firearms collectors;
- firearms dealers;
- prohibited persons;
- investigation, seizure and forfeiture of firearms;
- recognition of certain interstate firearms licences and permits;
- regulation of imitation firearms;
- to amend the *Crimes Act 1958* to make further provision regarding the use of firearms in the commission of offences; and
- to amend the *Magistrates' Court Act 1989* to enable certain indictable offences under the Firearms Act 1996 to be heard and determined summarily.

Content and Committee comment

[Clauses]

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

Strict liability offence

[38]. Inserts a new section 134AB into the Act making it an offence to possess or carry a part of a firearm that is capable of being used to alter the category of a firearm in the person's possession, carriage or use so that the firearm becomes a different category of firearm to that which the person is authorised to possess, carry or use under his or her licence –

- without lawful excuse; or
- unless before doing so, the person obtains the consent of the Chief Commissioner.

The Committee notes this extract from the Statement of Compatibility –

Section 130 of the Magistrates Court Act 1989 would apply on summary prosecution so that a defendant claiming he or she had a lawful excuse or prior consent of the Chief Commissioner would have to adduce or point to evidence that suggests a reasonable possibility that the exception applies. Only then is the prosecution required to prove beyond reasonable doubt that the exception does not apply.

It is questionable whether this provision actually transfers the burden of proof, because once the defendant has adduced or pointed to some evidence, the burden is on the prosecution to prove beyond reasonable doubt the absence of the exception raised.

...

The offence is a regulatory offence and does not carry a severe penalty. The onus is on the prosecution to prove that the person is not authorised under his or her licence to carry that category of firearm. A licence is the principal means by which possession of a firearm is lawful. It is reasonable to presume that a person whose licence does not permit the possession of that weapon is doing so unlawfully. It would be a considerable burden, both in terms of use of resources and in terms of costs, if the Crown had to investigate and bring evidence of all other potential matters that could give rise to an exception in order to disprove a negative.



The Committee reports to Parliament pursuant to a term of reference provided in section 17(a)(i) of the Parliamentary Committees Act 2003, – ‘trespasses unduly on rights or freedoms’ – Strict liability offence – Lawful excuse to be established by accused person – Prosecution required to prove elements of offence.

The Committee notes the strict liability offence and accepts that in certain circumstances the proof of lawful excuse as a defence is in the peculiar knowledge of the person possessing or carrying the relevant item. The Committee notes that once the person has adduced evidence sufficient to raise lawful excuse the legal burden remains with the prosecution to prove absence of lawful excuse beyond reasonable doubt.

Search and seizure without judicial warrant

[41]. Amends section 149 of the Act to enable police to exercise additional search and seizure powers in relation to silencers and prescribed items in addition to the powers already existing in relation to firearms and cartridge ammunition.

The Committee notes this extract from the Statement of Compatibility –

Section 149 of the Act enables police to search, without a warrant, persons and vehicles for firearms where the officer has reasonable grounds for suspecting that a person is committing or is about to commit an offence against the Act and that person has a firearm in his or her possession. Clause 41 amends s 149 of the Act to include cartridge ammunition, silencers and other prescribed items within the search powers. The search of a person or their vehicle may interfere with a person's private life. However, it cannot be regarded as arbitrary as it is limited to the search for firearms and related items in circumstances where a police officer has reasonable grounds for suspecting that a person is committing or is about to commit an offence. The police officer is required to inform the person of that suspicion as well as the officer's name, rank, place of duty and identification (unless they are in uniform). Accordingly, the provision is compatible with s 13 of the Charter. The search of a person, and sometimes a vehicle, will necessarily involve some restriction upon the liberty and security of the person.



The Committee reports to Parliament pursuant to a term of reference provided in section 17(a)(i) of the Parliamentary Committees Act 2003, – ‘trespasses unduly on rights or freedoms’ – Search without warrant based on reasonable suspicion.

The Committee notes that the search and seizure powers extend the existing police powers for search without warrant where police suspect on reasonable grounds that a person is committing or is about to commit an offence against the Act. This power will now extend to include silencers and prescribed items. The Committee observes that it has previously reported to the Parliament that the threshold for the exercise of the power based on ‘reasonable suspicion’ is a lower threshold test than that based on ‘reasonable belief’.

In the circumstances the Committee draws attention to the provision.

Forfeiture of property

[42]. Amends section 151 of the Act to extend the powers of the court to order forfeiture of silencers or prescribed items, in addition to the powers already existing in relation to firearms and cartridge ammunition, in the possession of, or used or carried by the person.

Crimes Act 1958

[57]. Amends section 31A(1) of the *Crimes Act 1958*, to provide that a person who is found guilty of an indictable offence and who carried a firearm (within the meaning of the *Firearms Act 1996*), or an imitation firearm (within the meaning of section 29(3)(b) of the *Crimes Act 1958*) when committing the offence is guilty of a further offence and is liable to level 6 imprisonment. The further offence must not be served concurrently with any other offence nor may a court order a suspended sentence for such an offence.

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

Charter Report

Keywords – Reasonable limits – Licensing and regulation scheme – Privacy – Freedom of expression – Property – Liberty– Presumption of innocence – Self-incrimination

Charter s7(2) provides that human rights may be ‘subject to such reasonable limits as can be demonstrably justified in a free and democratic society.’

The Committee notes that the Bill makes minor amendments to the scheme for regulating the possession and use of firearms. The provisions amended are typical in licensing or regulatory schemes such as those regulating the possession and use of dangerous or controlled items. Such schemes typically provide for accreditation or licensing, monitoring and enforcement provisions.

The Committee observes that the Statement of Compatibility comprehensively identifies a number of provisions in the Bill that are said to reasonably engage Charter rights. These Charter rights include:

- Privacy (Charter s13(a)): provisions requiring the provision of private information for the purposes of the Act; and expanded powers to search people and vehicles without a warrant.
- Freedom of expression (Charter s15(2)): modifications to a scheme regulating displays of firearms.
- Property rights (Charter s20): provisions requiring the surrender, forfeiture or disposal of firearms whose possession is not authorised by the scheme.

- Liberty (Charter s21(1)): the prospect that people will be detained while search powers are exercised.
- Presumption of innocence (Charter s25(1)): a new offence of carrying certain components of firearms that provides for defences of lawful excuse and consent.
- Self-incrimination (Charter s25(2)(k)): provisions requiring information to be provided to the Chief Commissioner.

In each instance the Statement contends that the respective rights, to the extent that they are infringed at all, are reasonable limitations according to the test set out in Charter s7(2). Having considered the Charter rights engaged by the Bill the Committee is satisfied that the measures so engaged do not warrant any special mention or adverse comment in respect to possible incompatibility with human rights.

The Committee makes no further comment.

Fisheries Amendment Bill 2007

Introduced	21 August 2007
Second Reading Speech	22 August 2007
House	Legislative Assembly
Member introducing Bill	Hon. Joe Helper MLA
Portfolio responsibility	Minister for Agriculture

Purpose

The Bill amends the *Fisheries Act 1995* (the 'Act') to prohibit commercial net fishing in Western Port; and define recreational fishing equipment; and make other miscellaneous amendments to that Act.

Content and Committee comment

[Clauses]

[2]. Provides that the provisions in the Bill (except clauses 3(2), 7, 8 and 9(2)) come into operation on the day after Royal Assent. Clauses 3(2), 7, 8 and 9(2) come into operation on a day to be proclaimed but no later than 1 April 2009.

The Committee notes this extract from the explanatory memorandum concerning the commencement provision –

The period allowed is necessary to allow time to make regulations to support amendments made by the Bill and the date coincides with the renewal of commercial fishing licences.

Restriction on commercial net fishing in Westernport bay – provision for compensation

[13]. Inserts new section 153C into the *Fisheries Act 1995* to provide that a holder of a Westernport/Port Phillip Bay Fishery Access Licence is not authorised to carry out net fishing in Western Port on and from 1 December 2007.

The Committee notes this extract from the explanatory memorandum –

This clause also provides that such a licence holder may be entitled to an amount of compensation determined by the Treasurer and the Minister. The amount will be determined in accordance with certain principles and criteria that have been developed for that purpose.



The Committee reports to Parliament pursuant to a term of reference provided in section 17(a)(i) of the Parliamentary Committees Act 2003, – ‘trespasses unduly on rights or freedoms’ – Property rights.

The Committee notes that new section 153C will remove entitlements for Westernport/ Port Philip Bay access licence holders to net fish in Westernport bay and further notes the provisions in the Bill for the payment of compensation by the State to affected licence holders.

The question of the adequacy of any compensation payable is a matter of judgment for the Parliament’s consideration.

The Committee further notes the Bill (new section 153C(4)) makes an appropriation to be paid out of the Consolidated Fund to meet any compensation determined by the Treasurer and the Minister.

The Committee notes that new section 153C will remove entitlements for Westernport/ Port Phillip Bay access licence holders to net fish in Westernport bay and further notes the provisions in the Bill for the payment of compensation by the State to affected licence holders.

The Committee further notes the Bill (new section 153C(4)) makes an appropriation to be paid out of the Consolidated Fund to meet any compensation determined by the Treasurer and the Minister.

[14]. Provides for the automatic repeal of this amending Act on 1 April 2010.

Charter Report

Keywords – Right to property – Restriction of licence-holders’ authority to use a fishing net – Whether arbitrary – Purpose of encouraging recreational fishing– Whether proportional – Discretionary compensation – No enforceable entitlement to compensation for commercial losses

Charter s20 prohibits the deprivation of anyone’s ‘property other than in accordance with law.’ The Committee considers that, to accord with law, any deprivation of property must be a proportionate means of achieving a purpose that is not arbitrary.

The Committee notes that holders of a Westernport / Port Phillip Bay Fishery Access Licence are presently authorised by regulation 225 of the *Fisheries Regulations 1998* to use certain fishing nets in Port Phillip Bay and Western Port (subject to conditions in Part 3 of those Regulations.) The Committee considers that this authority may be the property of licence holders. The Committee also considers that clause 13, inserting a new s135 into the *Fisheries Act 1995*, cancelling this authority in Western Port from 1 December 2007, may deprive licence holders of their property.

The Committee notes that the purpose of clause 13 is to enhance recreational fishing opportunities and encourage participation in Westernport bay. The Committee considers that whether or not this is an arbitrary reason for depriving individuals of property is a matter of political judgement.

The Committee notes that clause 13 provides that the amount of compensation that a licence holder ‘may be entitled to’ is at the discretion of the Treasurer and the Minister. The Committee further notes that clause 13 removes any liability of the State of Victoria under any law ‘other than the Charter of Human Rights and Responsibilities’ arising from its restriction of the authority to use fishing nets. The Committee observes that Charter s39(3) provides that no-one is ‘entitled to be awarded any damages because of a breach of this Charter.’ The Committee therefore considers that clause 13 removes any enforceable entitlement to compensation for any losses occasioned by its restriction of licence holders’ authority to use fishing nets.

The Committee refers to Parliament for its consideration the question of whether or not the restriction of licence holders’ authority to use fishing nets without an enforceable entitlement to compensation for any losses is a proportionate means of furthering recreational fishing and participation in Westernport bay.

The Committee makes no further comment.

Justice Legislation Amendment Bill 2007

Introduced	21 August 2007
Second Reading Speech	22 August 2007
House	Legislative Assembly
Member introducing Bill	Hon. Bob Cameron MLA
Portfolio responsibility	Minister for Police and Emergency Services

Purpose

The Bill amends the –

Control of Weapons Act 1990 to –

- (i) *prohibit the carrying of dangerous articles for the purposes of self-defence.*
- (ii) *provide for new offences for possession of weapons in, and in the immediate vicinity of, licensed premises; and increase certain penalties for existing offences under that Act.*

Corrections Act 1986 to –

- (i) *provide that certain serious road safety offences are criminal acts of violence for the purposes of the victims register.*
- (ii) *enable the Governor of a prison to stop or censor letters sent to a prisoner or from a prisoner that may be distressing or traumatic to a victim.*
- (iii) *make it an offence for a prisoner to send or attempt to send a letter to a victim that may be distressing or traumatic to the victim or any other victim who might reasonably receive it.*
- (iv) *make further provision for the power to make regulations with respect to the issuing and use of firearms by escort officers and the validation of current regulations concerning those matters.*

Legal Aid Act 1978 to extend the maximum period of membership of practitioner panels.

Magistrates' Court Act 1989 to enable a new offence under the Control of Weapons Act 1990 to be triable summarily.

Content and Committee comment

[Clauses]

[2]. Certain provisions commence on the day after Royal Assent. Other than sections 16 and 17 the remaining provisions commence on proclamation but not later than by 1 July 2008.

Sections 16 and 17 (relating to letters to and from prisoners) are deemed to have commenced on 1 July 2005.

Control of Weapons Act 1990

Strict liability offence – carry or possess a prohibited weapon without exemption or approval

[4]. Inserts new section 5(1A) in the to make it an offence for a person to possess, carry or use a prohibited weapon in licensed premises or in a public place in the immediate vicinity of licensed premises, without an exemption or approval under that Act. Currently section 8B provides for exemptions by Governor in Council Order and 8C provides for approvals by the Chief Commissioner of Police.

Note: *The effect of the new section is to double the maximum penalty for this offence when committed in, or in the immediate vicinity of, licensed premises.*

Strict liability offence – possess, carry or use controlled weapon without lawful excuse

[6]. Inserts new section 6(1A) to make it an offence for a person to possess, carry or use a controlled weapon in licensed premises or in a public place in the immediate vicinity of licensed premises, without lawful excuse.

Note: New section 6(1A) doubles the maximum penalty for this offence when committed in, or in the immediate vicinity of, licensed premises.

Strict liability offence – possess or carry a dangerous article without lawful excuse

[7]. Inserts new section 7(1A) to make it an offence for a person to possess or carry a dangerous article in licensed premises or in a public place in the immediate vicinity of licensed premises, without lawful excuse and further provides that the lawful reasons for which a person may possess or carry a dangerous article do not include self-defence.

Note: New section 7(1A) doubles the maximum penalty for this offence when committed in, or in the immediate vicinity of, licensed premises.

Clause 7(4) repeals section 7(3) which states that a lawful excuse for possessing or carrying a dangerous article includes self-defence.

Clause 7(5) substitutes a new section 7(4) to provide that ‘in considering whether a person has a lawful excuse to possess or carry a dangerous article, the court must have regard to the circumstances, such as the time and location, of the incident’.



The Committee reports to Parliament pursuant to a term of reference provided in section 17(a)(i) of the Parliamentary Committees Act 2003, – ‘trespasses unduly on rights or freedoms’.

Keywords: Right to life – Defence of self-defence abolished – Proportionate response to attack on self – Whether an undue trespass to right to self-preservation / bodily integrity.

The Committee notes the amendments abolish the lawful excuse of ‘self-defence’ for the purposes of the offence in section 7 of the Act. The Committee discusses this question in more detail in the Charter Report below.

The question whether the removal of the defence is an undue trespass to rights and freedoms is a question for the Parliament’s consideration.

Keywords: Strict liability offences – Clauses 4, 6 and 7 – Presumption of innocence – Prosecution must prove elements of crime – Defendant to bear evidential burden by establishing lawful excuse, exemption, exception or other qualification.

The Committee notes that section 8 of the Control of Weapons Act 1990 (the ‘Act’) provides that section 130 of the Magistrates’ Court Act 1989 applies in respect of a claim of ‘lawful excuse’ under the Act. Section 130 provides –

130 Evidential burden on defendant for exceptions etc.

(1) If—

- (a) an Act or subordinate instrument creates an offence and provides any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of the offence; and
- (b) the defendant wishes to rely on the exception, exemption, proviso, excuse or qualification—

the defendant must present or point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish the exception, exemption, proviso, excuse or qualification.

...

- (3) *No proof in relation to an exception, exemption, proviso, excuse or qualification is required on the part of the informant unless the defendant has presented or pointed to evidence in accordance with subsection (1).*

The Committee notes the strict liability offences in clauses 4, 6 and 7. The Committee observes that the offences in the existing sections 5, 6 and 7 are strict liability offences. The new offences respectively require the proof by the defendant that he or she had an exemption or approval (clause 4) or had lawful excuse to use, carry or possess certain weapons or dangerous articles (clauses 6 and 7). The Committee routinely notes strict liability offences where certain factual evidence is within the peculiar knowledge of one party to and where the other party would bear a disproportionately difficult evidential burden to prove the negative. The Committee draws attention to these provisions because they may engage the 'trespass to rights or freedoms' terms of reference in that they derogate from the principle of the presumption of innocence and the attendant duty on the prosecution to prove the necessary elements of a crime. In strict liability offences it is sufficient if the defendant discharges an evidential burden on the balance of probabilities and then the prosecution must prove beyond reasonable doubt that the lawful excuse did not apply in the circumstances.

The Committee accepts that in these circumstances the use of strict liability offences in the relevant clauses above is acceptable.

Removal of lawful excuse of self-defence only to apply after commencement of amendments

[14]. Inserts new section 15 as a transitional provision to ensure that the removal of self-defence as a lawful excuse for the possession and carriage of dangerous articles under clauses 7(3), 7(4) and 7(5) of the Bill cannot be applied to offences alleged to have been committed before the date of commencement of those clauses.

Corrections Act 1986

[15]. Amends the definition of criminal act of violence in section 30A(1) of the Act to clarify that victims of culpable driving causing death and dangerous driving causing death or serious injury offences can be included on the victims register established under the Act. The amendment also extends the victims register provisions to apply to a victim of failing to stop and render assistance after a motor vehicle accident causing death or serious injury under section 61(3) of the *Road Safety Act 1986*.

Retrospective amendments (16 and 17) to 1 July 2005

[16]. Creates a new Division 4A concerning letters to and from prisoners and inserts new section 47AA which provides for definitions of 'family member' and 'victim' for the purposes of that new Division.

[17]. Amends section 47D(1)(d) of the Act to enable a Governor to intercept or censor any letter to be sent by a prisoner, or sent to a prisoner by any person (other than prescribed persons) that contains written or pictorial matter that may be regarded by a victim as distressing or traumatic.

Section 47D relevantly provides (with amendments shown underlined) –

47D When letters may be stopped and censored

- (1) *This section applies if the Governor reasonably believes that any letter to be sent by a prisoner to, or sent to a prisoner by, any person who is not listed in section 47(1)(m)* –*

- (a) is a threat to prison security; or
- (b) may be of a threatening or harassing nature; or
- (c) may be being used to further an unlawful activity or purpose; or
- (d) contains indecent, abusive, threatening or offensive written or pictorial matter, or written or pictorial matter that may be regarded by a victim as distressing or traumatic, or an indecent, obscene or offensive article or substance; or ...

* Certain prescribed persons such as the Ombudsman or Members of Parliament

The Committee notes this extract from the Second Reading Speech –

The recent judgement of the Supreme Court case of Knight v. Anderson (2007) VSC 278 which granted Julian Knight leave to commence an application for judicial review in relation to the stopping of the letter to one of his victims has caused community outrage.

...

In response, the government gave a commitment to further protect victims' rights by giving correctional officials the power to stop offenders, such as Julian Knight, from contacting their victims.

...

This Bill will amend the Corrections Act 1986 to enable prison governors to intercept or censor letters sent by prisoners to any person if they reasonably believe that the letter contains material that may be distressing or traumatic.

This amendment will validate the prison governor's decision to stop the letter that Julian Knight wrote which was the subject of the decision of the Supreme Court in Knight v. Anderson.



The Committee reports to Parliament pursuant to a term of reference provided in section 17(a)(i) of the Parliamentary Committees Act 2003, – ‘trespasses unduly on rights or freedoms’ – Retrospective amendment.

The Committee notes that the amendments seek to validate a decision made by the prison Governor to stop the letter that Julian Knight wrote which was the subject of the decision of the Supreme Court in Knight v. Anderson.

The Committee refers to the Parliament the question whether the retrospective validation is warranted in the circumstances.

[18]. Inserts a new section 47DA to make it an offence for a prisoner to send or cause to be sent or attempt to send or cause to be sent a letter to a victim if the prisoner knows or ought reasonably to know that the letter contains matter that may be distressing or traumatic to the victim or any other victim who might reasonably receive it. This offence is intended to include situations where a prisoner writes to the victim or a family member of the victim of another prisoner or offender. The maximum penalty for this offence is 6 months imprisonment.

Regulation making powers and validation of past regulations

[20]. Inserts a new section 112A to enable the Governor in Council to make regulations for or with respect to the manner and circumstances in which an escort officer may be issued with a firearm; the carrying and storage of firearms; the use of firearms by escort officers when such use is the only practicable way to prevent the escape of a prisoner from custody or to prevent death or serious injury; and to confer a discretion on the Secretary or a Governor to issue a firearm to an escort officer where reasonably believed to be necessary for the security or good order of the prison or for the safety of a prisoner, an escort officer or other persons.

Note: *Current section 112(1)(k) provides that regulations may be made (subject to Parliament's disallowance) (amongst other matters) in respect to 'the issue of firearms to, and the carrying, use and storage of firearms by, prison officers or escort officers'.*

The clause also inserts a new section 112B to ensure that any regulation made or in force, or purported to have been made or in force, before the commencement of clauses 19 and 20 of this Bill are deemed to have the same force and effect as they would have had if new section 112A had been in operation at that time.



The Committee reports to Parliament pursuant to a term of reference provided in section 17(a)(i) of the Parliamentary Committees Act 2003, – ‘trespasses unduly on rights or freedoms’ – Retrospective validation – Existing causes of action

The Committee notes that clause 20 amplifies and clarifies the regulation making power currently found in section 112(1)(k). It is not clear to the Committee that any existing regulation made under that power, absent the validation clause, would be held invalid were it to be challenged in proceedings.

In the circumstances the Committee notes the retrospective validation seeks to avoid doubt as to the legal validity of existing regulations.

The Committee will however seek further advice from the Minister whether he is aware of any existing proceeding challenging the existing regulations.

Pending further advice the Committee draws attention to the provisions.

[23]. Inserts new item 42H in Schedule 4 of the *Magistrates' Court Act 1989* to enable the indictable offence in new section 5(1A) (clause 4 above) to be tried summarily in the Magistrates' Court.

[24]. This amending Act is to be repealed on 1 July 2009.

Charter Report

Keywords – Right to security – Offence to carry or possess a dangerous article in a public place without a lawful excuse – Removal of self-defence as a lawful excuse – Perceived immediate threats – Isolated or unsafe public places

The Committee notes that the Statement of Compatibility does not address the compatibility of clause 7 (amending s7 of the *Control of Weapons Act 1990*) with human rights. Charter s21(1) provides that everyone has a right to 'security'. The Committee considers that this right extends, not only to security from state conduct, but also to security from the conduct of others.

The Committee notes that s7(3) & (4) of the *Control of Weapons Act 1990* presently provide that self-defence is a lawful excuse to a charge of carrying or possessing a dangerous article. The Committee observes that the High Court has ruled that an identical provision in New South Wales does not authorise carrying or possessing an article merely 'for the purpose of "self-defence"'; rather, '[t]here must be a perceived threat, and its immediacy is also a relevant factor.' (*Taikato v R* (1996) 186 CLR 454, 467) The Committee considers that the right to security under s21(1) includes a right to take any steps reasonably necessary to defend oneself from such a perceived threat.

The Committee notes that clause 7, which removes self-defence as a lawful excuse to this offence, makes it unlawful for anyone who perceives an immediate threat in a public place to pick up or modify an article to defend himself or herself. The Committee observes that the only lawful options that will be available to such a person will be to call for help, run away or defend themselves with

their hands or any items that they are carrying for another purpose. These options may not be sufficient to overcome an immediate threat to personal security in some instances, particularly for people who live or work in isolated or unsafe places. The Committee is concerned that a law making it an offence for such a person to pick up, e.g. a brick, to fend off a potential attack, may deny that person an effective means of temporarily securing themselves against possible harm while they seek help or safety. The Committee therefore considers that the removal of self-defence as a lawful excuse for carrying or possessing a dangerous article may infringe the right to security from perceived immediate threats.

The Committee notes the following comment from the second reading speech:

To further safeguard public safety, this bill now removes self-defence as a lawful excuse for carrying dangerous articles. A 'dangerous article' is any item (for example a broken bottle or a pair of scissors) that is adapted or carried for use as a weapon. It is not appropriate in our society that such articles should be carried solely for self-defence when their use could result in serious injury or death.

The Committee observes that, as the Statement of Compatibility does not address the compatibility of clause 7 with human rights, it does not address whether clause 7 strikes a reasonable balance between different aspects of the right to security under Charter s21(1). The Committee will seek further advice from the Minister concerning the following matters:

1. What impact will removal of self-defence as a lawful excuse for possessing or carrying a dangerous article have on the security of people who perceive immediate threat of harm in an isolated or unsafe public place?
2. What is the extent of the risk to public safety posed by permitting people to temporarily carry an article as a weapon in a public place to defend themselves from a perceived immediate threat of harm?
3. Are there less restrictive means to overcome this risk than the removal of self-defence as a lawful excuse for possessing or carrying a dangerous article?

Pending the Minister's response, the Committee refers to Parliament the question of whether or not clause 7 strikes a reasonable balance between people's Charter right to be secure from being harmed by articles modified or carried as a weapon and people's Charter right to secure themselves by carrying such articles when they perceive an imminent threat of harm.

Keywords – Right to privacy – Prisoners – Extension of victims' register to fatal or harmful driving offences – Provision of information about sentencing, release and escape – Legitimate interest of victims in such information – Safeguards for confidentiality – No unlawful or arbitrary interference

Charter s13(a) gives people the right not to have their 'privacy... unlawfully or arbitrarily interfered with'. The Committee observes that the human rights in the Charter apply to all human beings, including prisoners. The Committee considers that clause 15, amending s30A(1) of the *Corrections Act 1986* to extend an existing scheme for informing victims of crime about the sentence, release and escape of prisoners to prisoners convicted of fatal or injurious driving offences, may interfere with such prisoners' privacy.

The Committee notes the following comments from the Statement of Compatibility:

[P]risoners' right in this regard compete in this instance with the right of victims to liberty and security of the person... and also their right to privacy... That is, without the relevant information to which a victim is entitled under the victims' register, a victim's right to liberty and security of the person and privacy may be limited.

The Committee considers that, in light of the profound impact that serious driving offences may have, victims of such offences may have a legitimate interest in receiving information about prisoners' sentence, release or escape.

The Committee further notes that existing provisions in the *Corrections Act 1986* permit the Secretary to decline to release information when a person's security may be endangered and oblige victims to respect the confidentiality of information they receive. The Committee considers that any interference in prisoners' privacy is neither arbitrary nor unlawful and that their Charter right to privacy is therefore not infringed.

Keywords – Right to correspondence – Freedom of expression – Prisoners – Censorship of letters that may be regarded by a victim as distressing or traumatic – Letters sent to prisoners – Whether proportionate – Whether predictable

Charter s13(a) gives people the right not to have their 'correspondence... unlawfully or arbitrarily interfered with'. Charter s15(2) gives people the 'right to freedom of expression', including the 'freedom to seek and impart information and ideas of all kinds'. The Committee observes that the rights in the Charter extend to all human beings, including prisoners. The Committee notes that the European Court of Human Rights has held that right of prisoners to correspondence differs from the rights of non-prisoners only to the extent that is necessitated by 'the ordinary and reasonable requirements of imprisonment' (*Golder v United Kingdom* [1975] ECHR 1, [45].)

The Committee considers that clause 17, amending s47D(1) of the *Corrections Act 1986* to extend an existing scheme for censoring letters sent to and from prisoners, may interfere with prisoners' and their correspondents' rights to correspondence and freedom of expression. However, the Committee notes that the rights to correspondence and freedom of expression are not absolute. In particular, all people's right to freedom of expression 'may be subject to lawful restrictions reasonably necessary... to respect the rights... of other persons'. The Committee observes that clause 17 has such a purpose: the protection of the rights of victims of crime. The Committee considers that clause 17 will be compatible with human rights if it is a proportionate and predictable means of protecting victims of crime.

The Committee notes that clause 17 gives prison governors and their delegates the power to censor any letter whose contents 'may be regarded as distressing or traumatic to a victim.' The Committee observes such letters may be censored or intercepted, regardless of any other characteristics of the letter, or of the prisoner or the other party to the correspondence or of any victim. The Committee notes that decisions under the *European Convention on Human Rights and Fundamental Freedoms* have emphasised that prison censorship schemes must be narrowly tailored to their intended purposes, as letters provide prisoners with an important link to the outside world. This is especially the case for letters between family members and letters airing a perceived injustice.

The Committee notes that censorship of prisoners' letters is discretionary and that (from next year) prison governors may be obliged by Charter s38(1) (subject to the limitation in Charter s38(2)) to consider prisoners' rights to correspondence and free expression when deciding whether or not to censor any particular letter. The Committee is nevertheless concerned that the test of whether a prison governor reasonably believes that a letter's contents may be regarded by a victim as distressing or traumatic may cover too broad a range of letters to be considered proportionate to the purpose of protecting victims. The Committee is also concerned that, without statutory or publicised administrative guidelines about how the discretion will be exercised, prisoners and their correspondents may be unable to predict how the scheme will operate in practice.

The Committee further notes that clause 17 applies, not only to letters sent by prisoners, but also to letters sent to prisoners. The Committee notes the following comment in the Statement of Compatibility about such letters:

It is also in accordance with the interests of justice that correspondence to prisoners be stopped or censored if it would be regarded by a victim as traumatic or distressing... [A]s envisaged by s5(1) of the Sentencing Act 1991, three important objectives associated with custodial sentences are that prisoners are rehabilitated; the potential for recidivism is reduced; and the community is protected. It is therefore not 'unjust' to stop or censor correspondence that may jeopardise these outcomes by adding to a victim's distress or trauma; or glorifying, encouraging or excusing criminal behaviour.

The Committee observes that the contents of letters sent into a prison cannot add to a victim's distress or trauma unless the victim is informed of those contents. The Committee further observes that the existing s47D(1) of the *Corrections Act 1986* already permits prison governors to censor all letters into and out of prisons that they reasonably believe is a threat to prison security; may be of a threatening or harassing nature; may be used to further an unlawful activity or purpose; or contains indecent, abusive, threatening or offensive matter.

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

1. What information will prisoners and their correspondents be given concerning the way that prison governors and their delegates will exercise their discretion to censor letters whose contents may be regarded by victims as distressing or traumatic?
2. Given the existing powers of censorship under s47D(1), what is the purpose of giving prison governors a further ground to censor letters sent to prisoners?

Pending the Minister's response, the Committee refers to Parliament the question of whether clause 17 is a proportionate and predictable limit on the rights to correspondence and freedom of expression of prisoners and their correspondents.

Keywords – Right to correspondence – Freedom of expression – Prisoners – Offence to cause letters to be sent to victims that may be regarded as distressing or traumatic to them – Whether proportional – Strict liability – Whether predictable – Reasonable limits

The Committee observes that clause 18, inserting a new offence of causing a letter to be sent to victims that may be regarded as traumatic or distressing into the *Corrections Act 1986*, also implicates the Charter rights of prisoners and their correspondents to correspondence and freedom of expression.

The Committee observes that clause 18's purpose is aimed at respecting the rights of other persons (i.e. victims), in particular by discouraging prisoners from circumventing the censorship regime (introduced by clause 17) and by providing victims with a remedy if prisoners do so. The Committee considers clause 18 will be compatible with prisoners Charter rights to correspondence and freedom of expression if it is a proportionate and predictable means of protecting victims of crime.

The Committee notes that clause 18 has a narrower scope than clause 17, as it does not apply to letters sent to a prisoner and only applies to letters that a prisoner causes to be sent (or attempts to cause to be sent) to a victim. However, the Committee observes that the clause 18 potentially has a much broader application within that scope, as it applies to all letters that 'may be regarded by a victim as distressing or traumatic', rather than only those letters that a prison governor exercises a discretion to censor or intercept. The Committee therefore considers that the operation of clause 18 may not be proportionate to the purpose of protecting victims of crime.

The Committee further notes that, according to the Statement of Compatibility, some of the words of the offence (i.e. 'distressing or traumatic') are expected to be interpreted by the courts in a way that differs from their ordinary meaning. The Committee observes that reasonable, informed minds could clearly differ on the new offence's application to some letters (e.g. a letter to a prisoner's spouse seeking a divorce, discussed in the Statement of Compatibility.) The Committee further observes that, because the new offence is one of strict liability (applying where a prisoner 'ought reasonably to know' that a letter may be distressing or traumatic to a victim), it may cover prisoners who send a letter to a victim believing that the letter will not cause distress or trauma. The Committee therefore considers that the operation of clause 18 may not be predictable to prisoners.

The Committee notes that the Statement of Compatibility, having concluded that clause 18 is compatible with human rights, does not address whether it is a 'reasonable limit' under Charter s7(2). The Committee refers to Parliament the question of whether or not clause 18 meets the test in

Charter s7(2), including whether or not there is a 'less restrictive means reasonably available to achieve the purpose' of preventing offenders from causing distress or trauma to victims by circumventing the censorship regime.

Keywords – Right not to be arbitrarily deprived of life – Prison escapees – Validation of regulations purportedly authorising the discharge of firearms by prison officers – Discharge of firearms as a last resort to prevent escape – Non-violent escapees – Proportionality – Reasonable limits

Charter s9 provides that everyone has 'the right not to be arbitrarily deprived of life.' The Committee observes that the rights in the Charter extend to all human beings, including prison escapees and those who aid them.

The Committee notes that clause 20 (inserting a new section 112B into the *Corrections Act 1986*) may operate to give force and effect to regulations in the Corrections Regulations 1998 that may presently be of no force and effect. This may include reg 10, which purports to permit prison officers to 'discharge a firearm at' an escaping prisoner or a person reasonably believed to be aiding him or her in certain circumstances.

The Committee notes that discharging a firearm at a person is likely to deprive him or her of life. The Committee observes that reg 10 permits a prison officer to discharge a firearm to prevent an escape regardless of the offence that the prisoner is in custody for, his or her security classification or the likelihood that the prisoner will commit violent offences if he or she escapes. So, clause 20 may authorise a prison officer to shoot a low security prisoner who is imprisoned for a non-violent offence and attempts to escape.

The Committee notes that reg 10 imposes other constraints on the discharge of firearms, including avoiding dangers to others, giving oral warnings if practicable and only shooting as a last resort. The Committee also notes that reg 10 does not oblige prison officers to discharge firearms against escaping non-violent offenders and observes that prison officers would surely choose to refrain from doing so. The Committee further notes the comments in the Statement of Compatibility that officers are 'trained to appropriately assess security risks and apply the use of force at a level that is proportionate to their relevant risk' and the government's intention stated in the Second Reading Speech to make new regulations limiting the circumstances when firearms may be issued. However, the Committee considers that the compatibility or otherwise of clause 20 with the right not to be arbitrarily deprived of life depends on what reg 10 currently authorises, rather than possible future contingences, such as discretions exercised during an escape and the proposed revision of the regulations.

The Committee observes that, whilst the international law of human rights permits the use of force on escaping prisoners, that permission is strictly limited to force that is proportional to the threat that the prisoner poses to others. In particular, firearms may only be used on persons who present a grave threat to life and the intentional use of firearms is only permitted when strictly unavoidable in order to protect life. The Committee therefore considers that clause 20, in its potential application to reg 10, may be incompatible with the rights of prisoners and others not to be arbitrarily deprived of life. The Committee's concern relates only to reg 10 in so far as it authorises the discharge of a firearm where an escort officer does not believe on reasonable grounds that the prisoner poses a significant threat of death or injury to others.

Charter s7(2) provides that human rights may be 'subject to such reasonable limits as can be demonstrably justified in a free and democratic society.' The Committee notes the following comment in the Statement of Compatibility about reg 10's application to escaping prisoners who do not present a danger to the community:

The issuance and hence, potential use of firearms also serves the important purpose of deterring prisoners who might otherwise contemplate escaping custody. Given the rarity of the actual use of firearms, the greatest utility of firearms in the corrections context is this

deterrent effect, rather than their actual use. By corollary, without the authority to use firearms it is likely that there would be an increase in the number of prisoners who attempt to escape from custody and of the willingness of other people to assist them in doing so. This would then pose an increased risk to the safety of officers, prisoners and the community; and compromise the good order and security of prisons.

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

1. Will the proposed new regulations authorise the discharge of firearms by a prison officer in circumstances where he or she does not believe on reasonable grounds that a prisoner poses a significant threat of death or injury to others?
2. Taking account of the time required to draft the proposed new regulations and train prison officers to operate within them, when are the new regulations expected to come into operation?

Pending the Minister's response, the Committee refers to Parliament the question of whether or not reg 10, in so far as it authorises prison officers to discharge firearms as a last resort to prevent a non-violent offender from escaping, strikes an appropriate balance between the rights of Victorians to security and the rights of escapees and those aiding them not to be arbitrarily deprived of life.

The Committee makes no further comment.

Legislation Reform (Repeals No. 1) Bill 2007

Introduced	21 August 2007
Second Reading Speech	22 August 2007
House	Legislative Assembly
Member introducing Bill	Hon. John Brumby MLA
Portfolio responsibility	Premier

Purpose

The Bill repeals 15 spent or redundant Acts. The reason for the repeal of each of the Acts is described in the explanatory memorandum.

Content and Committee comment

The Committee noted that it had not received a reference from the Legislative Assembly to review the Legislation Reform (Repeals No. 1) Bill 2007. In absence of such a reference the Committee resolved to suspend deliberation on the Bill and write to the Minister.

Please note the Extract from the Proceedings at the end of this report.

The Committee makes no further comment.

Working with Children Amendment Bill 2007

Introduced	21 August 2007
Second Reading Speech	22 August 2007
House	Legislative Assembly
Member introducing Bill	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill amends the *Working with Children Act 2005* (the 'Act') to further provide for –

- the meaning of parent and child-related work;
- additional offences in relation to various categories of applications for working with children checks;
- the revocation and surrender of assessment notices;
- the jurisdiction of VCAT;
- offences under Part 4 (offences connected with child-related work); and
- the delegation of the Secretary's powers.

The Bill also amends the *Children, Youth and Families Act 2005* to make further provision in relation to the reporting to the Secretary to the Department of Human Services of certain allegations about out of home carers and the Sentencing Act 1991 to insert a transitional provision in relation to amendments made to that Act by the *Working with Children Act 2005*.

Content and Committee comment

[Clauses]

[2]. Other than sections 4 and 22 the provisions in the Bill will come into operation on the day after Royal Assent. Sections 4 and 22 will be deemed to have commenced operation on 3 April 2006 (the day the Act came into operation).

Retrospective application – meaning of child-related work

[4]. Makes amendments that further clarify the meaning of 'child related work'. The clause adds an 'Example' after section 9(1) to show an example of a circumstance that would not amount to working with children for the purposes of the Act. The clause further inserts a new subsection 9(8) to further clarify circumstances where a person is not engaged in child-related work for the purposes of the Act.

Discretion to refuse application in exceptional circumstances

[10]. Amends section 17 of the Act to provide the Secretary with a discretion to refuse to give an assessment notice to an applicant who has been charged with or found guilty of an offence (other than a relevant offence) or has had a charge for an offence (other than a relevant offence) finally dealt with*, in circumstances where the applicant does not fall within category 1, 2, or 3 and where it is demonstrated that exceptional circumstances exist which justify the refusal of the notice; and there is a significant link between the offending behaviour in question and a risk to the safety of children. (*Also refer to revocation of assessment notice – clause 12 below*).

*Relevantly section 6 of the Act provides that a charge is finally dealt with where it is withdrawn, dismissed by a court or the person is discharged by a court following a committal hearing.

The Committee notes this extract from the Second Reading Speech –

Secondly, the Bill enhances assessment mechanisms within the Act by providing the Secretary with a limited 'exceptional circumstances' discretion.

In the scheme's first year of operation, it has been the experience of the Department of Justice that persons with certain types of criminal histories which do not otherwise fall into categories 1, 2 or 3, should be assessed in terms of whether they pose an unjustifiable risk to the physical or sexual safety of children. Such criminal histories could include, for example, an extensive and consistent pattern of violent offences.

The amendment will allow the Department to assess potential risk to the physical and sexual safety of children and, if warranted, refuse an assessment notice. This will occur in exceptional circumstances and where there is a significant link between the applicant's criminal record and the potential risk to the physical or sexual safety of children.

In these circumstances, there is a presumption that the person will pass the check unless the Secretary to the Department of Justice is satisfied that the giving of an assessment notice would pose an unjustifiable risk to the physical and sexual safety of children. In making a decision about whether a person should pass the check, the Secretary to the Department of Justice must have regard to a number of factors including the time since the offence(s) occurred and the conduct of the applicant since the offending. These are considerations which already exist in other areas within the act.

Anyone who receives a negative notice because of these additional provisions can, of course, appeal the decision to the Victorian Civil and Administrative Tribunal. This Bill does not affect this existing right in any way.



The Committee reports to Parliament pursuant to a term of reference provided in section 17(a)(i) of the Parliamentary Committees Act 2003, – ‘trespasses unduly on rights or freedoms’ – Administrative law – Exercise of discretion using criteria based on inconclusive charge (finally dealt with) made against a person where no merits determination is made.

The Committee notes that the amendments will allow the Secretary to exercise an administrative discretion (if exceptional circumstances exist) to issue a negative assessment or revoke an existing assessment using as the criteria, charges that are ‘finally dealt with’ such as the withdrawal or dismissal of a charge, where there is a significant link between the final dealing and a risk to the safety of children. The Committee observes that such a criteria constitute circumstances where there is no conclusive judicial merits determination.

The Committee notes that the issue of a negative notice of assessment or revocation of an existing assessment based on such exceptional grounds is reviewable by VCAT (proposed amended section 26(5)).

The Committee considers that the exercise of administrative powers based on such non-merits criteria is unusual and may trespass on a person’s rights and freedoms. The Committee raises this issue in greater detail in the Charter Report below.

The Committee will raise the issue with the Attorney-General to seek further advice.

Re-assessment of working with children assessment

[11]. Inserts new subsection 21(2A) into the Act to provide that the Secretary may re-assess an assessment notice holder's eligibility to hold an assessment notice, in accordance with the amendments made by this Bill. Particularly, reassessment may occur as a result of the inclusion of

the additional offences within categories 2 and 3, and as a result of the Secretary's discretion to refuse an assessment notice in "exceptional circumstances".

[12]. Substitute a new section 23(1) concerning the circumstances where the Secretary may revoke an assessment notice including the circumstance where the Secretary becomes aware that the person has had a charge for an offence (other than a relevant offence) finally dealt with (other than by a finding of not guilty) and is satisfied that there are exceptional circumstances to justify revocation and that there is a significant link between the final dealing and a risk to the safety of children posed by the applicant.

[14]. Inserts new subsection 26(1A) to empower the VCAT to make an order to stay a decision of the Secretary to issue a negative notice, review a decision under new section 17(1A) (see clause 10 above) or to revoke an assessment notice (see clause 12 above).

[21]. Amends section 82 of the *Children, Youth and Families Act 2005* (CYFA), which provides for allegations concerning out of home carers to be made to the Secretary. The clause clarifies that the report may be made even though the person may no longer be a foster carer or be employed or engaged by an out of home care service.

Note: Section 82(3) of the Act provides that the report may relate to conduct occurring at any time from 7 December 2002 up to the commencement date of the Act on 23 April 2007 (three years prior to Royal Assent – 7 December 2005).

The Committee notes this extract from the Statement of Compatibility –

However, the CYFA as currently worded, significantly limits the retrospective effect of these provisions. Sections 81 and 82 specify that the allegation must relate to a person who is or was a registered foster carer or residential care employee.

The concept of 'registered' carer is created by the CYFA. This limits the application of the provisions to carers who were registered carers on or after the commencement of the CYFA.

This limitation excludes carers who were engaged by an out of home care agency to provide care between 7 December 2002 and 23 April 2007, but were not registered as carers when the CYFA commenced. The objective of this amendment is to overcome this unintended consequence.

Retrospective application of amendment

[22]. Inserts new section 134 into the *Sentencing Act 1991*. The amendment is of a transitional nature and clarifies that the amendments made to that Act by the *Working with Children Act 2005* will apply to the sentencing of a person for an offence committed on or after the commencement of the *Working with Children Act 2005* (3 April 2007) and not before.



The Committee reports to Parliament pursuant to a term of reference provided in section 17(a)(i) of the Parliamentary Committees Act 2003, – ‘trespasses unduly on rights or freedoms’ – Retrospective application.

The Committee observes that both retrospective provisions [i.e. clauses 4 and 22] provide beneficial clarification, respectively as to circumstances that do not amount to ‘engaging in child-related work’ for the purposes of the Working with Children Act 2005 and the amendments made to the Sentencing Act 1991 are only to apply to the sentencing of a person after the commencement of the Working with Children Act 2005.

[23]. Provides for the automatic repeal of this amending Bill on the first anniversary of the day on which it receives the Royal Assent.

Charter Report

Keywords – Statement of compatibility – Incorrect description of offence – Loitering near schools etc

The Committee notes that, in the section of the Statement of Compatibility titled ‘unlawful and arbitrary interferences’, the offence of ‘loitering near schools’ etc in s60B of the *Crimes Act 1958* is incorrectly described in the following terms:

To be charged with the offence, a person must:

- *have been charged with a specified sexual offence (all of which are currently included as ‘relevant offences’ under the act); and*
- *be in or near a place frequented by children, ‘without reasonable excuse’.*

In fact, s60B provides that, to be charged with this offence, a person must loiter near a school or certain public places after have been found guilty of a specified sexual offence. Merely being charged with such an offence is insufficient.

The Committee resolves to write to the Attorney-General outlining this concern.

Keywords – Right to privacy – Protection of children – Investigations into risks to children from certain people who work with or care for them – Collecting, inquiring into and supplying personal information about such people

Charter s13(a) gives every person the right ‘not to have his or her privacy... unlawfully or arbitrarily interfered with.’ Charter s17(2) gives every child the right ‘to such protection as is in his or her best interests and is needed by him or her by reason of being a child.’

The Committee notes that the Statement of Compatibility identifies a number of provisions of the Bill that extend existing laws permitting the collection, supply and investigation of personal information concerning certain people who work with or care for children. The Committee considers that the question of whether the extension of these laws infringes the Charter’s right to privacy is usefully canvassed by the Statement of Compatibility. The Committee also considers that any infringement of the Charter’s right to privacy may be justified by children’s competing Charter right to protection.

Keywords – Equality before the law – Discrimination on the basis of impairment, race and sex – Discretion to refuse or revoke assessment notice permitting people to work with children – People with a criminal record – Reasonable limits

Charter s8(3) provides that every person is ‘equal before the law and is entitled to equal protection of the law without discrimination’. Discrimination is defined to mean discrimination on the basis of listed attributes that include impairment, race and sex. Charter s7(2) provides that human rights may be ‘subject to such reasonable limits as can be demonstrably justified in a free and democratic society.’

The Committee notes that clauses 10 & 12 (amending ss 17 & 23 of the *Working With Children Act 2005*) extend the Secretary’s powers to refuse or revoke a person’s assessment notice (making it an offence for the person to engage in child-related work) to people who have ever been charged or found guilty of any offence. The Committee observes that this extension may have a disproportionate impact on groups who are over-represented in the criminal justice system. This may include people with an intellectual disability, indigenous people and men.

The Committee considers that the Statement of Compatibility compellingly demonstrates that any indirect discrimination against people with an intellectual disability and indigenous people is a reasonable limit on Charter s8(3), noting in particular the scheme’s purpose of safeguarding children and the discretionary and reviewable nature of the Secretary’s power to refuse or revoke

an application. The Committee considers that a similar justification can be made in relation to any indirect discrimination on the basis of sex.

Keywords – Presumption of innocence – Discretion to refuse or revoke assessment notice in exceptional circumstances – Criminal charges finally dealt with without a finding of guilty or not guilty – Secretary’s finding of a significant link between a final dealing and a risk to safety of children – Protection of children

The Committee observes that the Statement of Compatibility does not address the compatibility of clauses 10 & 12 (amending ss 17 & 23 of the *Working With Children Act 2005*) with Charter s25(1). Charter s25(1) gives ‘a person charged with a criminal offence... the right to be presumed innocent until proved guilty according to law.’ The Committee notes that the European Court of Human Rights has held that an equivalent provision under the *European Convention on Human Rights and Fundamental Freedoms* ‘may be infringed not only by a judge or court but also by other public authorities’ (*Allenet de Ribemont v France* [1995] ECHR 5, [36]) and that the purpose of the presumption of innocence ‘is to protect the accused against any judicial decision or other statements by State officials amounting to an assessment of the applicant’s guilt without him having previously been proved guilty according to law.’ (*Rushiti v Austria* [2000] ECHR 106, [31])

The Committee notes that clauses 10 & 12 provide that the Secretary’s new powers to refuse or revoke a person’s assessment notice (making it an offence for the person to work with children) in exceptional circumstances on the basis of the applicant’s criminal record apply not only to pending charges and to offences where the applicant has been found guilty but also to charges that have been ‘finally dealt with’ without a finding of guilty or not guilty. Section 6 of the Act lists the following ways a charge can be finally dealt with without a finding of guilty or not guilty:

- the charge is withdrawn (including a *nolle prosequi*, i.e. formal discontinuation of the charge by the prosecutor)
- the charge is dismissed by a court
- the person is discharged by a court following a committal hearing

The Committee observes that none of these determinations amount to proof of guilt according to law. The Committee notes that the European Court of Human Rights has held that the presumption of innocence continues to apply when a court has ‘closed the proceedings’ against a person but did not ‘determine the question of guilt’ (*Allenet de Ribemont v France* [1995] ECHR 5, [35].)

The Committee notes that clauses 10 and 12 provide that the new powers may only be applied to a person on the basis of a charge that has been finally dealt with if the Secretary is satisfied that there is a significant link between the final dealing and a risk to the safety of children posed by the person. The Committee observes that such a finding may involve (and may to be seen to involve) a conclusion by the Secretary that the charge was well founded. The Committee therefore considers that any refusal or revocation of an application by the Secretary on the basis of a charge that has been finally dealt with (other than by a finding of guilty) may breach the presumption of innocence of the person who is the subject of the charge.

Charter s17(2) provides that ‘every child has the right... to such protection as is in his or her best interests and is needed by him or her by reason of being a child.’ The Committee notes that the evident purpose of clauses 10 & 12 is to protect children and that the Secretary’s new power to refuse or revoke an application is limited to ‘exceptional circumstances’ and is subject to review by the Victorian Civil and Administrative Tribunal. The Committee observes that, as the Statement of Compatibility does not discuss the compatibility of clauses 10 & 12 with Charter s25(1), it does not address whether or not they strike a reasonable balance between Charter s25(1) and Charter s17(2).

The Committee resolves to write to the Attorney-General outlining this concern. Pending the Minister’s response, the Committee draws attention to the provision.

The Committee makes no further comment.

Ministerial Correspondence

Justice and Road Legislation Amendment (Law Enforcement) Bill 2007

The Bill was introduced into the Legislative Assembly on 17 July 2007 by the Hon. Bob Cameron MLA. The Committee considered the Bill on 6 August 2007 and made the following comments in Alert Digest No. 10 of 2007 tabled in the Parliament on 7 August 2007.

Committee's Comment

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 –

Will or should there be additional safeguards or accountabilities where access to an agency photograph involves release of photographs of children?

Will the provisions in the Bill apply to persons found guilty of an offence but who have had no formal conviction recorded?

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?

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?

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.

Minister's Response

Thank you for your letter of 7 August 2007, in which you seek my advice in relation to amendments to the Police Regulation Act 1958 clarifying the circumstances in which police may release 'agency photographs' to the media.

These amendments fulfil a commitment made by the former Premier in October 2005, in response to concerns raised by the media and the community following a decision of the Victorian Civil and Administrative Tribunal (VCAT). They establish a process for release of photographs of convicted offenders to the media which balances individual and community policing interests.

I will deal with each of the Committee's questions in turn.

Will or should there be additional safeguards or accountabilities where access to an agency photograph involves release of photographs of children?

In determining whether to release an agency photograph to the media, the Chief Commissioner must strike a balance between the public interest, the interests of the victim of and any witness to the offence for which the person has been found guilty, and the interests of the person photographed. In considering whether the public interest is served by the release of the photograph, section 118T(a) of the Act provides that the Chief Commissioner must have regard to matters including the age of the person photographed. This specific guidance is an additional safeguard for young people, because it directs the Chief Commissioner to consider the age of the person photographed as an element of the public interest, as well as having regard to the interests of the person photographed.

The Chief Commissioner is also required to consider other matters such as any other legal impediments or any information known to the Chief Commissioner as to the person being suspected on reasonable grounds of having committed other offences. The legal impediments would include provisions under the Children, Youth and Families Act 2005 that generally restrict publication of

proceedings that may identify a child or other party to the proceeding, including a picture of a child (section 534).

Will the provisions in the Bill apply to persons found guilty of an offence but who have had no formal conviction recorded?

New section 118R of the Act provides that the provisions in the Bill apply to persons “found guilty of an offence”. The sentence given to the person photographed is one of the elements of the public interest to which the Chief Commissioner must have regard under new section 118T(a)(iii) of the Act.

Is there any form of review or appeal against a decision to grant access to agency photographs by a person photographed or who may be affected?

All police conduct is subject to the scrutiny of the Director, Police Integrity. The decision of the Chief Commissioner (or her delegate) to grant access will be subject to the inherent judicial review powers of the Supreme Court.

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?

The primary purpose of the procedure introduced by the Bill is to enable the release of agency photographs to assist Victoria Police to fulfil its community policing functions and as a deterrence measure, not to additionally punish offenders through administrative act. I therefore do not believe it necessary that special procedures for judicial approval or oversight be built into this procedure. In any event, as indicated above, the inherent judicial review powers of the Supreme Court apply to this procedure.

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?

The offence provisions of the legislation are drafted to refer only to the media organisation that initially seeks access to the agency photograph, and therefore will not apply to secondary publication. I note that the reference to a 'generally available publication' in the question is not relevant to the grant of access to a media organisation under the Bill. Section 11 of the Information Privacy Act 2000 is intended to apply to information generally available to the public by a public entity. The agency photographs held by police are not so available.

I thank you for the opportunity to respond to the Committee's questions.

*Bob Cameron MP
Minister for Police and Emergency Services*

20 August 2007

The Committee thanks the Minister for this response.

**Committee Room
17 September 2007**

Extracts from the Proceedings

The Minutes of the Committee show that the following division took place during consideration of *Alert Digest No. 12 of 2007* on Monday 17 September 2007.

Legislation Reform (Repeals No. 1) Bill 2007

Motion— That the following words be inserted in place of the current text concerning the Bill:

The Committee noted that it had not received a reference from the Legislative Assembly to review the *Legislation Reform (Repeals No. 1) Bill 2007*. In absence of such a reference the Committee resolved to suspend deliberation on the Bill and write to the Minister.

Moved Mrs Inga Peulich MLC
Seconded Mr Ryan Smith MLA

The Committee divided.

Ayes, 4	Noes, 3
Mr Edward O'Donohue MLC	Mr Carlo Carli MLA
Mrs Inga Peulich MLC	Mr Khalil Eideh MLC
Mr Ryan Smith MLA	Ms Jaala Pulford MLA
Mr Ken Jasper MLA	

And so it passed in the positive.

Appendix 1

Index of Bills in 2007

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Appropriation (Parliament 2007/2008) Bill 2007	6
Building Amendment (Plumbing) Bill 2007	5
Confiscation Amendment Bill 2007	11
Control of Weapons Amendment (Penalties) Bill 2006	1
Courts Legislation Amendment (Judicial Education and Other Matters) Bill 2007	7
Crimes Amendment (DNA Database) Bill 2007	6
Crimes Amendment (Rape) Bill 2007	12
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Gene Technology Amendment Bill 2007	10
Grain Handling and Storage Amendment Bill 2007	10
Health Professions Registration Amendment Bill 2007	6
Howard Florey Institute of Experimental Physiology and Medicine (Repeal) Bill 2007	4
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Land (Revocation of Reservations) Bill 2007	11
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Outworkers and Contractors Legislation Amendment Bill 2007	7
Parliamentary Legislation Amendment Bill 2007	2
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Payroll Tax Bill 2007	7
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Appendix 2

Committee Comments classified by Terms of Reference

Alert Digest Nos.

Section 17(a)

(i) trespasses unduly upon rights and freedoms.

Public Prosecutions Amendment Bill 2006	1
Senate Elections Amendment Bill 2006	1

(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
Road Legislation Amendment Bill 2007	4
Royal Children's Hospital (Land) Bill	10

(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
Infertility Treatment Amendment Bill 2007	4
Senate Elections Amendment Bill 2006	1
Superannuation Legislation Amendment (Contribution Splitting and Other Matters) Bill 2007	7

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	19.8.07	4 of 2007	11 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

Scrutiny of Acts and Regulations Committee

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	20.8.07	10 of 2007	12 of 2007