No. 12 of 2008

Tuesday, 7 October 2008

On the

Assisted Reproductive Treatment Bill 2008

Compensation and Superannuation Legislation Amendment Bill 2008

Corrections Amendment Bill 2008

County Court Amendment (Koori Court) Bill 2008

Dangerous Goods Amendment (Transport) Bill 2008

Energy Legislation Amendment (Retail Competition and Other Matters) Bill 2008

Greenhouse Gas Geological Sequestration Bill 2008

Health Professions Registration Amendment Bill 2008

Local Government Amendment (Councillor Conduct and Other Matters) Bill 2008

Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008

Prohibition of Human Cloning for Reproduction Bill 2008

Research Involving Human Embryos Bill 2008

Stalking Intervention Orders Bill 2008

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Glossary

'*Article*' refers to an Article of the International Covenant on Civil and Political Rights;

'*Assembly*' refers to the Legislative Assembly of the Victorian Parliament;

'*Charter*' refers to the Victorian *Charter of Human Rights and Responsibilities Act 2006;*

'*child*' means a person under 18 years of age;

'*Committee*' refers to the Scrutiny of Acts and Regulations Committee of the Victorian Parliament;

'*Council*' refers to the Legislative Council of the Victorian Parliament;

'*court'* refers to the Supreme Court, the County Court, the Magistrates' Court or the Children's Court as the circumstances require;

'*Covenant*' refers to the International Covenant on Civil and Political Rights;

'*human rights'* refers to the rights set out in Part 2 of the Charter;

'***penalty units'*** refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette *(currently one penalty unit equals $113.42).*

'Statement of Compatibility' refers to a statement made by a member introducing a Bill in either the Council or the Assembly as to whether the provisions in a Bill are compatible with Charter rights.

'***VCAT***' refers to the Victorian Civil and Administrative Tribunal;

Useful provisions

Section 7 of the ***Charter*** provides –

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

(2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—

(a) the nature of the right; and

(b) the importance of the purpose of the limitation; and

(c) the nature and extent of the imitation; and

(d) the relationship between the limitation and its purpose; and

(e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

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

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

Terms of Reference

Parliamentary Committees Act 2003

17. Scrutiny of Acts and Regulations Committee

The functions of the Scrutiny of Acts and Regulations Committee are –

(a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly –

  (i) trespasses unduly upon rights or freedoms;

  (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;

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

  (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000*;

  (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2001*;

  (vi) inappropriately delegates legislative power;

  (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;

  (viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;

(b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament –

  (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the *Constitution Act 1975*, or raises an issue as to the jurisdiction of the Supreme Court;

  (ii) if a Bill repeals, alters or varies section 85 of the *Constitution Act 1975*, whether this is in all the circumstances appropriate and desirable;

  (iii) if a Bill does not repeal, alter or vary section 85 of the *Constitution Act 1975,* but an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;

(c) to consider any Act that was not considered under paragraph (a) or (b) when it was a Bill –

  (i) within 30 days immediately after the first appointment of members of the Committee after the commencement of each Parliament; or

  (ii) within 10 sitting days after the Act receives Royal Assent —

  whichever is the later, and to report to the Parliament with respect to that Act or any matter referred to in those paragraphs;

(d) the functions conferred on the Committee by the *Subordinate Legislation Act 1994*;

(e) the functions conferred on the Committee by the *Environment Protection Act 1970*;

(f) the functions conferred on the Committee by the *Co-operative Schemes (Administrative Actions) Act 2001*;

(fa) the functions conferred on the Committee by the Charter of Human Rights and Responsibilities;

(g) to review any Act in accordance with the terms of reference under which the Act is referred to the Committee under this Act.

The Committee has considered the following Bills –

Assisted Reproductive Treatment Bill 2008
Compensation and Superannuation Legislation Amendment Bill 2008
Dangerous Goods Amendment (Transport) Bill 2008
Energy Legislation Amendment (Retail Competition and Other Matters) Bill 2008
Greenhouse Gas Geological Sequestration Bill 2008
Health Professions Registration Amendment Bill 2008
Local Government Amendment (Councillor Conduct and Other Matters) Bill 2008
Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008
Prohibition of Human Cloning for Reproduction Bill 2008
Research Involving Human Embryos Bill 2008
Stalking Intervention Orders Bill 2008

The Committee notes the following correspondence –

Corrections Amendment Bill 2008
County Court Amendment (Koori Court) Bill 2008

Role of the Committee

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

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

Alert Digest No. 12 of 2008

Assisted Reproductive Treatment Bill 2008

Introduced	9 September 2008
Second Reading Speech	10 September 2008
House	Legislative Assembly
Member introducing Bill	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General and Minister for Health

Purpose

The Bill repeals the current *Infertility Treatment Act 1995* (the 'Act') and replaces it with the *Assisted Reproductive Treatment Act 2008*. The Bill also amends the *Status of Children Act 1974* and the *Births, Deaths and Marriages Registration Act 1996*.

Notes:

1. *Part 2A and Part 4A of the current Act will be reproduced respectively in the Research Involving Human Embryos Act 2008 and the Prohibition of Human Cloning for Reproduction Act 2008 at the same time that the Act is repealed. Bills for these Acts are also currently before the Parliament and are reported in this Alert Digest.*

2. *'ART' refers to Assisted Reproductive Treatment.*

The Bill will –

- remove the current statutory requirement that women be married or be in a de facto relationship with a male to access ART treatment in Victoria;
- strengthen the protections for children born through ART by implementing enhanced screening for treatment, expanding donor-conceived children's access to information about their genetic history and clarifying parentage laws;
- provide that complex treatment decisions are made by an independent expert Patient Review Panel, with provision for review of decisions by the Victorian Civil and Administrative Tribunal;
- expand the opportunity for altruistic surrogacy and posthumous use of gametes in treatment procedures, in the context of rigorously assessed applications;
- update Victoria's laws on ART and surrogacy to clarify and remove existing anomalies and inconsistencies to recognise the realities of Victorian families and reflect new technologies;
- provide that prescribed ART records are held by the Registry of Births, Deaths and Marriages; and
- reduce the regulatory burden on ART providers by introducing a deemed registration system.

Extracts from the Second Reading Speech

- In 2001, the Federal Court of Australia found that the requirement that a woman be married or in a heterosexual de-facto relationship to access assisted reproductive treatment…was invalid because it was inconsistent with the Commonwealth *Sex Discrimination Act 1986.*
- ART is defined as a medical treatment or procedure that procures or attempts to procure pregnancy in a woman by means other than sexual intercourse.
- The treatment eligibility provisions provide that a woman may undergo a treatment procedure if, in the woman's circumstances, she is unlikely to become pregnant, or carry a pregnancy, or give birth to a child, other than by a treatment procedure, or she is at risk of producing a child with a genetic abnormality or disease without a treatment procedure. There is no reference to the relationship status of the woman. This means that a woman without a male partner will be eligible for treatment.
- A new provision has been added to the treatment eligibility requirements. A presumption against treatment applies to a woman when a criminal record check provided by the woman, or her partner, if any, shows charges have been proven for a sexual offence or convictions for a violent offence. The presumption also applies if a child protection order check reveals that a relevant order has been made to remove a child from the care of the woman or her partner. An ART clinic must not treat a woman to whom a presumption against treatment applies.
- Where a presumption against treatment applies, or in circumstances where the ART clinic is concerned about a risk of abuse or neglect of the prospective child, the application for treatment may be considered by the newly established Patient Review Panel. …If the Patient Review Panel decides that there is a barrier to treatment, the ART provider cannot treat the woman. The decision of the Patient Review Panel can be reviewed by VCAT.

Patient Review Panel

- The Bill provides for the establishment of a Patient Review Panel, a state wide panel appointed by the Minister for Health, with the primary role being to determine particular applications for ART.
- All decisions of the panel are reviewable by VCAT.

Continuing offences

- The ART Bill continues its ban on prohibited procedures. These include: 1. sex selection except where this is to prevent transmission of a severe genetic abnormality; 2. treatment procedures where the genetic material from more than two people is used; and 3. the conduct of any destructive research on ART embryos created for treatment purposes.
- *Use of gametes from a child* – Also included within the Bill are the requirements attaching to the circumstances under which a gamete may be obtained from a child.
- *Limiting the number of families from one donor* – This Bill elevates a current condition of licence into legislation and creates a new offence for an ART provider to carry out a treatment procedure using gametes or an embryo formed from gametes produced by a donor if the person knows the treatment procedure may result in more than 10 women having children who are genetic siblings.

Surrogacy

- The Bill removes the requirement that the surrogate mother must be unlikely to become pregnant or be able to carry a pregnancy. Instead, the commissioning parent or couple must be unlikely to become pregnant, be able to carry a pregnancy or give birth.
- All parties involved in any surrogacy arrangement, including the surrogate mother and her partner, if any, will be subject to the standard access to treatment process and must provide a police check and consent to a child protection check.
- The Bill provides that the Patient Review Panel must approve all surrogate arrangements. …the surrogate mother must be at least 25 years of age…
- Surrogacy will be available regardless of a person's marital or relationship status or sexual orientation.
- While surrogacy will remain altruistic in Victoria, the Bill provides that the costs actually incurred by the surrogate mother in participating in a surrogacy arrangement may be reimbursed.

Commercial surrogacy will be a prohibited offence.

Posthumous use of gametes

- … First, the person must have consented to the use of their gametes and this use may only be by the deceased person's partner in the context of a pre-existing relationship. In all cases, applications for posthumous use are to be approved by the Patient Review Panel …
- In the case where a woman has consented to an ART provider using her egg posthumously, her male partner may use it to create an embryo for use in a surrogacy arrangement, only if approved by the Patient Review Panel.

Records and access to information

- The donor registers play an important role in capturing information for the benefit of donor-conceived persons. For persons who donated gametes before 1 January 1998, information may only be released from the registers in line with their wishes. Since the current legislation took effect on 1 January 1998, donors have not been permitted to be anonymous. This Bill enhances the current system of access to information by enabling a donor-conceived child to obtain information about their donor before the child turns 18 years of age, if assessed by an ART counsellor as being sufficiently mature.
- Women who self-inseminate have an avenue to record the details of the sperm donor on the registers. This will enable those children born of a self-insemination procedure to gain information about their genetic background.

Victorian Assisted Reproductive Treatment Authority

- The Infertility Treatment Authority will be renamed the Victorian Assisted Reproductive Treatment Authority (VARTA).

Status of Children Act amendments

- The Bill adds three new parts to the Status of Children Act to clarify the status of children born as a result of the use of donated gametes. The first contains provisions in relation to the status of children born to women with a female partner or without a male partner. The next establishes a scheme to transfer the parentage of children from a surrogate mother to the commissioning parents in surrogacy arrangements and the third part clarifies the status of children born through the posthumous use of gametes.

Status of children born to women with a female partner or without a male partner

- The Status of Children Act will now provide that the woman who gives birth is presumed to be the mother of any child born as a result of the pregnancy. Her partner will be presumed to be a legal parent of any child born as a result of the pregnancy if she and the woman who gave birth were living together as a couple on a genuine domestic basis when the woman underwent the procedure as a result of which she became pregnant. She must have consented to the procedure as a result of which her partner became pregnant.
- The presumption will apply retrospectively to children born in Victoria to a woman with a female partner before the Act commenced. The retrospective operation of these provisions will not affect the vesting in possession or in interest of any property that occurred before the commencement of the Act. This is consistent with the approach to these matters in the past. When the presumption that applies to the non-biological parent of a donor-conceived child born to a heterosexual couple was introduced in 1984, it applied in respect of all children born before the commencement of the new provisions.

Status of donor

- The Bill includes new provisions to clarify that a man who produces semen used by a woman without a male partner is presumed for all purposes not to be the father of any child born as a result of the pregnancy, whether or not the man is known to the woman or her female partner.
- Similarly, the Bill provides that if a woman with a female partner uses a donor ovum to conceive a child, the woman who produced the ovum is presumed not to be the mother of any child born as a result of the pregnancy.

Status of children born through surrogacy arrangements

- The new Part introduces a scheme to transfer parentage in surrogacy arrangements similar to those operating in the ACT and the UK.
- Commissioning parents will be able to apply to the Supreme or County Court for a substitute parentage order which will transfer legal parentage from the surrogate mother and her partner (if she has one) to the commissioning parents. The court must be satisfied of various matters before making a substitute parentage order. These include that the order is in the best interests of the child, the surrogate mother received no material advantage as a result of the arrangement, the child is living with the commissioning parents at the time of the application and the surrogate mother freely consents to the making of the order.
- The court will be able to make substitute parentage orders retrospectively if certain criteria are met including that the commissioning parents are ordinarily resident in Victoria. These provisions will allow people who had children through surrogacy before the Act commences to apply to be the child's legal parents. Once the order has been made, a new birth certificate will be issued showing the commissioning parents as the parents of the child.

Status of children born through the posthumous use of gametes

- The new provisions in the *Status of Children Act* provide that where the gametes of a deceased person are used posthumously, the deceased person will be named on the child's birth certificate but the child will not be regarded as the child of the deceased for any other purpose under Victorian law, in particular in relation to the laws of succession. This will allow recognition of the deceased as the child's parent, in accordance with their express consent. It will also provide certainty in the administration of estates.

- A person will be able to make provision for a posthumously conceived child in his or her will. If no such disposition is made, the child should have no claim to the deceased's estate.

Births, Deaths and Marriages Registration Act

- Provision is made for same-sex couples to be recorded on the birth certificate of their donor-conceived child. The woman who gave birth will be named 'mother' and her partner will appear as 'parent'. In addition provision is made for the retrospective amendment of birth certificates to capture information about the female partner of a woman who has given birth.

Public submissions sought

The Committee will call for public submissions and comments in respect to the –

- Assisted Reproductive Treatment Bill 2008
- Prohibition of Human Cloning for Reproduction Bill 2008
- Research Involving Human Embryos Bill 2008

Content and Committee comment

[Clauses]

[2]. The Act will come into effect on proclamation but not later than by 1 January 2010.

[7]. It is an offence for a person to carry out assisted reproductive treatment unless the person is (or are under the supervision and direction of) a doctor carrying out treatment on behalf of a registered ART provider and the other requirements of the Act have been met.

[8]. It is an offence for a person to carry out artificial insemination of a woman unless the person is a doctor and the person is satisfied that the requirements of the Act have been met. [9]. The offence in section 8 does not apply in the case of self-insemination or assisted self-inseminate.

[10]. Sets out the eligibility criteria for persons wishing to undergo treatment procedures.

Requirements for treatment procedures

[11 and 12]. Sets out the requirements for a valid consent to be given by a person wanting to undergo ART.

The consent must be accompanied by a statement from a counsellor that a criminal records check in relation to both the woman and her partner (if any) has been sighted and considered by a counsellor providing services on behalf of the registered ART provider; and must be accompanied by permission from the woman and her partner (if any) for a child protection check to be conducted. (*Refer to Charter Report*).

[14]. Where a presumption against treatment applies against a woman, a registered ART provider must not provide a treatment procedure to that woman.

A presumption against treatment applies against a woman if a criminal record check in relation to a woman or her partner (if any) shown to a counsellor providing services on behalf of a registered ART provider specifies that charges have been proven against the woman or her partner (if any) for a sexual offence referred to in the Sentencing Act 1991; or the woman

and her partner (if any) has been convicted of a violent offence referred to in that Act. (Refer to Charter Report).

A presumption against treatment against a woman will also apply if a child protection order check as referred to in section 12 specifies that a child protection order has been made which removed custody or guardianship over any child from the woman or her partner (if any). (*Refer to Charter Report*).

[15]. A person can apply to the Patient Review Panel (PRP) for review in the following circumstances –

- if a presumption against treatment applies to a woman under section 14.
- if a woman does not meet the treatment eligibility criteria as set out in section 10.
- if a registered ART provider or a doctor has refused to carry out a treatment procedure on a woman because the provider or doctor believes that a child that may be born as a result of the treatment procedure would be at risk of abuse or neglect.

  Note: *Decisions made by the Patient Review Panel under this section are able to be reviewed by VCAT.*

[26 to 38]. Provide for offences relating to the use and storage of gametes and embryos.

[28]. Prohibits the use of gametes or embryos in a treatment procedure with the purpose or a purpose of producing or attempting to produce a child of a particular sex except if it is necessary for a child to be a particular sex to avoid the risk of transmission of a genetic abnormality or a genetic disease to the child.

Finally, the Patient Review Panel may also approve a treatment procedure in which gametes or embryos may be specifically used, or a treatment procedure that may be performed in a particular manner, with the purpose or a purpose of producing or attempting to produce a child of a particular sex or where the PRP have approved the use for the purpose of producing a child of a particular sex.

[34]. Sets out when embryos may be removed from storage and disposed of in accordance with the regulations. (*Refer to Charter Report*).

Surrogacy

[39]. Treatment procedures carried out by registered ART providers may only be carried out as part of a surrogacy arrangement if the surrogacy arrangement has been approved by the Panel.

> **Note:** *Section 3 of the Act defines a surrogacy arrangement as an arrangement, agreement or understanding, whether formal or informal under which a woman agrees with another person to become or try to become pregnant, with the intention—*
>
> - *that a child born as a result of the pregnancy is to be treated as the child, not of her, but of another person or persons (whether by adoption, agreement or otherwise); or*
> - *of transferring custody or guardianship in a child born as a result of the pregnancy to another person or persons; or*
> - *that the right to care for a child born as a result of the pregnancy be permanently surrendered to another persons or persons.*

[42]. The requirement to ensure that a criminal records check has been shown to a counsellor providing services on behalf of the registered ART provider applies to all parties to a surrogacy arrangement as does the requirement to give permission for a child protection order check to be conducted.

[44]. Prevents a surrogate mother from receiving any material benefit or advantage as a result of a surrogacy arrangement. Surrogacy arrangements under the Act may only be altruistic and not for commercial gain or profit.

A surrogate mother may be reimbursed for costs actually incurred by her as part of the surrogacy arrangement.

[45]. Prohibits certain things being published in relation to surrogacy arrangements including to the effect that a person is or may be willing to act as a surrogate mother.

This clause is an offence which carries a penalty of 240 penalty units or 2 years imprisonment or both. (*Refer to Charter Report*).

Posthumous use of gametes

[46 to 48]. Part 5 deals with the posthumous use of gametes.

A registered ART provider may use a person's gametes or an embryo formed from the person's gametes, in a treatment procedure after that person has died only if all of the prescribed criteria are met including that the deceased person provided specific written consent for their gametes or an embryo created using their gametes to be used after their death in a treatment procedure of that kind.

Registers and access to information

[40 to 68]. Part 6 provides for registers to be kept of prescribed information by ART providers and access to that information by certain persons.

The Part sets out the information that must be provided to the Registrar of Births, Deaths and Marriages no later than 1 July each year by registered ART providers and by doctors who have carried out artificial insemination other than on behalf of a registered ART provider.

[68]. Declares certain documents to be an exempt document for the purposes of the *Freedom of Information Act 1982*, including the whole of the Central Register, and information about donors, persons who have undergone treatment and their partners and persons born of treatment procedures.

Voluntary register

[69 to 73]. Part 7 makes provision for a voluntary register separate to the Central Register and access to information on that register where the donor consents to certain disclosure.

[82 to 98]. Part 9 establishes the Patient Review Panel and sets out its functions, constitution, procedures and provides certain statutory immunities for its members.

[96]. Enables applications to be made to VCAT for a review of decisions made by the Panel.

Victorian Assisted Reproductive Treatment Authority

[99 to 117]. Part 10 establishes the Victorian Assisted Reproductive Treatment Authority and provides for its functions, duties, membership and provides certain statutory immunities for its members.

[126]. Repeals the *Infertility Treatment Act 1995*.

> **Note:** *This Act replaces the Infertility Treatment Act 1995, except for Part 2A of the Infertility Treatment Act 1995 which is replaced by the Research Involving Human Embryos Act 2008,*

and Part 4A of the Infertility Treatment Act 1995 which is replaced by the Prohibition of Human Cloning for Reproduction Act 2008.

Status of Children Act 1974

[136 to 148]. Part 14 of the Bill amends the *Status of Children Act 1974* in order to clarify the status of children born as a result of the use of assisted reproductive treatment and artificial insemination.

The Part –

- applies presumptions of parentage in relation to children born to a woman who has undergone a treatment of artificial insemination or assisted reproductive treatment where she does not have a male partner; as a result of a surrogacy arrangement; or through the posthumous use of gametes.
- clarifies that a donor of gametes used in assisted reproductive treatment or artificial insemination is presumed not to be a parent of a child born as a result of that procedure.
- allows the Supreme Court and the County Court to make substitute parentage orders in relation to children born as a result of a surrogacy arrangement.

[140]. Amends section 10 to provide for applications to the Supreme Court for declarations of parentage to be made.

[147]. Replaces Part III of the Act with new Parts III, IV, V and VI as follows —

New Part III allows for the application of presumptions as to the status of a child born to a woman with a female partner, or without a partner, who undergoes a procedure.

New Part IV allows for the application of presumptions as to the status of a child born as a result of a surrogacy arrangement, and provides for making substitute parentage orders.

New section 20 allows a commissioning parent or the commissioning parents of a child born as a result of a surrogacy arrangement to apply to the County or Supreme Court for a substitute parentage order if the child was conceived as a result of a procedure carried out in Victoria and the commissioning parent or parents live in Victoria when the application for the order is made.

A party to a proceeding for a substitute parentage order, or for an order to discharge a substitute parentage order may appeal a decision of the County or Supreme Court to the Court of Appeal.

New Part V provides for the posthumous use of gametes.

Births, Deaths and Marriages Registration Act 1996

[152]. Amends section 16(1)(a) to replace the reference to ‘father and mother’ with ‘parents’. The section will therefore provide that the parents of the child make a joint application for the inclusion of information regarding themselves on their child's birth record.

[153]. Inserts a new section 17A to provide for the inclusion of a woman's female partner on a child's birth record where the female partner is presumed to be a parent of the child under Part III of the *Status of Children Act 1974* (the non-birth mother) and where the child's birth was registered before the commencement of the *Assisted Reproductive Treatment Act 2008*.

The mother and her female partner may apply for the mother's female partner to be included on the birth record as the child's parent where the original birth entry lists only the mother of the child. However, if the birth entry lists the mother and a father, an amendment to the birth record may only be made upon production of a court order to that effect.

[154]. Inserts a new section 19A to enable the registration of surrogate births.

Charter Report

Right to enjoyment of human rights without discrimination – Interference in privacy and family – Criminal records check and child protection order check – Presumption against treatment – Protection of children conceived by ART – Whether reasonable limit

The Committee notes that clause 11(1) requires that a woman wishing to undergo an assisted reproductive treatment procedure must supply a criminal records check for herself and any partner to a counsellor and permit the registered ART provided to conduct a child protection order check on herself and any partner Clause 14 bars assisted reproduction treatments where these checks reveal sexual or violent offences, or removal orders, unless the Patient Review Panel decides that there is no barrier to the woman undergoing a treatment procedure.

The Statement of Compatibility remarks:

> *The requirements to provide a criminal records check and consent to a child protection order are reasonable given the important purpose of protecting the child to be born from ART… [T]he presumption against treatment does not amount to discrimination under the Equal Opportunity Act 1995 (EO Act) and is therefore not discriminatory, arbitrary or unlawful. The purpose of the presumption is to protect children born through ART, which is a clear and reasonable purpose consistent with the principles of the charter, in particular, the best interests of the child protected in section 17[1] of the charter.*

While the Committee agrees that checking a person's criminal records and making decisions based on them is neither arbitrary, unlawful nor discriminatory, the Committee considers that the imposition of these constraints solely on people who use assisted reproductive technology may engage their Charter right to equal enjoyment of human rights without discrimination.[2] People who seek to use assisted reproductive technology almost always do so because they or their partner have an impairment (i.e. infertility) or because they are single or in a same-sex relationship. Clause 14, by imposing procedures on users of assisted reproductive technology that do not apply to persons who conceive naturally, may limit such persons' Charter right to equal enjoyment of the right to privacy and family life without discrimination on the basis of impairment, marital status or sexual orientation.[3]

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

1. ***Whether or not clauses 11(1) and 14, by imposing procedures on people who use assisted reproductive technology that do not apply to people who conceive naturally, limits their Charter right to equal enjoyment of the rights to privacy and family without discrimination on the basis of impairment, marital status or sexual orientation?***

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1 Charter s. 17(2) provides that children have 'the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.'

2 Charter s. 8(2) provides that everyone 'has the right to enjoy his or her human rights without discrimination.' Charter s. 13(a) provides that everyone 'has the right… not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with'.

3 Discrimination in the Charter means discrimination on the basis of attributes in s. 6 of the *Equal Opportunity Act 1995*, including impairment, marital status (including being single) and sexual orientation.

2. ***If so, whether or not clauses 11(1) and 14, by seeking to protect children conceived using assisted reproductive technology, are reasonable limits according to the test set out in Charter s. 7(2)?***[4]

Right to life – Requirement to dispose of stored embryos – Whether embryos have rights under the Charter – Whether reasonable limit on rights

The Committee notes that clause 34(2)(b) requires that stored embryos be 'disposed of' in certain circumstances. The Committee observes that the compatibility of clause 34(2) with the Charter depends on two issues:

First, whether or not embryos have rights under the Charter. The Charter provides that 'all persons' have human rights[5] and defines 'person' to mean 'human being'.[6] The Committee observes that overseas courts have held that the question of defining a human being for the purpose of determining the existence of legal rights is a legal (rather than metaphysical or scientific) one[7] and that there is no international consensus on the legal status of embryos.[8]

Second, whether or not the disposal requirements in clause 34(2)(b) are compatible with any rights that embryos have, including the right to life.[9] The Statement of Compatibility remarks:

> *This bill includes a provision which limits the ART provider to storing embryos for a period of five years with the consent of both persons who provided the gametes which formed the embryo, or a lesser period as defined in their consents. There is provision to extend this period for a further five years with the consent of both parties who provided the gametes. This provision is consistent with the NHMRC ethical guidelines, which state it is not desirable to leave embryos in storage indefinitely. The Bill provides for extension of storage past this time upon the approval of the Patient Review Panel.*

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

1. ***Whether or not embryos have human rights under the Charter; and***
2. ***If so, whether or not clause 34(2)(b), by requiring the destruction of stored embryos in some circumstances to prevent their indefinite storage, is compatible with any rights that stored embryos have to life.***

Freedom of expression – Offence to make certain statements about surrogacy – Altruistic surrogacy – Public expressions of personal views

The Committee notes that clause 45 makes it an offence to publish various statements about surrogacy. The Committee considers that clause 45 engages the Charter right to freedom of expression.[10]

The Explanatory Memorandum states that clause 45 is:

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4 Charter s. 7(2) provides that a 'human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom and taking into account all relevant factors…'

5 Charter s. 6(1)

6 Charter s. 3

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

8 *Vo v France* [2004] ECHR 326, [84]

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

10 Charter s. 15(2) provides that everyone 'has the right to freedom of expression'.

> *…[i]n keeping with the need to ensure that surrogacy arrangements are not commercialised and are altruistic…*

While the Committee accepts that preventing the advertising of commercial surrogacy (which is banned by the Bill) is compatible with the Charter's right to freedom of expression,[11] the Committee is concerned that clause 45 may go further than this purpose in two respects:

First, clause 45 also applies to publications about non-commercial surrogacy, which is permitted under Part 4 of the Bill. Other jurisdictions that permit altruistic surrogacy either restrict their ban to commercial surrogacy or advertisements, or distinguish between commercial and non-commercial surrogacy.[12]

Second, the ban on publications is not limited to advertisements or publications intended to procure or facilitate a surrogacy arrangement. Rather, it includes 'statements' or 'documents' (including in the media or online) to 'the effect that' a person 'may be willing' to be involved in a surrogacy arrangement either as a prospective parent (clause 45(1)(a)) or a as a surrogate mother (clause 45(1)(f)). Clause 45 may therefore criminalise public expressions of a person's personal views, e.g. a media column where a person criticises the existing law for impeding their desire to have a baby via a surrogate; or a blog post discussing the ethics of surrogacy where the author remarks that she'd be willing to be a surrogate if a close relative was infertile.[13] The Committee observes that criminalising such statements may chill public discussions about an important social issue.

The Committee will seek further information from the Minister as to whether clause 45 will apply to people who publicly mention their own willingness to enter into a surrogacy arrangement as part of public discussions on the issues associated with surrogacy. Pending the Minister's response, the Committee draws attention to clause 45.

The Committee makes no further comment.

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11 Charter s. 15(3)(b) states: 'Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary… for the protection of national security, public order, public health or public morality.'

12 *Assisted Reproductive Technology Act 2007* (NSW), s. 44; *Substitute Parenting Act 1994* (ACT), s. 7; *Surrogacy Arrangements Act 1985* (UK), s. 3. See also clause 10 of the *Surrogacy Bill 2007* (WA).

13 E.g. J Sinclair, 'The surrogacy journey must be respected', *The Age*, 16th September 2008 at <www.theage.com.au/opinion/the-surrogacy-journey-must-be-respected-20080915-4h21.html>

Prohibition of Human Cloning for Reproduction Bill 2008

Introduced	9 September 2008
Second Reading Speech	10 September 2008
House	Legislative Assembly
Member introducing Bill	Hon. Daniel Andrews MLA
Portfolio responsibility	Minister for Health

Purpose

This Bill re-enacts Part 4A of the *Infertility Treatment Act 1995* (the 'Act') as a separate Act to continue the prohibition on human cloning for reproduction and other unacceptable practices associated with reproductive technology.

Notes:

1. *It is proposed that the Act will be repealed by the Assisted Reproductive Treatment (ART) Bill 2008 (also in this Alert Digest).*
2. *The Infertility Treatment Amendment Bill 2007 (the 'amending Act') inserted into the Act new Part 2A concerning the regulation of certain uses for research purposes involving excess ART embryos and a new Part 4A concerning the prohibition of certain practices involving human embryos including a prohibition on human cloning .The Committee reported on the amending Act in Alert Digest No. 4 of 2007.*

Public submissions sought

The Committee will call for public submissions and comments in respect to the –

- Assisted Reproductive Treatment Bill 2008
- Prohibition of Human Cloning for Reproduction Bill 2008
- Research Involving Human Embryos Bill 2008

Content and Committee comment

[Clauses]

[2]. The Act will commence on proclamation but no later than 1 January 2010.

Delayed commencement – Inappropriate delegation of legislative power

The Committee refers to its Practice Note No. 1 concerning delayed commencement provisions exceeding one year from introduction in the Parliament. In such circumstances the Committee will seek to ensure that Parliament has sufficient information to determine whether a delay in commencement is justified. The Committee will seek further information from the Minister.

[5 to 17]. Part 2 details practices that are completely prohibited and for which indictable offences apply. In each case the indictable offence is punishable by imprisonment for a term not exceeding 15 years. [18 to 21]. Part 3 identifies practices that are prohibited unless authorised by a licence issued by the NHMRC. In each case the indictable offence is punishable by imprisonment for a term not exceeding 10 years.

The Committee makes no further comment.

Research Involving Human Embryos Bill 2008

Introduced	9 September 2008
Second Reading Speech	10 September 2008
House	Legislative Assembly
Member introducing Bill	Hon. Daniel Andrews MLA
Portfolio responsibility	Minister for Health

Purpose

The Bill re-enacts Part 2A of the *Infertility Treatment Act 1995* (the 'Act') in a separate Bill to regulate research involving the use of human embryos.

Notes:

1. *It is proposed that the Act will be repealed by the Assisted Reproductive Treatment ('ART') Bill 2008 (also in this Alert Digest).*
2. *The Infertility Treatment Amendment Bill 2007 (the 'amending Act') inserted into the Act new Part 2A concerning the regulation of certain uses for research purposes involving excess ART embryos (this Bill) and a new Part 4A concerning the prohibition of certain practices involving human embryos including a prohibition on human cloning (see Prohibition of Human Cloning for Reproduction Bill 2008 – also in this Alert Digest).*
3. *The Committee reported on the amending Act in Alert Digest No. 4 of 2007.*

Public submissions sought

The Committee will call for public submissions and comments in respect to the –

- Assisted Reproductive Treatment Bill 2008
- Prohibition of Human Cloning for Reproduction Bill 2008
- Research Involving Human Embryos Bill 2008

Content and Committee comment

[Clauses]

[2]. The Act is to commence on proclamation but no later than 1 January 2010.

Delayed commencement – Inappropriate delegation of legislative power

The Committee refers to its Practice Note No. 1 concerning delayed commencement provisions exceeding one year from introduction in the Parliament. In such circumstances the Committee will seek to ensure that Parliament has sufficient information to determine whether a delay in commencement is justified. The Committee will seek further information from the Minister.

[6]. Describes the scope of the regulatory scheme for excess ART embryos by describing the uses of excess ART embryos that require a licence and those that do not.

[7]. Provides that a person commits an offence if a person intentionally uses certain types of embryos without a licence issued by the National Health and Medical Research Council (NHMRC) Licensing Committee.

[10]. A person is guilty of an offence if they intentionally do something, or fail to do something, that they know will result in a breach of a condition of licence or that they do so being reckless as to whether or not the omission will contravene a condition of licence.

[12 to 26]. Part 3 confers functions on the NHMRC Licensing Committee established by section 13 of the Commonwealth Act.

[15]. Sets out certain things that the NHMRC Licensing Committee must be satisfied of before it issues a licence and other issues that the NHMRC Licensing Committee must have regard to when deciding whether or not to grant a licence. The NHMRC must not issue the licence unless it is satisfied that appropriate protocols are in place to enable 'proper consent' (defined in section 3) to be obtained before an excess ART embryo is used, or other embryo is created or used under the licence, and to ensure that if restrictions on the use of an embryo have been specified, these restrictions will be observed.

Whether an embryo is a person and has rights – Undue trespass to rights or freedoms

In its previous report (Alert Digest No. 4 of 2007) the Committee noted the difficult issue concerning the definition of 'person' or 'human being' within the meaning of the section 17(a) of the *Parliamentary Committees Act 2003*. In its previous report the Committee concluded that these were issues involving fundamental questions of ethics and personal conscience and would therefore refer these matters for consideration of the Parliament.

The Committee notes this passage from the Statement of Compatibility concerning the common law position in Victoria –

> *However, in relation to research involving human embryos, the threshold issue of whether an embryo is a 'person' for the purposes of the Charter arises for Parliament to consider.*
>
> *The common-law position in Victoria is that a human being is not a legal person until he or she is born alive (see Yunghanns v. Candoora No 19 Pty Ltd [1999] VSC 524 at [75-76]). The common law is consistent with decisions made by courts in the United Kingdom, Canada, New Zealand and South Africa which have held that a person becomes a rights-holder after birth (see Christian Lawyers Association of SA and Others v. Minister of Health and Others 1998 (11) BCL 1434 (T), Tremblay v. Daigle [1989] 2 SCR 530 and Evans v. Amicus Healthcare Ltd [2004] 2 WLR 681). The NHMRC definition of a human embryo, which is nationally applied, is 'a discrete entity arising from the first mitotic division when fertilisation of a human oocyte by a human sperm is complete and has not reached 8 weeks of development since the mitotic division'. At this stage the human embryo does not have legal personhood and therefore the Charter rights are not engaged.*

The Committee also notes these fundamental questions in its Charter Report below.

Informed consent

In its Alert Digest No. 4 of 2007 the Committee raised issues concerning the nature and extent of information and support that would be provided to altruistic donors to ensure that donor's consent was full, free and informed and free of coercion or improper inducement.

The Committee notes this extract from the Statement of Compatibility –

> *Section 10(c) of the Charter protects a person's right not to be subjected to medical treatment unless the person has given their full, free and informed consent. In this context 'medical treatment' encompasses all forms of medical treatment and medical intervention, including acquiring human gametes for research, training or diagnostic purposes.*
>
> *Clause 15 provides that before a licence may be issued the NHMRC Licensing Committee must be satisfied that the applicant for a licence has appropriate protocols in place to ensure 'proper consent' is obtained before undertaking the research activity nominated on the licence application. The Bill provides that 'proper consent' means consent obtained in accordance with*

guidelines issued by the Chief Executive Officer of the NHMRC. The relevant NHMRC National Statement on Ethical Conduct in Human Research (2007) and the NHMRC Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research (June 2007) provide extensive requirements for the conduct of human and ART research. These guidelines place obligations on researchers to ensure the anticipated benefits of the research justify the risk; to ensure that donors are sufficiently and independently informed of all known and potential risks of the procedure or research; to minimise risks; and to obtain participants' informed consent.

The guidelines also address ethical considerations specific to participants, including people who are in dependent or unequal relationships, and provide that clinics must provide information in a way that avoids any coercion or direct or indirect inducements. One of the purposes of research involving human embryos is to improve the effectiveness of assisted reproductive treatments. Women who donate eggs for research purposes may personally benefit from the results of the research as well as altruistically benefit other women and families. In the case where the research activity involves the medical treatment to obtain a human egg, the bill's provisions require that ART providers must have in place protocols which ensure that the full, free and informed consent of participants is obtained before research is undertaken. Clause 18(2) makes the licence subject to the condition that the use of these eggs must be in accordance with the restrictions to which proper consent is subject. Therefore the provisions of the Bill are consistent with the rights protected by section 10 of the Charter.

[23]. The NHMRC Licensing Committee must establish and maintain a comprehensive, publicly available data base containing information about licences that have been issued by the NHMRC Licensing Committee.

[25 and 26]. Describes those persons who are able to seek review in relation to various types of decisions made by the NHMRC Licensing Committee and provides that an eligible person may apply to the Commonwealth Administrative Appeals Tribunal for review of certain decisions of the NHMRC Licensing Committee.

[27 to 37] Part 4 deals with enforcement and monitoring powers.

[27]. An inspector appointed under the Act may exercise search and seizure powers with the consent of the occupier or under warrant issued under section 30.

[37]. Provides that the monitoring powers provided in Part 4 of this Act will also apply to the *Prohibition of Human Cloning for Reproduction Act 2008*.

Charter Report

Licence to create or use embryos for medical research – Whether embryos have rights under the Charter – Whether reasonable limit on rights

The Committee notes that clause 14 allows the NHMRC Licensing Committee to licence:

- the use, including development for up to 14 days, of embryos created for the use of assisted reproduction but that are now excess to the needs of the woman and her partner (clause 14(1)(a))
- the creation of human embryos other than by fertilisation, and their use, including development for up to 14 days (clauses 14(1)(b), (c) & (d))
- the creation of human or hybrid embryos by fertilisation, and their use, up to but not including first mitotic division (clauses 14(1)(e) & (f))

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

First, whether or not embryos have rights under the Charter. The Charter provides that 'all persons' have human rights[14] and defines 'person' to mean 'human being'[15]. The statement of compatibility remarks:

The NHMRC definition of a human embryo, which is nationally applied, is 'a discrete entity' arising from the first mitotic division when fertilisation of a human oocyte by a human sperm is complete and has not reached 8 weeks of development since the mitotic division'. At this stage the human embryo does not have legal personhood and therefore the charter rights are not engaged.

The Committee observes that overseas courts have held that the question of defining a human being for the purpose of determining the existence of legal rights is a legal (rather than metaphysical or scientific) one[16] and that there is no international consensus on the legal status of embryos.[17]

Second, whether or not clause 14 is incompatible with any rights that embryos have, including the right to life.[18] Charter s. 7(2) permits all rights to be subject to reasonable limits to further other interests, such as researching potential medical advances.[19] The Committee observes that clause 14 is limited to embryos that can't or won't be born.

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

1. ***Whether or not embryos have human rights under the Charter; and***

2. ***If so, whether or not clause 14, by permitting the creation and/or use of embryos (that can't or won't be born) for medical research, reasonably limits the human rights of embryos according to the test set out in Charter s. 7(2).***

The Committee makes no further comment.

14 Charter s. 6(1)

15 Charter s. 3

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

17 *Vo v France* [2004] ECHR 326, [84]

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

19 Charter s. 7(2) provides that a 'human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom and taking into account all relevant factors…'

Compensation and Superannuation Legislation Amendment Bill 2008

Introduced	9 September 2008
Second Reading Speech	12 September 2008
House	Legislative Assembly
Member introducing Bill	Hon. Tim Holding MLA
Portfolio responsibility	Minister for Finance (WorkCover and the Transport Accident Commission)

Purpose

The Bill amends the —

Transport Accident Act 1986 to —

- Clarify that damages in respect of death or serious injury as a result of a transport accident can only be brought under the TAC scheme by a natural person and not a corporation;*

  * *The clarifying amendment applies to all injuries irrespective of the date of occurrence, however clause 7 of the Bill inserts new section 197 which has the effect of preserving the rights of corporate applicants who have commenced proceedings claiming loss of services before 11 September 2008.*

- Provide that the making of a valid claim for compensation remains a prerequisite before seeking an impairment assessment for accessing TAC benefits and common law damages.

Accident Compensation Act 1985 removes a sunset provision to ensure that workers with certain injuries who have a whole person impairment of less than 10 per cent can continue to access compensation for non-economic loss under the WorkCover scheme.

Transport Accident Act 1986 and the *Accident Compensation Act 1985* to ensure that the WorkSafe and TAC schemes are able to continue holding negligent third parties fully accountable for work practices and systems that contribute to workplace and transport injury.

Emergency Services Superannuation Act 1986 to permit members of Victoria Police to purchase death and disability insurance limited to part of a period of leave without pay (LWOP) rather than, as currently the entire period of LWOP.

Content and Committee comment

[Clauses]

[2]. Other than sections 3, 4 and 10 the provisions in the Bill come into operation on the day after Royal Assent. Sections 3 and 4 are deemed to have come into operation on 11 September 2008 (the date of the Second Reading Speech in the Legislative Assembly). Section 10 comes into operation on 2 December 2008.

[12]. Provides for the repeal of this amending Act on 2 December 2009.

The Committee makes no further comment.

Dangerous Goods Amendment (Transport) Bill 2008

Introduced	9 September 2008
Second Reading Speech	12 September 2008
House	Legislative Assembly
Member introducing Bill	Hon. Tim Holding MLA
Portfolio responsibility	Minister for Finance (WorkCover and the Transport Accident Commission)

Purpose

The Bill amends the *Dangerous Goods Act 1985* (the 'Act') to facilitate the implementation of the Model Law contained in the new national legislative framework for the transport of dangerous goods by road and rail, having regard to the statutory framework that exists in Victoria.

The Bill provides for the repeal of the *Road Transport (Dangerous Goods) Act 1995* under which the existing scheme operates.

Content and Committee comment

[Clauses]

[2]. The amendments made by the Bill come into operation on proclamation but not later than by 1 January 2010.

Delayed commencement – Inappropriate delegation of legislative power

The Committee refers to its Practice Note No. 1 concerning delayed commencement provisions exceeding one year from introduction in the Parliament. In such circumstances the Committee will seek to ensure that Parliament has sufficient information to determine whether a delay in commencement is justified. The Committee will seek further information from the Minister.

[22 to 24]. Amends sections 48 to 50 of the Act with the effect of enabling a court to order the forfeiture of a container containing seized dangerous goods by a person guilty of an offence. These amendments raise Charter issues concerning the right not to be deprived of property other than in accordance with law. (*Charter section 20*).

[29]. Repeals the *Road Transport (Dangerous Goods) Act 1995*.

[34]. Provides for the automatic repeal of this amending Act on 1 January 2011.

The Committee makes no further comment.

Energy Legislation Amendment (Retail Competition and Other Matters) Bill 2008

Introduced	9 September 2008
Second Reading Speech	12 September 2008
House	Legislative Assembly
Member introducing Bill	Hon. Peter Batchelor MLA
Portfolio responsibility	Minister for Energy and Resources

Purpose

The Bill amends the –

Electricity Industry Act 2000 and the *Gas Industry Act 2001* to make further provision in relation to the operation of the existing gas and electricity industry customer safety net provisions.

Electricity Industry Act 2000 to include a requirement for electricity bill benchmarking as an alternative to the current requirement to publish greenhouse gas emission information on customer bills.

Electricity Industry Act 2000 to make further provision in relation to the making of Orders in Councils for the rollout of advanced metering infrastructure.

Gas Industry Act 2001 to provide for —

- the Governor in Council to make retail gas market rules for the gas transmission system and gas distribution system; and
- the transfer of responsibility from the Essential Services Commission (the Commission) to the Australian Energy Regulator (the AER) for approval of amounts payable by gas retailers in respect of costs incurred by the Victorian Energy Networks Corporation (VENCorp) in relation to the implementation and operation of, and the provision of services in connection with, arrangements for competition in the retail gas market.

Gas Industry Act 2001 to provide for the repeal of a redundant tariff order provision.

Gas Safety Act 1997 to amend the definition of a standard gas installation.

Electricity Safety Act 1998 to remove the provisions and references relating to the acceptance of electrical equipment by Energy Safe Victoria.

Gas Safety Act 1997 and the *Electricity Safety Act 1998* to make further provision in relation to the making of regulations.

National Electricity (Victoria) Amendment Act 2007 to make further provision in relation to determinations relating to advanced metering infrastructure.

The Bill will also clarify the application of the AER's powers in relation to accounting and cost allocation information requirements for the economic regulation of gas distribution businesses under the *National Gas (Victoria) Act 2008*.

Content and Committee comment

[Clauses]

[2]. Except for Part 2, Division 1 of Part 3, section 30(1) and sections 31 to 39, the Act will come into operation the day after Assent. Part 2 and Division 1 of Part 3 come into operation on 1 January 2009.

Section 30(1) and sections 31 to 38 will come into operation on proclamation but not later than 1 July 2010.

> **Note:** *These sections will be proclaimed once the Australian Energy Regulator is conferred power, under the Trade Practices Act 1974 of the Commonwealth, to approve amounts payable by gas retailers in respect of costs incurred by VENCorp in relation to the implementation and operation of, and the provision of services in connection with, arrangements for competition in the retail gas market.*

Section 39 will, subject to earlier proclamation, come into operation on 1 January 2010.

> **Note:** *This section will be proclaimed once relevant Regulations are made under the Gas Safety Act 1997.*

The Committee makes no further comment.

Greenhouse Gas Geological Sequestration Bill 2008

Introduced	9 September 2008
Second Reading Speech	12 September 2008
House	Legislative Assembly
Member introducing Bill	Hon. Peter Batchelor MLA
Minister responsible	Hon. Gavin Jennings MLC
Portfolio responsibility	Minister for Environment and Climate Change

Purpose

The Bill facilitates and regulates the large scale commercial and sustainable injection and permanent storage of greenhouse gas substances in onshore Victoria.

> **Note:** *The Bill is based on existing regulatory frameworks for petroleum operations under the Petroleum Act 1998 and geothermal operations under the Geothermal Energy Resources Act 2005.*

Content and Committee comment

[Clauses]

[2]. The Act will come into operation on proclamation but not later than by 1 January 2010. Division 2 of Part 18 (sections 305 to 318) come into operation on the fourth anniversary of the commencement of specified sections of the Act.

> **Notes:**
>
> **1**. From the explanatory memorandum – *A forced commencement of 1 January 2010 is necessary given that the development of regulations and other supporting instruments underpinning this Bill will need to be consistent, to the extent practicable, with regulations and other supporting instruments currently being developed in other Australian jurisdictions to enable greenhouse gas injection and storage.*
>
> **2.** *Division 2 of Part 18 provide that the Environment Protection Authority will become the regulator responsible for monitoring and verification.*

[10]. Provides that nothing in the Bill affects the operation of the *Aboriginal Heritage Act 2006*.

Ownership in underground geological formations to vest in the Crown and no compensation is payable

[14]. Provides that the Crown owns all underground geological storage formations 15.24 metres (50 feet) below the surface of any land in Victoria, irrespective of any prior alienation of Crown land and that the Crown is not liable to pay any compensation in respect of a loss resulting from the operation of this clause. [203]. Declares that no compensation is payable for the value of any underground geological storage formation. (*Refer to Charter report below*).

[17 and 18]. Respectively create offences for a person to undertake greenhouse gas sequestration exploration or substance injection activities in Victoria unless authorised or permitted under the Bill.

[19 to 57]. Part 3 provides for greenhouse gas sequestration exploration permits.

[58 to 70]. Part 4 deal with retention leases which enable the holder of an exploration permit to retain the right to an underground geological storage formation that is likely to be suitable for the injection and permanent storage of a greenhouse gas substance, but is not yet

commercially viable to develop under an injection and monitoring licence, but which might become viable to develop within 15 years.

[71 to 118]. Part 5 deals with greenhouse gas substance injection and monitoring licences.

[150]. Provides that In respect of land for which there is a native title holder the Minister must not issue an authority unless he or she is satisfied that the relevant procedures under the *Native Title Act 1993 (Cth)* have been followed.

Self-incrimination – Provide information of serious situation – Licence condition in regulatory scheme requiring information – condition of authority (licence)

[181]. Requires the *'holder of an authority'* to report any 'serious situation' (defined in section 6) that has occurred, or may occur in the authority area. It is an offence to fail to do so.

The Committee notes the following extract from the Statement of Compatibility –

> *Clause 181 requires that the holder of an authority must report a 'serious situation'. It is possible that the reporting of a serious situation could involve the disclosure of a criminal offence. The report may be used against the authority holder in subsequent criminal proceedings.*
>
> *Section 25(2)(k) of the Charter provides that a person charged with a criminal offence is entitled not to be compelled to testify against himself or to confess guilt. At the time the person is required to provide information he/she will not have been charged with an offence. On this basis the right in s 25(2)(k) of the charter would have no application. However, similar rights in other jurisdictions and the broader right to a fair trial (s 24) have been interpreted to provide some limited protection at the investigation stage.*
>
> *Even so, the rights have not been extended so far as to protect persons from providing information necessary for the monitoring and enforcement of a regulatory regime. The Supreme Court of Canada has held that in accepting a licence, a person is presumed to know, and to have accepted, the terms and conditions associated with the licence, including the provision of information to monitor compliance with those terms and conditions.*

[200 to 208]. Part 12 deals with compensation. Sections 200 and 201 require the consent of, or a compensation agreement to be entered into with, the owners or occupiers of private land before starting operations on that land and outline those activities for which compensation may be payable to the owners and occupiers of private or native title land, including compensation for any loss or damage that has been or will be sustain in relation to the activities carried out as a consequence of a greenhouse gas sequestration operation.

[206]. Provides for the settling of disputes in respect to private or native title land by application to the VCAT or referral of a disputed claim to the Supreme Court for determination.

[208]. Provides for instances where the *Native Title Act 1993* (Cth) prevails in respect to disputes concerning compensation.

Minister may require information – self-incrimination abrogated but use limitation provided

[233]. Enables the Minister to require a person to provide certain information in relation to the carrying out of greenhouse gas sequestration operations. A person must comply with the request notwithstanding that the information or answer may tend to incriminate. However, any information, answer, thing or document provided is not admissible in any proceedings other than for the falsity of the information provided.

Part 15 – *Enforcement* – The Part (clauses 230 to 280) provides for enforcement powers to monitor compliance with the Act. The provisions include powers of authorised inspectors to

enter premises in emergency situations without search warrant, enter by consent of the occupier and provide for the issue of search warrants by a magistrate. The powers also include powers to seize things and documents. Inspectors may require information to be given or documents provided. It is an offence to obstruct an inspector.

Privilege against self-incrimination does not apply to documents

[268]. A natural person may refuse or fail to give any information if that information would tend to incriminate the person. This protection does bot apply to the production of a document required to be kept by the Act or the regulations, or the giving of a person's name or address.

[270 and 271]. Respectively make provision for Improvement Notices and for Prohibition Notices. [273]. A person will have the right of review by VCAT against a decision to issue a notice.

[274]. Provides reverse onus defences to the offences of failing to comply with an improvement or prohibition notice.

Reverse onus defences – Legal burden to prove affirmative defence – Defences within the peculiar knowledge of defendant - Regulatory offences punishable by fine

The Committee notes the reverse onus defences raise the issue of the presumption of innocence. The Committee notes the defences in clause 274 and observes that before the affirmative defence can apply the prosecution must still establish that the defendant has failed to comply with the notice.

The Committee notes the offences are punishable by fine only and are offences within a regulatory scheme where certain factual matters are peculiarly within the knowledge of the respondent.

The Committee accepts that the imposition of a legal burden to raise the affirmative defences proposed in this provision is appropriate in the particular circumstances. (refer to Statement of Compatibility)

[281 to 298]. Part 16 establishes a greenhouse gas sequestration register.

[301]. Enables the Minister to approve a code of practice for the purpose of providing practical guidance to the holders of authorities in carrying out greenhouse gas sequestration operations. However no civil or criminal liability attaches to a failure to observe a code of practice so approved.

[305 to 318]. Division 2 of Part 18 provides that on the fourth anniversary of the commencement of the Act the Environment Protection Authority is to assume certain responsibilities for the administration, monitoring, prosecution and verification of the provisions of the Act.

Charter Report

Property – Expropriation of all privately owned underground geological storage formations below 15.24m – No compensation for value of formations – Whether in accordance with law

The Committee notes that clause 14 provides that the Crown 'owns all underground geological storage formations below the surface of any land in Victoria' below 15.24m. The effect of the clause is to expropriate any such formations presently owned by Victorians (i.e.

who own land above such formations that was granted by the Crown before 1891.[20]) The Discussion Paper on geological sequestration published by the Department of Primary industries remarks:[21]

> *[I[n most instances the Crown will in most instance be the owner of a geological storage formation. However, in a carbon-constrained world, sites suitable for the geological storage of carbon dioxide may become a valuable commodity.*

The Committee considers that clause 14 may engage some Victorians' Charter right not to be deprived of property 'other than in accordance with the law'.[22] The Statement of Compatibility remarks:

> *[A]s any deprivation occurs in accordance with the provisions of the bill, it is in accordance with law and does not limit the property right in s 20 of the Charter.*

The Committee observes that the term 'in accordance with the law' may extend beyond its literal meaning to require compatibility with values associated with the rule of law.[23]

The Second Reading Speech explains the purpose of clause 14 as follows:

> *The bill establishes that the Crown owns all underground geological storage formations below the surface of any land in Victoria. This will allow the Crown to grant exclusive rights to explore for geological storage formations in a specific area, and where a suitable geological storage formation is identified, to undertake greenhouse gas injection and monitoring operations.*

The Committee observes that this aim may be achieved by the exploration permits, retention leases, injection licences and special access authorisations in Parts 3, 4, 5 and 8 of the Bill. Clause 14 has the additional effect of removing any legal obligation to compensate owners of formations for the deprivation of the commercial value of those formations. Clause 14(4) excludes compensation for the operation of clause 14 and clause 203 excludes compensation for the 'value of any underground geological storage formation' from the compensation scheme for greenhouse gas sequestration operations on private land provided for in Part 12.

While Charter s. 20 does not create any right to compensation for deprivations of property, the Committee is concerned that a blanket expropriation of all privately owned property of a certain description without any compensation for its value may be incompatible with the values associated with the rule of law.

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

1. ***Whether or not clauses 14 & 203, by depriving some Victorians of their ownership of certain formations below their land and excluding any compensation of the value of those formations, are compatible with their Charter right not to be deprived of property 'other than in accordance with the law'?***

2. ***If so, whether or not clauses 14 & 203 are a reasonable limit on landowners' Charter rights according to the test set out in Charter s. 7(2)?***

The Committee makes no further comment.

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20 Section 339 of the *Land Act 1958* provides for the depth limitation of Crown sales of land, but only for sales after 1891.

21 Department of Primary Industries, Discussion *Paper: A Regulatory Framework for the Long-Term Underground Geological Storage of Carbon Dioxide in Victoria*, January 2008, p. 25

22 Charter s. 20.

23 *James v United Kingdom* [1986] ECHR 2, [67]

Health Professions Registration Amendment Bill 2008

Introduced	9 September 2008
Second Reading Speech	12 September 2008
House	Legislative Assembly
Member introducing Bill	Hon. Daniel Andrews MLA
Portfolio responsibility	Minister for Health

Purpose

The Bill amends the *Health Professions Registration Act 2005* (the 'Act') to —

- provide for the fixing of certain fees by responsible boards to ensure that examination and course accreditation fees remain GST free;
- increase the period of provisional registration from 12 months to 24 months;
- allow nurses with specific registration as midwives to apply for renewal of such registration;
- enable responsible boards to suspend the registration of a health practitioner at a board meeting held by means of an approved method, or combination of methods of communication (e.g. video or teleconferencing) in circumstances where there is a serious risk to public health and safety;
- clarify the transitional provisions in respect to investigations, inquiries, hearings or proceedings;
- specify caps on the growth of pharmacy ownership for friendly society type companies.

Content and Committee comment

[Clauses]

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

[9]. Substitutes section 169(1) to rectify an omission in the transition provisions of the Act to clarify that boards may prosecute unregistered persons for offences that occurred under the previous health practitioner legislation, prior to commencement of the Act on 1 July 2007; and investigate and discipline persons who were not registered on 30 June 2007 in relation to conduct that occurred prior to 1 July 2007, to the extent the previous legislation applied to that conduct. The current section fails to capture, for example, persons that were previously registered but whose registration had lapsed.

The Statement of Compatibility provides –

> *The proposed amendment in clause 9 of the Bill substitutes the existing section 169(1) of the Act to provide that the Act applies to activities of any person which occurred before the Act's commencement, to the extent that there was power in relation to those activities under the previous health practitioner legislation. For example, if a Board had power under the previous legislation to bring proceedings in relation to conduct that was a criminal offence at that time, the Act clarifies that the Board's power continues if the proceedings have not yet been taken. This is consistent with section 14 of the Interpretation of Legislation Act 1984 which has the effect that the repeal of the previous health practitioner legislation did not affect the operation of that legislation or the continuing power to bring legal proceedings in relation to offences committed under that legislation. Clause 9 therefore does not create retrospective liability for criminal offences, and does not limit any right under the Charter.*

The Committee makes no further comment.

Local Government Amendment (Councillor Conduct and Other Matters) Bill 2008

Introduced	9 September 2008
Second Reading Speech	12 September 2008
House	Legislative Assembly
Member introducing Bill	Hon. Richard Wynne MLA
Portfolio responsibility	Minister for Local Government

Purpose

The Bill amends the —

Local Government Act 1989 to —

- further provide for standards of conduct for Councillors and provide for arrangements to deal with Councillor misconduct;
- redefine what constitutes a conflict of interest and specify further duties with respect to the disclosure of a conflict of interest;
- alter the provisions relating to the payment of Councillor allowances;

City of Melbourne Act 2001 to—

- alter provisions in relation to the payment of Councillor allowances;
- provide arrangements for the offices of Lord Mayor and Deputy Lord Mayor in the event that either is suspended or required to take leave of absence;

Victorian Civil and Administrative Tribunal Act 1998 to make consequential amendments.

Key points from the Second Reading Speech

Part 3 – Councillor conduct amendments

A Councillor Conduct Panel will be able to:

- *discipline a councillor by reprimand, demand an apology or require the councillor to take up to two months leave of absence;*
- *require remedial action, including mediation, training or counselling, or*
- *refer a matter to VCAT if a councillor's behaviour appears to be serious misconduct.*

Decisions of a panel regarding a finding of misconduct may be appealed to VCAT.

VCAT will be empowered to discipline a councillor for serious misconduct, after a referral from a Councillor Conduct Panel, by:

- *suspending the councillor for up to six months;*
- *prohibiting the councillor from being the Mayor or the Chair of a special committee of a council for a period of up to four years.*

VCAT may also hear an application for a finding of gross misconduct from the Department. If VCAT makes a finding of gross misconduct it may disqualify a councillor for up to four years, suspend the councillor for up to six months or disqualify the councillor from being mayor for up to four years.

The Bill also establishes new arrangements that apply if a councillor is charged or convicted of an offence that will have the effect of disqualifying them from being a councillor under section 29(2) of the Local Government Act. This includes serious criminal offences, electoral offences and serious offences as a councillor.

If a councillor is charged with such an offence, the Department may apply to VCAT for the councillor to be required to take leave of absence until the matter is heard. If a councillor is convicted of one of these offences and appeals the decision to a higher court, he or she will be automatically on leave of absence until the appeal is decided.

Content and Committee comment

[Clauses]

[2]. Other than Part 4 the provisions in the Bill come into operation on Assent. Part 4 comes into operation on proclamation but not later than 1 January 2009.

Local Government Act 1989

[4 to 9]. Part 2 provides for councillor and mayoral allowances.

[10 to 19]. Part 3 deals with councillor conduct amendments concerning leave of absence, suspension and disqualification from holding office.

[11]. Amends section 29 in regard to the disqualification of a person from holding the office of Councillor.

New section 29(4) to provide that the Secretary of the Department may apply to VCAT for a Councillor to be required to take leave of absence (until the proceedings are finally determined) if he or she has been charged with an offence that, if convicted, would disqualify him or her from being a Councillor. (*Refer to Charter Report*).

New section 23(7) provides that a person, who has been convicted of an offence which disqualifies him or her from being a Councillor and who appeals the conviction, is taken to be on leave of absence until the appeal is determined and his or her allowance must be withheld.

[12]. Substitutes a new section 30 to allow a person who has been disqualified from being a Councillor because of a conviction (referred to in section 29(3)) to apply to VCAT for relief from the disqualification after a period of 4 years has elapsed.

[14 and 15]. Deal with principles of Councillor conduct and in regard to Councillor Codes of Conduct.

[16]. Inserts new sections 76D and 76E and makes it an offence for a person who is, or has been, a Councillor or a member of a special committee of the Council to misuse his or her position for personal gain, to cause gain or detriment to another person or to harm the Council.

Councillor conduct panels

[18]. Inserts a new Division 1B in Part 4 of the Act (new sections 81A to 81S) to provide for the functions, powers and operations of Councillor Conduct Panels (Panel) and VCAT when dealing with Councillor conduct matters.

New section 81I specifies matters relating to the conduct of hearings by a Councillor Conduct Panel. Hearings are not to be open to the public and parties are not entitled to be

represented unless the Panel considers it is required for fairness. A Panel is bound by the rules of natural justice.

New section 81J sets out the determinations that may be made by a Panel. A Panel may –

- make a finding of misconduct against the Councillor and may reprimand the Councillor, require the Councillor to make an apology, require the Councillor to take up to 2 months leave of absence or any combination of these.
- authorise the applicant to make an application to VCAT if it considers that there are reasonable grounds on which VCAT may make a finding of serious misconduct.
- find that remedial action is required and direct the councillor to attend mediation, training or counselling.
- direct the Council to amend its Councillor Code of Conduct, which it must do within 3 months.

New section 81K sets out the finding that may be made by VCAT following a referral or authorisation from a Councillor Conduct Panel or following an application from the Secretary. VCAT may make any of the following findings –

- that a Councillor has engaged in misconduct and may reprimand the Councillor, order that the Councillor make an apology, order that the Councillor take up to 2 months leave of absence or any combination of these;
- that a Councillor has engaged in serious misconduct and may order that the Councillor be suspended for a period of up to 6 months, be ineligible to hold the office of Mayor for up to 4 years or be ineligible to chair a special committee for a period of up to 4 years or any combination of these;
- a finding of gross misconduct against a Councillor and order that he or she is disqualified from being a Councillor for a period of up to 4 years, is disqualified for a period of up to 6 months, is ineligible to hold the office of Mayor for a period of up to 4 years, or any combination of these.

If a finding of serious or gross misconduct is made against a Councillor, he or she is ineligible to hold the office of Mayor for the remainder of the Council's term of office, unless VCAT otherwise orders.

New section 81Q provides for a party to a Panel hearing to apply for review of the Panel decision by VCAT, but not in regard to the dismissal of an application under section 81C or a decision regarding the authorisation of an application to VCAT.

[19]. Inserts a new Schedule 5 in respect to the establishment of Councillor Conduct Panels. A Councillor Conduct panel is to comprise 2 persons. The Municipal Association of Victoria (MAV) must establish and update two lists from which members of Panels will be drawn. List A must include at least 5 persons with specified legal qualifications and experience. List B must include at least 7 persons with relevant experience in local government governance.

The Schedule provides for the immunity of members of a Panel for actions taken in good faith.

Conflict of interest amendments

[21]. Substitutes new sections 77A to 78D for sections 77A, 77B and 78 to specify new definitions for direct and indirect conflicts of interest.

[22]. Substitutes new sections 79 to 79D for section 79 to specify matters relating to the disclosure of conflicts of interest at Council and special committee meetings.

New section 79 provides for Councillors and members of special committees to disclose the type and nature of a conflict of interest before a matter is considered in a meeting of the Council or committee and to leave the meeting while the matter is considered and voted upon.

New section 79A states that it is a defence to a prosecution under sections 79, 80A, 80B or 80C if the person proves he or she did not know of the conflict of interest or that the matter was considered at the meeting.

[24]. Inserts new sections 80A, 80B and 80C to prescribe requirements in regard to the disclosure of interests.

Other amendments

[26]. Amends section 28 to specify that a Councillor, whose only entitlement to be on the voters roll is as a resident of the municipality and whose primary place of residence is no longer in the municipality, ceases to hold office after 50 days.

[30]. Inserts new sections 66A and 66B to clarify arrangements when a Councillor is suspended or required to take leave of absence.

New section 66A states that a Councillor who is suspended ceases to be a Councillor for the period of suspension, is not entitled to receive an allowance and must return all Council equipment and materials to the Council.

New section 66B states that a Councillor who is required to take leave of absence under the Act may continue to be a Councillor but must not perform the duties of a Councillor during the period of leave. The Councillor continues to receive an allowance unless the Act otherwise provides is not entitled to be reimbursed for out of pocket expenses and must return all Council equipment and material if requested by the Council. This section does not apply to leave granted by the Council under section 69 of the Principal Act.

Rights or Freedoms – Representative government – Right to stand for and hold public office at Municipal elections – Eligibility to continue in office – Leave of absence from Council pending final disposition of hearing of charges for certain disqualifying offences

The Committee draws attention to the provisions in the Bill concerning eligibility, suspension, leave of absence and disqualification in respect to holding public office as an elected representative councillor of a municipality.

The relevant provisions in this Bill are –

- *In respect to misconduct – clauses 11, 18 and 30 provide that councillors are required to take leave of absence, be suspended or disqualified from the office of councillor, or be ineligible to hold office of mayor or vacate their position as Mayor where proceedings against them are on foot in respect of charges for certain offences under the Act, or where a Panel or VCAT have made findings of misconduct, serious misconduct or gross misconduct against the councillor.*
- *In particular clause 11(3) will require a councillor charged with certain disqualifying offences to take leave of absence from the office of Councillor until the relevant proceedings are finally determined. (Refer to Charter Report)*
- *In respect to eligibility to retain office as Councillor clause 26 of the Bill provides that where the only entitlement a person has to be qualified to be a councillor is an entitlement to be enrolled as a resident of the municipal district, that person ceases to hold office after 50 days if the person's principal place of residence is no longer within the municipal district.*

The Committee notes that electoral laws may prescribe matters concerning eligibility and disqualification for proven misconduct in respect to running for or holding public office.

The question whether these laws prescribe reasonable and non-discriminatory eligibility and disqualification limitations is for the Parliament as a whole to consider and determine.

Charter Report

Presumption of innocence – Charged councillors can be required to take a leave of absence until the proceedings are determined – Requirement to have regard to the nature and circumstances of the charge

The Committee notes that clause 11(3), amending existing s. 29 of the *Local Government Act 1989*, provides for VCAT to order a Councillor who is charged with certain offences to take a leave of absence until the proceedings in respect of the charge are finally determined. New section 29(5) requires VCAT to 'have regard to the nature and circumstances of the charge.' The Committee considers that clause 11(3) may engage the Charter right of charged councillors to be presumed innocent until proven guilty.[24]

The Statement of Compatibility remarks:

> *VCAT provides Victorians with access to a civil justice system, whose role and jurisdiction is separate to that of the criminal jurisdictions of courts and other tribunals. VCAT's power to make orders and impose civil liability under clause.. 11… is intended to address local governance issues and ensure that elected councillors undertake their public duty in accordance with community expectations. It does not in any way interfere with or prejudice an individual's right to be presumed innocence… by the Victorian criminal justice system.*

The Committee reiterates its view that the Charter right to be presumed innocent may apply outside the context of criminal proceedings, especially in proceedings (such as the 'leave of absence' determination) that are both triggered by and require the consideration of a criminal charge.[25]

The Committee is concerned that new section 29(5) requires VCAT to 'have regard to the nature and circumstances of the charge'. This may be read as permitting VCAT to decide on the basis of the fact of the charge, rather than on any evidence that relevantly shows that the councillor may have committed a relevant offence.[26] The Committee considers that a Councillor's right to be presumed innocent may be infringed if VCAT's decision is made on the basis of the charge, rather than any evidence properly before it that shows that the Councillor may have committed a relevant offence.

The Committee will write to the Minister seeking further information about whether or not VCAT could make its decision to order a Councillor to go on leave only on the basis of the charge against the Councillor, rather than to any evidence properly before the tribunal that shows that the Councillor may have committed a relevant offence. Pending the Minister's response, the Committee draws attention to clause 11(3) and its compatibility with Charter s. 25(1).

The Committee makes no further comment.

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24 Charter s. 25(1)

25 See *Alert Digest No. 4 of 2008*, p. 41. The scope of Charter s. 25(1) was recently discussed, but not determined, in *Sabet v Medical Practitioners Board of Victoria* [2008] VSC 346, [176]-[177]

26 See *Sabet v Medical Practitioners Board of Victoria* [2008] VSC 346, [183]-[184]

Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008

Introduced	9 September 2008
Second Reading Speech	12 September 2008
House	Legislative Assembly
Member introducing Bill	Hon. Bob Cameron MLA
Portfolio responsibility	Minister for Police and Emergency Services

Purpose

The Bill amends the –

Police Regulation Act 1958 (the 'PRA') to —

- reform the police discipline arrangements in the PRA to remove a formal charge and inquiry process and substitute a model that is focussed on a remedial approach whilst retaining the ability to dismiss members who are unsuitable to remain in the police force with an improved streamlined process;
- clarify the supervisory capacity of the Chief Commissioner of Police with respect to members of the police force and to improve the management of the performance and conduct of police members;
- provide more flexible working arrangements for police members that will also allow the Chief Commissioner of Police to cover short-term and seasonal requirements for policing in Victoria;
- clarify the position and powers of police members on leave or secondment to external agencies;
- improve procedures for the State to assume liability in civil actions against police members arising from the performance of their functions;
- clarify who are "protected persons" and the circumstances in which these persons can be called to give evidence.

Major Crime (Investigative Powers) Act 2004 to extend the operation of sections 49 and 50 until 1 January 2012 (originally these sections were to sunset after 42 months of operation). These sections concern proceedings for contempt of the Chief Examiner and relief against double jeopardy.

Police Integrity Act 2008 to –

- provide the Director, Police Integrity or a member of staff of the Office of Police Integrity ("OPI") with a power to commence criminal proceedings arising out of OPI investigations;
- clarify who are "protected persons" and the circumstances in which these persons can be called to give evidence.

*Whistleblowers Protection Act 2001 to s*ubstitute sections 61H and 61I concerning contempt of the Director, Police Integrity and relief against double jeopardy. New section 61J now provides that these provisions expire 3 years from their commencement.

> **Note:** *Sections 61H and 61I expired in May 2008 by operation of section 61J of the Act. It is intended that these powers will be revived for a further 3 years, consistent with the powers of the Chief Examiner under the Major Crime (Investigative Powers) Act 2004 (also extended by this Bill for a further 3 years).*

Written submissions received

- Human Rights Law Resource Centre Ltd.

The submission will be reproduced on the Committee Website.

Further advice and written submission sought

The Committee will invite the Police Association Victoria to make a written submission to the Committee in respect to the lack of confidence and other general dismissal powers of the Chief Commissioner and specifically whether 'right of re-instatement' should be a included as a Police Appeals Board remedy where a 'lack of confidence' dismissal is found not to be 'well founded'.

Content and Committee comment

[Clauses]

[2]. The majority of the provisions in the Bill come into operation on the day after Royal Assent. Some provisions commence on proclamation but not later than by 1 December 2009. A number of provisions are linked to the commencement of the *Police Integrity Act 2008* or other Acts.

[7]. Amends section 8 of the PRA to enable the Chief Commissioner to appoint members to the force on a full-time or part-time or fixed term or ongoing basis.

[17 to 30]. Part 4 of the Bill makes amendments in respect to police discipline and dismissal procedures.

Double jeopardy – misconduct – dismissal based upon a conviction

[19]. Substitutes Division 2 of Part IV and inserts a new Division 2A of Part IV respectively dealing with misconduct and underperformance. New section 69(1)(h) defines misconduct to include the commission of an offence by the police member and the offence has been found proven. Based on that conviction the member may be subject to a criminal penalty as well as dismissal or other remedial action.

The committee notes that this provision may raise the issue of the right against double jeopardy and notes this passage from the Statement of Compatibility –

> *…*
>
> *However, courts in other jurisdictions have consistently held that the right does not preclude the imposition of both criminal and civil sanctions for the same conduct.*
>
> *In determining whether a sanction is truly civil or amounts to a punishment for an offence, courts have regarded the statutory classification of the proceedings (here disciplinary rather than criminal) as relevant but not determinative. They have also looked at the nature, purpose and severity of the sanction. Police disciplinary proceedings have been held by the Supreme Court of Canada not to engage the double jeopardy right (R v. Wigglesworth [1987] 2 SCR 541).*
>
> *The purpose of the disciplinary measure is not to punish the member for the criminal offence, but to maintain the integrity and reputation of Victoria Police and to protect the public.*

The Committee is satisfied that the ability to take disciplinary action including dismissal of the member, based upon a conviction for a criminal offence is a civil penalty and does not engage the right against double jeopardy.

Presumption of innocence – dismissal or remedial action where criminal charge or investigation pending

[20]. Substitutes a new section 80 that makes it clear that the Chief Commissioner is not prevented from dismissing a member or taking remedial action against the member for misconduct or underperformance where the member is being investigated for a breach of the criminal law; or has been charged with an offence and the determination of that offence by a court is pending.

The Committee notes this extract from the Statement of Compatibility –

> *The Bill envisages a scenario where a member is found internally as having engaged in disgraceful or improper conduct under the misconduct provisions and externally charged with a criminal offence.*
>
> *While the criminal charge and disciplinary proceedings may relate to the same conduct, the test for misconduct is different from the criminal offence. This is not simply an issue of the standard of proof, but of the elements of the criminal offence compared with the misconduct. For example, intentional conduct may be necessary to a finding of guilt in relation to a criminal offence, whereas negligent conduct may be sufficient to amount to misconduct. A finding of misconduct founded directly upon having committed a criminal offence is limited to circumstances where the offence has been found proven (s 69(1)(h)). Accordingly a finding of misconduct (other than misconduct based upon a conviction) is different from and does not amount to a statement of guilt in relation to the criminal charge.*
>
> *…neither the finding of misconduct nor the dismissal would of themselves amount to a prejudgment of the outcome of the trial such as to breach the right to be presumed innocent.*

The Committee is satisfied that the dismissal of a member for misconduct in circumstances where a charge is pending may be justified in certain circumstances and notes that the finding of misconduct and dismissal may not be adduced as evidence so as to prejudice a defendant at a criminal trial.

Power to require answers and information

[21]. Inserts a new section 82 into the PRA and allows the Chief Commissioner to direct any member of the force to provide any relevant information, produce any relevant document or answer any relevant question considered necessary for the purposes of determining whether to dismiss a member under section 68; or an investigation or assessment under section 70 or section 75; or determining whether to dismiss a police member under section 72 or section 77 or take remedial action against a member of the force under section 73 or 78.

A police member must comply with a direction under this provision and commits misconduct if he or she fails to do so.

Privilege against self-incrimination abrogated but use limitation provided

Any information, document or answer given under this section is not admissible in any court proceedings or before any person acting judicially, unless the proceedings are for perjury; or a prescribed matter related to police discipline.

> **Note:** Extract from the Statement of Compatibility – *'proposed s 82 makes clear that the Chief Commissioner's questioning powers may only be used for the purposes of determining whether to dismiss a member who is unsuitable under s 68; an investigation or assessment of a member who is believed to have engaged in misconduct or for underperformance; or in determining whether to dismiss or take other remedial action in respect of a member for misconduct or underperformance. The Chief Commissioner is not able to use those powers for the purpose of gathering evidence for a criminal charge. In the event that he or she were to use the powers for an improper purpose any evidence derived as a result could be excluded in the criminal trial'.*

[25]. Inserts a new section 91FA into the PRA to enable a police member who is dismissed from the police force under section 72 or 77 to apply to the Police Appeals Board for review of the Chief Commissioner's decision to dismiss him or her.

The grounds for the Police Appeals Board to review the Chief Commissioner's decision to dismiss the police member are that the decision was harsh, unjust or unreasonable. [26]. Deals with the remedies and orders the Board is empowered to make (or is restrained from making) consequent on such review.

[31 and 32]. Part 5 inserts a new Part VID in the PRA (new sections 118ZB to 118ZG) dealing with legal proceedings against members of the force.

New section 118ZC provides that the Crown cannot deny being vicariously liable for a tort that is alleged to have been committed by a member on the basis that the member is not an employee of the Crown or that the conduct giving rise to the claim occurred in the performance by the member of an independent function.

New section 118ZD provides that a police tort claim must be made against the Crown and not the member concerned. The person making the claim may join the member concerned as a party to the claim only if the Crown denies that it would be vicariously liable for the alleged tort and must do so within 2 months of the Crown denying vicarious liability.

The new section 118ZE prevents a court from finding that the Crown is vicariously liable if the conduct by the member concerned giving rise to the tort was serious and wilful misconduct or was not committed by the member in the performance or purported performance of his or her duties or the performance of an independent function.

New section 118ZG deals with the joinder of other parties that may also be liable for contribution or indemnity for a tort.

Major Crime (Investigative Powers) Act 2004

[39]. Amends sections 49(12) and 50(2) to extend the power of the Chief Examiner to issue contempt proceedings. The existing provisions for such powers are due to sunset on 1 January 2009. The amendments extend the operation of those sections for a further 3 years to 1 January 2012.

Police Integrity Act 2008

[40]. Inserts new sections 51A and 51B to authorise the Director, or a member of OPI staff authorised in writing by the Director, to commence criminal proceedings arising out of an OPI investigation. The Director may authorise an OPI officer to commence criminal proceedings generally, or in relation to a specified person or investigation. The Director or an authorised OPI officer has immunity from any personal liability arising from a prosecution commenced in good faith. Any liability that would otherwise attach to the Director or an authorised OPI officer will attach instead to the State.

[41]. Amends section 104 which defines ‘protected person’ for the purposes of Part 4, Division 10 and inserts the phrase "a person who is or was". The clause also amends a numbering error in section 104. The purpose of the amendment is to extend the sections cover to include former protected persons, such as the former Director and former members of OPI staff. (*Refer to section 85 report below*)

[42]. Inserts a new section 109A to provide that a protected person cannot be compelled to give evidence in any legal proceedings. A protected person is competent to give evidence in any legal proceeding, but they cannot be compelled to do so. Protected persons may be

compelled to give evidence if the Director certifies that the giving of such evidence is in the public interest. (*Refer to Charter Report below*).

[43]. Declares that it is the intention of section 109 as it applies after the commencement of clause 41, to alter or vary section 85 of the *Constitution Act 1975*. (*Refer to section 85 report below*)

[45]. Amends section 85KE of the *Police Regulation Act 1958*, which defines protected person and replicates section 104 (clause 41 above) of the *Police Integrity Act 2008* and extends the definition of protected person to include former protected persons such as the former Director and former OPI officers. (*Refer to section 85 report below*)

[46]. Inserts a new section 86KJA into the *Police Regulation Act 1958*. Section 86KJA replicates section 109A of the *Police Integrity Act 2008* and provides that protected persons are competent but not compellable to give evidence in legal proceedings except where the Director certifies that the giving of such evidence is in the public interest. (*Refer to Charter Report below*).

[47]. Inserts new sections 86TB and 86TC into the *Police Regulation Act 1958*. The new sections replicate sections of the *Police Integrity Act 2008* (*see clause 40 above*).

[48]. Declares that it is the intention of section 86KJ, as it applies after the commencement of clause 45, to alter or vary section 85 of the *Constitution Act 1975*. (*Refer to section 85 report below*)

[49]. Amends the *Whistleblowers Protection Act 2001* to insert new sections 61H and 61I and substitute a new section 61J dealing with contempt of the Director powers. These powers expired in May 2008 and are now to be re-enacted for a further 3 years. The powers are in keeping with the extension of the operation of identical powers (also made by this Bill) of the Chief Examiner to issue contempt proceedings under the *Major Crime (Investigative Powers) Act 2004*.

[50]. This amending Act is repealed on 1 December 2010.

Repeal alteration or variation of s. 85 of the Constitution Act 1975

The Committee notes the section 85 statement in the Minister's Second Reading Speech –

> *While the amendment to the definition of 'protected person' will clarify the current law, it will alter or vary section 85 of the Constitution Act 1975. Accordingly, I wish to make a statement under section 85 of the Constitution Act 1975 of the reasons for altering or varying that section pursuant to the Police Regulation Act 1958.*
>
> *Clause 48 of the Bill will insert a new section 129A(6) in the Police Regulation Act 1958. It will provide that it is the intention of section 86KJ of the Police Regulation Act 1958 as it applies on and after the commencement of clause 45 of the Bill to alter or vary section 85 of the Constitution Act 1975.*
>
> *Clause 45 of the Bill will amend the definition of 'protected person' in section 86KE of the Police Regulation Act 1958. Section 86KE currently defines a 'protected person' in the present tense as someone falling into a category listed in subsections (a) to (e).*
>
> *The Bill will amend section 86KE to confirm that the definition of 'protected person' includes someone who previously fell into one of the listed categories.*
>
> *This amendment will widen the scope of section 86KJ, which currently provides that proceedings against a 'protected person' are limited to acts done in bad faith. The amendment to section 86KE will ensure that a former protected person is entitled to protection under the*

Police Regulation Act 1958. In this way, the amended definition of a 'protected person' will expand the class of persons to whom the section 86KJ protection applies.

I also wish to make a statement under section 85 of the Constitution Act 1975 of the reasons for altering or varying that section pursuant to the Police Integrity Act 2008.

Clause 43 of the Bill will insert a new section 130(2) in the Police Integrity Act 2008. It will provide that it is the intention of section 109 of the Police Integrity Act 2008 as it applies on and after the commencement of clause 41 of the Bill to alter or vary section 85 of the Constitution Act 1975.

Sections 104 and 109 of the Police Integrity Act 2008 replicate the provisions of sections 86KE and 86KJ of the Police Regulation Act 1958. These sections ensure that the protection afforded to the director and his staff operates prior to the commencement of sections 104 and 109 of the Police Integrity Act 2008.

The Bill will amend the definition of a 'protected person' in section 104 to mirror the amended definition of 'protected person' in section 86KE of the Police Regulation Act 1958. The amended section 104 will widen the scope of section 109 in the same way section 86KE expands the class of persons to whom the section 86KJ protection applies.

Both section 86KJ of the Police Regulation Act 1958 and section 109 of the Police Integrity Act 2008 provide the protection necessary for the Director and staff of the OPI to perform their significant public functions properly. To protect OPI investigations, confidential information, and the safety of informers, it is important to clarify beyond doubt that former OPI officers are 'protected persons' under the Acts.

Constitution Act 1975, section 85 – Repeal alteration or variation of the unlimited jurisdiction of the Supreme Court

The Committee having reviewed the section 85 statement made in the Second Reading Speech, the declaratory and enabling clauses and the explanatory memorandum is of the view that the proposed provisions altering or varying section 85 of the Constitution Act 1975 are appropriate and desirable in all the circumstances.

Charter Report

Fair hearing – Right to call witnesses – OPI employees cannot be compelled to testify on OPI matters without the consent of the DPI – Proceedings between state and individuals – Equality of arms

The Committee notes clause 42, inserting a new section 109A into the *Police Integrity Act 2008*, and clause 46, inserting a new section 86KJA into the *Police Regulation Act 1958*, provide that OPI employees 'cannot be compelled to give evidence in any legal proceeding in respect of any matter coming to his or her knowledge in the performance of functions under' the two Acts unless 'the Director certifies in writing' that it is in the public interest to do so.

The Committee is concerned about the application of clauses 42 and 46 in proceedings between the State (including the OPI) and individuals (including criminal defendants.) In such proceedings, it will be the Director, Police Integrity who will determine whether or not either party can call an OPI employee as a witness in relation to OPI matters and, possibly, what the employee may testify about.

The Committee considers that the vesting of exclusive control in a State employee over whether or not such witnesses can be called may limit the Charter right of individual litigants in such matters to a fair hearing,[27] a right that overseas courts have held includes the

[27] Charter s. 24(1)

principle of 'equality of arms.[28] Also, where the proceedings are criminal proceedings (especially proceedings prosecuted by the OPI), clauses 42 and 46 may also be incompatible with the right of criminal defendants 'to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses for the prosecution'[29].

Whilst the Committee accepts that limits on the ability of litigants to compel OPI employees to testify are reasonably necessary to protect sensitive OPI information, the Committee is concerned that giving exclusive control to the DPI to determine whether OPI witnesses can testify may not be the least restrictive limit on the Charter rights to a fair hearing and to call witnesses.[30] The Committee observes that the existing procedure in the Police Integrity Act 2008 for determining whether to admit protected documents, which delineates specific matters of sensitivity and, in criminal cases, allows a court to assess those matters and to admit sensitive documents in exceptional circumstances,[31] may be capable of being adapted to the circumstance where a non-state party wishes to call an OPI employee as a witness.

The Committee will write to the Minister seeking further information as follows:

1. ***Do clauses 42 and 46, by giving the DPI exclusive control over the calling of OPI employees as witnesses, limit the Charter rights of litigants opposed to the state to a fair hearing and the Charter right of criminal defendants to call witnesses under the same conditions as the prosecution?***

2. ***Could the purpose of protecting sensitive OPI information be achieved by adapting the existing 'protected documents' procedure in Division 10 of Part 4 of the Police Integrity Act 2008 to the circumstance where a non-state party wishes to call an OPI employee as a witness?***

Pending the Minister's response, the Committee calls attention to clauses 42 and 46."

The Committee makes no further comment.

28 *Neumeister v Austria* [1968] ECHR 1, [22]

29 Charter s. 25(2)(h)

30 s. 7(2) provides that a 'human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom and taking into account all relevant factors…' including 'any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve'.

31 Division 10 of Part 4 of the Act.

Stalking Intervention Orders Bill 2008

Introduced	9 September 2008
Second Reading Speech	12 September 2008
House	Legislative Assembly
Member introducing Bill	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill makes provision for a system of interim and final intervention orders and related offences in cases of stalking.

> **Note:** *Section 21A of the Crimes Act 1958 provides the offence of stalking and current 21A(5) effectively provides that the Crimes (Family Violence) Act 1987 applies to making intervention orders for the purposes of section 21A as though the defendant in the application were a family member of the applicant for the order.*

Content and Committee comment

[Clauses]

[2]. The Act will come into operation on proclamation but not later than by 1 October 2009.

[4]. Defines the term stalking, for the purposes of the Bill, and reflects the crime of stalking in section 21A of the *Crimes Act 1958*.

[5]. Provides for circumstances in which the Bill does not apply and mirror the current exceptions found in section 21A(4) of the *Crimes Act 1958*.

[8]. Provides non-exhaustive examples of the types of restrictions or prohibitions that may be included in a final order.

[9]. Requires the court, before making an intervention order, to enquire as to whether the respondent holds a firearms authority.

[13]. Allows for the making of interim orders. An interim order may impose any condition on the respondent that may be imposed on a final order, other than cancelling a firearms authority.

Interim order may be made in the absence of the respondent

Any interim order which is made in the absence of the respondent only operates until the time specified in the order, or until a further order of the court is made.

[14]. Provides for making applications for intervention orders by telephone or facsimile machine.

[18]. Where a respondent has been served with a summons for an intervention order and fails to attend the hearing the court may make an order notwithstanding his or her absence.

[30]. *Respondent appeal* – An appeal lies from the Magistrates' Court to the County Court and from the President of the Children's Court to the Supreme Court. The giving of a notice of appeal does not stay the operation of the order. However, the court which made the order may, on the application of the respondent, in its discretion stay the operation of the order or any term of the order pending the determination of the appeal.

[31]. *Applicant appeal* – An appeal from a relevant decision (defined in the Act) lies from the Magistrates' Court to the County Court and from the President of the Children's Court to the

Supreme Court. No further appeal may be brought (*Refer to section 85 of the Constitution Act 1975 report below*).

[32]. Sets out an offence for contravening an intervention order.

[33]. Empowers police to arrest and detain a person without warrant if they believe, on reasonable grounds, that the person has contravened an intervention order.

[34 to 42]. Provides for search of premises, vehicles, search warrants and the seizure of firearms.

Search without warrant

[36]. Provides fro search without warrant of a residence, premises or vehicle in circumstances where an intervention order has been made or is likely to be made and the police officer is aware or has reasonable grounds to suspect that a person has possession of firearms, a firearms authority or ammunition. [37]. Provides for search warrants to search premises and vehicles in accordance with the *Magistrates' Court Act 1989.*

[43 to 47]. Deals with registration of corresponding interstate and New Zealand orders.

Repeal alteration or variation of s. 85 of the Constitution Act 1975

[52]. Declares that section 31 intends to alter or vary section 85 of the *Constitution Act 1975*.

The Committee notes the section 85 statement in the Minister's Second Reading Speech –

> *Section 31 of the Bill provides that the applicant to an order may appeal to the County Court, or, if the court that has made the order is the Children's Court, constituted by the President of that Court, to the trial division of the Supreme Court, for a rehearing. This clause alters or varies the jurisdiction of the Supreme Court of Victoria because it does not provide for an appeal from the County Court. This is appropriate because the rights of the parties in such cases have been tested in a hearing by a Magistrate and the County Court and further appeals could result in a proliferation of proceedings.*

Constitution Act 1975, section 85 – Repeal alteration or variation of the unlimited jurisdiction of the Supreme Court

The Committee having reviewed the section 85 statement made in the Second Reading Speech, the declaratory and enabling clauses and is of the view that the proposed provisions altering or varying section 85 of the Constitution Act 1975 are appropriate and desirable in all the circumstances.

Liberty of the person – Respondent to show cause why bail should be granted

[63]. Inserts a new section 4(4)(bb) into the *Bail Act 1977* to provide that the court must refuse bail unless the accused person shows cause why detention in custody is not justified. The reverse onus applies where the person is charged with an offence against clause 32 of the Act of contravening an order in the course of committing which the accused person is alleged to have used or threatened to use violence; and (i) the accused person has, within the previous 10 years, been convicted or found guilty of an offence in the course of committing which they used or threatened to use violence against any person; or (ii) the court is satisfied that the accused person, on a separate occasion, used or threatened to use violence against the person who is the subject of the order, whether or not the accused person has been convicted or found guilty of, or charged with, an offence in connection with that use or threatened use of violence.

The Committee makes no further comment.

Ministerial Correspondence

Corrections Amendment Bill 2008

The Bill was introduced into the Legislative Assembly on 30 July 2008 by the Hon. Bob Cameron MLA. The Committee considered the Bill on 18 August 2008 and made the following comments in Alert Digest No. 10 of 2008 tabled in the Parliament on 19 August 2008.

Committee's Comments

[3]

Parliamentary Committees Act 2003, s. 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 (the 'IPA') – Registration at VCAT of conciliation agreements concerning complaints of breach of privacy

The Committee notes the submission made by the Office of the Victorian Privacy Commissioner concerning the possible effect of the operation of new section 104S in respect to the conciliation provisions in section 35 of the IPA.

In respect to a breach of privacy complaint section 35 of the IPA allows parties to register a certified record of conciliation (an agreement) with the VCAT. The tenure of the submission is that new section 104S (as currently drafted) excludes the conciliation mechanism provided in section 35 of the IPA and therefore may have an adverse impact on personal privacy.

The Committee resolved to forward the Commissioner's submission to the Minister for further advice from the Minister.

Charter Report

Privacy – Name of prisoner and fact of award of damages must be published in newspapers – Whether arbitrary – Whether reasonable limit

The Committee will write to the Minister seeking further information as to whether or not section 104Y will override contrary court orders or laws.

Pending the Minister's response, the Committee refers to Parliament for its consideration the following questions:

1. *Whether or not new section 104Y, by making it mandatory for the Secretary to publish the fact that a named prisoner has been successful in a significant compensation claim against the state, regardless of the circumstances of the prisoner's crime and the likelihood of any claims by victims, limits the prisoner's Charter right not to have his or her privacy arbitrarily interfered with.*
2. *If so, whether or not new section 104Y is a reasonable limit on the right to privacy according to the test set out in Charter s. 7(2) and, in particular, whether giving the Secretary a discretion to advertise in newspapers would be a less intrusive way of achieving the purpose of the section.*

Minister's response

Thank you for your letter of 19 August 2008. I note your concerns and will address each of those matters in turn.

Office of the Victorian Privacy Commissioner Submission

In the submission of the Office of the Victorian Privacy Commissioner (OVPC), the primary concern was the impact of clause 104S and whether it excludes prisoners from the complaints mechanism under the Information Privacy Act 2000 (IPA) and therefore has an adverse impact on personal privacy.

Clause 104S provides that 'An agreement between the State and a prisoner for the payment of damages for a civil wrong is of no effect until it has been approved by a court'. A court includes a tribunal. Under section 35 of the IPA, a party to an agreement reached by conciliation may lodge that agreement with the Victorian Civil and Administrative Tribunal (VCAT) for registration.

The OVPC contends that the approval process is significantly different from the registration process currently provided for under the IPA and that before 'approving an agreement' the Tribunal (VCAT) will seek to assure itself of the validity of the basis upon which the agreement was reached. Therefore the Tribunal would need to adduce evidence to satisfy itself to the validity of the settlement.

The requirement to obtain court approval under the Bill does not interfere with the ability to register an agreement. Instead, it is intended that in registering an agreement, the Tribunal will, in addition to its obligations under section 35 of the IPA, have regard to the relevant clauses of the Bill which require it to approve the agreement insofar as it includes the payment of monetary damages. The approval process is intended to ensure that funds available for a prisoner compensation quarantine fund are appropriate in the circumstances.

The clause is not intended to alter the ability of parties to reach a settlement under other legislation. The intention is to ensure the proportions of specific components within a settlement are appropriate. Approval by a court or tribunal will prevent a settlement agreement from understating the amount to be made available for the purposes of the Bill.

Furthermore, the Bill sets a threshold amount of $10,000 and therefore only conciliation agreements in excess of this amount will require the approval of VCAT.

As the Bill does not affect the operation of the IPA, other than to require settlement agreements that include the payment of monetary damages to be approved, it does not adversely impact on personal privacy.

Operation of Clause l04Y

This clause provides for the Secretary to the Department of Justice (the Secretary) to publish a notice advising of an award of damages to a prisoner as soon as practicable after the amount of damages is paid to the Secretary to be placed in the fund. The clause outlines the specific details to be placed in the notice including:

- *that the award of damages has been made to the prisoner in a claim against the State but must not state the amount of the award of damages;*
- *the name of the prisoner and any other names by which the prisoner is known;*
- *state that money in that award has been paid to a prisoner compensation quarantine fund and the initial quarantine period; and*
- *invite victims in relation to criminal acts of the prisoner to seek further information from the Secretary about the fund and provide contact details for seeking further information.*

Clause 104Y is intended to allow the publication of limited matters despite a pre-existing prohibition arising from an award of damages made under a settlement agreement, court order or a legislative provision.

1. ***Whether or not new section 104Y, by making it mandatory for the Secretary to publish the fact that a named prisoner has been successful in a significant compensation claim against the state, regardless of the circumstances of the***

prisoner's crime and the likelihood of any claims by victims, limits the prisoner's Charter right not to have his or her privacy arbitrarily interfered with.

The purpose of the Bill is to provide victims and others with an opportunity to seek and enforce civil remedies. The public notice requirement in the Bill is important as it is not always possible to identify all of the victims of a prisoner. Some victims might never report matters to the authorities, other victims might move between jurisdictions. It is therefore important to advertise the availability of funds in an attempt to ensure that all victims who might consider civil action have an opportunity to do so. The public notice will only include information of a general nature and victims will have to satisfy further requirements under clause 104ZA before more detailed information is provided by the Secretary. Further information is provided by the Secretary for the purpose of or in connection with the taking of legal proceedings by the victim against the prisoner concerned.

The definition of victim is purposely very broad and is not linked to a specific incident or offence. It is important to note for the purposes of bringing a civil claim, the existence or absence of a criminal conviction is not necessarily determinative. In light of this it is difficult to understand how the Secretary could be satisfied that all possible victims of a prisoner are aware of the information that will be published publicly. The public notice procedure ensures a fairer method of notifying those victims who might act on the information as well as provide a greater degree of certainty when the Secretary considers payments out of a fund.

The Bill prohibits unauthorised and inappropriate disclosures of a prisoner's information. As outlined in the Statement of Compatibility, clause 104ZD creates offences where a person to whom information is disclosed under the provisions discloses the information to any other person except for the purposes, or in connection, with the taking and determining of legal proceedings by the person against the prisoner concerned; and where a person who becomes aware of information disclosed to a person under the Bill uses that information or discloses it to any person. The creation of these offences is sufficient to protect the disclosure of information from being used inappropriately.

Section 13 of the Charter of Human Rights and Responsibilities Act 2006 (the Charter) provides that a person has the right not to have his or her privacy, family, home, or correspondence unlawfully or arbitrarily interfered with. This right is relevant in situations involving the disclosure of private information. The right only proscribes interference where that interference is unlawful or arbitrary.

An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. Furthermore, interference will not be arbitrary provided that the restrictions on privacy are reasonable in the particular circumstances. The public notification amendments meet the requirements as proscribed under the Charter and when considered in this light, the Bill does not unlawfully of arbitrarily interfere with a prisoner's privacy.

2. If so, whether or not new section I04Y is a reasonable limit on the right to privacy according to the test set out in Charter s.7(2) and, in particular, whether giving the Secretary a discretion to advertise in newspapers would be a less intrusive way of achieving the purpose of the section.

As outlined above, the Bill does not unlawfully or arbitrarily interfere with a prisoner's privacy. The Bill seeks to rebalance the rights between prisoners and their victims. It does so in a way that is appropriate having regard to the matters in section 7(2) of the Charter. In balancing rights, the Bill does so in the least restrictive manner to achieve its purpose of giving victims and others the opportunity to seek and enforce civil remedies.

Bob Cameron MP
Minister for Corrections

10 September 2008

The Committee thanks the Minister for this response.

County Court Amendment (Koori Court) Bill 2008

The Bill was introduced into the Legislative Assembly on 30 July 2008 by the Hon. Rob Hulls MLA. The Committee considered the Bill on 18 August 2008 and made the following comments in Alert Digest No. 10 of 2008 tabled in the Parliament on 19 August 2008.

Committee's Comments

Charter Report

Errors in second reading speech

The Committee notes that Second Reading Speech remarks:

> *The Koori Court division will have the same jurisdiction as the criminal jurisdiction of the County Court to hear all offences, with the exception of sexual offences.*

The Committee observes that clause 6, inserting a new s. 4E(b)(ii) into the County Court Act 1958, also excludes offences of breaching a family violence intervention order and other offences arising out of such breaches from the Koori Court division's jurisdiction.

The Committee also notes that the Second Reading Speech remarks:

> *The Koori Court division will hear a proceeding where the defendant meets the definition of an Aborigine, as set out in the bill, and pleads guilty or is found guilty, of an offence.*

The Committee observes that clause 6, inserting a new s. 4E(c), requires that 'the defendant pleads guilty to the offence' and therefore does not extend the jurisdiction of the Koori Court division to offenders who are 'found guilty'.

The Committee will write to the Minister concerning these errors in the Second Reading Speech.

Equal protection against discrimination – Compelled guilty plea – Sentencing process to assist a group disadvantaged by discrimination – Exclusion of sexual and family violence offenders – Requirement of guilty plea – Whether reasonable limit

Charter s. 8(3) provides that everyone is entitled to 'equal and effective protection against discrimination'. Charter s. 8(4) provides that measures to assist 'groups of persons disadvantaged because of discrimination' are not discrimination for the purposes of the Charter. Charter s. 25(2)(k) provides that all criminal defendants are entitled 'to not be compelled to confess guilt'. Charter s. 7(2) provides that human rights may be 'subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society'.

The Committee notes that clause 6, inserting a new s. 4E(a) into the County Court Act 1958, restricts access to the Koori Court division of the County Court to criminal defendants who are Aboriginal.

The Statement of Compatibility remarks:

> *The purpose of establishing the Koori Court is to assist indigenous persons, who are disadvantaged and overrepresented in the criminal justice system… Therefore, this proposed amendment falls within section 8(4) of the charter and is accordingly compatible with the Charter.*

Whilst the Committee considers that new s. 4E(a) falls within the exception contained in Charter s. 8(4), the Committee observes that because the Koori Court division of the County Court is measure to redress discrimination against Aboriginal persons, Charter s. 8(3) requires

that all Aboriginal persons must be given 'equal and effective protection' from this discrimination.

The Committee also notes that clause 6, inserting new ss. 4E(b) and 4E(c), excludes sexual offenders, certain family violence offenders and people who plead not guilty from the jurisdiction of the Koori Court division. The Committee considers that clause 6 may engage the Charter right of such offenders to 'equal' protection against discrimination. The Committee observes that the Statement of Compatibility does not address the compatibility of new ss. 4E(b) and 4E(c) with Charter s. 8(3).

The Committee also considers that new s. 4E(c), by barring defendants who plead not guilty from accessing the Koori Court division, may engage Aboriginal County Court defendants' Charter right to not be compelled to confess guilt.

The Statement of Compatibility remarks:

> *A guilty plea is a fundamental aspect of the County Koori Court model, based on the Magistrates Koori Court model already in operation. For the Aboriginal elder or respected person to have a significant participatory role in the plea discussion in the Koori Court division, the defendant must be willing to acknowledge their guilty plea and address the ways of resolving their offending behaviour.*
>
> *It should be noted that nothing in the bill limits the right of an indigenous defendant to be presumed innocent in the County Court, nor to plead not guilty and have their proceeding heard at first instance or on appeal in the County Court, sitting other than as the Koori Court division. Therefore, the right to be presumed innocent is not limited.*

While the Committee accepts that new s. 4E(c) is compatible with the Charter right to be presumed innocent, the Committee is concerned that requiring Aboriginal County Court defendants to choose between contesting their charge and utilising a sentencing system designed to assist them against discrimination may place pressure on them to plead guilty, potentially limiting their Charter right to not be compelled to plead guilty.

The Committee considers that the compatibility of new ss. 4E(b) and 4E(c) with the Charter may depend on their satisfaction of the test for limiting Charter rights in Charter s. 7(2) Whilst the Committee accepts that it is appropriate to limit the availability of the Koori Court process to offenders who can be suitably dealt with under that process, the Committee is concerned that an automatic exclusion of entire categories of offenders may not be a 'reasonable limit' that is 'demonstrably justified'. For example, some pleas of 'not guilty' may co-exist with remorse and acknowledgement of responsibility, such as where the offender only contests an element of aggravation (e.g. whether his or her admitted conduct caused 'serious injury', rather than mere 'injury'.) For a holding by a Canadian Court that an indigenous sentencing procedure can, in rare cases, be successfully applied to an offender who pled not guilty to a sexual offence against his spouse, see R v Taylor (1997) 122 CCC (3d) 376.

The Committee notes that new s. 4E(e) provides that the Koori Court division can only hear matters where it 'considers that it is appropriate in all the circumstances that the proceeding be dealt with.' The Committee observes that this section may allow the Koori Court division to appropriately limit its jurisdiction to suitable candidates without the need for blanket rules excluding entire categories of offenders.

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

1. ***Whether or not clause 6, inserting new ss. 4E(b) and 4E(c) that exclude sexual offenders, family violence offenders and offenders who pled not guilty from the Koori Court division's jurisdiction, limits the Charter right of Aboriginal offenders to equal protection against discrimination?***
2. ***Whether or not clause 6, inserting a new s. 4E(c) that excludes offenders who plead not guilty from the Koori Court division's jurisdiction, limits the Charter right of Aboriginal defendants not to be compelled to confess guilt?***

3. If so, whether or not clause 6's automatic exclusion of such offenders from the Koori Court division's jurisdiction is a demonstrably justified and reasonable limit of their Charter rights according to the test set out in Charter s. 7(2)?

The Committee makes no further comment.

Minister's Response

I write in reference to the Scrutiny of Acts and Regulations Committee (the Committee) in Alert Digest No. 10 of 2008 regarding the County Court Amendment (Koori Court) Bill 2008 (the Bill).

The Alert Digest report makes a number of observations on the Bill, which I have endeavoured to address in the attached paper.

If the Committee requires clarification of any of the matters raised in the paper, please do not hesitate to contact me or Ruth Andrew of the Courts and Tribunals Unit, Department of Justice (9603 9219).

ROB HULLS MP

Attorney-General

COUNTY COURT AMENDMENT (KOORI COURT) BILL 2008

ATTORNEY-GENERAL'S RESPONSE TO ISSUES RAISED BY THE SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

1. INTRODUCTION

The County Court Amendment (Koori Court) Bill 2008 (the Bill) was introduced into Parliament on 30 July 2008 to:

- *provide for the establishment of a Koori Court Division in the County Court of Victoria to hear criminal proceedings, with the exception of sexual offences and breaches of intervention and interim intervention orders;*
- *increase the participation of the Indigenous community within the administration of the criminal justice system and to allow for Indigenous community involvement in the sentencing process; and*
- *build upon the Koori Court model, already in operation at the Magistrates' Court and Children's Court.*

The issues raised by the Scrutiny of Acts and Regulations Committee (the Committee) in the extract from Alert Digest No. 10 of 2008 (the Digest) are directed at perceived errors in the Second Reading Speech and whether the Bill limits the right of Aboriginal offenders to equal protection against discrimination as contained in the Charter of Human Rights and Responsibilities Act 2006. A detailed response to the issues raised by the Digest is provided below.

2. ERRORS IN THE SECOND READING SPEECH

2.1 Matters referred to Parliament for its consideration

- *The Committee notes that the Second Reading speech remarks:*

  The Koori Court division will have the same jurisdiction as the criminal jurisdiction of the County Court to hear all offences, with the exception of sexual offences.

The Committee observes that clause 6, inserting a new section 4E(b)(ii) into the County Court Act 1958, also excludes offences of breaching a family violence intervention order and other offences arising out of breaches from the Koori Court division's jurisdiction.

The Committee correctly identifies that the Koori Court Division will hear all criminal offences in the County Court with two exceptions – sexual offences and breaches of intervention and interim intervention orders. However, the Second Reading Speech only makes reference to one of those exceptions - sexual offences.

The decision not to refer to the second exception – breach of intervention and interim intervention orders, was made for brevity and recognises that these exceptions continue the current policy and practice in the Koori Court division of the Magistrates' Court.

The exception is very clearly stated in section 4E(b)(ii) and accompanying Explanatory Memorandum and thus is not open to any ambiguity that would require reference in the Second Reading Speech for assistance with statutory interpretation.

- *The Committee also notes that the Second Reading Speech remarks:*

  The Koori Court division will hear a proceeding where the defendant meets the definition of an Aborigine, as set out in the bill, and pleads guilty or is found guilty of an offence.

  The Committee observes that clause 6, inserting a new section 4E(c) requires that 'the defendant pleads guilty to the offence' and therefore does not extend the jurisdiction of the Koori Court division to offenders who are 'found guilty'.

The reference to section 4E(c) relates to defendants being heard at first instance. The particular reference in the Second Reading Speech relating to 'found guilty' applies to the appellate aspect of the Koori Court division. This is a reference to the possibility that an appellant may have been found guilty and is appealing a sentencing order made by the Magistrates' Court sitting other than the Koori Court division of that court (section 4D(1)(b)). Sections 4D and 4E relating to appeals are read together.

3. EQUAL PROTECTION AGAINST DISCRIMINATION

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

1. *Whether of not clause 6, inserting new ss. 4E(b) and 4E(c) that exclude sexual offenders, family violence offenders and offenders who pled not guilty from the Koori Court's division's jurisdiction, limits the Charter right of Aboriginal offenders to equal protection against discrimination?*

Section 8(3) of the Charter provides that' every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination'. Discrimination is defined in section 3 of the Charter by reference to the Equal Opportunity Act 1995. Direct discrimination occurs where a person treats, or proposes to treat, someone with an attribute less favourably than the person treats or would treat someone without that attribute, or with a different attribute, in the same or similar circumstances. The relevant attributes are listed in the Equal Opportunity Act 1995.

The Bill does not limit the Charter right of Aboriginal offenders to equal protection against discrimination.

As you have noted, the Koori Court model is targeted only at Indigenous offenders, and the Court's jurisdiction will exclude people who do not plead guilty, and those charged with sexual offences and breaches of intervention or interim intervention orders. This limited jurisdiction does not draw distinctions between groups of Aboriginal offenders based on attributes set out in the Equal Opportunity Act 1995.

Differential treatment of persons within a group of people with a particular attribute depending upon whether they have pleaded guilty or the nature of their offence might raise a question as to whether the differential treatment of non-eligible defendants amounts to treating this group

less favourably in the same or similar circumstances so as to amount to discrimination ('intra-attribute discrimination'). However, these defendants are not in the same or similar circumstances as those offenders who plead guilty to non-sexual or non-family violence offences.

A guilty plea is a fundamental aspect of the Koori Court model, based on the Magistrates' Koori Court model already in operation. For the Aboriginal Elder or Respected Person to have a significant participatory role in the plea discussion in the Koori Court division, the defendant must be willing to acknowledge their guilty plea and address their offending behaviour with the support of appropriate court ordered services.

The defendant (or appellant) must be receptive to the cultural knowledge and influence that an Aboriginal Elder brings to the County Court during the plea discussion. This cultural knowledge and understanding of a defendant's behaviour reinforces how the behaviour impacts on the Koori community and ultimately contributes to the lower recidivism rates demonstrated by Koori defendants who have participated in the Koori Court Division of the Magistrates' Court.

The influential cultural role that Aboriginal Elders and Respected Persons play within the Koori Court model is essential to its success. Sexual offences and offences for breaches of an intervention or interim-intervention order contain sensitive, highly emotional and complex elements and are therefore considered inappropriate for Aboriginal Elders or Respected Persons to participate in. It would be difficult for Aboriginal Elders or Respected Persons to be exposed to the sensitive details of sexual offence or family violence cases, within a court setting, and then have to participate in their respective communities where defendants and their families are well-known to them. It is for these reasons that a clear policy distinction is drawn between those Indigenous defendants who plead guilty and those who plead guilty to a sexual offence or a breach of an intervention or interim intervention order.

2. *Whether or not clause 6, inserting a new s. 4E(c) that excludes offenders who plead not guilty from the Koori Court division's jurisdiction, limits the Charter right of Aboriginal defendants not to be compelled to confess guilt?*

Section 25(2)(k) provides that a person charged with a criminal offence is entitled without discrimination to not be compelled to confess guilt. The focus of s. 25(2)(k) is on compelled confessions of guilt. This provision prohibits measures aimed at forcing an accused to confess guilt in the determination of the charge against him or her.[1] *The term 'to be compelled' refers to various forms of direct or indirect physical or psychological pressure, ranging from torture to methods of extortion.*[2] *Voluntary confessions of guilt are not prohibited by s. 25(2)(k).*

The Koori Court Model gives Aboriginal defendants who plead guilty an opportunity to have their cases heard in a way that is appropriate to their cultural needs by engaging with representatives of their community. If an Aboriginal defendant accesses the Koori Court Model, the defendant must plead guilty but that does not compel them to plead guilty, nor does it prevent them from having their case heard in the County Court's General Criminal Division. The Model has assisted defendants to acknowledge their actions, and begin to address ways of resolving their offending behaviour and its impact on the community.

Further, section 4E(e) of the County Court Amendment (Koori Court) Bill 2008 enables the Koori Court Division to decline to hear or to continue to hear a matter if it considers that it is not appropriate in all the circumstances that the proceeding be dealt with by it. This discretion will enable the County Court Koori Division to refer a case to the General Criminal Division of the County Court if a doubt arises as to the appropriateness of the defendant's plea of guilty. It is also noted that the Magistrates' Court Koori Court Division has been established for some time and there is no evidence that defendants have been compelled to plead guilty in that jurisdiction.

1 See A Butler and P Butler, *The New Zealand Bill of Rights Act - A Commentary*, (2005) [23.6.3] – [23.6.5].

2 See M Nowak, *UN Covenant on Civil and Political Rights - CCPR Commentary* (2005) at p. 344.

3. *If so, whether or not clause 6's automatic exclusion of such offenders from the Koori Court division's jurisdiction is a demonstrably justified and reasonable limit of their Charter rights according to the test set out in Charter s. 7(2)?*

As the answer to the above questions is no, a section 7(2) analysis is not required.

4. ADDITIONAL OBSERVATION

The Committee notes that in the case of R v Taylor (1997) 122 CCC (3d) 376 a Canadian Court held that an indigenous sentencing procedure can, in rare cases, be successfully applied to an offender who pled not guilty to a sexual offence against his spouse. This reference to the Canadian Sentencing Circle is unconvincing as it does not correlate with Victoria's statutory regime and sentencing dispositions available to the Victorian Koori Court Model. In this particular instance, the Indigenous offender was sentenced to a period of six months of banishment, to a remote island, where he was required to live in isolation, self-sufficiently under a series of court ordered conditions. These conditions include that the offender will be provided with a cabin at a remote location and be provided with amongst other things a wood stove, cooking utensils and sufficient material for snaring of animals for food and a first aid kit.

In this case the Court acknowledged that banishment is an "old aboriginal sanction". This remark reflects that the Canadian sentencing circle appears to pay more regard to customary law. In contrast, in Victoria, it is a fundamental policy position that the Koori Court model does not depart from the sentencing dispositions available under the Sentencing Act 1991. This is consistent with the policy that a single law applies to all Victorians as clearly discussed in the Second Reading Speech. Banishment, as a sentencing disposition is not, and never has been, under policy consideration in this state.

The Committee is reminded that sexual offences are excluded from the Koori Court division of the Magistrates' Court and this exclusion will continue to operate in the County Court. It is a clear and consistent policy decision that the determination of sexual offences contains sensitive, complex and emotional aspects making it inappropriate for Aboriginal Elders or Respected Persons to participate. This policy is strongly endorsed and supported by the Koori County Court Reference Group.

It is also worth noting that in the case of R v Talyor, the majority judgment of Bayda CJA stated that the fact that the offence was a serious sexual assault did not automatically rule out a sentencing circle. However, the community was divided as to whether such a case was appropriate for a circle and a restorative approach.

The Committee thanks the Attorney-General for this response

Committee Room
6 October 2008

Appendix 1
Index of Bills in 2008

Appendix 2
Committee Comments classified by Terms of Reference

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

Alert Digest Nos.

Section 17(a)

(i) trespasses unduly upon rights or freedoms

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

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

Relationships Bill 2007	1

(iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the Information Privacy Act 2000

Corrections Amendment Bill 2008

(vi) inappropriately delegates legislative power

Essential Service Commission Amendmnet Bill 2008	4

(vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny

National Gas (Victoria) Bill 2008	6

(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities.

Abortion Law Reform Bill 2008	11
Children's Legislation Amendment Bill 2008	5
Constitution Amendment (Judicial Pensions) Bill 2007	1
Corrections Amendment Bill 2008	10
Crimes Amendment (Child Homicide) Bill 2007	1
Drugs, Poisons and Controlled Substances Amendment Bill 2008	3
Education and Training Reform Amendment Bill 2008	4
Family Violence Protection Bill 2008	9
Gambling Regulation Amendment (Licensing) Bill 2008	5
Justice Legislation Amendment Bill 2008	5
Justice Legislation Amendment (Sex Offenders Procedure) Bill 2008	4
Labour and Industry (Repeal) Bill 2008	10
Local Government Amendment (Councillor Conduct and Other matters) Bill 2008	12
Police Integity Bill 2008	4

Section 17(b)

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

Appendix 3
Ministerial Correspondence

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

Bill Title	Minister/ Member	Date of Committee Letter	Date of Minister's Response	Issue Raised in Alert Digest No.	Response Published in Alert Digest No.
Working with Children Amendment Bill 2007	Attorney-General	19.09.07	19.03.08	12 of 2007	4 of 2008
Emergency Services Legislation Amendment Bill 2007	Police and Emergency Services	09.10.07	29.01.08	13 of 2007	1 of 2008
Animals Legislation Amendment (Animal Care) Bill 2007	Agriculture	31.10.07	12.12.07	14 of 2007	4 of 2008
Liquor Control Reform Amendment Bill 2007	Consumer Affairs	21.11.07	04.12.07	15 of 2007	1 of 2008
Police Regulation Amendment Bill 2007	Police and Emergency Services	21.11.07	06.12.07	15 of 2007	1 of 2008
Victorian Energy Efficiency Target Bill 2007	Energy and Resources	21.11.07	04.12.07	15 of 2007	1 of 2008
Criminal Procedure Legislation Amendment Bill 2007	Attorney-General	04.12.07	30.01.08	16 of 2007	1 of 2008
Crimes Amendment (Child Homicide) Bill 2007	Attorney-General	05.02.08	25.02.08	1 of 2008	4 of 2008
Constitution Amendment (Judicial Pensions) Bill 2007	Attorney-General	05.02.08	21.05.08	1 of 2008	6 of 2008
Professional Boxing and Combat Sports Amendment Bill 2007	Sport, Recreation and Youth Affairs	05.02.08		1 of 2008	
Relationships Bill 2007	Attorney-General	05.02.08	03.03.08	1 of 2008	3 of 2008
Criminal Procedure Legislation Amendment Bill 2007	Attorney-General	28.02.08	07.05.08	2 of 2008	6 of 2008
Port Services Amendment (Public Disclosure) Bill 2008	Hon. David Davis MLC	28.02.08		2 of 2008	

Bill Title	Minister/ Member	Date of Committee Letter	Date of Minister's Response	Issue Raised in Alert Digest No.	Response Published in Alert Digest No.
Courts Legislation Amendment (Associate Judges) Bill 2008	Attorney-General	11.03.08	13.05.08	3 of 2008	6 of 2008
Drugs, Poisons and Controlled Substances Amendment Bill 2008	Health	12.03.08	03.04.08	3 of 2008	4 of 2008
Education and Training Reform Amendment Bill 2008	Education	08.04.08	16.04.08	4 of 2008	5 of 2008
Essential Services Commission (Amendment) Bill 2007	Finance	08.04.08	17.04.08	4 of 2008	5 of 2008
Justice Legislation Amendment (Sex Offenders Procedure) Bill 2008	Attorney-General	08.04.08	21.04.08	4 of 2008	5 of 2008
Police Integrity Bill 2008	Police & Emergency Services	08.04.08	18.04.08	4 of 2008	5 of 2008
Children's Legislation Amendment Bill 2008	Children & Early Childhood Development	07.05.08	28.05.08	5 of 2008	7 of 2008
Gambling Regulation Amendment (Licensing) Bill 2008	Gambling	07.05.08	11.06.08	5 of 2008	8 of 2008
Justice Legislation Amendment Bill 2008	Corrections	07.05.08	23.05.08	5 of 2008	6 of 2008
National Gas (Victoria) Bill 2008	Energy & Resources	30.05.08	24.06.08	6 of 2008	9 of 2008
Public Health and Wellbeing Bill 2008	Health	24.06.08	17.07.08	6 of 2008	9 of 2008
Building Amendment Bill 2008	Planning	30.07.08		9 of 2008	
Evidence Bill 2008	Attorney-General	30.07.08	13.08.08	9 of 2008	11 of 2008
Family Violence Protection Bill 2008	Attorney-General	30.07.08	21.08.08	9 of 2008	11 of 2008
Corrections Amendment Bill 2008	Corrections	19.08.08	08.09.08	10 of 2008	12 of 2008
County Court Amendment (Koori Court) Bill 2008	Attorney-General	19.08.08	08.09.08	10 of 2008	12 of 2008
Labour and Industry (Repeal) Bill 2008		19.08.08		10 of 2008	
Abortion Law Reform Bill 2008	Attorney-General	09.09.08		11 of 2008	