

No. 13 of 2007

Tuesday, 9 October 2007

On the

Building Amendment Bill 2007
Education and Training Reform
Miscellaneous Amendments
Bill 2007

Emergency Services Legislation
Amendment Bill 2007

Energy Legislation Further
Amendment Bill 2007

Graffiti Prevention Bill 2007

Legislation Reform (Repeals No. 1)
Bill 2007

Royal Children's Hospital (Land)
Bill 2007

Transport Accident and Accident
Compensation Acts Amendment
Bill 2007

Transport Legislation Amendment
Bill 2007

Table of Contents

	Page Nos.
Alert Digest No. 13 of 2007	
Building Amendment Bill 2007	1
Education and Training Reform Miscellaneous Amendments Bill 2007	2
Emergency Services Legislation Amendment Bill 2007	7
Energy Legislation Further Amendment Bill 2007	10
Graffiti Prevention Bill 2007	13
Legislation Reform (Repeals No. 1) Bill 2007	19
Transport Accident and Accident Compensation Acts Amendment Bill 2007	20
Transport Legislation Amendment Bill 2007	24
Ministerial Correspondence	
Royal Children's Hospital (Land) Bill 2007	31
Appendices	
1 – Index of Bills in 2007	33
2 – Committee Comments classified by Terms of Reference	35
3 – Ministerial Correspondence	37

Glossary



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

Useful provisions

Section 7 of the *Charter* provides –

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

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

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

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



Terms of Reference

Parliamentary Committees Act 2003

17. Scrutiny of Acts and Regulations Committee

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

- (a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly –
 - (i) trespasses unduly upon rights or freedoms;
 - (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;
 - (iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions;
 - (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000*;
 - (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2001*;
 - (vi) inappropriately delegates legislative power;
 - (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
 - (viii) is incompatible with the human rights set out in the *Charter of Human Rights and Responsibilities*;
- (b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament –
 - (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the *Constitution Act 1975*, or raises an issue as to the jurisdiction of the Supreme Court;
 - (ii) if a Bill repeals, alters or varies section 85 of the *Constitution Act 1975*, whether this is in all the circumstances appropriate and desirable;
 - (iii) if a Bill does not repeal, alter or vary section 85 of the *Constitution Act 1975*, but an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;
- (c) to consider any Act that was not considered under paragraph (a) or (b) when it was a Bill –
 - (i) within 30 days immediately after the first appointment of members of the Committee after the commencement of each Parliament; or
 - (ii) within 10 sitting days after the Act receives Royal Assent —
whichever is the later, and to report to the Parliament with respect to that Act or any matter referred to in those paragraphs;
- (d) the functions conferred on the Committee by the *Subordinate Legislation Act 1994*;
- (e) the functions conferred on the Committee by the *Environment Protection Act 1970*;
- (f) the functions conferred on the Committee by the *Co-operative Schemes (Administrative Actions) Act 2001*;
- (fa) the functions conferred on the Committee by the Charter of Human Rights and Responsibilities;*
- (g) to review any Act in accordance with the terms of reference under which the Act is referred to the Committee under this Act.

The Committee has considered the following Bills–

Building Amendment Bill 2007
Education and Training Reform Miscellaneous Amendments Bill 2007
Emergency Services Legislation Amendment Bill 2007
Energy Legislation Further Amendment Bill 2007
Graffiti Prevention Bill 2007
Legislation Reform (Repeals No. 1) Bill 2007
Transport Accident and Accident Compensation Acts Amendment Bill 2007
Transport Legislation Amendment Bill 2007

The Committee notes the following correspondence –

Royal Children’s Hospital (Land) Bill 2007



Role of the Committee

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

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

Alert Digest No. 13 of 2007

Building Amendment Bill 2007

Introduced	18 September 2007
Second Reading Speech	19 September 2007
House	Legislative Assembly
Member introducing Bill	Hon. Peter Batchelor MLA
Portfolio responsibility	Minister for Planning

Purpose

The Bill substitutes new purposes and objectives into the *Building Act 1993* (the 'Act') and revises the functions of the Building Commission and the Plumbing Industry Commission.

Content and Committee comment

[Clauses]

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

[3 and 6]. Substitutes new sections 1 and 4 in the Act which respectively sets out the Act's purposes and objectives.

[6 and 7]. Substitutes a new section 196 and inserts a new section 196AA which respectively deal with the functions and powers of the Building Commission.

[8]. Substitutes section 221ZZV dealing with the functions of the Plumbing Industry Commission.

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

The Committee makes no further comment.

Education and Training Reform Miscellaneous Amendments Bill 2007

Introduced	18 September 2007
Second Reading Speech	20 September 2007
House	Legislative Assembly
Member introducing Bill	Hon. Bronwyn Pike MLA
Portfolio responsibility	Minister for Education

Purpose

The Bill amends the *Education and Training Reform Act 2006* (the 'Act') to –

- provide for the approval of student exchange organisations,
- prevent double payments for personal injuries to volunteer school workers,
- permit students aged up to 18 years to be registered for home schooling,
- make further provision for criminal records checks for registered teachers.

Content and Committee comment

[Clauses]

[2]. Other than some specific clauses the provisions of the Bill come into operation on the day after Royal Assent. Clauses 6, 8, 38, 44, 48(2), 50, 54(1) and 54(2) are deemed to have commenced on 1 July 2007.

Note: The reason why 1 July 2007 has been chosen is because that is the date on which the Act came into operation, and is the date from which those amendments need to operate.

Retrospective application – clauses 6 and 8

[6]. Corrects an error in section 2.4.45(1) of the Act which refers to the members of a Merit Protection Board being 'employed' by the Governor in Council.

Note: Members are actually 'appointed' by the Governor in Council and that is made clear from the remainder of the section. The amendment returns the section to what it was under section 64AA of the Teaching Service Act 1981 immediately prior to 1 July 2007 when the members were appointed.

[8]. Amends section 2.6.11(2) of the Act dealing with the Victorian Institute of Teaching, and which currently has an incorrect reference to section 2.6.8.

Note: The section states that a person who is eligible for renewal of registration under section 2.6.8, except that the person does not satisfy the requirements of section 2.6.18(1)(b)(i), may apply for non practising registration. The section dealing with renewal of registration is section 2.6.18 and not 2.6.8, so the incorrect reference to section 2.6.8 is being changed to 2.6.18. The clause operates retrospectively to 1 July 2007. Section 2.6.11 did not exist in the Victorian Institute of Teaching Act 2001 prior to 1 July 2007, and was a new section inserted in the Act which replaced the former Act. It is necessary for the provision to be retrospective in operation to ensure that the section operates correctly from its commencement.

Criminal records check

[9]. Inserts a new section 2.6.22A into the Act to require the Victorian Institute of Teaching to undertake a criminal record check on a registered teacher every five years. The teacher is required to pay for the check and the Institute may suspend a teacher's registration if they fail to pay.

[10]. Inserts a new section 2.6.26A into the Act to enable the Victorian Institute of Teaching to obtain from the employers of teachers, the names of the teachers, the teacher's registration number and date of birth. It is being introduced to enable the Institute to cross check its teacher registration details against details of persons actually employed in schools as teachers. This cross checking will enable the Institute to identify any teachers who are not qualified or who have been deregistered.

[11]. Amends section 2.6.31 of the Act so as to require the Chief Commissioner of Police to inform the Victorian Institute of Teaching on becoming aware that a teacher has been charged with, committed for trial or convicted of violent offences like murder, and various drug offences.

Delegation to 'any person'

[37]. Amends section 5.3.3(2) of the Act to permit the Secretary to delegate his employment powers in respect of non teaching school based staff to a person. The current section only permits the Secretary to delegate his employment powers in respect of those staff to a school council. For consistency with other delegations in the teaching service, the section is being amended to permit the Secretary to delegate to persons other than the school council.

The Committee notes this extract from the explanatory memorandum –

Although the main purpose of the amendment is to enable the Secretary to delegate most of the powers to a Principal, it enables the Secretary to delegate powers to 'any person'. The reason for widening its application is to mirror section 5.3.3(1) which enables the Secretary to delegate powers to "any person" and section 18 of the Public Administration Act 2004 which enables a public service body head (which includes the Secretary as a Department Head) to delegate powers under that Act to 'any person'. The reasons for providing the Secretary with wide delegation powers are –

- *most of the Secretary's powers relate to employment matters, which cover those employed under the Government teaching service and also administrative staff under the Public Administration Act 2004, and it is preferable that the delegation powers under both Acts be the same;*
- *the delegation power enables the Secretary to delegate matters to other persons such as contractors with expertise, or retired officers engaged to conduct investigations or discipline enquiries. For example, a recent matter involved a delegation to a person who was retired Departmental officer and an officer of another Department.*

The Committee notes the reasons given for a wide delegation (to 'any person') provision.

Retrospective application

[38]. Amends section 5.6.2(4) of the Act which deals with compensation to volunteer workers in Government schools. The clause inserts the words '*Accident Compensation Act 1985*' in place of 'that Act' where the last mentioned words appear in section 5.6.2(4), so to avoid 'that Act' being interpreted to mean the '*Workers Compensation Act 1958*' appearing in subsection (3).

The Committee notes this extract from the explanatory memorandum –

The clause operates retrospectively to 1 July 2007, being the date on which the Act came into operation and from which the change occurred. It is unlikely that the amendment will affect the interpretation of the section, as the current wording is an obvious error. It is necessary for the provision to be retrospective in operation to correct the wording so that the provision operates correctly from the outset. The retrospectivity will not detrimentally affect any person.

Regulations to permit incorporation of documents 'as amended from time to time'

[43]. Amends the regulation making powers in section 5.10.2 of the Act to permit the regulations made under the Act to incorporate matter in documents as published from time to time.

Note: The education portfolio is governed by various national guidelines and frameworks, such as the Australian Qualifications Framework and the standards for Registered Training Organisations,

and at the State level through instruments such as guidelines, Ministerial Orders, or directions. The regulations sometimes need to refer to the above documents, however the current regulation making power under the Education and Training Reform Act 2006 is restricted to referring to documents as issued or published at the time the regulations are made. To accommodate changes in published documents without having to remake the regulations, the amendment will enable the regulations to incorporate matter contained in a document as amended from time to time. Section 32(4) of the Interpretation of Legislation Act 1984 will be relevant to this amendment, as it requires the Minister to table in Parliament a copy of the relevant documents, and for copies to be kept in the Department for inspection by the public, as well as notices to be published in the Government Gazette, so as to provide information to the public of the documents as amended.

Retrospective application – clauses 44, 48, 50 and 54

[44]. Inserts a new section 6.1.4 in the Act. The new section provides that the discipline provisions of the *Teaching Service Act 1981*, as in force before 1 July 2007, continue to apply to discipline type proceedings commenced under that Act before the commencement of clause 44.

Note: The clause operates retrospectively to 1 July 2007. This is necessary to ensure that the transitional provision operates correctly from the commencement of the Act. It reflects the operation of section 14 of the Interpretation of Legislation Act 1984. The retrospectivity will not detrimentally affect any person.

[48]. Subclause (1) makes minor corrections to Schedule 8 of the Act. They cover inserting the missing word ‘on’ in a sentence, correcting ‘1.4.1’ to read ‘1.5.1’, and correcting the name of the Victorian Learning and Employment Skills Commission. Subclause (1) operates retrospectively to 1 July 2007 to ensure that the transitional provisions amended operate correctly from the outset.

Subclause (2) substitutes clause 1.7.2 of Schedule 8 of the Act. The current clause deems Government schools to be approved by the Victorian Registration and Qualifications Authority as a provider of courses to overseas students. The new clause will deem the Department of Education and Early Childhood Development to be approved by the Victorian Registration and Qualifications Authority as a provider of courses to overseas students. This will reflect the arrangements operating within the Department and with the Commonwealth, under which the Department is listed on the Commonwealth Register as the provider of courses to overseas students, and not individual Government schools.

Note: The subclause operates retrospectively to 1 July 2007. It is necessary for the provision to be retrospective in operation to reflect from the outset of the new Act the arrangements with the Commonwealth and in the Department. It also addresses section 8 of the Commonwealth's Education Services for Overseas Students Act 2000, which creates an offence if a person provides a course to an overseas student without first being registered by the relevant State authority. The retrospectivity will not detrimentally affect any person.

[50]. Updates section 11 of the *Child Employment Act 2003*, by replacing the reference to the repealed section 74G of the *Community Services Act 1970* with section 2.1.5 of the *Education and Training Reform Act 2006*. Section 11 of the *Child Employment Act 2003* prohibits a person from employing a child during normal schools hours on any school day unless the Minister has granted the child an exemption from attendance at school under section 74G of the *Community Services Act 1970*. Section 2.1.5 of the *Education and Training Reform Act 2006* now contains the Minister's powers to exempt children from attending school and replaces section 74G of the *Community Services Act 1970*. The amendment operates retrospectively to 1 July 2007.

Note: It is necessary for the provision to be retrospective in operation for two reasons. First, it will mirror the section under which exemptions from attendance at school were to be given after 1 July 2007. Secondly, section 16 of the Interpretation of Legislation Act 1994, states that where provisions in an Act are re-enacted (either with or without modification) then provisions in other Acts which refer to the repealed provisions shall be construed as a reference to the new provisions. It is likely that section 16 has the effect that the reference to section 74G of the Community Services Act 1970 is to be construed as a reference to section 2.1.5 of the Education and Training Reform Act

2006, however out of caution, the amendment is expressed to operate retrospectively to the commencement of the Principal Act. The retrospectivity will not detrimentally affect any person.

[54]. Amends the *Public Administration Act 2004*.

Subclause (1) removes Universities from the list of public entities in section 5(1A) and reinserts TAFEs as public entities.

Note: *This subclause operates retrospectively to 1 July 2007, and will return the section to what it was immediately prior to that date. The change was made on 1 July by an incorrect reference in clause 33.2 of Schedule 7 of the Act. However the incorrect reference did not result in any real change, as Universities are included in the definition of exempt bodies in section 4 of the Public Administration Act 2004 and that section expressly excludes them from the definition of public entity. It is desirable or necessary for the provision to be retrospective in operation to correct an obvious drafting error. The retrospectivity will not detrimentally affect any person.*

Subclause (2) removes a reference to AMES and the Centre for Adult Education in the list of public entities in section 5(1A), and inserts a reference to the Boards of those Institutions as being public entities. This amendment is being made because these Institutions are not legal entities. It is the Boards of the Institutions that are bodies corporate under sections 3.3.26 and 3.3.27 of the Principal Act. This is a technical amendment to ensure the section correctly refers to a legal entity.

Note: *This subclause operates retrospectively to 1 July 2007. It is desirable for the provision to be retrospective in operation to correct an obvious drafting error, even though the error is unlikely to result in a different interpretation of what the section means.*

The Committee notes the retrospective amendments made by clauses 6, 8, 38, 44, 48(2), 50, 54(1) and 54(2) and the reasons given in the explanatory memorandum for the desirability to provide for such application. The Committee considers the retrospective amendments in each case are appropriate.

Overall the Committee notes the helpful explanatory memorandum that deals appropriately with every issue that may engage the Committee's terms of reference.

[56]. Repeals the *Vocational Education and Training (Amendment) Act 1994*.

Note: *This Act contains transitional and deeming provisions that did not form part of the Act it amended, namely the Vocational Education and Training Act 1990. Its provisions are spent and can now be repealed. Any residual effect of the transitional provisions will be saved by section 14 of the Interpretation of Legislation Act 1984.*

[57]. Provides for the automatic repeal of this amending Act on the first anniversary of its Royal Assent.

Charter report

Keywords – Right to privacy – Supply of registered teachers' criminal histories to Victorian Institute of Teaching – Not unlawful or arbitrary

Charter s.13(a) gives people the right not to have their 'privacy... unlawfully or arbitrarily interfered with'.

The Committee notes that clause 9 (inserting new section 2.6.22A into the *Education and Training Reform Act 2006*), clause 10 (inserting new section 2.6.26A) and clause 11 (amending existing s.2.6.31) provide or extend mechanisms for the Victorian Institute of Teaching to be informed of the criminal history of registered teachers. Existing ss.2.6.27, 2.6.29 and 2.6.32 permit or require the Institute to inquire into, suspend or cancel a teacher's registration on the basis of such information.

The Committee observes that the Statement of Compatibility usefully canvasses whether or not clauses 9, 10 and 11 infringe Charter s.13(a). The Committee considers that the Statement correctly concludes that any interference is neither unlawful nor arbitrary and, therefore, that the Charter's right to privacy is not infringed.

The Committee makes no further comment.

Emergency Services Legislation Amendment Bill 2007

Introduced	18 September 2007
Second Reading Speech	20 September 2007
House	Legislative Assembly
Member introducing Bill	Hon. Bob Cameron MLA
Portfolio responsibility	Minister for Police and Emergency Services

Purpose

The Bill amends the *Country Fire Authority Act 1958*, the *Emergency Management Act 1986*, the *Metropolitan Fire Brigades Act 1958* and the *Victoria State Emergency Service Act 2005* to improve coordination and delivery of emergency response services; to provide similar long service leave entitlements to Metropolitan Fire and Emergency Service Board and Country Fire Authority employees; and to make miscellaneous amendments to the *Building Act 1993*, the *Juries Act 2000* and the *Summary Offences Act 1966*.

Content and Committee comment

[Clauses]

[2]. Other than specified provisions the amendments made by the Bill come into operation on the day after Royal Assent. The new offence provisions in clauses 39, 42, 82, 105 and 134 come into operation on a day to be proclaimed but not later than by 1 January 2008.

Country Fire Authority Act 1985

[39]. Inserts a new section 106A to create an offence to wilfully damage or interfere with, or wilfully reset without the consent of the Authority, a fire indicator panel or similar apparatus.

[42]. Inserts a new section 107B to create an offence to wilfully give or cause to be given a false report of fire to a fire brigade in the country area of Victoria.

Metropolitan Fire Brigades Act 1958

[78]. The clause notes for this amendment provides – *substitutes section 31A of the MFB Act to provides for a more appropriate suite of powers which the Chief Officer may delegate.*



The Committee reports to Parliament pursuant to a term of reference provided in section 17(a)(ii) of the Parliamentary Committees Act 2003, – ‘makes rights, freedoms or obligations dependent on insufficiently defined administrative powers’.

The Committee notes that the delegation power will allow the Chief Officer to delegate to ‘any person by name’. The Committee had consistently pointed out that such wide delegation provisions should be accompanied by reasonable explanatory material. Once again the Committee refers to its Practice Note No. 1 of October 2005 concerning such provisions and the desirability of avoiding needless, repetitive Ministerial correspondence.

The Committee will seek further explanatory material from the Minister.

Pending further advice the Committee draws attention to the provisions.

[82]. Inserts a new section 33 to provide an offence for a person to wilfully give or cause to give a false report of fire to a unit in the metropolitan district.

[105]. Inserts new sections 75B and 75C. New section 75B creates an offence to wilfully damage or interfere with a fire indicator panel, or reset a fire indicator panel or similar apparatus without the consent of the Board. The penalty for this offence is 60 penalty units. New section 75C provides an offence to act in certain ways that may interfere with the Board's operations, its members or certain apparatus or property

[110]. Amends section 78C to insert a new subsection (5) to enable the Chief Executive Officer to delegate his or her duty to hear a charge to a suitably qualified person. Such a person may include a person with operational fire fighting experience, a legal practitioner or other person, whether or not that person is an employee of the Board.

Victoria State Emergency Service Act 2005

[121]. Substitutes section 26 of the Act to provide for the delegation powers of the Chief Executive Officer. The delegation power includes a power to delegate to 'any other person by name'.



The Committee reports to Parliament pursuant to a term of reference provided in section 17(a)(ii) of the Parliamentary Committees Act 2003, – ‘makes rights, freedoms or obligations dependent on insufficiently defined administrative powers’.

The Committee draws attention to its Practice Note No. 1 of October 2005. Amongst other matters the Practice Note requests that explanatory material provided to Parliament include reasons why wide delegation provisions such as ‘to any person’ are considered necessary or desirable.

The Committee as a matter of routine will seek further advice from the Minister where the explanatory memorandum fails to adequately justify such provisions.

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

[134]. Inserts a new section 51A in the *Summary Offences Act 1966* to provide an offence to assault, resist or delay the Chief Officers of the Country Fire Authority or Metropolitan Fire and Emergency Services Board or any other person in the exercise of any power or discharge of any duty conferred by the *Country Fire Authority Act 1958* or *Metropolitan Fire Brigades Act 1958*.

[135]. Provides that this amending Act is to be repealed on 1 January 2009.

Charter report

Keywords: Reasonable limits on rights – Powers to protect life and property during emergencies – Privacy – Property – Movement – Freedom of expression

Charter s.7(2) provides that human rights may be ‘subject to such reasonable limits as can be demonstrably justified in a free and democratic society.’

The Committee notes that the Bill extends and amends various provisions on the powers of emergency services in preparing for and responding to emergencies. The most intrusive powers (and related criminal offences supporting those powers) are engaged only during emergencies and extend only to reasonable steps to protect life and property and to permit emergency services to perform their functions.

The Statement of Compatibility identifies a number of provisions in the Bill that are said to engage the following Charter rights:

- **Movement** (Charter s.12): provisions authorising emergency services to order or force people to leave an area affected by an emergency (clauses 11(1), 21, 35, 66(3), 79(2) & 90) and to

prosecute those who 'resist or delay' an emergency services officer (e.g. by refusing to move) (clause 134.)

- **Privacy** (Charter s.13(a)): provisions requiring the transfer of private information for the purposes of assessing the performance of emergency services and locating water for emergency service use (clauses 34 & 93); and authorising emergency services to interfere with bodily privacy and homes to effect evacuation orders (clauses 35, 66(3) & 90.)
- **Property** (Charter s.20): provisions empowering emergency services to order people to leave (and therefore cease to defend) their own property during an emergency in some circumstances (clauses 13, 63(2) & 90); and to seize privately owned water during an emergency (with compensation only available to owners with fire insurance) (clauses 34 & 93.)

In each instance the Statement of Compatibility contends that the respective rights, to the extent that they are infringed at all, are reasonably limited by the Bill according to the test set out in Charter s.7(2). Having considered the above provisions, the Committee is satisfied that the measures so engaged do not warrant any special mention or adverse comment in respect to possible incompatibility with human rights.

The Committee also notes that clauses 42 (inserting new section 107B into the *Country Fire Authority Act 1958*) and 82 (inserting new section 33 into the *Metropolitan Fire Brigades Act 1958*) create offences of wilfully giving 'a false report of a fire'. The Committee recalls the remark of American jurist Oliver Wendell Holmes that '[t]he most stringent protection of free speech would not protect a man in falsely shouting fire...' (*Schenck v United States*, 249 US 47 (1919)) and observes that this approach is reflected in Charter s.15(3), which provides for limits on the Charter's right to freedom of expression in Charter s.15(2). The Committee therefore considers that clauses 42 and 82 do not infringe the Charter's right to freedom of expression.

The Committee makes no further comment.

Energy Legislation Further Amendment Bill 2007

Introduced	18 September 2007
Second Reading Speech	19 September 2007
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 improve the supplier of last resort arrangements, extend the operation of the existing gas and electricity industry customer safety net provisions until the end of 2008 and reduce the publication requirement for retail safety net tariffs from 2 months to 1 month.
- *Electricity Industry Act 2000* to repeal Victorian Energy Networks Corporation's (VENCorp's) electricity demand management function.
- *Gas Industry Act 2001* to provide for the approval of VENCorp's charges for services it provides to participants in the market regulated under the Market and System Operation Rules (MSO Rules) and repeal provisions and references relating to the Port Campbell underground storage facility.
- *Gas Pipelines Access (Victoria) Act 1998* to clarify that VENCorp is not a service provider under the national gas pipelines access regime as the operator of the Victorian gas transmission system.
- *Gas and Fuel Corporation (Heatane Gas) Act 1993* to clarify the effect of an Order made in 1994 under section 11 of that Act relating to the transfer of the ownership of the heatane gas pipeline.

Content and Committee comment

[Clauses]

[2]. Except for sections 23, 25(1), 26 and 33, the Act will come into operation the day after it receives the Royal Assent.

Delayed commencement

Sections 23, 25(1), 26 and 33 will, subject to earlier proclamation, come into operation on 1 January 2010.

Notes: The explanatory memorandum provides – *Section 26 will be proclaimed once the MSO Rules are amended to provide for the approval (or determination) of VENCorp's charges for services it provides to participants in the market regulated by those Rules.*

Sections 23, 25(1) and 33 will be proclaimed once the Australian Energy Regulator is conferred power, under the Trade Practices Act 1974 (Cth) to approve VENCorp's charges for services it provides to participants in the market regulated by the MSO Rules.

[3 and 14]. Insert new Divisions concerned with suppliers of last resort in the *Electricity Industry Act 2000* and the *Gas Industry Act 2001*. (Refer to Charter report below).

Retrospective application – validation

[35]. Inserts new section 20A which retrospectively validates a relevant Order in Council published on 25 August 1994 made under section 11 of the *Gas and Fuel Corporation (Heatane Gas) Act 1993*. Section 12 of the Act deals with the creation of statutory easements and covenants that may involve property rights. The Committee refers to the *Charter report* below.

[36]. Provides for the automatic repeal of this amending Act on 1 January 2010.

Charter report

Keywords – Right to privacy – Transfer of customer information to supplier of last resort – Information necessary to identify customers’ needs and billing details – Not unlawful or arbitrary

Charter s.13(a) gives people the right not to have their ‘privacy... unlawfully or arbitrarily interfered with’.

The Committee notes that clauses 3 (inserting new sections 49G-49J into the *Electricity Industry Act 2000*) and 14 (inserting new sections 51G-51J into the *Gas Industry Act 2001*) require the transfer of certain customer details (‘relevant customer information’ and ‘related relevant customer information’) to a supplier of last resort. The Statement of Compatibility remarks that the information to be transferred is:

confined to that which is necessary to identify a failed retailer’s customers and their gas or electricity supply needs and billing details, so that a retailer of last resort may supply gas or electricity to those customers and obtain payment for electricity or gas supplied.

The Committee considers that any interference in privacy is neither unlawful nor arbitrary and, therefore, that clauses 3 and 14 do not infringe the Charter’s right to privacy.

Keywords – Right to property – Force and effect may be given to Order of Governor in Council – Order’s operation triggers statutory variation of property rights – No compensation payable – Whether in accordance with law

Charter s.20 provides that people must not be deprived of property ‘other than in accordance with law.’ Charter 6(1) provides that only human beings have rights under the Charter.

The Committee notes that clause 35 (inserting a new section 20A into the *Gas and Fuel Corporation (Heatane Gas) Act 1993*) may give force and effect to an Order of the Governor in Council (providing for the transfer of the Heatane pipeline) purportedly made in 1994 under s.11 of that Act. The Committee observes that s.12 of that Act (read together with s.3, defining ‘appointed day’) provides for the extinguishment, variation and creation of certain easements and restrictive covenants when an order made under s.11 comes ‘into operation’ and that ss.13-16 and 18-19 make further provision for the legal effect of these changes. The Committee is concerned that, although the parties to the transfer of the pipeline (the Gas and Fuel Corporation of Victorian and Elgas Reticulation Pty Ltd) are corporations, non-corporate individuals may be amongst the third parties whose property may be affected by ss.12-16 and 18-19 of the Act.

The Committee also notes that s.20 of the existing Act provides that no compensation is payable by certain parties ‘in respect of the extinguishment, creation or variation by this Act of an interest, right, privilege or obligation over land.’ The Committee considers that the absence of compensation may be relevant to whether or not a deprivation of property occasioned by clause 35 is disproportionate to its purpose and, therefore, ‘other than in accordance with law’ under the Charter’s right to property.

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

1. **Will clause 35, read in conjunction with the existing provisions of the *Gas and Fuel Corporation (Heatane Gas) Act 1993*, impose easements or restrictive covenants on (or otherwise deprive) the property of any non-corporate individual?**
2. ***What is the purpose of any such deprivation?***
3. ***What is the purpose of preventing the payment of compensation to such a person?***

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

The Committee makes no further comment.

Graffiti Prevention Bill 2007

Introduced	19 September 2007
Second Reading Speech	20 September 2007
House	Legislative Assembly
Member introducing Bill	Hon. Bob Cameron MLA
Portfolio responsibility	Minister for Police and Emergency Services

Purpose

The purpose of this new Act is to reduce the incidence of graffiti by creating graffiti-related offences; and providing search and seizure powers for members of the police force; and providing power for a Council to enter private property for the purpose of removing graffiti.

Content and Committee comment

[Clauses]

[2]. Other than clauses 10, 11(2) and 11(5) the provisions in the Bill come into operation on proclamation but not later than on 30 June 2008. Clauses 10, 11(2) and 11(5) will commence on proclamation but not later than by 1 September 2008.

[5]. Makes it an offence for a person to mark graffiti on property that is visible from a public place without the property owner's consent. Penalty – 2 years imprisonment (Level 7).

Implied right to free political communication – freedom of speech

[6]. Makes it an offence for a person to mark graffiti that is visible from a public place if the graffiti would offend a reasonable person. The section provides an exception for graffiti that is reasonable political comment. Penalty – 2 years imprisonment (Level 7).



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

The Committee has previously reported on laws that may be characterised as imposing a burden or abridgment upon the implied right to free political communication. The implied right arises from a line of judicial reasoning developed by the High Court over the last 20 years concerning the nature of representative government provided by the Federal Constitution.

The Committee in this respect notes that the offence excludes graffiti marked on property where the owner consents to the graffiti where the graffiti may be characterised as ‘reasonable political comment’.

Notwithstanding the inherent difficulty in applying the test of what may ‘offend a reasonable person’ the Committee is of the view that the offence may be considered, in all the circumstances, as a proportionate law that has a rationale nexus to achieving a legitimate public policy objective and that it does not unduly or unreasonably burden free political communication.

Strict liability offence

[7]. Makes it an offence for a person to possess a prescribed graffiti implement without lawful excuse while on property of a transport company, in an adjacent public place or in a place where

the person is trespassing. Clause 7(2) provides examples of lawful excuse for these purposes. These include employment or trade purposes but does not include a school activity.



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

The Committee notes section 7 places an evidential burden on an accused person to show, on the balance of probabilities ‘lawful excuse’ in respect to the possession of a prescribed graffiti implement. The Committee accepts that in certain circumstances the balance of convenience for the proof of certain factual evidence may rest within the peculiar knowledge of an accused person and that in these cases it may be appropriate to reverse the onus of proof to establish certain facts. Whether the particular circumstances justify a reverse onus of proof of evidence provision is a matter for the Parliament to consider.

The Committee draws attention to the provision.

[8]. Makes it an offence for a person to possess a graffiti implement with the intention of contravening clauses 5 or 6 of the Bill.

[9]. Makes it an offence to advertise for sale a prescribed graffiti implement if the advertisement is likely to incite or promote unlawful graffiti and the person intends the advertisement to incite or promote unlawful graffiti. Clause 9(2) provides that evidence that the advertisement was placed in a publication, including on an Internet site, that itself contains images that incite or promote unlawful graffiti, is proof that the advertisement is likely to incite or promote unlawful graffiti in the absence of evidence to the contrary.

Equal protection – Discrimination on the basis of Age – commerce

[10]. Makes it an offence to sell a can of spray paint to a person under the age of 18 unless the person demonstrates that he or she needs the paint for employment purposes. The clause also makes it an offence for an employer to fail to take reasonable precautions to prevent an employee from contravening the primary offence.

The Committee notes that the restrictions in relation to sale of aerosol paint containers to persons under the age of 18 years may be regarded as a legislated exception to the prohibition against discrimination on the basis of age within the meaning of section 6 of the Equal Opportunity Act 1995.

[11]. Allows for an infringement notice to be served upon a person who has contravened clauses 7(1) or 10(2) and provides the infringement penalty for each of those offences if they proceed by way of infringement notice.

[12]. Provides for the issue of a search warrant where there are reasonable grounds for believing that an offence against the Bill has been or is being committed. Search warrants are to be issued using the forms and procedures in accordance with the *Magistrates’ Court Act 1989*.

Search without warrant based on reasonable suspicion

[13]. Allows a police officer, in certain circumstances, to search a person (over 14 years of age) without warrant and to seize a prescribed graffiti implement or evidence of the commission of an offence against the Bill. An officer may search the person if the officer suspects on reasonable grounds that a person has in his or her possession a prescribed graffiti implement on property, or in a place, referred to in clause 7(1) and relevant evidence is likely to be lost or destroyed if a search

is delayed until a search warrant is obtained. The clause also details the officer's obligations when conducting such a search.

The Committee has previously noted that the exercise of police powers on the basis of a 'reasonable suspicion' constitutes a lower threshold than the exercise of the discretion based on 'reasonable belief'.

[14]. Regulates how a search of a person aged over 14 years and under 18 years can take place. The clause allows for a person aged between 14 and 17 years old to be subjected to a 'pat-down' search. No search can take place of a person aged under 14 years.

[15]. Sets out how a search of a person must be conducted. A search must be conducted in a manner that affords reasonable privacy to the person being searched and must be conducted as quickly as is reasonably practicable. If, before or during a search, the officer reasonably suspects that the person is aged under 18 and is inhaling, or will inhale, a volatile substance, the officer must stop the search and deal with the person under Division 2 of Part IV of the *Drugs, Poisons and Controlled Substances Act 1981*.

[16 and 17]. The exercise of search without warrant powers under this Act must be recorded by the officer exercising the power and ultimately reported by the Chief Commissioner of Police.

Part 4 – Removal of graffiti

[18]. Provides that a local council may take any action necessary to remove or obliterate graffiti on private property if the graffiti is visible from a public place. This includes entry to private property if entry is necessary to remove or obliterate the graffiti and consent has been obtained from the owner or occupier. If entry to private property is necessary, the work of graffiti removal is to be carried out by a person authorised under clause 19. A local council may take action to remove graffiti from private property after serving a notice on the owner or occupier of the property and, if necessary, obtaining consent for that removal.

[19]. Allows a local council to authorise a person to remove graffiti from private property.

[21]. Provides that no compensation is payable to a person in respect of any loss, damage or injury to property arising from anything done in good faith under Part 4 (removal or obliteration of graffiti) of the Bill.

[24]. Provides for the forfeiture and sale of seized graffiti implements in certain circumstances.

[28]. Repeals sections 223A to 223F of the *Transport Act 1983* which deal with offences in relation to marking graffiti and possessing graffiti implements, the seizure and destruction of graffiti implements, and graffiti clean-up programs. This section of the Bill is repealed on 1 September 2009.

Charter report

Keywords: Reasonable limits on rights – Public order legislation – Investigation and prosecution of graffiti offences – Possession and sale of prescribed graffiti implements – Age discrimination – Movement – Privacy – Expression – Property – Liberty – Presumption of innocence

Charter s.7(2) provides that human rights may be 'subject to such reasonable limits as can be demonstrably justified in a free and democratic society.'

The Committee notes that the Bill provides powers and procedures for the investigation and prosecution of graffiti offences and regulates the possession and sale of prescribed graffiti implements (defined in clause 3 as aerosol paint containers and graffiti implements prescribed by

regulation.) The balance of the provisions are typical of those that appear in ‘public order’ legislation.

The Statement of Compatibility identifies a number of provisions in the Bill that are said to engage the following Charter rights:

- **Age discrimination** (Charter s.8(3)): a provision barring the police from returning seized evidence to unconvicted person under 18 without an accompanying parent or guardian (clause 25(6)).
- **Movement** (Charter s.12): provisions barring people carrying prescribed graffiti implements without lawful excuse from going in or near transport property (including using public transport) (clause 7) and providing stop and search powers for graffiti offences (clause 13).
- **Privacy** (Charter s.13(a)): provisions empowering police to search premises (clause 12) and persons (clause 13) for evidence of graffiti offences; and empowering graffiti cleaners to enter property to remove publicly visible graffiti in some circumstances (clause 18).
- **Expression** (Charter s.15(2)): provisions barring advertisements that encourage unlawful graffiti (clause 9).
- **Property** (Charter s.20): provisions permitting the seizure (clause 13) and retention (clauses 24 & 25) of evidence of graffiti offences. (The Committee notes that the Statement does not discuss two further clauses that engage Charter s.20: clause 18, which permits entry and removal of publicly visible graffiti from private property if an owner fails to object within 28 days; and clause 21, which bars compensation for property damage arising from good faith exercises of graffiti removal powers.)
- **Liberty** (Charter s.21(1)): provisions providing police with stop and search powers for graffiti offences (clause 13).
- **Presumption of innocence** (Charter s.25(1)): provisions requiring people charged with carrying a prescribed graffiti implement on or near transport property or when trespassing to meet an evidential burden for the defence of lawful excuse (clause 7) and requiring people charged with placing an advertisement encouraging unlawful graffiti to meet an evidential burden to negate the element of intent if the prosecution proves that the advertisement is adjacent to images encouraging unlawful graffiti (clause 9).

In each instance the Statement of Compatibility contends that the respective rights, to the extent that they are infringed at all, are reasonably limited by the Bill according to the test set out in Charter s.7(2). Having considered the above Charter rights and provisions, the Committee is satisfied that the measures so engaged do not warrant any special mention or adverse comment in respect to possible incompatibility with human rights.

Keywords: Freedom of expression – Marking graffiti – Offence to mark graffiti on property without prior express consent of the owner – Whether reasonably necessary to protect property rights – Offence to mark graffiti that would offend a reasonable person – Whether reasonably necessary to protect public order or morality – Whether lawful restriction

Charter s.15(2) provides that everyone ‘has the right to freedom of expression’, including expression ‘by way of art’ or ‘in another medium chosen by him or her.’ The Committee notes that clause 3 defines ‘mark graffiti’ as defacing property by any means so that the defacement is not readily removable by wiping with a dry cloth. While the Committee considers that marking graffiti may be a form of expression protected by Charter s.15(2), the Committee observes that Charter s.15(3) provides that this protection ‘may be subject to lawful restrictions reasonably necessary’ to achieve certain purposes, including protecting others’ rights and protection public order and morality.

The Committee notes that clause 5 makes it an offence, punishable by imprisonment, to mark publicly visible graffiti on any property without first obtaining the ‘express consent’ of the property

owner or his or her agent. The Statement of Compatibility identifies the purpose of clause 5 as the protection of others' property rights. The Committee observes that clause 5's defence of 'express consent' is narrower than the defences provided by existing provisions protecting property from defacement, which provide defences of 'the consent of the owner or occupier of the building concerned' (s.9 of the *Summary Offences Act 1966*) and 'lawful excuse' (s.197 of the *Crimes Act 1958*). The Committee refers to Parliament the question of whether or not requiring the prior express consent of property owners to mark publicly visible graffiti on their property is reasonably necessary to protect the rights of property owners.

The Committee also notes that clause 6 makes it an offence, punishable by imprisonment, to mark publicly visible graffiti that 'would offend a reasonable person'. The sole defence to this offence is that the graffiti was 'reasonable political comment.' The Committee observes that, as clause 5 (and existing offences) already criminalise marking property without the owner's consent, clause 6's effect is to criminalise marking certain graffiti where it would otherwise be lawful to do so. This includes graffiti marked on a person's own property or on a wall expressly set aside for the purpose of public art.

The Statement of Compatibility identifies the purpose of clause 6 as protecting 'public order and public morality by preventing the marking of publicly visible comments that would offend the community'. The Committee notes that the European Court of Human Rights has pertinently remarked that freedom of expression:

is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". This means, amongst other things, that every "formality", "condition", "restriction" or "penalty" imposed in this sphere must be proportionate to the legitimate aim pursued. From another standpoint, whoever exercises his freedom of expression undertakes "duties and responsibilities" the scope of which depends on his situation and the technical means he uses. The Court cannot overlook such a person's "duties" and "responsibilities" when it enquires, as in this case, whether "restrictions" or "penalties" were conducive to the "protection of morals" which made them "necessary" in a "democratic society". (Handyside v United Kingdom (1976) 1 EHRR 737, [49])

The Committee observes that clause 6 is wider than the same clause in the Graffiti Prevention Exposure Draft Bill previously published by the Department of Justice, which was limited to graffiti that 'harasses or vilifies a person or class of persons.' The Committee refers to Parliament the question of whether clause 6 is reasonably necessary to protect public order and morality.

The Committee also observes that the present Bill does not define 'offend a reasonable person', 'reasonable political comment' or (in the definition of 'mark graffiti') 'defaces', 'defacement' or 'property'. The Committee is therefore concerned that Victorians may find it difficult to distinguish between publicly visible markings that are lawful and publicly visible markings that are punishable by imprisonment. The Committee refers to Parliament the question of whether clause 6 is a 'lawful restriction' on freedom of expression.

Keywords: Equal protection of the law – Ban on sale of aerosol paint containers to persons under 18 – Whether age discrimination demonstrably justified

Charter s.8(3) provides that everyone is entitled to 'equal protection of the law without discrimination.' Discrimination is defined to include discrimination on the ground of age. Charter s.7(2) provides that human rights may be subject only to 'such reasonable limits as can be demonstrably justified.'

The Committee notes that clause 10 bans the sale of aerosol paint containers to people under 18, unless they supply a letter from their employer stating that the container is required for employment purposes. The Statement of Compatibility remarks that the effect of clause 10 is that:

people under the age of 18 who wish to purchase a spray paint can for a legitimate and lawful purpose... will have to approach an adult, such as a parent, to obtain one. The restriction will operate so as to discriminate against those persons on the ground of their age.

The Statement asserts that a rational connection, for the purposes of Charter s.7(2), between clause 10 and the prevention of unlawful graffiti is established by two statistics:

- Victoria Police: 69% of persons apprehended for graffiti crimes from 2001-2006 were minors
- City of Casey: after a similar local law (alongside a set of other measures: see www.casey.vic.gov.au/graffiti) was introduced, there was a 70% drop (by area) in graffiti requiring removal. (City of Boroondara also reports ‘a reduction.’)

The Committee refers to Parliament the question of whether or not these statistics demonstrably justify that clause 10 is a reasonable limit on the Charter’s right to equal protection of the law without discrimination based on age.

The Committee makes no further comment.

Legislation Reform (Repeals No. 1) Bill 2007

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

Purpose

The Bill repeals 15 spent or redundant Acts.

Notes: 1. The reason for the repeal of each of the Acts is described in the explanatory memorandum. 2. The Committee has tabled a separate report on this Bill consequent on the Bills referral to the Committee by the Legislative Assembly for consideration, inquiry and report.

Content and Committee comment

[2]. The repeals made by this Bill come into force on the day after Royal Assent.

[3]. Provides for the Acts listed in the Schedule to be repealed.

[4]. Provides for the automatic repeal of this Act on the first anniversary of the day on which it receives the Royal Assent.

The Acts set out in the Schedule are spent or redundant—

- 1 *Ballaarat Free Library (Borrowing) Act 1938* (No. 4600)
- 2 *Heatherton Sanatorium Act 1944* (No. 5045)
- 3 *Victorian Relief Committee Act 1958* (No. 6378)
- 4 *Hairdressers Registration (Repeal) Act 1985* (No. 10226)
- 5 *State Relief Committee Act 1986* (No. 6/1986)
- 6 *Food (Amendment) Act 1991* (No. 36/1991)
- 7 *Health and Community Services (Further Amendment) Act 1993* (No. 124/1993)
- 8 *Food (Amendment) Act 1994* (No. 13/1994)
- 9 *Children and Young Persons (Miscellaneous Amendments) Act 1994* (No. 19/1994)
- 10 *Local Government (Amendment) Act 1994* (No. 99/1994)
- 11 *Health Acts (Amendment) Act 1995* (No. 21/1995)
- 12 *Housing (Amendment) Act 1996* (No. 20/1996)
- 13 *Children and Young Persons (Miscellaneous Amendments) Act 1996* (No. 44/1996)
- 14 *Local Government (Darebin City Council) Act 1998* (No. 33/1998)
- 15 *Local Government (Nillumbik Shire Council) Act 1998* (No. 95 of 1998)

The Committee makes no further comment.

Transport Accident and Accident Compensation Acts Amendment Bill 2007

Introduced	18 September 2007
Second Reading Speech	19 September 2007
House	Legislative Assembly
Member introducing Bill	Hon. Tim Holding MLA
Portfolio responsibility	Minister for Finance

Purpose

The Bill amends the —

Transport Accident Act 1986 —

- (i) *to clarify that employer superannuation contributions are not included for the purposes of calculating weekly payments and pre-accident weekly earnings;*
- (ii) *to improve certain benefits available under that Act;*
- (iii) *to introduce a new safety net income benefit for persons with severe injuries;*
- (iv) *to provide for the annual indexation of certain benefits payable under Part 3 of that Act;*
- (v) *to extend the range of services to which an agreement under section 121 of that Act may apply;*
- (vi) *to make statute law revision;*

Accident Compensation Act 1985 —

- (i) *to clarify that employer superannuation contributions are not included for the purposes of calculating weekly payments;*
- (ii) *to improve certain benefits available under that Act;*
- (iii) *to provide for the annual indexation of benefits payable under section 99(1)(aa) of that Act;*
- (iv) *to repeal certain provisions relating to the calculation of remuneration which are to be re-enacted in the Accident Compensation (WorkCover Insurance) Act 1993;*
- (v) *to make statute law revision amendments ;*

Accident Compensation (WorkCover Insurance) Act 1993 to re-enact certain provisions relating to the calculation of remuneration.

Content and Committee comment

[2]. Provides that other than specified clauses the provisions in the Bill come into operation on the day after Royal Assent. Clauses 3(1), 4, 8, 13, 20, 22, 23, 24, 25, 28 and Part 4 are deemed to have come into operation on 19 September 2007, the date of the Second Reading of the Bill.

(Also refer to notes on clauses 20 and 28 below and in Charter report).

Retrospective amendments

Clause 19 which deals with the application of previous amendments made by the *Transport Accident (Amendment) Act 2004* ('the 2004 amending Act') is deemed to have come into operation on 1 January 2005.

Clause 15(1) which addresses issues with transitional provisions associated with amendments of the *Transport Accident Act 1986* on 1 July 2005 is deemed to have come into operation on that day.

Transport Accident Act 1986

[15]. Amends section 61 of the Act to provide for indexation of various benefits under section 47 (impairment benefits) the *Transport Accident Act 1986* in accordance with the CPI.

[19]. The explanatory memorandum states – *Amends section 192 to ensure the proper application of transitional provisions in relation to child care following amendments made to the Act by the Transport Accident (Amendment) Act 2004.*



Explanatory memorandum – Retrospective application

The Committee notes that the relevant section of the 2004 amending Act provided that the amendments made by section 15(2) of the amending Act, which inserted new sections 60(2AA), 60(2AB) and 60(2AC) in the Act, were to apply to transport accidents regardless of when they occurred and to all applications regardless of when they were made.

The Committee does not consider that the explanatory memorandum adequately explains the apparent change in application to the provisions to the proposed new section 192(2) which limits the amendments made by the 2004 amending Act to post amending Act commencement injuries.

Given that the amendment sought has retrospective application the Committee is unable to determine whether any person may be adversely affected by these amendments.

The Committee will seek further explanatory material from the Minister.

[20 and 28]. Respectively insert transitional provisions in the *Transport Accident Act 1986* and the *Accident Compensation Act 1985*. A number of the provisions apply to accidents regardless of when they occurred and applications regardless of when they were made and in regards to assessments of impairment regardless of when the injury occurred. (*Refer to Charter report below*).

[21]. Amends section 134. The Explanatory memorandum states – ‘*amends section 134 of the TA Act 1986 to address statute law revision*’.



Explanatory material – statute law revision

The Committee refers to its Practice Note No. 2 of August 2007 which provided that an explanatory memorandum that failed to state the nature of a statute law revision amendment would engage the Committee’s terms of reference on the grounds that it not subject the exercise of legislative power to sufficient Parliamentary scrutiny. In this instance the Committee considers the explanatory memorandum is mechanical and not sufficiently explanatory or helpful.

The Committee will draw further attention to the requirement that Parliament be properly informed and will seek further explanatory material from the Minister.

The Committee will seek further explanatory material from the Minister.

[33]. Repeals this Bill one year after it receives Royal Assent.

Charter report

Keywords: Right to property – Changes to statutory compensation for injuries – Reduced compensation for some existing injuries – Whether a deprivation of a legitimate expectation of a future claim to money

Charter s.20 provides that people must not be deprived of property ‘other than in accordance with law.’

The Committee notes that the Bill makes numerous changes to how compensation is calculated for workplace and transport accident injuries. The Committee further notes that clauses 2(2), 2(3), 2(4), 20 & 28 provide for the application of some of these changes to some injuries that occur before the Bill receives Royal Assent. The Committee observes that the European Court of Human Rights has held that an analogous right to property in the *European Convention for the Protection of Human Rights and Fundamental Freedoms* extends to a right not to be deprived of a ‘legitimate expectation’ of a future claim to property (including money) that is founded on an existing law. The Committee considers that Charter s.20 may therefore be engaged by clauses 2(2), 2(3), 2(4), 20 & 28.

The Statement of Compatibility addresses only two pairs of retrospective changes made by the Bill:

- removing employer-paid superannuation from the definition of pre-injury weekly income:
 - *Transport Accident Act 1986*: clause 4, amending s.6, applying retrospectively to all injuries, regardless of when they occur (clause 20, inserting a new section 195(1));
 - *Accident Compensation Act 1985*: clause 24, amending s.5A, applying retrospectively to all injures after 19 September 2007 (clause 2(4)).
- altering how spinal injuries are assessed:
 - *Transport Accident Act 1986*: clause 8, amending s.46A(2), applying retrospectively to all injuries, regardless of when they occur (clause 20, inserting s.193);
 - *Accident Compensation Act 1985*: clause 25, amending s.91, applying retrospectively to all injuries, regardless of when they occur (clause 28, inserting s.296).

With respect to the removal of employer-paid superannuation from the definition of pre-injury weekly income, the Statement remarks that these changes ‘clarify what has always been the position in Victoria’ and will not affect existing proceedings (as a result of new section 195(2) of the *Transport Accident Act 1986*, and the application of statutory interpretation principles to clause 24.) The Committee observes that the existing definition of pre-injury income in s.6 of the *Transport Accident Act 1986* expressly includes ‘superannuation allowances’. The Committee further observes that s.35 of the *Transport Accident 1986* and s.82 of the *Accident Compensation Act 1985* both provide that an entitlement to ‘compensation in accordance with’ the respective Act arises at the time of injury (rather than the commencement of proceedings.)

With respect to the alterations to the assessment of spinal injuries, the Statement remarks that (as a result of new sections 296(2) and 296(3), also inserted by clause 28), these changes exclude injured workers who have already had their impairment assessed. The Committee observes that clauses 8 and 25 overturn a current interpretation by the Victorian Court of Appeal (in favour of an earlier interpretation by a single judge of the Supreme Court) of a part of the A.M.A. Guides that presently governs both workplace and transport accident spinal injuries. The Committee further observes that clause 25 will still apply to people with existing workplace spinal injuries who are yet to lodge formal claims or have their impairment assessed under the existing standard, as well as to all persons with existing injuries from transport accidents.

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

- 1. What is the purpose of applying the removal of employer-paid superannuation from the definition of pre-injury weekly income retrospectively to all transport accident injuries (where proceedings have not yet commenced) and to workplace injuries that occur after 19 September 2007?*
- 2. What is the purpose of applying the changes to how spinal injuries are assessed retrospectively to all transport injuries and to all workplace injuries (other than workplace injuries where both a claim has commenced and an assessment of the injury as been made?)*
- 3. Do any of the remaining provisions listed in clauses 2(2), 2(3), 2(4), new section 193 of the Transport Accident Act 1986 (inserted by clause 20) and new section 297 of the Accident Compensation Act 1985 (inserted by clause 28) change entitlements to compensation for injuries in a way that is (or is reasonably arguably) less generous to any class of injured persons than the law that existed at the time of their injuries?*
- 4. In 3 above, in each such case, what is the purpose of applying the change retrospectively to any such class?*

Pending the Minister's response, the Committee draws attention to these provisions.

The Committee makes no further comment.

Transport Legislation Amendment Bill 2007

Introduced	18 September 2007
Second Reading Speech	20 September 2007
House	Legislative Assembly
Member introducing Bill	Hon. Lynne Kosky MLA
Portfolio responsibility	Minister for Transport

Purpose

The prime purpose of the Bill is to facilitate the ongoing reform of transport policy and legislation in a number of key areas, including —

- the use of smartcards for public transport;
- the introduction of new bus contracts;
- providing financial assistance to traumatised train drivers;
- controlling illegal touting by commercial passenger vehicle operators and other vehicle drivers;
- rail safety primarily by introducing requirements for safety interface agreements at rail and road crossings;
- addressing road rules parking breaches in park and ride facilities;
- confirming the policy that private full fee-paying overseas students are not entitled to concession travel on public transport.

Content and Committee comment

[Clauses]

[2]. Provides for the commencement of the various clauses of the Bill. The clause consists of 13 subsections with provisions including commencement on Royal Assent and commencement on proclamation with various forced commencement provisions applying. A number of provisions have retrospective application and some appear to have a delayed forced commencement exceeding one year from the date of the Second Reading Speech.

The Committee reports on the following commencement provisions.

Section 38 is deemed to have come into operation on 7 August 2006 and amends the *Transport Act 1983*.

Note: Proposed section 38 inserts a new transitional provision into section 271 of the Transport Act 1983 (the Act) linking to the amendments made to that Act by section 31(1) of the Transport Legislation (Further Amendment) Act 2006 (the 2006 amending Act). These amendments transferred functions from the Secretary to the Department of Infrastructure to the Director of Public Transport. Section 31(1) commenced on 8 August 2006. The reason for the retrospective commencement of proposed section 38 on 7 August 2006 is to ensure that the transitional provision is in place before section 31(1) commences. The new section 271(1A) saves delegations made by the Secretary under section 32(1A) which were in force before the commencement of the 2006 amending Act and deems them to have been made by the Director under section 9(7) of the Act.

Section 40(2) is deemed to have come into operation on 1 July 2007 and amends the *Transport Act 1983*.

Note: New driver accreditation provisions for commercial passenger vehicle drivers in the Transport Act 1983 commenced on 1 July 2007. It is necessary for proposed sections 40(2) to have a retrospective commencement to ensure that the provisions amended operate correctly from the

commencement of the new driver accreditation provisions. Clause 40(2) corrects an incorrect cross-reference to section 165 which should have referred to section 166. Section 165 refers to an offence to drive without accreditation provision and section 166 refers to the director's power to accredit persons.

Section 40(5) is deemed to have come into operation on 30 March 2007 and amends the *Transport Act 1983*.

Note: Section 40(5) corrects wrong cross references in section 228H of the Transport Act 1983. Section 228H commenced on 30 March 2007. The retrospective commencement of proposed section 40(5) is necessary to ensure that section 228H operates correctly from its commencement.

Section 42 is deemed to have come into operation on 1 July 2007 and amends the *Public Transport Competition Act 1995*.

Note: New driver accreditation provisions for commercial passenger vehicle drivers in the Transport Act 1983 commenced on 1 July 2007. It is necessary for proposed section 42 to have a retrospective commencement to ensure that the provisions amended operate correctly from the commencement of the new driver accreditation provisions. The clause makes an editorial amendment to the Public Transport Competition Act 1995 so that the new accreditation scheme is referred to in section 10 of that Act rather than the reference to the superseded 'drivers certificate'.

Delayed commencement explained

Sections 54(1), 58, 60, 61, 64 and 66 and Division 3 of Part 5 come into operation on 1 July 2010 and amends the *Rail Safety Act 2006*.

Note: The explanatory memorandum provides – The reason for the deferred commencement is to give rail operators and rail infrastructure managers sufficient time to prepare for the implementation of the new safety interface agreement requirements.

Delayed commencement of greater than one year

Subclause (12) provides that the remaining provisions of the Act come into operation on a day or days to be proclaimed and subclause (13) provides that if a provision referred to in subsection (12) does not come into operation before 1 January 2009, it comes into operation on that day.



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

The Committee notes the potential for the commencement of some provisions to be delayed for more than one year. In the present case subsection (13) of the commencement provision allows for some provisions to commence before 1 January 2009. The Committee draws attention to its Practice Note No. 1 of October 2005 in which it stated that it would routinely seek further advice from Ministers introducing legislative measures with delayed commencement of more than one year.

The Committee will seek further advice from the Minister.

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

Transport Act 1983

Division 1 — Smartcards

[5]. Inserts new sections 230AB to 230AH into the Act regarding the provision of evidence relating to smartcards in proceedings for ticket offences. A ticket offence is defined in section 208 of the

Act to mean an offence against Division 4 of Part VII of the Act or any regulations made under section 221AA of the Act. These offences relate to entitlements to use a public transport service and tickets or other things that can be used to prove such an entitlement.

[9]. Inserts a new section 12 into the Act to provide for a scheme for the granting of financial assistance to train drivers following fatal incidents. Clause 84 of the Bill will ensure that there is no dual entitlement payable for compensation under the *Victims of Crime Assistance Act 1996* arising from the same incident.

Inadequate explanatory material

[14]. Amends section 169C of the Act. The section (not yet proclaimed) deals with disqualification by the Director from the ability to apply for accreditation. The repeal of sections 169C(5)(c) and (d) involve persons who cease to be subject to certain obligations or orders made under sex offender registration and monitoring Acts for the purposes of the *Working with Children Act 2005*. The effect of the repeal is to remove these grounds (i.e. cessation of reporting requirements) as a 'relevant change in circumstances'. Under the Act 'a relevant change of circumstances triggers an entitlement for a person to make a further application for accreditation. The explanatory memorandum only provides that – *Subclause (2) repeals sections 169C(5)(c) and 169C(5)(d) of the Transport Act 1983.*



The Committee reports to Parliament pursuant to a term of reference provided in section 17(a)(vii) of the Parliamentary Committees Act 2003, – ‘insufficiently subjects the exercise of legislative power to parliamentary scrutiny’.

Explanatory material

The Committee notes that clause 14 appears to have policy implications in respect to the exercise of administrative determination concerning the circumstances in which a person may claim ‘a change of circumstances’ to make an application following disqualification. The Committee is aware of the additional grounds of review of this administrative decision by VCAT (clause 17).

The Committee considers that this matter should have been brought to the attention of the Parliament.

The Committee will seek further explanatory material from the Minister so that Parliament may be informed as to the purpose of these amendments.

[17]. Inserts a new subsections 169O(1)(d) and (e) into the Act to enable the VCAT to review a –

- *determination of the Director of Public Transport to disqualify a person from applying for the issue of an accreditation where the person's application for the issue or renewal of that accreditation is refused;*
- *decision of or a failure of the Director to, under section 169EB, reinstate the accreditation of person suspended in accordance with section 169EA.*

Concessions not to apply to overseas students – Discrimination – Equal Opportunity – Charter rights

[23]. Inserts a new section 220DA into the Act regarding conditions determined under section 220D which may relate to overseas students. New section 220DA(6) provides a definition of 'overseas student' and excludes certain students from the operation of the section. New section 220DA(3) declares that the Director's determinations do not constitute discrimination on the basis of race for the purposes of the *Equal Opportunity Act 1995* and subsection (4) validates previous determinations and declares that they do not constitute discrimination on that ground under that

Act. The definition of ‘overseas student’ excludes certain students from the definition for the purposes of the exclusionary determinations made under the section.

Note: From the explanatory memorandum – The purpose of the provision is to continue the current policy of not providing public transport concession entitlements to private full fee-paying overseas students. As part of that, the provisions confirm that the policy does not constitute, and has never constituted, discrimination on the basis of race for the purposes of the Equal Opportunity Act 1995. However, the provisions expressly preserve the right of a current named complainant to pursue the argument in a current matter which is before the Victorian Equal Opportunity and Human Rights Commission.

The provisions also empower the making of conditions under section 220D for the purposes of section 32 of the *Charter of Human Rights and Responsibilities Act 2006* to put beyond doubt the possibility of their validity being affected.

The Committee observes that the Equal Opportunity Act 1995 provides a number of circumstances where exemptions apply to employers or service providers concerning the general prohibition against discrimination on the grounds of a prescribed attribute. These may be found in Part 3 (sections 16 to 28) of that Act. For example, exemptions may provide for political employment, welfare services, single sex accommodation, youth wages, early retirement schemes and a number of other circumstances.

The question whether it is appropriate to extend public transport concessions to certain overseas students is a policy matter for Parliament to consider.

Forfeiture without court order – reviewable by VCAT

[27]. Substitutes section 228ZX of the Act to allow for things seized by a transport safety officer to be forfeited to the State in certain circumstances. The effect of the new provision is to enable forfeiture without first obtaining an order of the Magistrates’ Court. Where the owner of the property is able to be contacted they must be informed of such a decision and how to seek review of the decision. [36]. Makes a consequential amendment to section 228ZZQ to ensure that the forfeiture of a seized thing under the relevant rail safety related powers of the Act (section 228ZX) is a decision that is reviewable by the VCAT.

[37]. Inserts new sections into the Act in relation to a new compliance sanction known as an exclusion order. The provision will enable a court, on the application of the prosecutor or Safety Director, to make an exclusion order if the court finds a person guilty of an offence against a relevant transport safety law, and considers the person to be a persistent or systematic offender against relevant rail safety laws and also considers a supervisory intervention order inappropriate. An exclusion order may prohibit a person from managing or being involved in the management of rail operations.

[85]. Provides for the automatic repeal of this amending Bill on 1 July 2011.

Charter report

Keywords – Reasonable limits on rights – Regulation of transport – Privacy – Expression – Property – Rights in criminal proceedings

Charter s.7(2) provides that human rights may be ‘subject to such reasonable limits as can be demonstrably justified in a free and democratic society.’

The Committee notes that the Bill amends various schemes regulating transport, including the licensing of taxis and the provision of bus services. The provisions are ones that commonly appear in licensing and services legislation.

The Statement of Compatibility identifies a number of provisions in the Bill that are said to engage the following Charter rights:

- **Privacy** (Charter s.13(a)): a provision authorising the collection of information from equipment in taxis (clause 12).
- **Expression** (Charter s.15(2)): a provision widening a ban on soliciting, touting or advertising a motor vehicle for hire as a taxi in certain circumstances (clause 10).
- **Property** (Charter s.20): provisions providing for the transfer of a bus operator's (or an 'associated' operator's) property according to a provision of a service contract (clause 53, inserting a new division 5 of Part 3 of the *Public Transport Competition Act 1995*); and providing for the transfer (without a court order) of property seized as evidence by a transport safety officers (clause 27).

In each instance the Statement of Compatibility contends that the respective rights are not infringed. Having considered the above Charter rights and provisions, the Committee is satisfied that the measures so engaged do not warrant any special mention or adverse comment in respect to possible incompatibility with human rights.

Keywords: Rights in criminal proceedings – Evidentiary provisions relating to smartcards – Admissibility of certificates – Conclusive proof unless defendant gives notice – Bar on defendant calling expert evidence without notice

Charter s.25(1) provides that persons charged with a criminal offence are 'presumed innocent until proved guilty according to law.' Charter s.25(2) provides that such a person is 'entitled without discrimination' to examine witnesses against him 'unless otherwise provided for by law' (Charter s.25(2)(g)) and to call and examine witnesses 'under the same conditions as witnesses for the prosecution' (Charter s.25(2)(h)).

The Committee notes that clause 4 (amending s.230(6) of the *Transport Act 1983*) and clause 5 (inserting new sections 230AB, 230AC(1) & 230AD) provides that certain certificates (establishing facts that may support a prosecution for a ticketing or other offence) are admissible as evidence. The Committee observes that the effect of these provisions may be to permit a person's words, contained in such a certificate, to be used as hearsay evidence against a criminal defendant without the defendant being able to cross-examine that person, thus engaging Charter s.25(2)(g).

The Committee also notes that clause 4 (amending s.230(6)) and clause 5 (inserting new sections 230AC(2), 230AE & 230AG) provides that certain certificates create presumptions or (if served on the defendant by a required time) are conclusive proof of various facts in a hearing for a ticketing offence, unless the defendant gives notice requiring a person giving a certificate to be called as a witness or of an intent to call rebuttal evidence of a fact contained in a certificate, or adduces evidence to explain any fact or matter in a certificate. The Committee observes that these provisions may require a court to treat certain facts, which may constitute elements of a ticketing offence, as proved even if the evidence falls short of proof beyond reasonable doubt, thus engaging Charter s.25(1).

The Committee further notes that clause 5 (inserting new section 230AF(3)) bars a defendant in a hearing on a ticketing offence from calling expert evidence unless the nature of that evidence was indicated in a timely notice by the defendant or a court gives leave. The Committee observes that this provision may differ from the rules relating to undisclosed prosecution expert evidence, thus engaging Charter s.25(2)(h).

The Committee resolves to raise with the Minister the Statement of Compatibility's failure to address whether or not these provisions are compatible with the Charter's rights in criminal proceedings. Pending the Minister's response, the Committee draws attention to these provisions.

Keywords: Equal protection of the law – Validation of existing decision that private full-fee-paying international students ineligible for student concessions on public transport – Whether discrimination on the basis of nationality – Whether reasonable limit

Charter s.8(3) provides that everyone is entitled to ‘equal protection of the law without discrimination.’ Discrimination is defined to include discrimination on the basis of race, which in turn is defined to include discrimination on the basis of nationality. Charter s.7(2) provides that human rights may be subject only to ‘such reasonable limits as can be demonstrably justified.’

The Committee notes that clause 23 (inserting new section 220DA(4) into the *Transport Act 1983*) validates an existing decision of the Director of Public Transport under s.220 to the effect that private full-fee paying international students are ineligible for student concessions on Victorian public transport. The Committee observes that the NSW Administrative Decisions Tribunal has held that a similar decision in NSW amounted to discrimination on the basis of nationality (*SUPRA v Minister for Transport Services* [2006] NSWADT 83.) The Statement of Compatibility argues that validation of the Victorian decision is a reasonable limit on Charter s.8(3), in light of its even-handed application to all non-Australian nationalities, its exclusion of categories of non-Australian students with a more permanent relationship with Australia, the cost of providing a student concession to all international students, the subsidised nature of public transport and the expectation that holders of a student visa will meet their own living expenses while studying in Australia. Having considered the Statement’s arguments, the Committee considers that the validation of the existing decision is a reasonable limit on Charter s.8(3) according to the test in Charter s.7(2).

Keywords: Effective protection against discrimination – Decisions about international students’ eligibility for public transport concessions deemed not to be race discrimination – Identification of classes of overseas students on the basis of colour, descent, ancestry, nationality, national origin, ethnicity or ethnic origin – Reduction of Charter’s protections against discrimination

Charter s.8(3) provides that every person is entitled to ‘effective protection against discrimination.’ Discrimination is defined in Charter s.3 to mean discrimination ‘within the meaning of the *Equal Opportunity Act 1995*’. Section 7 of that Act defines discrimination as meaning ‘direct or indirect discrimination on the basis of an attribute’. Section 6(i) includes ‘race’ as such an attribute and s.4 defines race to include colour, descent, ancestry, nationality, national origin, ethnicity and ethnic origin. Charter s.31 provides that Parliament may override the Charter with respect to a statutory provision and one or more human rights, but declares Parliament’s then intention ‘that an override declaration will only be made in exceptional circumstances’ and provides for scrutiny procedures, including a timely statement in Parliament and a sunset clause.

The Committee notes that clause 23 (inserting new section 220DA into the *Transport Act 1983*) authorises the Director of Public Transport to determine that ‘overseas students or specified classes of overseas students’ are ineligible for student concessions for public transport and that new section 220DA(3) provides that any such determination ‘does not constitute discrimination on the basis of race for the purposes of the *Equal Opportunity Act 1995*’. The Committee observes that ‘race’ is a much broader set of attributes than ‘nationality’, which was the sole attribute raised in the adverse finding against the NSW student concession scheme (*SUPRA v Minister for Transport Services* [2006] NSWADT 83, [53].)

The Committee also observes that the effect of new section 220DA(3) may be to permit the Director, in future, to specify particular classes of overseas students as ineligible for student concessions on public transport on the basis of race, colour, descent, ancestry, nationality, national origin, ethnicity or ethnic origin.

The Committee further observes that the extent of the Charter’s protections against discrimination is defined in terms of the *Equal Opportunity Act 1995*’s definition of discrimination. The

Committee is therefore concerned that clause 23 may operate to reduce the protections against discrimination presently provided for by the Charter.

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

- 1. Why does clause 23 deem the Director's decisions to not be discrimination on the basis of 'race', rather than 'nationality'?*
- 2. Will clause 23 permit the Director to specify a class of overseas students as ineligible for student concessions on public transport on the basis of race, colour, descent, ancestry, nationality, national origin, ethnicity or ethnic origin?*
- 3. Will clause 23 alter the definition of discrimination for the purposes of the Charter?*
- 4. If so, why hasn't Charter s.31 (override by Parliament) been complied with?*

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

The Committee makes no further comment.

.

Ministerial Correspondence

Royal Children's Hospital (Land) Bill 2007

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

Committee's Comment

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

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

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

Minister's Response

Thank you for your letter to the Hon Justin Madden MLC, Minister for Planning, dated 7 August 2007 in relation to the Scrutiny of Acts and Regulations Committee's request for advice on the delayed commencement provision in the Royal Children's Hospital (Land) Bill 2007 (the Bill). As Crown land legislation is now part of the Environment and Climate Change portfolio, the Bill is now my responsibility and your letter has been referred to me.

The commencement provision in the Bill will provide some flexibility as to exactly when the Bill commences. This will ensure that public access to Royal Park is not restricted any earlier than is necessary.

As soon as the Bill's provisions commence, the construction site for the new Royal Children's Hospital (the Hospital) will be excised from Royal Park. However, it will not be necessary for this to take place until construction of the new Hospital is ready to commence.

As you may be aware, the new Hospital will be built under the Government's Partnership's Victoria policy in conjunction with the private sector. The Government's private sector partner will be selected as part of a tender process. On 4 September 2007, the Government entered an exclusive negotiation phase with one of the two short listed bidders in the tender process, with a view to formally awarding the tender by the end of 2007. Construction of the new Hospital is expected to start shortly after the tender is awarded.

Because the exact timing of the awarding of the tender is uncertain, it has been necessary to prepare the Bill to commence upon proclamation rather than when it receives the Royal Assent. This will enable commencement to be timed as closely as possible to the awarding of the tender and the imminent commencement of construction activity. Without this flexibility, the construction site for the new Hospital would be excised from Royal Park some time before construction commences. This would be inconsistent with the Government's intention to minimise the impact of the new Hospital project on Royal Park.

I note that if the Bill has not been proclaimed by 1 January 2009, then it will commence on that day. This provides the necessary flexibility to accommodate the tender process, while also providing a degree of certainty as to the time by which the Bill will ultimately commence.

Having regard to the issues discussed above, I am confident that the commencement provision in the Bill is appropriate.

Thank you for bringing this matter to my attention. I trust that the contents of this letter adequately address the Committee's concerns. Should the Committee have any further queries, the relevant officer in the Department of Sustainability and Environment dealing with this Bill is Deidre Egan, Manager Legislation and Cabinet Services, who can be contacted directly on 9637 8575.

*GAVIN JENNINGS MLC
Minister for Environment and Climate Change*

20 September 2007

The Committee thanks the Minister for this response.

**Committee Room
8 October 2007**

Appendix 1

Index of Bills in 2007

	Alert Digest Nos.
Accident Compensation Amendment Bill 2007	7
Accident Towing Services Bill 2007	5, 6
Appropriation (2007/2008) Bill 2007	6
Appropriation (Parliament 2007/2008) Bill 2007	6
Building Amendment Bill 2007	13
Building Amendment (Plumbing) Bill 2007	5
Confiscation Amendment Bill 2007	11
Control of Weapons Amendment (Penalties) Bill 2006	1
Courts Legislation Amendment (Judicial Education and Other Matters) Bill 2007	7
Crimes Amendment (DNA Database) Bill 2007	6
Crimes Amendment (Rape) Bill 2007	12
Crimes (Decriminalisation of Abortion) Bill 2007	10
Drugs, Poisons and Controlled Substances Amendment (Repeal of Part X) Bill 2007	3
Education and Training Reform Miscellaneous Amendments Bill 2007	13
Emergency Services Legislation Amendment Bill 2007	13
Energy Legislation Amendment Bill 2007	9
Energy Legislation Further Amendment Bill 2007	13
Equal Opportunity Amendment Bill 2007	5
Fair Trading and Consumer Acts Amendment Bill 2007	5, 6
Firearms Amendment Bill 2007	12
Fisheries Amendment Bill 2007	12
Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007	4
Gambling Regulation Amendment Bill 2007	8
Gambling Regulation Amendment (Review Panel) Bill 2007	3
Gene Technology Amendment Bill 2007	10
Graffiti Prevention Bill 2007	13
Grain Handling and Storage Amendment Bill 2007	10
Health Professions Registration Amendment Bill 2007	6
Howard Florey Institute of Experimental Physiology and Medicine (Repeal) Bill 2007	4
Infertility Treatment Amendment Bill 2007	4, 9
Interpretation of Legislation Amendment Bill	1
Justice and Road Legislation Amendment (Law Enforcement) Bill 2007	10, 12
Justice Legislation Amendment Bill 2007	12
Justice Legislation (Further Miscellaneous Amendments) Bill	1
Land (Revocation of Reservations) Bill 2007	11
Legal Profession Amendment Bill 2007	3
Legal Profession Amendment (Education) Bill 2007	10
Legislation Reform (Repeals No. 1) Bill 2007	12, 13
Livestock Disease Control Amendment Bill 2007	3
Magistrates' Court and Coroners Acts Amendment Bill 2007	8
Major Events (Aerial Advertising) Bill 2007	3
Murray-Darling Basin Amendment Bill 2006	1

Nuclear Activities (Prohibitions) Amendment (Plebiscite) Bill 2007	3
Outworkers and Contractors Legislation Amendment Bill 2007	7
Parliamentary Legislation Amendment Bill 2007	2
Parliamentary Salaries and Superannuation Amendment Bill 2007	10
Pay-roll Tax Amendment (Bushfire and Emergency Service) Bill 2007	2
Payroll Tax Bill 2007	7
Planning and Environment Amendment Bill 2007	9
Prahran Mechanics' Institute Amendment Bill 2007	2
Professional Standards Amendment Bill 2007	7
Public Prosecutions Amendment Bill 2006	1, 3
Road Legislation Amendment Bill 2007	4, 11
Road Legislation (Projects and Road Safety) Bill	1
Royal Children's Hospital (Land) Bill 2007	10, 13
Senate Elections Amendment Bill 2006	1
State Taxation Acts Amendment Bill 2007	7
State Taxation and Gambling Legislation Amendment (Budget Measures) Bill 2007	6
Statute Law Repeals Bill 2006	4
Statute Law Revision Bill 2006	5
Summary Offences Amendment (Body Piercing) Bill 2007	10
Summary Offences Amendment (Upskirting) Bill 2007	9
Superannuation Legislation Amendment (Contribution Splitting and Other Matters) Bill 2007	7, 9
Transport Accident and Accident Compensation Acts Amendment Bill 2007	13
Transport Legislation Amendment Bill 2007	13
Victims of Crime Assistance Amendment Bill 2007	2
Water Acts Amendment (Enforcement and Other Matters) Bill 2007	6
Water Amendment (Critical Water Infrastructure Projects) Bill 2006	1, 4
Water (Governance) Bill	1
Wills Amendment Bill 2007	7
Working with Children Amendment Bill 2007	12

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 and freedoms.

Justice Legislation Amendment Bill 2007	12
Public Prosecutions Amendment Bill 2006	1
Senate Elections Amendment Bill 2006	1
Working with Children Amendment Bill 2007	12

(ii) Makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers.

Emergency Services Legislation Amendment Bill 2007	13
--	----

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

Justice and Road Legislation Amendment (Law Enforcement) Bill 2007	10
--	----

(vi) inappropriately delegates legislative power.

Accident Towing Services Bill 2007	5
Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007	4
Road Legislation Amendment Bill 2007	4
Royal Children's Hospital (Land) Bill	10
Transport Legislation Amendment Bill 2007	13

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

Transport Accident and Accident Compensation Acts Amendment Bill 2007	13
Transport Legislation Amendment Bill 2007	13

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

Energy Legislation Further Amendment Bill 2007	13
Fair Trading and Consumer Acts Amendment Bill 2007	5
Graffiti Prevention Bill 2007	13
Infertility Treatment Amendment Bill 2007	4
Justice Legislation Amendment Bill 2007	12
Senate Elections Amendment Bill 2006	1
Superannuation Legislation Amendment (Contribution Splitting and Other Matters) Bill 2007	7

Scrutiny of Acts and Regulations Committee

Transport Accident and Accident Compensation Acts Amendment Bill 2007	13
Transport Legislation Amendment Bill 2007	13
Working with Children Amendment Bill 2007	12

Appendix 3

Ministerial Correspondence

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

Bill Title	Minister/ Member	Date of Committee Letter	Date of Minister's Response	Issue Raised in Alert Digest No.	Response Published in Alert Digest No.
Justice Legislation (Further Miscellaneous Amendments) Bill	Attorney-General	31.5.06	13.10.06	5 of 2006	1 of 2007
Water (Governance) Bill	Water	22.8.06	1.11.06	9 of 2006	1 of 2007
Funerals Bill	Attorney-General	22.8.06		9 of 2006	
Public Sector Acts (Further Workplace Protection and Other Matters) Bill	Industrial Relations	13.9.06		10 of 2006	
Road Legislation (Projects and Road Safety) Bill	Transport	13.9.06	18.10.06	10 of 2006	1 of 2007
Serious Sex Offenders Monitoring (Amendment) Bill	Corrections	16.10.06		12 of 2006	
Public Prosecutions Amendment Bill 2006	Attorney-General	13.2.07	26.2.07	1 of 2007	3 of 2007
Senate Elections Amendment Bill 2006	Attorney-General	13.2.07		1 of 2007	
Water Amendment (Critical Water Infrastructure Projects) Bill 2006	Water	13.2.07	20.3.07	1 of 2007	4 of 2007
Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007	Gaming	17.4.07	27.4.07	4 of 2007	5 of 2007
Roads Legislation Amendment Bill 2007	Roads and Ports	17.4.07	19.8.07	4 of 2007	11 of 2007
Infertility Treatment Amendment Bill 2007	Health	28.3.07	3.7.07	4 of 2007	9 of 2007
Accident Towing Services Bill 2007	Roads and Ports	1.5.07	18.5.07	5 of 2007	6 of 2007
Fair Trading and Consumer Acts Amendment Bill 2007	Consumer Affairs	1.5.07	3.5.07	5 of 2007	6 of 2007

Bill Title	Minister/ Member	Date of Committee Letter	Date of Minister's Response	Issue Raised in Alert Digest No.	Response Published in Alert Digest No.
Superannuation Legislation Amendment (Contribution and Other Matters) Bill 2007	Finance	5.6.07	3.7.07	7 of 2007	9 of 2007
Royal Children's Hospital (Land) Bill	Planning	7.8.07	20.9.07	10 of 2007	13 of 2007
Justice and Road Legislation Amendment (Law Enforcement) Bill 2007		7.8.07	20.8.07	10 of 2007	12 of 2007
Emergency Services Legislation Amendment Bill 2007	Police and Emergency Services	9.10.07		13 of 2007	
Energy Legislation Further Amendment Bill 2007	Energy and Resources	9.10.07		13 of 2007	
Transport Accident and Accident Compensation Acts Amendment Bill 2007	Finance	9.10.07		13 of 2007	
Transport Legislation Amendment Bill 2007	Transport	9.10.07		13 of 2007	