

No. 13 of 2008

Tuesday, 28 October 2008

On the

- Abortion Law Reform Bill 2008
- Asbestos Diseases Compensation
Bill 2008
- Coroners Bill 2008
- Dangerous Goods Amendment (Transport)
Bill 2008
- Education and Training Reform Further
Amendment Bill 2008
- Fundraising Appeals and Consumer Acts
Amendment Bill 2008
- Gambling Legislation Amendment
(Responsible Gambling and Other
Measures) Bill 2008
- Labour and Industry (Repeal) Bill 2008
- Liquor Control Reform Amendment
Bill 2008
- Major Crime (Investigative Powers) and
Other Acts Amendment Bill 2008
- Police, Major Crime and Whistleblowers
Legislation Amendment Bill 2008
- Police Regulation Amendment Bill 2008
- Primary Industries Legislation Amendment
Bill 2008
- Prohibition of Human Cloning for
Reproduction Bill 2008
- Prostitution Control and Other Matters
Amendment Bill 2008
- Racing and Gambling Legislation
Amendment Bill 2008
- Research Involving Human Embryos
Bill 2008
- Sheriff Bill 2008
- Water (Commonwealth Powers) Bill 2008

Table of Contents

| | Page Nos. |
|--|------------------|
| Alert Digest No. 13 of 2008 | |
| Asbestos Diseases Compensation Bill 2008 | 1 |
| Coroners Bill 2008 | 3 |
| Education and Training Reform Further Amendment Bill 2008 | 7 |
| Fundraising Appeals and Consumer Acts Amendment Bill 2008 | 8 |
| Gambling Legislation Amendment (Responsible Gambling and Other Measures) Bill 2008 | 9 |
| Liquor Control Reform Amendment Bill 2008 | 11 |
| Major Crime (Investigative Powers) and Other Acts Amendment Bill 2008 | 12 |
| Police Regulation Amendment Bill 2008 | 15 |
| Primary Industries Legislation Amendment Bill 2008 | 18 |
| Prostitution Control and Other Matters Amendment Bill 2008 | 22 |
| Racing and Gambling Legislation Amendment Bill 2008 | 23 |
| Sheriff Bill 2008 | 24 |
| Water (Commonwealth Powers) Bill 2008 | 26 |
| Ministerial Correspondence | |
| Abortion Law Reform Bill 2008 | 29 |
| Dangerous Goods Amendment (Transport) Bill 2008 | 32 |
| Labour and Industry (Repeal) Bill 2008 | 33 |
| Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008 | 36 |
| Prohibition of Human Cloning for Reproduction Bill 2008 and Research Involving Human Embryos Bill 2008 | 39 |
| Appendices | |
| 1 – Index of Bills in 2008 | 41 |
| 2 – Committee Comments classified by Terms of Reference | 43 |
| 3 – Ministerial Correspondence | 45 |
| 4 – Submission concerning the Police, Major Crime & Whistleblowers Legislation Amendment Bill 2008 | 47 |

Glossary



- ‘**Article**’ refers to an Article of the International Covenant on Civil and Political Rights;
- ‘**Assembly**’ refers to the Legislative Assembly of the Victorian Parliament;
- ‘**Charter**’ refers to the Victorian *Charter of Human Rights and Responsibilities Act 2006*;
- ‘**child**’ means a person under 18 years of age;
- ‘**Committee**’ refers to the Scrutiny of Acts and Regulations Committee of the Victorian Parliament;
- ‘**Council**’ refers to the Legislative Council of the Victorian Parliament;
- ‘**court**’ refers to the Supreme Court, the County Court, the Magistrates’ Court or the Children’s Court as the circumstances require;
- ‘**Covenant**’ refers to the International Covenant on Civil and Political Rights;
- ‘**human rights**’ refers to the rights set out in Part 2 of the Charter;
- ‘**penalty units**’ refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (*currently one penalty unit equals \$113.42*).
- ‘**Statement of Compatibility**’ refers to a statement made by a member introducing a Bill in either the Council or the Assembly as to whether the provisions in a Bill are compatible with Charter rights.
- ‘**VCAT**’ refers to the Victorian Civil and Administrative Tribunal;

Useful provisions

Section 7 of the **Charter** provides –

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

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

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

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



Terms of Reference

Parliamentary Committees Act 2003

17. Scrutiny of Acts and Regulations Committee

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

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

The Committee has considered the following Bills –

Asbestos Diseases Compensation Bill 2008
Coroners Bill 2008
Education and Training Reform Further Amendment Bill 2008
Fundraising Appeals and Consumer Acts Amendment Bill 2008
Gambling Legislation Amendment (Responsible Gambling and Other Measures) Bill 2008
Liquor Control Reform Amendment Bill 2008
Major Crime (Investigative Powers) and Other Acts Amendment Bill 2008
Police Regulation Amendment Bill 2008
Primary Industries Legislation Amendment Bill 2008
Prostitution Control and Other Matters Amendment Bill 2008
Racing and Gambling Legislation Amendment Bill 2008
Sheriff Bill 2008
Water (Commonwealth Powers) Bill 2008

The Committee notes the following correspondence –

Abortion Law Reform Bill 2008
Dangerous Goods Amendment (Transport) Bill 2008
Labour and Industry (Repeal) Bill 2008
Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008
Prohibition of Human Cloning for Reproduction Bill 2008
Research Involving Human Embryos Bill 2008



Role of the Committee

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

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

Alert Digest No. 13 of 2008

Asbestos Diseases Compensation Bill 2008

| | |
|--------------------------|--|
| Introduced | 7 October 2008 |
| Second Reading Speech | 9 October 2008 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Tim Holding MLA |
| Portfolio responsibility | Minister for Finance, WorkCover and Transport Accident Commission |

Purpose

The purpose of the Bill is to –

- permit the awarding of provisional damages to persons suffering from asbestos-related conditions; and
- amend the *Accident Compensation Act 1985* in relation to proceedings that relate to asbestos-related conditions; and
- amend the *Wrongs Act 1958* in relation to claims made by dependants who make a claim for damages, where a person has died from a dust-related condition.

Notes: *The Bill allows for the awarding of provisional damages for asbestos-related conditions. The Bill will enable an individual to pursue an initial claim for an asbestos-related condition and a further claim if they develop a subsequent asbestos-related condition. The awarding of provisional damages is confined to asbestos-related conditions. It can take many years for a person exposed to asbestos to know the full extent of their injuries and the initial award of damages may not provide adequate compensation for a fatal condition that may develop in the future.*

The Bill also amends the Accident Compensation Act 1985 so that a worker who has an asbestos-related condition has access to expedited processes.

Content and Committee comment

[Clauses]

[8]. *Transitional* – The Act will apply to causes of action arising or actions commenced before or after the commencement of this Act. The Act will not apply to an action commenced before the commencement of the Act if the hearing of the action has commenced, if damages were awarded or if a settlement was reached. If the action has been settled on a provisional basis, then a subsequent action can be made for another asbestos-related condition once the Act has commenced.

Charter Report

Equal and effective protection against discrimination – Modification of rules that cause disadvantage to claimants suffering from an asbestos-related condition – No modification for claimants suffering from similar conditions – Whether reasonable limit

The Committee notes that the Bill provides for a number of measures to redress disadvantages for people with asbestos-related conditions, which often involve a lengthy

latency and speedy fatality, arising from existing compensation laws. The Statement of Compatibility remarks:

People making claims for asbestos-related conditions might be disadvantaged as a result of the 'once-and-for-all' approach to awarding damages. It can take many years for a person exposed to asbestos to know the full extent of their injuries and the initial award of damages may not provide adequate compensation for a fatal condition. The existing limitation periods may also disproportionately affect a person suffering from an asbestos-related condition. As the bill addresses that disadvantage, it could be regarded as a special measure within section 8(4) of the charter...¹

Whilst the Committee accepts that compensation claims in respect of different sorts of impairments can and should be treated differently because of the specific characteristics of those impairments, the Committee is concerned that the Bill, by only addressing such disadvantages for claimants with asbestos-related conditions, limits the Charter right of people with other conditions with lengthy latencies and fatal outcomes to equal and effective protection against discrimination.²

The Statement of Compatibility remarks:

Provisional damages are being provided to people with asbestos-related conditions due to the long latency periods combined with the potentially fatal nature of the conditions arising from asbestos exposure. While it is theoretically possible to set up a scheme that inquires into the individual circumstances of each case, to determine whether provisional damages are necessary to address any disadvantage, such a scheme would be costly to administer and result in considerable uncertainty for employers, insurers and other businesses, which would ultimately translate to increased insurance premiums with flow-on effects for all Victorians.

By restricting the provisional damages in the manner proposed, the economic impact is also more readily identifiable, quantifiable and limited for asbestos-related conditions. Given the fact that the use of asbestos has been banned, claims are limited in number. Any person with injuries or latent diseases, in the same or similar circumstances as a person with an asbestos-related condition, will continue to be entitled to compensation in the same way as all other impairments.

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

- 1. Whether or not the Bill, by modifying procedures to account for the long latency and fatal outcome of asbestos-related conditions, limits the Charter right of people with other conditions with lengthy latencies and fatal outcomes to equal and effective protection against discrimination?**
- 2. If so, whether or not the limitation of the Bill to asbestos-related conditions is reasonable and demonstrably justified under the test set out in Charter s. 7(2)?³**

The Committee makes no further comment.

¹ Charter s. 8(4) provides that 'Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.'

² Charter s. 8(3). 'Impairment' is a prohibited attribute for discrimination under s. 6 of the *Equal Opportunity Act 1995*.

³ Charter s. 7(2) provides that human rights 'may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom...'

Coroners Bill 2008

| | |
|---------------------------------|----------------------|
| Introduced | 7 October 2008 |
| Second Reading Speech | 9 October 2008 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Rob Hulls MLA |
| Portfolio responsibility | Attorney-General |

Purpose

The purposes of the Bill are to –

- require the reporting of certain deaths;
- provide for coroners to investigate deaths and fires in specified circumstances;
- contribute to reducing the number of preventable deaths and fires through the findings of the investigation of deaths and fires, and the making of recommendations, by coroners;
- establish the Coroners Court of Victoria as a specialist inquisitorial court;
- establish the Coronial Council of Victoria;
- amend the *Coroners Act 1985* to repeal the provisions relating to coroners and to rename that Act as the *Victorian Institute of Forensic Medicine Act 1985*;
- make consequential amendments to other Acts.

Content and Committee comment

[Clauses]

[4]. *Reportable deaths* – Defines ‘reportable death’ for the purposes of the Act including; where the death occurred in unexpected, unnatural or violent circumstances; the person was held in custody or was in care; the person died as a result of a medical procedure; the person’s identity is unknown.

[5]. *Reviewable deaths* – Defines ‘reviewable death’ as the death of a child (the deceased child) if the deceased child is the second or subsequent child of the deceased child’s parent to die and one of the following applies: the body is in Victoria, or the death occurred in Victoria, or the cause of death occurred in Victoria or the child ordinarily resided in Victoria.

[10 to 13]. Create obligations to report ‘reportable deaths’, deaths of persons in custody or care and reviewable deaths.

[21]. Where the coroner has commenced an investigation notice of the coronial process must be provided to the next of kin of the deceased person and to certain other persons who have or may have an interest in the investigation.

[25]. *Autopsies* – A coroner may require an autopsy to be performed and may impose conditions on the manner in which an autopsy is performed.

[26]. *Objection to autopsy* – Deals with objections by the senior next of kin (defined in section 3) to an autopsy. However, if it is appropriate, the coroner could direct that an autopsy be performed immediately and the autopsy could occur before a senior next of kin is even located. (*Also note clause 79 concerning appeals to the Supreme Court*).

[37]. The coroner or the Chief Commissioner of Police may take reasonable steps to restrict access to the place where the death occurred, or reasonably connected to the place where the death occurred. It is an offence to enter a restricted place.

[43 to 46]. *Exhumation* – Deals with exhumation of a body on application or on the coroner's own motion. (Also refer to section 81 concerning appeals to the Supreme Court).

[50]. The privilege against self-incrimination applies in relation to certain provisions under the Bill. The privilege does not apply to the requirement to produce documents required to be produced under the Act (Refer also to clause 57).

[52]. A coroner may hold an inquest into any death the coroner is investigating and provides for the circumstances where a coroner must conduct an inquest and the process regarding when a person requests a coroner to conduct an inquest.

Privilege against self-incrimination

[57]. A coroner may require a person to give evidence despite that evidence being incriminating. The clause also provides for the coroner to provide a certificate in respect of the evidence.

Note: *The provision is based on (and consistent with) section 128 of the Evidence Act 2008 and protects the person giving the evidence from any legal proceedings that they may have been liable to as a consequence of the giving of the evidence.*

[58]. *Legal professional privilege* – Clarifies that this Act does not affect legal professional privilege.

[59]. *Warrant to arrest* – A coroner may issue a warrant to arrest a person in certain situations, such as failure to attend before the coroner or produce documents.

Part 7 – Appeals to the Supreme Court

[78 to 88]. Part 7 provides for appeals to the Trial Division of the Supreme Court on a question of law and on application seeking judicial review of decisions made by coroners.

[78]. A person may appeal in relation to a decision of a coroner that a death is not a reportable death.

[79]. The senior next of kin may appeal against a decision of a coroner to perform an autopsy or not to perform an autopsy (clause 27).

[81]. The senior next of kin may appeal a decision in relation to an exhumation authorisation.

[82]. A person who requested that the coroner hold an inquest may appeal in relation to a decision of a coroner not to hold an inquest.

[83]. A person with a sufficient interest in an investigation may appeal with regard to the findings of a coroner.

[84]. Provides for an appeal against the refusal by the coroner to re open an investigation.

[85]. Provides for an appeal against an order to release the body of the deceased.

The Coroners Court

[89 to 108]. Part 8 provides for the establishment of the Coroners Court as an inquisitorial court consisting of the coroners and registrars. A coroner and registrar have the same protection and immunity as a Judge of the Supreme Court.

[103]. Deals with contempt of court in a variety of situations including where a person wilfully fails to comply with a summons or order of the Court and establishes the process for dealing with contempt and notes that the rules of evidence apply in relation to the exercise of powers under the clause. A person convicted of contempt may appeal to the Court of Appeal.

[109 to 113]. Part 9 provides for the establishment of the Coronial Council of Victoria and provides for the functions of the Coronial Council.

[120]. Provides for the *Coroners Act 1985* being renamed the *Victorian Institute of Forensic Medicine Act 1985*. This name reflects that the 1985 Act will only relate to the Institute.

[123]. Repeals provisions that are not relevant to the Institute or that are being replaced by the new Act in respect to the Coroners Court.

[129]. Provides for consequential amendments set out in the items of Schedule 2.

Charter Report

Partial exemption from Charter – Obligation to act compatibly with and give proper consideration to human rights – Extent of exemption – Whether exceptional circumstances

The Committee notes that clause 129 and item 5 of Schedule 2, amending s. 3 of the Charter includes the Coroners Court within the Charter's definition of 'court'. This has the effect of exempting the Coroners Court from the Charter's definition of 'public authority' when it is not acting in an administrative capacity,⁴ and thus from the Charter requirement that it act compatibly with and give proper consideration to human rights.⁵

The Statement of Compatibility remarks:

When acting in an administrative capacity, the Coroners Court will be a public authority and will be bound by section 38 of the Charter. Further, statutory provisions and discretions in the bill will need to be interpreted, where possible, compatibly with the human rights set out in the Charter.

The Committee observes that coroners are presently bound by Charter s. 38 in all of their capacities and that interpretation of statutory discretions under Charter s. 32 will not necessarily produce the same requirement.

The Committee considers that the Charter's general protections should not be removed except in exceptional circumstances.⁶ The exemption of other courts and tribunals from Charter s. 38 in their non-administrative capacities has the purpose of avoiding constitutional problems arising from Australia's unified common law and preventing the Charter from affecting private disputes. However, these purposes do not appear to be served by

⁴ Charter s. 4(1)(j) provides that the definition of public authority 'does not include... a court or tribunal except when it is acting in an administrative capacity'.

⁵ Charter s. 38(1) provides that 'it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.'

⁶ Charter s. 31(4) provides that 'It is the intention of Parliament that an override declaration [which has the effect of removing the application of the Charter from a statutory provision] will only be made in exceptional circumstances'.

exempting the Coroners Court, which neither develops the common law nor adjudicates private disputes. The Committee is also concerned that the meaning of 'administrative capacity' may be unclear in the context of an inquisitorial court.

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

- 1. What capacities of the Coroners Court are non-administrative?***
- 2. What exceptional circumstances exist for exempting the Coroners Court in those capacities from the Charter's obligation to act compatibly with and give proper consideration to human rights?***

Pending the Minister's response, the Committee draws attention to clause 129 and item 5 of Schedule 2.

Rights of criminal defendants – Trial and punishment for contempt – Adoption of any procedure that the coroner sees fit

The Committee notes that clause 103 provides that the Coroners Court may find a person guilty of contempt and may commit an offender to prison or impose a fine. Clause 103(4) provides that, once a coroner has informed a defendant of a charge, the coroner 'may adopt any procedure that the coroner thinks fit'.

The Committee is concerned that the procedures adopted by the coroner for trying and sentencing contempt under clause 103(4) may fall short of Charter rights of criminal defendants.⁷ The Supreme Court recently held that an identical provision permits VCAT to commit people charged with contempt to prison in their absence.⁸ By contrast, the Magistrates' Court is not permitted to impose any custodial sentence in the absence of the defendant.⁹

The Committee will write to the Minister seeking further information as to whether the Coroners Court can adopt procedures under clause 103(4) that fall short of the Charter rights of criminal defendants. Pending the Minister's response, the Committee draws attention to clause 103(4).

The Committee makes no further comment.

⁷ Charter ss. 24 & 25.

⁸ *Devine v Victorian Civil and Administrative Tribunal* [2008] VSC 410. Charter s. 25(2)(d) entitles defendants 'to be tried in person...'.

⁹ *Magistrates Court Act 1989*, s. 41(4).

Education and Training Reform Further Amendment Bill 2008

| | |
|---------------------------------|------------------------|
| Introduced | 7 October 2008 |
| Second Reading Speech | 9 October 2008 |
| 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* to –

- create an executive class of employees within the teaching service and provide for matters relating to that employment;
- provide for a process to deal with the unsatisfactory performance of employees in the teaching service
- broaden and clarify the orders that may be made by the Disciplinary Appeals Board in respect to a termination of employment decision.

Content and Committee comment

[Clauses]

[12]. Inserts new Division 9A of Part 2.4 to provide a new process for managing unsatisfactory performance of school based employees.

If the Secretary determines that there has been unsatisfactory performance by an employee, the Secretary may reprimand the employee, reduce the employee's classification or terminate the employee's employment.

The Secretary must give written notice to an employee of a determination made in respect of that employee and any action taken against him or her and of the employee's right of appeal to a Disciplinary Appeals Board.

[13 and 14]. Amend Division 10 to remove references to 'inefficiency' so that the Division will now apply only to misconduct.

[16]. Amends section 2.4.68(1) to enable the Disciplinary Appeals Board to hear appeals against determinations by the Secretary under new Division 9A inserted by [12] above.

[17]. Substitutes section 2.4.69 to allow the Disciplinary Appeals Board to order that an employee be reinstated to the teaching service and be paid an amount for loss of salary.

The Committee makes no further comment.

Fundraising Appeals and Consumer Acts Amendment Bill 2008

| | |
|---------------------------------|-------------------------------|
| Introduced | 7 October 2008 |
| Second Reading Speech | 9 October 2008 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Tony Robinson MLA |
| Portfolio responsibility | Minister for Consumer Affairs |

Purpose

The Bill amends the *Fundraising Appeals Act 1998* to —

- rename the Act as the *Fundraising Act 1998*;
- insert an object provision;
- in respect to the disclosure requirements of fundraisers to require the portion of funds received for the supply of goods or services that are to be directed to fundraising to be disclosed;
- enable the Director to reduce the duration of a fundraiser's registration.

The Bill also makes consequential and miscellaneous amendments to several other Acts including the —

- *Goods Act 1958* in relation to contracts of sale for goods forming part of a bulk quantity and to the *Warehousemen's Liens Act 1958* in relation to such goods that are deposited with warehousemen;
- *Conveyancers Act 2006* to provide that any dealing of a thing that is subject to an embargo notice (section 168) is void;
- *Liquor Control Reform Act 1998* in relation to the power to make regulations with respect to security cameras in high risk licensed premises.

Content and Committee comment

[Clauses]

[16]. Amends section 33J to enable a person to apply to the VCAT for review of the Director's decision to impose conditions concerning the manner in which disclosure must be made in respect to the portion of funds to be directed to fundraising (new section 12A) and a decision to reduce the duration of a person's registration as a fundraiser.

The Committee makes no further comment.

Gambling Legislation Amendment (Responsible Gambling and Other Measures) Bill 2008

| | |
|---------------------------------|------------------------|
| Introduced | 7 October 2008 |
| Second Reading Speech | 9 October 2008 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Tony Robinson MLA |
| Portfolio responsibility | Minister for Gaming |

Purpose

The Bill amends the *Gambling Regulation Act 2003* (the 'Act') to –

- consolidate offences in relation to minors;
- provide for the banning of irresponsible gambling products and practices;
- reform the regulation of the conduct of bingo by or on behalf of community or charitable organisations;
- clarify the Secretary's powers in relation to wagering and betting licensing and keno licensing;
- make other miscellaneous amendments;

The Bill also makes consequential amendments to the *Casino Control Act 1991* and the *Racing Act 1958*.

Content and Committee comment

[Clauses]

[2]. The provisions in the Bill (other than Parts 2, 3 and 4) comes into operation on Royal Assent. Part 3 will come into operation on the first anniversary of the day on which the Bill receives Royal Assent.

Parts 2 and 4 come into operation on proclamation but not later than by 1 January 2010.

Delayed commencement – Inappropriate delegation of legislative power

In respect to Parts 2 and 4 the Committee refers to its Practice Note No. 1 concerning delayed commencement provisions exceeding one year from introduction in the Parliament. In such circumstances the Committee will seek to ensure that Parliament has sufficient information to determine whether a delay in commencement is justified. The Committee will seek further information from the Minister.

[5]. Inserts a new Part 5A. The Minister may make interim or fixed term ban orders concerning the banning of irresponsible gambling products and practices. A fixed term ban order is disallowable by a House of the Parliament.

No compensation is payable by the State for any loss, damage or injury of any kind suffered by any person arising from either an interim or fixed term ban order.

[30]. *Evidentiary provision* – Inserts a new section 10.5.32(1A) to provide that in proceedings under a gaming Act an assertion about the age of a person is evidence of the truth of the assertion unless denied by the defendant.

[31]. *Minors*– Inserts a new Part 7 into Chapter 10 of the Act which consolidates provisions in relation to gambling by minors.

New section 10.7.3 provides for offences in respect of allowing a minor to gamble.

New section 10.7.4 makes it an offence to knowingly assist or enable a minor to gamble, to obtain entry to or remain in a gaming machine area of an approved venue or in a casino.

New section 10.7.5 makes it an offence for a minor to gamble.

New section 10.7.6 makes it an offence for a venue operator to allow a minor to enter the gaming machine area of the approved venue or for a casino operator to allow a minor to enter the casino. The section also makes it an offence for a gambling employee of a venue or casino operator to knowingly allow a minor to enter a gaming machine area of an approved venue or casino.

New section 10.7.7 makes it an offence for a minor to enter or remain in a gaming machine area of an approved venue or in a casino

New section 10.7.8 makes it an offence for a minor to use false evidence of age in order to gamble, to enter or remain in a gaming machine area of an approved venue, or to enter or remain in a casino.

New section 10.7.12 specifies defences that are available to a prosecution for some of the new offences.

Note: *It is a defence to a prosecution for an offence under section 10.7.3, 10.7.4 or 10.7.6 if the minor was above the age of 14 years at the time the acts constituting the offence were committed; and immediately before the acts constituting the offence were committed, there was produced to the defendant acceptable proof of age for the minor.*

New section 10.7.13 provides that proof of age may be required where an authorised person has reasonable cause to suspect that a person in an approved venue or a casino is a minor.

Presumption of innocence – Strict liability offences – Defence requires reverse onus to establish evidentiary matters – Reasonable steps to ensure compliance – Regulatory scheme preventing minors from gambling

The Committee notes that in a gaming prosecution the defendant may deny any assertion as to age and thereby require the prosecution to prove the assertion (see clause 30 above). The Committee notes that the purpose of the provisions is to prevent under-age gambling and that to ensure the efficacy of the regulatory scheme in these circumstances it is justifiable that a prosecution should succeed unless a defendant is able to establish on the balance of probabilities that they had taken reasonable steps to ensure compliance.

The Committee notes this extract from the Statement of Compatibility –

An objective of providing this defence is to encourage a culture of preventative diligence, by incentivising the checking for proof of age in circumstances where a person's age is questionable.

The Committee makes no further comment.

Liquor Control Reform Amendment Bill 2008

| | |
|---------------------------------|-------------------------------|
| Introduced | 7 October 2008 |
| Second Reading Speech | 9 October 2008 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Tony Robinson MLA |
| Portfolio responsibility | Minister for Consumer Affairs |

Purpose

The Bill amends the *Liquor Control Reform Act 1998* (the 'Act') in relation to late-hour entry declarations. The amendments modify the declaration process and enable licensees to apply for an exemption from the application of the late-hour entry declaration. The Director of liquor licensing will determine the exemption application and the refusal to grant an exemption will be reviewable by the VCAT.

Content and Committee comment

[Clauses]

[5]. Substitutes a new Division 7A of Part 2 dealing with late hour entry declarations.

New section 58C deals with temporary late hour entry declarations and 58D deals with late hour entry declarations.

New section 58F provides for a licensee to make an application for an exemption from a late hour entry declaration.

New section 58G provides for the power of the Director to determine an application for exemption. The Director must consult the Chief Commissioner of Police before exempting licensed premises from a late hour entry declaration.

[6]. Substitutes a new section 87A to authorise a licensee to apply to the VCAT for the review of a decision by the Director of Liquor Licensing under section 58G to refuse an application to exempt premises from a late hour entry declaration. The declaration has effect until the decision of the Tribunal takes effect.

The Committee makes no further comment.

Major Crime (Investigative Powers) and Other Acts Amendment Bill 2008

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

Purpose

The Bill amends the –

- *Major Crime (Investigative Powers) Act 2004*

Note: *The Act enables the Chief Examiner to issue a summons to examine persons in relation to an organised crime offence. Section 49 allows the Chief Examiner to charge a person with contempt for refusing or failing to produce a document or answer a question or engage in conduct that would be contempt of the Supreme Court. Section 50 prevents a person from being punished both for contempt under section 49 and another breach of that Act for the same act or omission. Both sections 49 and 50 contain provisions that would operate to sunset those sections on 1 January 2009. The amendments in this Bill extend the operation of sections 49 and 50 until 1 January 2012.*

- *Police Integrity Act 2008 and Police Regulation Act 1958 to –*
- provide the Director, Police Integrity or a member of staff of the Office of Police Integrity ("OPI") with a power to commence criminal proceedings arising out of OPI investigations;
- clarify who are "protected persons" and the circumstances in which these persons can be called to give evidence. (*Refer to section 85 of the Constitution Act 1975 report below*).
- *Whistleblowers Protection Act 2001*

Note: *The Act gives the Director, Police Integrity extensive powers to investigate disclosures made under that Act concerning the Chief Commissioner or any member of the police force. Those powers include the power to issue a summons under section 17 of the Evidence Act 1958 to a person to produce any document or appear as a witness to be questioned.*

Section 61H of the Act enabled the Director to punish a person for failing to produce a document or attend and answer questions in accordance with that summons or engage in conduct that would constitute a contempt of court. That provision enabled the issue of a warrant for that person to be arrested and brought before the Supreme Court. Section 61I prevented a person being liable for offences under both section 61H and the Evidence Act 1958. These powers were essentially identical to the powers of the Director to punish for contempt in an investigation under sections 86KB to KD of the PRA or the powers of the Chief Examiner to punish for contempt under sections 49 and 50 of the Major Crime (Investigative Powers) Act 2004.

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

Note: *This Bill was originally part of the Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008 and was split on 9 October 2008 in the Legislative Assembly. The Committee considered the original Bill in Alert Digest No. 12 of 2008.*

Content and Committee comment

[Clauses]

[2]. The majority of the provisions in the Bill come into operation on the day after Royal Assent. Division 1 of Part 3 (clauses 4 to 8) commences on the day on which section 104 of the *Police Integrity Act 2008* comes into operation.

Police Integrity Act 2008

[5]. Amends section 104 of the *Police Integrity Act 2008*, which defines protected person to extend the application of the protection to include former protected persons, such as the former Director and former members of OPI staff. (Refer to section 85 of the *Constitution Act 1975* report below).

[7]. Declares that it is the intention of section 109 of the *Police Integrity Act 2008*, as it applies after the commencement of clause 5, to alter or vary section 85 of the *Constitution Act 1975*. (Refer to section 85 of the *Constitution Act 1975* report below).

Police Regulation Act 1958

[9]. Amends section 85KE of the Act to replicate the provision in clause 5 above. (Refer to section 85 of the *Constitution Act 1975* report below).

[12]. Declares that it is the intention of section 86KJ, as it applies after the commencement of clause 9, to alter or vary section 85 of the *Constitution Act 1975*. (Refer to section 85 of the *Constitution Act 1975* report below).

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

The Second Reading Speech provides –

While the amendment to the definition of 'protected person' will clarify the current law, it will alter or vary section 85 of the Constitution Act 1975. Accordingly, I wish to make a statement under section 85 of the Constitution Act 1975 of the reasons for altering or varying that section pursuant to the Police Regulation Act 1958.

Clause 48 of the Bill will insert a new section 129A(6) in the Police Regulation Act 1958. It will provide that it is the intention of section 86KJ of the Police Regulation Act 1958 as it applies on and after the commencement of clause 45 of the Bill to alter or vary section 85 of the Constitution Act 1975.*

Clause 45 of the Bill will amend the definition of 'protected person' in section 86KE of the Police Regulation Act 1958. Section 86KE currently defines a 'protected person' in the present tense as someone falling into a category listed in subsections (a) to (e).*

The Bill will amend section 86KE to confirm that the definition of 'protected person' includes someone who previously fell into one of the listed categories.

This amendment will widen the scope of section 86KJ, which currently provides that proceedings against a 'protected person' are limited to acts done in bad faith. The amendment to section 86KE will ensure that a former protected person is entitled to protection under the Police Regulation Act 1958. In this way, the amended definition of a 'protected person' will expand the class of persons to whom the section 86KJ protection applies.

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

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

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

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

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

** In this Bill (the split Bill) the clauses respectively are clause 12 (former clause 48), clause 9 (former clause 45), clause 5 (former clause 41) and clause 7 (former clause 43).*

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

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

The Committee makes no further comment.

Police Regulation Amendment Bill 2008

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

Purpose

This Bill amends the *Police Regulation Act 1958* (the 'Act') to —

- reform the police discipline arrangements in the Act to remove a formal charge and inquiry process and substitute a model that is focussed on a remedial approach whilst retaining the ability to dismiss members who are unsuitable to remain in the police force for reasons of misconduct or underperformance;
- clarify the supervisory capacity of the Chief Commissioner of Police with respect to members of the police force and to improve the management of the performance and conduct of police members;
- improve procedures for the State to assume liability in civil actions against police members arising from the performance of their functions.

Note: *This Bill was originally part of the Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008 and was split on 9 October 2008 in the Legislative Assembly. The Committee considered the original Bill in Alert Digest No. 12 of 2008.*

Inquiry and call for submissions – Dismissal for want of confidence

The Committee has invited key peak bodies and persons to make submissions by Friday 7 November 2008. The inquiry concerns amendments made by this Bill to the *Police Regulation Act 1958*. Clause 18 of the Bill amends section 68D of the Act effectively removing the ability of the Police Appeals Board to order the Chief Commissioner to re-instate an applicant officer where on appeal the Board concludes that the dismissal was not *sound, defensible or well-founded*. The only remedy available to the Board in such circumstances is to order the Chief Commissioner to pay 12 months remuneration to the applicant.

The Committee has invited submissions in accordance with its terms of reference as to whether the removal of the re-instatement remedy by the Police Appeals Board in cases of dismissal for want of confidence is an undue trespass to rights or freedom; or is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities Act 2006.

Written submissions received

The Committee received written submissions from –

- Human Rights Law Resource Centre Ltd.
- The Chief Commissioner of Police*

The Committee has determined to publish the submissions on its Website.

**Please find the Chief Commissioner's submission attached to this report as Appendix 4.*

Content and Committee comment

[Clauses]

Dismissal for want of confidence

[18]. Amends sections 68A to 68D dealing with the Chief Commissioner's powers of dismissal of unsuitable members for want of confidence.

Note: *Section 68 provides that the Chief Commissioner may by written order dismiss a member of the force if he or she is satisfied that the member is unsuitable to continue as a member having regard to the member's integrity and the potential loss of community confidence in the force were the member to continue in the force. The Chief Commissioner must give the member an opportunity to make a written submission in relation to the proposed dismissal and the notice of intention to dismiss and the order dismissing the member must set out the reasons for the notice or order. New section 6A(1AA) allows the Chief Commissioner to delegate this power to a Deputy Commissioner (see clause 6).*

Section 68D is amended to require the Police Appeals Board (the 'Board') to confirm the decision of the Chief Commissioner to dismiss a police member under section 68 unless the decision is not sound, defensible or well-founded. However the Board may order the payment of compensation of up to 12 months remuneration if it is satisfied that the decision to dismiss the member was not sound, defensible or well-founded.

Note: *The power of the Board to order reinstatement is removed as is the power to remit the matter back to the Chief Commissioner with recommendations or directions.*

[19]. Substitutes a new Division 2 of Part IV (new sections 69 to 78B).

Misconduct

New section 69 defines the term misconduct for the purposes of the PRA.

New section 70 empowers the Chief Commissioner to investigate a member who may have engaged in misconduct.

New section 71 provides that if an investigation under section 70 reveals that the police member has engaged in misconduct and the nature or circumstances of the misconduct warrant the dismissal of the member; or the member has had an offence against the law of Victoria or another jurisdiction found proven against him or her the Chief Commissioner may give a written notice to the member requiring the member to "show cause" why he or she should not be dismissed.

New section 72 allows the Chief Commissioner to dismiss a police member if, after giving a show cause notice under section 71, the Chief Commissioner is satisfied that the police member has engaged in misconduct and the nature or circumstances of that misconduct warrant dismissal.

New section 73 allows the Chief Commissioner to take remedial action in respect of a police member if, after giving a show cause notice under section 71, the Chief Commissioner is satisfied that the member has engaged in misconduct but is not satisfied that the member's misconduct warrants dismissal.

New section 74 gives protection to any disclosures, admissions or documents produced for the purposes of a misconduct procedure so that they are not admissible in any court proceedings or before any person acting judicially except in certain cases.

Underperformance

New section 75 empowers the Chief Commissioner to investigate a member in underperformance circumstances.

New section 77 allows the Chief Commissioner to dismiss a member of the force if, after giving a show cause notice under section 76, the Chief Commissioner remains satisfied that the member has failed to comply with a requirement of his or her performance management plan or a requirement of a remedial plan and that dismissal is warranted.

[20]. Substitutes a new section 80 to provide that the Chief Commissioner is not prevented from dismissing a member under section 68 (want of confidence) or dismissing the member or taking remedial action against the member for misconduct or underperformance in the event that the member is being investigated for a breach of the criminal law; or has been charged with an offence and the determination of that offence by a court is pending.

[21]. *Information to be provided* – Substitutes a new Division 4 of Part IV (new section 82) to allow the Chief Commissioner to direct any member of the force to provide any relevant information, produce any relevant document or answer any relevant question considered necessary for the purposes of determining whether to dismiss a member under section 68; or an investigation or assessment under section 70 or section 75; or determining whether to dismiss a police member under section 72 or section 77 or take remedial action against a member of the force under section 73 or 78.

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

However any information, document or answer given under this section is not admissible in any court proceedings or before any person acting judicially, unless the proceedings are for perjury or in certain defined circumstances.

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

The grounds for the Board to review the Chief Commissioner's decision to dismiss the police member are that the decision was harsh, unjust or unreasonable. [26]. Provides for the powers and remedies available to the Board on a termination or dismissal review.

[31]. *Civil proceedings for torts* – Inserts a new Part VID (new sections 118ZB to 118ZG) dealing with civil proceedings for damages against members of the police force. New section 118ZE prevents a court from finding that the Crown is vicariously liable if the conduct by the member concerned giving rise to the tort was serious and wilful misconduct or was not committed by the member in the performance or purported performance of his or her duties or the performance of an independent function.

The Committee makes no further comment.

Primary Industries Legislation Amendment Bill 2008

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|---------------------------------|--------------------------|
| Introduced | 7 October 2008 |
| Second Reading Speech | 9 October 2008 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Joe Helper MLA |
| Portfolio responsibility | Minister for Agriculture |

Purpose

The Bill amends the —

- *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* to —
 - make changes to definitions relating to maximum residue limits for certain substances;
 - remove the requirement for aerial sprayers to hold approved insurance policies;
 - insert offences for selling contaminated produce and breaching authority conditions;
 - remove the power of entry and inspection with consent;
- *Catchment and Land Protection Act 1994* to expand and clarify enforcement powers under that Act;
- *Domestic (Feral and Nuisance) Animals Act 1994* to —
 - amend provisions of that Act relating to dog attacks;
 - amend the requirements relating to the preparation of domestic animal management plans;
- *Fisheries Act 1995* to —
 - replace consultative arrangements under that Act;
 - provide for more effective management and protection of fish and protected aquatic biota;
- *Livestock Disease Control Act 1994* (the ‘Livestock Act’) to —
 - increase penalties for various offences under that Act;
 - clarify and amend certain provisions in that Act relating to disease control;
 - insert strict liability offences relating to the control of exotic diseases;
 - remove the requirement for chicken hatcheries to be licensed;
 - clarify and expand certain powers of inspectors under that Act;
 - provide for additional offences that may be the subject of infringement notices;
 - increase the maximum penalty for offences prescribed under the regulations;
- *Prevention of Cruelty to Animals Act 1986* to clarify the powers of specialist inspectors under that Act and make minor amendments to that Act;
- *Veterinary Practice Act 1997* to implement the model for National Recognition of Veterinary Registration to allow veterinary practitioners who hold a right to carry on or engage in veterinary practice in another State or a Territory to practise as a veterinary practitioner in Victoria without the need for separate registration in Victoria by deeming them to be registered under that Act.

Content and Committee comment

[Clauses]

[2]. The majority of the provisions in the Bill come into force on Royal Assent the remaining provisions have a forced commencement provision of not later than by 1 December 2009.

[50]. Subclause (5) amends the definition of 'priority species' in section 4 of the *Fisheries Act 1995* to include Murray cod as a priority species. Taking a commercial quantity of a priority species is an indictable offence under the Act. The commercial quantity of Murray cod is inserted by subclause (3).

Charter – Distinct cultural rights of Aboriginal persons – Traditional laws and customs – Fishing limitations on commercial quantities of Murray cod

The Committee notes the Statement of Compatibility concerning the engagement of the Charter in respect to cultural rights of aboriginal persons and the necessity to restrict the taking of commercial quantities of the Murray cod to adequately protect the species.

The Committee notes this extract from the Statement –

Aboriginal persons will only be prevented from taking Murray cod in commercial quantities without a permit...Aboriginal persons will not be prevented from taking a commercial quantity of Murray cod for cultural or other persons where they hold a general permit under section 49 of the Fisheries Act.

Notes: 1. Section 49(h) of the *Fisheries Act 1995* authorise the Secretary to issue a general permit to a person to take fish (in areas where recreational fishing is authorised under the Act) for a specified indigenous cultural ceremony or event.

2. 'priority species' are (after the amendment) 'abalone, rock lobster and Murray cod' and those species specified by regulation (see section 4(1)).

[68]. *Strict liability – Reverse onus* – Amends section 116 of the *Fisheries Act 1995* to include in the offence to possess or sell fish taken in contravention of the Act or a corresponding State or Commonwealth law, fish "otherwise dealt with". A definition of otherwise dealt with is included in a new subsection (3). (*Refer to Charter Report*).

[83 to 87]. Amends sections 25, 27, 28, 30 and 33 in the *Livestock Disease Control Act 1994* to insert strict liability offences for non-compliance with livestock disease control measures restricting the movement of livestock and livestock products into an out of declared infected places, restricted areas, control areas as well as the importation of livestock and livestock products into Victoria. Movement is permitted by permit issued by an inspector or in accordance with the relevant notice issued under the Act.

Charter Report

Statement of compatibility – Complex bill – Comprehensive and helpful analysis

The Committee notes that the *Primary Industries Legislation Amendment Bill 2008* is a complex bill, involving multiple amendments of other statutes and engaging numerous Charter rights. The Committee observes that the statement of compatibility for the bill provides a comprehensive and helpful analysis of the rights issues it raises.

The Committee will write to the Minister commending him on the exemplary statement of compatibility for this bill.

Presumption of innocence – Arbitrary detention – Offence of possessing or selling a fish taken or dealt with illegally – Penalty of six months imprisonment – Defendant must prove lack of knowledge of the illegality and the reasonableness of that lack of knowledge – Whether reasonable limit – Adequacy of section heading

The Committee notes that clause 68 extends the offence of possessing or selling an illegally taken fish in s. 116 of the *Fisheries Act 1995* to include the possession or sale of a fish 'otherwise dealt with' in contravention of any Australian law. This extension will make it a criminal offence to possess or sell a fish that has ever been fished, farmed, stocked, possessed, transported, processed, sold or disposed of in breach of any Australian law. Once such possession has been established, the defendant can only avoid a conviction (and a possible sentence of six months imprisonment) if he or she can prove, on the balance of probabilities, that he or she neither knew nor ought to have known of the illegality. The Committee considers that clause 68 engages the Charter rights of criminal defendants to be presumed innocent¹⁰ and to be free from arbitrary detention.¹¹

The Statement of Compatibility remarks:

The burden of proof is imposed in respect of an affirmative defence only, and does not apply to essential elements of the offences. Further, before the defence could apply, the prosecution would have to establish that the accused has failed to comply with section 116. The facts which an accused would need to prove in order to avail himself or herself of the defence are peculiarly in the knowledge of the accused and would be difficult for the prosecution to prove.

The Committee observes that a person can 'fail to comply' with s. 116 merely by possessing a fish, even if the person knows nothing about how that fish was previously dealt with. So, the offence is considerably broader than the usual regulatory offences that typically attract reverse onus defences. In particular, it is not limited to people involved in the fishing industry but rather extends to ordinary end sellers and consumers (such as workers and shoppers at a supermarket). Such people may find establishing an affirmative defence (containing both objective and subjective elements and concerning a breach of any law in Australia in relation to anything ever done with the fish) to the civil standard confusing, distressing, difficult and expensive.

The Statement of Compatibility remarks:

Although an evidential onus would be less restrictive upon the right to be presumed innocent, it would not be as effective in achieving the purpose of ensuring the effectiveness of the regulatory scheme created by the Fisheries Act. Enabling an accused merely to point to or adduce sufficient evidence to raise the defence would undermine the effectiveness of the offences.

The Committee is concerned that people may be convicted of the offence and sentenced to prison despite evidence raising a reasonable doubt about whether or not they have any knowledge about the illegality affecting their fish. Such outcomes may not advance (or significantly advance) the effective regulation of fisheries or fish. The Committee also notes that the headings of the existing offence – 'Sale of fish taken in contravention of this Act or corresponding law' – and clause 68 do not adequately describe the scope of the offence, which extends to the possession of such fish. Overseas courts have held that adequate notification of laws is an essential precondition for any law that limits a human right.¹² The Committee considers that it should be made clear that mere possession of a fish, with no

¹⁰ Charter s. 25(1)

¹¹ Charter s. 21(2)

¹² *Sunday Times v United Kingdom*, [1979] ECHR 1, [49]

intention to sell, may expose the possessor to liability and imprisonment in the absence of an affirmative defence.

The Committee therefore considers that clause 68 may be incompatible with the Charter.

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

- 1. Whether or not clause 68, by requiring people who possess fish that anyone has dealt with illegally to prove that they didn't know of that illegality and that it was reasonable for them not to know (or face a conviction and possible imprisonment) limits their Charter rights to be presumed innocent and to not be arbitrarily detained?***
- 2. If so, whether or not clause 68 is a reasonable and demonstrably justified limit on their Charter rights according to the test in Charter s. 7(2)?¹³***

The Committee will write to the Minister concerning the headings to clause 68 and s. 116 of the Fisheries Act 1995.

The Committee makes no further comment.

¹³ Charter s. 7(2) provides that human rights 'may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom...'

Prostitution Control and Other Matters Amendment Bill 2008

| | |
|---------------------------------|-------------------------------|
| Introduced | 7 October 2008 |
| Second Reading Speech | 9 October 2008 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Tony Robinson MLA |
| Portfolio responsibility | Minister for Consumer Affairs |

Purpose

The Bill amends the *Prostitution Control Act 1994* (the 'Act') to –

- amend the definition of brothel and escort agency to include premises that offer (rather than provide) sexual services.
- clarify the kinds of evidence that agencies can use to show that sexual services were on offer when seeking an order to declare premises an illegal brothel.
- widen the range of police members (to the rank of senior sergeant) who may apply for a warrant to search suspected illegal brothel premises.
- introduce an effective control test for licensees to ensure that the person who has met the license requirements is the person effectively controlling the business.

The Bill also amends the *Second-Hand Dealers and Pawnbrokers Act 1989* to clarify the powers of police to obtain hard copy records from electronic record-keeping systems under that Act, during general inspections.

Content and Committee comment

[Clauses]

[2]. Provides that the Bill comes into operation on the day after the day on which it receives the Royal Assent, aside from the sections which are to come into effect on proclamation, with default commencement dates of 1 March 2009. Sections 6, 7(1), 7(2) and 8 have a default commencement provision of 1 January 2010.

Delayed commencement – Inappropriate delegation of legislative power

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

[7]. *Self-incrimination* – Provides that the failure to exercise effective control over a prostitution business is grounds for automatic cancellation of a licence, and makes it an offence to fail (without reasonable excuse) to notify the Business Licensing Authority if any of the grounds for automatic cancellation of a licence arises (these are court findings set out in section 47(1) of the Act). (*Concerning Charter issues refer to the Statement of Compatibility*).

The Committee makes no further comment.

Racing and Gambling Legislation Amendment Bill 2008

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|---------------------------------|----------------------|
| Introduced | 7 October 2008 |
| Second Reading Speech | 9 October 2008 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Rob Hulls MLA |
| Portfolio responsibility | Minister for Racing |

Purpose

The Bill amends the *Racing Act 1958*, the *Gambling Regulation Act 2003* and the *Instruments Act 1958* to —

- allow bookmakers to conduct internet and telephone betting operations at any time from approved racecourse locations (on-course betting);
- transfer responsibility for the registration of bookmakers and bookmaker's key employees to the Victorian Commission for Gambling Regulation (the Commission. This function is currently performed by the Bookmakers and Bookmakers' Clerks Registration Committee;
- permit corporations to act as bookmakers (in keeping with other jurisdictions).

Content and Committee comment

[Clauses]

[5]. Amends the *Racing Act 1958* to allow bookmakers to conduct internet and telephone betting operations at any time from approved racecourse locations.

[27]. Provides for review by the VCAT of Commission decisions concerning registrations as a bookmaker or bookmaker's key employee.

The Committee makes no further comment.

Sheriff Bill 2008

| | |
|---------------------------------|----------------------|
| Introduced | 7 October 2008 |
| Second Reading Speech | 9 October 2008 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Rob Hulls MLA |
| Portfolio responsibility | Attorney-General |

Purpose

The Bill provides a legislative framework for the appointment of the sheriff, deputy sheriff and sheriff's officers and their functions, powers and duties.

Note: The Second Reading Speech provides – *The Victorian Office of the Sheriff maintains a relevant role by enforcing and executing criminal, in addition to civil warrants. The sheriff is responsible for warrants for non-payment of fines, including failure to pay infringement notices for 'on-the-spot' fines registered as Infringements Court Orders, and failure to pay fines imposed by a court. In 2006-07, over 900,000 warrants were issued. Approximately 155 Sheriff's Officers are responsible for actioning the warrants and enforce sanctions against those who do not comply with court orders.*

Content and Committee comment

[Clauses]

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

Delayed commencement – Inappropriate delegation of legislative power

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

[15]. *Power of arrest* – the sheriff may arrest a person named or described in a criminal warrant authorising arrest, or a person as provided for under relevant court and enforcement legislation (*Refer to Statement of Compatibility*).

[16]. *Power to restrain* – the sheriff may temporarily restrain a person hindering the execution of a warrant. This power is limited on the basis that the person must be released as soon as the activity that the person was hindering is completed.

[17]. *Power to enter premises to serve seven day notice* – the sheriff may enter premises for the purposes of serving a seven day demand if the sheriff reasonably believes that a person named or described in a warrant, which requires a seven day demand to be given, is at the premises.

[18]. *Power to enter and search premises to arrest person* – the sheriff may break and enter any premises where the person named or described in a criminal warrant authorising arrest is suspected to be, and to search for the person at that premises (*In respect to clauses 18 to 22 refer to Statement of Compatibility*).

[19]. *Power to search for property* – the sheriff, in the execution of a warrant that authorises the seizure of property, may enter premises for the purpose of searching for and seizing property and, after entering the premises, may search for and seize property. For the purposes of this clause, the sheriff may only enter premises occupied by the person named

or described in the warrant, or premises where the sheriff reasonably suspects there is property belonging to that person.

[20]. *Power to enter and take possession of real property* – the sheriff, in accordance with a warrant of possession, may enter premises owned by the person named or described in the warrant for the purpose of taking possession of that premises.

[21]. *Use of reasonable force* – The sheriff may use reasonable force to enter premises for the purpose of exercising powers under the Act.

[22]. *Entry requirements* – provides for the circumstances in which the sheriff may enter and use force in the execution of civil warrants, other than warrants of possession.

[23]. *Powers to seize, sell and deal with property* – provides that, subject to this Division, the sheriff may seize or take possession of recoverable property in accordance with relevant court and enforcement legislation or a warrant that authorises the seizure of property. This can occur irrespective of who has possession of the property (In respect to clauses 23 and 24 refer to Statement of Compatibility).

[24]. *Power to sell property* – provides the sheriff, subject to this Bill, with the power to sell or deal with property seized in accordance with relevant court and enforcement legislation or a warrant that authorises seizure of property. The clause outlines the purposes for which this can occur.

[25]. *Buyer obtains good title* – a person who buys seized property sold by the sheriff acquires good title if the property is bought in good faith and without notice of any defect or want of title.

[29]. *Power to request name and address* – the sheriff may request the name and ordinary place of residence or business of a person who the sheriff believes on reasonable grounds is the person named or described in a warrant to be executed. It is an offence for a person to refuse or fail to comply with a request without a reasonable excuse, state a false name, or state an address that is not correct (Refer to Statement of Compatibility).

[30]. *Road checks* – Provides that the sheriff may give directions at police road checks for a driver to pull over and remain or go to a designated spot in order to determine the identity of any person in the vehicle (Refer to Statement of Compatibility).

[32]. *Recovery of costs* – the sheriff is able to recover all reasonable costs and expenses incurred in the execution of a warrant.

[34 to 46]. Provide for the execution of more than one warrant at the same time.

[47 to 50]. *Offences* – Makes it an offence to resist the sheriff, deputy sheriff or sheriff's officer in the execution of a warrant or other process or to assault the sheriff, deputy sheriff or sheriff's officer while performing or exercising an enforcement function or power or delegated enforcement function or power. It is an offence to escape from lawful custody of the sheriff or to remove goods seized by the sheriff.

Note: *The offences do not affect the powers of the Supreme Court in relation to contempt.*

The Committee makes no further comment.

Water (Commonwealth Powers) Bill 2008

| | |
|---------------------------------|----------------------|
| Introduced | 7 October 2008 |
| Second Reading Speech | 9 October 2008 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Tim Holding MLA |
| Portfolio responsibility | Minister for Water |

Purpose

The Bill is being enacted to give effect to the Agreement on Murray-Darling Basin Reform entered into by the Commonwealth, New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory on 3 July 2008.

The Bill also amends the *Murray-Darling Basin Act 1993* to provide for the carrying out of the new Murray-Darling Basin Agreement and repeals all provisions in the Act concerning the former agreement revoked by the new agreement.

The Bill also makes consequential and related amendments to the *Murray-Darling Basin Act 1993* and *Snowy Hydro Corporatisation Act 1997*.

Note: *The Bill refers certain matters relating to the Murray-Darling Basin and other water management matters to the Commonwealth Parliament so as to enable the Commonwealth Parliament to make laws about those matters. The proposed Act will be enacted for the purposes of section 51 (xxxvii) of the Commonwealth Constitution, which enables State Parliaments to refer matters to the Commonwealth Parliament.*

Content and Committee comment

[Clauses]

[4]. Provides the references of legislative power to the Commonwealth Parliament.

[5]. Deals with the termination of the period of the references specified under clause 4 (namely, the period ending on a day fixed by the Governor by proclamation). The clause enables the period of both references to be terminated or only the period of the amendment reference.

Note Re: *The Commonwealth Act**

Water Amendment Bill 2008

Introduced into the House of Representatives on 25 September 2008

Portfolio: Climate Change and Water

Background

This bill amends the Water Act 2007 to give effect to the intergovernmental Agreement on Murray-Darling Basin Reform signed by the Commonwealth, New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory at the meeting of the Council of Australian Governments (COAG) on 3 July 2008. The bill seeks to enable water resources in the Murray-Darling Basin to be managed in the national interest.

In particular, the bill:

- *Transfers the current powers and functions of the Murray-Darling Basin Commission, as set out in the former Murray-Darling Basin Commission, to the new Murray-Darling Basin Authority;*
- *Expands the Basin Plan to include arrangements for critical human water needs for communities dependent on the River Murray System;*
- *Extends the Australian Competition and Consumer Commission's role in relation to water market rules and water charge rules; and*
- *Implements a revised Murray-Darling Basin Agreement which, among other things, establishes a new Ministerial Council and the Basin Officials Committee.*

The bill repeals the Murray-Darling Basin Act 1993; and makes consequential and technical amendments to the Legislative Instruments Act 2003, the Trade Practices Act 1974 and the Water Act 2007.

The bill also contains application and transitional provisions.

** Extract from the Senate Standing Committee for the Scrutiny of Bills, Alert Digest No. 11 (2008), published 15 October 2008 at page 40.*

The Committee makes no further comment.

Ministerial Correspondence

Abortion Law Reform Bill 2008

The Bill was introduced into the Legislative Assembly on 19 August 2008 by the Hon. Maxine Morand MLA. The Committee considered the Bill on 8 September 2008 and made the following comments in Alert Digest No. 11 of 2008 tabled in the Parliament on 9 September 2008.

Committee's Comments

Charter Report

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

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

The Explanatory Memorandum remarks:

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

The Committee observes that the consequences of clauses 5 and 7 may go further than this description. An abortion performed on a woman who is more than 24 weeks pregnant will be unlawful if either practitioner reaches an unreasonable belief that an abortion is appropriate in all the circumstances.

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

The Explanatory Memorandum remarks:

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

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

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

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

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

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

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

The Committee observes that:

- *Charter s. 48 is limited to 'any law applicable to abortion or child destruction'. The Bill is not (yet) law.*
- *Charter s. 48 provides that nothing in the Charter 'affects' a law. Statements of compatibility have no legal effect.*
- *Clause 10, in extending the definition of 'serious injury' in the Crimes Act 1958 to cover destruction of a foetus, goes beyond the current definitions of abortion and child destruction (which are presently limited to intentional conduct) to cover reckless destruction, threats to destroy, conduct causing danger of destruction, negligent destruction, and dangerous driving causing destruction of foetuses. If clause 10 is classified as a law applicable to abortion or child destruction, then its effect may be to make a number of existing criminal offences applicable to abortion or child destruction and, hence, subject to Charter s. 48, exempting them from the effects of the Charter.*

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

Minister's response

I refer to your letter of 9 September 2008 with which you enclosed a copy of the Committee's Charter Report in relation to the above Bill, contained in Alert 11 of 2008, seeking advice in relation to two matters raised in the Alert. As I introduced the Bill to the parliament, the Committee's letter has been referred to me for response.

Consequences of an "unreasonable" belief

The first issue on which the Committee seeks my advice is in relation to the outcome in a hypothetical situation, if a doctor performed an abortion on a woman who was more than 24 weeks pregnant after unreasonably forming a belief that the abortion was appropriate in all the circumstances. The Committee has asked whether such a doctor might be liable to prosecution under one of the "causing serious injury" offences in the Crimes Act, as a result of the extended meaning of "serious injury" introduced into that Act by the Bill.

Although there are six offences in the Crimes Act relating to causing serious injury, only section 16 (intentionally causing serious injury), section 17 (recklessly causing serious injury), and section 24 (negligently causing serious injury) are relevant to the hypothetical case. Section 21 (threatening to cause serious injury), section 23 (recklessly placing another in danger of serious injury) and section 319 (causing serious injury through dangerous driving) are not relevant.

The offences set out in sections 16 and 17 both relate to causing serious injury “without lawful excuse”. The offence set out in section 24 is that of causing serious injury by negligently doing or omitting to do an act.

I understand the Committee’s concern to relate to the assessment of the registered medical practitioner’s “reasonable belief”. The concept of “reasonable belief” is well established in a number of legal contexts. The term “reasonable belief” means a belief based on reasonable grounds, that is, grounds which could lead a reasonable person in the same situation to the same belief. As the Abortion Law Reform Bill is concerned with the reasonable belief of a registered medical practitioner, the assessment of whether a belief was reasonable or not will be an assessment of whether another similarly qualified medical practitioner, with similar training and experience as the medical practitioner, and in possession of the same information, would be likely to form the same belief in those circumstances.

While the hypothetical case posed by the Committee is in theory possible, in practice I consider that there is little likelihood of such a problem occurring. This is because, under clause 5 of the Bill, an abortion may only be performed on a woman who is more than 24 weeks pregnant where two registered medical practitioners each are of the reasonable belief that abortion is appropriate in all the circumstances. Given that two doctors need to form the same belief, it is highly unlikely that the treating doctor would find herself or himself in the position that her or his belief was not judged reasonable, against the prevailing standard of the medical profession, as it would already have been demonstrably supported by the second registered medical practitioner.

In contrast, were a registered medical practitioner to perform an abortion on a woman more than 24 weeks’ pregnant without consulting a second medical practitioner as envisaged by the Bill, the treating medical practitioner may in some circumstances indeed be found not to have a “lawful excuse” for her or his conduct, and so be potentially criminally liable.

Application of the Charter to Clause 10 of the Bill

The second issue on which the Committee has sought my response is in relation to the application of section 48 of the Charter of Human Rights and Responsibilities to the Bill and, in particular, whether or not clause 10 of the Bill will exempt any existing criminal offences from the effects of the Charter.

The Committee notes in Alert 11 that the amendment to the definition of “serious injury” in section 15 of the Crimes Act has the effect of extending the law relating to destruction of a foetus, through the application of the defined term in other provisions of the Crimes Act. The Committee asserts that at present the offences contained in section 10 (child destruction) and sections 65 and 66 (performing unlawful abortion and supplying the means of abortion) are limited to intentional conduct, and contrasts this with the offences contained in section 17 (recklessly causing serious injury), section 21 (threatening to cause serious injury), section 23 (recklessly placing another in danger of serious injury) section 24 (negligently causing serious injury) and section 319 (causing serious injury through dangerous driving).

The Committee has sought my advice as to whether, because the Bill extends the operation of these offences, and the extended definition of “serious injury” is a law relating to abortion and therefore exempt from the effects of the Charter, the offences contained in sections 16, 17, 21, 23, 24 and 319 of the Crimes Act are therefore now also to be considered to be laws relating to abortion and exempt from the Charter. I confirm that, to the extent that the laws relate to child destruction and abortion, they will fall within the exemption provided by section 48. Whether future amendments to those provisions are to be characterised as laws relating to child destruction and abortion will be a matter to be determined by reference to the amendments proposed.

I trust that these responses will assist the Committee in its consideration of the Bill.

Maxine Morand
Minister for Women's Affairs

7 October 2008

The Committee thanks the Minister for this response.

Dangerous Goods Amendment (Transport) Bill 2008

The Bill was introduced into the Legislative Assembly on 9 September 2008 by the Hon. Tim Holding MLA. The Committee considered the Bill on 6 October 2008 and made the following comments in Alert Digest No. 12 of 2008 tabled in the Parliament on 7 October 2008.

Committee's Comments

[2]

Delayed commencement – Inappropriate delegation of legislative power

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

Minister's response

I refer to your correspondence dated 7 October 2008 in relation to the commencement date of the Dangerous Goods (Amendment) Bill 2008. I understand Steve Palmer of my office has also discussed the Scrutiny of Acts and Regulations Committee's (the Committee) concerns with this Bill with the relevant legal adviser, Andrew Homer.

I confirm that it is intended that all provisions of the amending Act will commence operation by 31 December 2008, or shortly thereafter.

I trust this appropriately clarifies the matter for the Committee.

Thank you for writing to me on this matter, and should I be able to provide any further assistance, please do not hesitate to contact my office.

TIM HOLDING MP
*Minister for Finance, WorkCover
and the Transport Accident Commission*

15 October 2008

The Committee thanks the Minister for this response.

Labour and Industry (Repeal) Bill 2008

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

Committee's Comments

Charter Report

Presumption of innocence – Offence of opening factories or warehouses or failing to provide holiday to employees on ANZAC Day – Managers guilty of offence committed by body corporate – Defence if manager proves due diligence – No defence if manager knew that the body corporate committed an offence – Whether reasonable limit

Charter s. 25(1) provides that criminal defendants have the right 'to be presumed innocent until proved guilty according to law.' Charter s. 7(2) provides that human rights may be 'subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society'.

The Committee notes that clause 5, inserting a new s. 5C(4) into the ANZAC Day Act 1958, provides that, where a body corporate occupier of a factory or warehouse commits the offence of failing to close a factory or warehouse on ANZAC Day or failing to give each employee a holiday for the whole of ANZAC Day, anyone concerned in the management of the body corporate is also guilty of that offence and is liable for its penalty. The Committee observes that the effect of s. 5C(4) is that, if an employee of a body corporate, acting in the course of his or her employment, opened a factory or warehouse or failed to give an employee a full holiday on ANZAC Day, then the chair and every board member, director, secretary and officer of the corporation may be convicted of a criminal offence and fined up to 100 penalty units (currently \$11,012.)

The Committee also notes that new s. 5C(5) provides a defence for managers who can prove that they didn't consent to the opening or employment and exercised due diligence to prevent it. The Committee observes that, to use this defence, managers will have to prove their due diligence and lack of consent on the balance of probabilities. The Committee therefore considers that s. 5C(5) engages the Charter right of criminal defendants to be presumed innocent until proven guilty.

The Statement of Compatibility remarks:

The right to be presumed innocent is an important right that has long been recognised well before the enactment of the charter. However, the courts have held that it may be subject to limits particularly where, as here:

the offence is of a regulatory nature; and,

a defence is enacted for the benefit of an accused to escape liability...

...The purpose of the imposition of a burden of proof on an accused person concerned with the management of the body corporate, is to provide such a person with an opportunity to escape liability in circumstances where the offence was committed without his or her knowledge or consent and where the defendant took appropriate measures to ensure compliance with clause 5C(1) without undermining the ability to enforce the provision.

*The Committee observes that s. 5C(4) may render people liable for conduct that they have no connection to and that s. 5C(5) may therefore be correctly classified as a denial of an essential element of an offence: see *State v Coetzee* [1997] ZACC 2 (a decision of the Constitutional Court of South Africa on a similar provision.) The Committee also observes that although the offence in s. 5C(1) does not attract imprisonment, the fine is a significant one. The Committee is therefore concerned that, despite the regulatory nature of the offence, the reverse onus in*

s. 5C(5) may not be a reasonable limit on the Charter's right to be presumed innocent according to the test in Charter s. 7(2).

*The Committee is also concerned that the defence of due diligence is not available to managers if they knew that the offence was being or would be committed (as s. 5C(5) requires that defence prove both that the offence occurred without their 'consent or knowledge' and that they 'exercised due diligence'.) The Committee observes that a person concerned with the management of a corporation who acts diligently to prevent a factory opening on ANZAC Day but who discovers on ANZAC Day that the factory is nevertheless open will have no defence to a prosecution for the offence. The Committee also observes that the defence of due diligence is usually conceived as an alternative, rather than an addition, to the defence of absence of knowledge: see *R v Sault Ste. Marie* [1978] 2 SCR 1299, 1326. The Committee further observes that a number of similar managerial liability provisions in other statutes provide for a broader defence for managers, either by omitting the requirement to prove that the offence occurred without the manager's knowledge; substituting narrower requirements like 'without knowing permission', 'without connivance' or 'unintentionally'; or by making the defence of due diligence an alternative to the defence of lack of knowledge or consent.*

The Committee will write to the Minister seeking further advice on the following matters:

- 1. Whether it is appropriate to reverse the burden of proof on the sole defence available to a criminal offence where a person's liability for that offence can be established solely by their occupation and the offence carries a significant financial penalty?**
- 2. Whether the defence in new sub-section 5C(5) would be available to a manager who learns on ANZAC Day that a factory is open and immediately take all reasonable steps to close it, given para (a)'s requirement that a person wishing to use the due diligence offence must prove that the offence occurred 'without that person's... knowledge'?**

Pending the Minister's response, the Committee draws attention to new sub-section 5C(5).

Minister's response

Thank you for your letter dated 19 August 2008 regarding the Labour and Industry (Repeal) Bill 2008.

With reference to the two queries raised by SARC, I make the following remarks.

Whether it is appropriate to reverse the burden of proof on the only defence available in response to a criminal offence where a person may be liable on the basis of their occupation and exposed to a significant financial penalty

Committee members are aware that there is a community expectation that factories remain closed on ANZAC Day. The law has stipulated this for many years and the reforms to the ANZAC Day Act merely reflect the importance of ANZAC Day, and the place it holds in the national consciousness.

The provisions in question already apply through the ANZAC Day Act to entertainment and sporting events. What the Bill does is take the current provisions in the Labour and Industry Act, put them into the ANZAC Day Act and make them consistent with arrangements prevailing for entertainment and sport. Given the similarity in the potential offences to impede the observation of ANZAC Day, the same treatment should apply. Victorians, particularly those who must comply with the legislation, should welcome the consistency that the Government is bringing about.

The purpose behind the reverse onus of proof is to provide a defence for persons who have done everything within their power in order to prevent opening, while avoiding situations where a person can seek to escape liability through recklessness, wilful ignorance or negligence.

The Government believes that the defence provided in the Bill is appropriately narrow. It should be noted that the Labour and Industry Act, which now governs the opening of factories on ANZAC Day, has no defence provisions.

In your letter you make reference to a number of cases determined in other jurisdictions. This offence is quite different from the offences and defences considered by the Constitutional Court of South Africa and the Supreme Court of Canada and most of the other offences identified by the Committee.

*The defence relates to a narrowly defined regulatory offence involving a penalty of a fine only. While the fine in the proposed amendment to the ANZAC Day Act can be up to 100 penalty units, it should be seen in the context of the potential profits a business could make through breaching the requirement to close a factory on ANZAC Day. The Government believes that the fine will have the appropriate deterrent effect. By way of contrast the defence in issue in *State v Coetzee* was in the Criminal Procedure Act. It had a very broad reach and was not limited to regulatory offences. Rather, it applied indiscriminately to all offences, whether regulatory or criminal, including those with penalties of imprisonment.*

*Further, unlike the offence of water pollution considered in *La Reine v Sault Ste - Marie*, or many of the other offences in other States referred to by the Committee, this is a case where it would be possible not to enact any defence at all.*

While the equivalent Tasmanian offence referred to by the Committee, (which carries a maximum penalty of nearly double that prescribed in the Bill) may have a broader defence, there are examples in other jurisdictions of similar offences that carry no defence whatsoever. For example, s 6 of the Anzac Day Act 1960 (WA) renders all members of a managing body or committee guilty of the offence of holding a sports event on Anzac Day, without any defence whatsoever. Section 5 of the Shop Trading Hours Act Repeal Act 1990 (NZ) prohibits trading on ANZAC Day and defines occupiers liable for the offence to include 'any agent, manager, supervisor, or other person acting or apparently acting in general management or control of the shop' and, where the shop is occupied by a corporation or body of persons, the shop's working manager.

*In contrast, the Victorian Government in the Bill currently before Parliament has provided a defence. In these circumstances, the courts consider an affirmative defence with an onus on the accused to be a reasonable limit on the right to be presumed innocent. As Lord Woolf pointed out in *AG of Hong Kong v Lee Kwong-kut**

It would not assist the individuals who are charged with offences if, because of the approach adopted to 'statutory defences' by the courts, the legislature, in order to avoid the risk of legislation being successfully challenged, did not include in the legislation a statutory defence to a charge.¹

I also ask the Committee to note that the defence contained in the Bill is in the same terms as the existing offences in the ANZAC Day Act, which was the subject of an inquiry by the Committee in 2002. I consider that the narrow defence provided in the Bill is appropriate.

I do not consider it appropriate to allow a person involved in the management of a body corporate to escape liability in circumstances where he or she did not implement a system to ensure the factory does not open on ANZAC Day. Similarly, a person should not be able to rely on ignorance of the factory's opening, where steps should have been taken to ensure that breaches of the Act did not occur and that all other body corporate officers are made aware and are responsible in this regard.

I also refer the Committee to the Statement of Compatibility (attached), in which I set out the Government's views as to the reasonableness of reversing the onus of proof.

¹ [1993] AC 951, p975

Whether the defence would be available to a manager who learns on ANZAC Day that a factory is open and immediately takes all reasonable steps to close it

In the unlikely situation of a person concerned in the management of a body corporate taking all reasonable steps to ensure that a factory did not open contrary to the Act, and the factory still opening without that person's knowledge, the defence will apply.

Another scenario, unlikely though it may be, is where the manager took all reasonable steps to ensure that a factory did not open contrary to the Act, but the factory still opened without that person's knowledge, and then, on ANZAC Day, the manager became aware that the factory was operating. In this situation, the onus will be on the manager to take whatever steps are necessary to close the factory. Should they fail to act on their knowledge they will be liable for prosecution. Where the manager takes reasonable steps, then that person will have a defence against any action brought under this provision.

ROB HULLS MP

Minister for Industrial Relations

6 October 2008

Enc. Statement of Compatibility

The Committee thanks the Minister for this response.

Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008

The Bill was introduced into the Legislative Assembly on 9 September 2008 by the Hon. Bob Cameron MLA. The Committee considered the Bill on 6 October 2008 and made the following comments in Alert Digest No. 12 of 2008 tabled in the Parliament on 7 October 2008.

Committee's Comments

Charter Report

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

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

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

The Committee considers that the vesting of exclusive control in a State employee over whether or not such witnesses can be called may limit the Charter right of individual litigants in such matters to a fair hearing, a right that overseas courts have held includes the principle of 'equality of arms. Also, where the proceedings are criminal proceedings (especially proceedings prosecuted by the OPI), clauses 42 and 46 may also be incompatible with the right of criminal defendants 'to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses for the prosecution'.

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

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

- 1. Do clauses 42 and 46, by giving the DPI exclusive control over the calling of OPI employees as witnesses, limit the Charter rights of litigants opposed to the state to a fair hearing and the Charter right of criminal defendants to call witnesses under the same conditions as the prosecution?**
- 2. Could the purpose of protecting sensitive OPI information be achieved by adapting the existing 'protected documents' procedure in Division 10 of Part 4 of the Police Integrity Act 2008 to the circumstance where a non-state party wishes to call an OPI employee as a witness?**

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

The Committee makes no further comment.

Minister's response

Thank you for your letter dated 7 October 2008 enclosing an extract from the Scrutiny of Acts and Regulations Committee's ('the Committee') Alert Digest No. 12 of 2008. The extract comments on Part Nine of the Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008 ('the Bill') regarding the protection of the Director, Police Integrity ('DPI') and staff of the Office of Police Integrity ('OPI').

On 9 October 2008, the Legislative Assembly agreed to divide the Bill into two bills, as follows:

- a) Police Regulation Amendment Bill 2008 will enact the amends to the Police Regulation Act 1958 ('the PRA') that appear in Parts 1 to 7 of the Bill. These Parts are in relation to the constitution of Victoria Police, remedial procedures and civil proceedings under the PRA and other consequential amendments to other Acts; and*
- b) Major Crime (Investigative Powers) and Other Acts Amendment Bill 2008 ('the MCOA Bill') will include Parts 8, 9 and 10 of the Bill.*

I note that your letter refers to clauses in Part Nine of the Bill which now appears in Part 3 of the MCOA Bill. Apart from the re-numbering of clauses, the provisions are the same. Accordingly, your questions and my responses below refer to the revised numbering.

Your letter includes two questions for Parliament's consideration which I reproduce, for convenience, as follows:

Whether or not clauses 6 and 10, by giving the DPI exclusive control over the calling of OPI employees as witnesses, limits the Charter rights of litigants opposed to the state (including criminal defendants) to a fair hearing and to call witnesses under the same conditions as the prosecution?

If so, whether or not clauses 6 and 10 are reasonable limits on those rights according to the test in Charter s.7(2) and, in particular, are the least restrictive means reasonably available to achieve the goal of protecting sensitive OPI information? In the Alert Digest 12 of 2008, the Committee asks if the existing 'protected documents' procedure could be adapted for circumstances where a person wishes to call an OPI officer.

Clauses 6 and 10 introduce s 86KJA into the PRA and s 109A into the PIA. These provisions clarify the circumstances in which past and present OPI officers may be compelled to give

evidence in civil proceedings, criminal proceedings and proceedings before the Appeals Board. Section 86KJ in the PRA (and s 109 in the PIA) currently provide for the general protection of OPI staff. The MCOA Bill repeals s 86KJ, which states 'a protected person cannot be called to give evidence in court...' and replaces it with s 86KJA. The new provision states that a protected person cannot be compelled to give evidence 'in any legal proceeding in respect of any matter coming to his or her knowledge in the performance of functions under this Act.' This aligns the provision with the original intention of Parliament to protect the safety of and information known to OPI staff rather than to entirely exclude OPI staff from being called as witnesses.

The MCOA Bill represents an appropriate balance between the competing rights of the safety of the protected person and the integrity of OPI investigations with the fairness of the hearing as set out in sections 24 and 25(2)(h) of the Charter of Human Rights and Responsibilities Act 2006 ('the Charter').

Section 25(2)(h) does not protect an unlimited right to compel the attendance of witnesses on the defendant's behalf, but only protects a right to obtain the attendance and examination of witnesses on the same conditions as witnesses against him or her. Section 86KJA(1) is compatible with this right. A recent County Court ruling has illustrated that a literal reading of the current provisions may prevent OPI officers from giving evidence in the context of present and former members of Victoria Police charged with theft. Accordingly, the purpose of the amendment is to ensure the provisions are interpreted the way Parliament intended: that OPI officers are competent but not compellable witnesses.

The amended provisions ensure that protected persons are competent witnesses for both the prosecution and the defence and allow either party to the proceeding to call a protected person as a witness. However, apart from the exception in s 86KJA(2), protected persons cannot be compelled to give evidence.

The existing 'protected documents' procedure in Division 1A of Part IVA of the PRA cannot be adapted to apply to the DPI and staff of the OPI because the procedure was developed for the specific purpose of dealing with material held by OPI officers. There is an important distinction between disclosing documents held by the OPI and the evidence that can be ascertained from a document, compared to allowing an OPI officer to be subject to cross-examination. This distinction is reflected in the existing legislation and will be preserved by the amendments to ensure the safety of protected persons and preserve the integrity of OPI investigations.

Not allowing either party to compel protected witnesses may in some instances limit the rights protected by s 24(1) and s 25(2)(h). Any limitation on the rights under the Charter can be demonstrably justified as a reasonable restriction for a range of reasons, including that:

- it strikes an appropriate balance between the rights of the accused and the necessity of protecting the safety of OPI officers and the confidentiality of sensitive OPI information;
- other procedural safeguards exist in proceedings to ensure the fairness of the proceeding, including procedures for disclosing documents or other things in the possession of the OPI;
- the provisions do not affect the ability of the accused to examine witnesses; and
- the limitation is less restrictive on the rights than the previous provisions that sought to achieve the same purpose.

Section 86KJA(2) allows for a protected person to be compelled to give evidence if the DPI certifies in writing that the giving of evidence by the protected person is in the public interest. Section 86KJA(2) will only be incompatible with the right to a fair hearing in s 24(1) of the Charter if it gives an advantage to the prosecution. The requirement of fairness protected by s 24(1) requires that defendants have a reasonable opportunity to present their case under conditions that do not place them at a substantial procedural disadvantage to their opponents. It imposes an obligation on the prosecution to disclose to the accused and to the court all material evidence favourable or unfavourable to the accused. The 'public interest' under s 86KJA(2) stands for the interests of justice and not what is in the interests of the prosecution.

Allocating this power to the DPI (rather than to a court with the presence of a special counsel representing the interests of the defendant – as occurs with protected documents under the Act), is a demonstrably justifiable limit under the Act, having regard to the important competing interest of protecting the safety of vulnerable witnesses. It enables the DPI to compel protected persons (or former protected persons) who may be unwilling to testify and rely on s 86KJA where it is not in the public interest to do so.

The provisions do not restrict the prosecution from giving adequate notice of prosecution witnesses and nor do they restrict the examination of witnesses compelled by the prosecution to be examined in the presence of the accused (or prevent the accused from cross-examining a witness). The MCOA Bill repeals 86KJ(6) of the PRA and s 109(7) of the PIA, which – if interpreted as a general prohibition on OPI officers giving evidence in court – are potentially an unjustifiable limit on the rights. Additionally, the MCOA Bill does not displace the duties of prosecutors to exercise their functions to promote the fairness of the proceedings. The amendments do not displace the prosecution's common law duty of disclosure of all material evidence under common law, which goes towards ensuring equality of arms in the proceedings (as required pursuant to s 25(2)(g) and (h) and s 24(1)).

BOB CAMERON MP
Minister for Police & Emergency Services

14 October 2008

The Committee thanks the Minister for this response.

Prohibition of Human Cloning for Reproduction Bill 2008 and Research Involving Human Embryos Bill 2008

Both Bills were introduced into the Legislative Assembly on 9 September 2008 by the Hon. Daniel Andrews MLA. The Committee considered the Bills on 6 October 2008 and made the following comments in Alert Digest No. 12 of 2008 tabled in the Parliament on 7 October 2008.

Committee's Comments

[2]

Delayed commencement – Inappropriate delegation of legislative power

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

Minister's response

Thank you for your correspondence of 7 October 2008 regarding the commencement of the Prohibition of Human Cloning for Reproduction Bill 2008 and the Research Involving Human Embryos Bill 2008.

The commencement of these Bills is by proclamation, with a forced commencement date of 1 January 2010. However, the commitment is to enact these pieces of legislation as soon as the Assisted Reproductive Treatment Act (ART Act) is proclaimed, and the Infertility Treatment Act 1995 is necessarily repealed.

The intention is to proclaim the ART Act by 1 July 2009, pending satisfactory resolution of any implementation requirements. If it is possible to achieve this, these bills will commence within the one year period specified in Practice Note No 1 produced by SARC.

I trust this explanation addresses the Committee's concerns.

Hon. Daniel Andrews MP
Minister for Health

20 October 2008

The Committee thanks the Minister for this response.

Committee Room
27 October 2008

Appendix 1

Index of Bills in 2008

Alert Digest Nos.

| | |
|---|---------|
| Abortion Law Reform Bill 2008 | 11, 13 |
| Animals Legislation Amendment (Animal Care) Bill 2007 | 3, 4 |
| Appropriation (2008/2009) Bill 2008 | 6 |
| Appropriation (Parliament 2008/2009) Bill 2008 | 6 |
| Assisted Reproductive Treatment Bill 2008 | 12 |
| Building Amendment Bill 2008 | 9 |
| Cancer Amendment (HPV) Bill 2008 | 5 |
| Children's Legislation Amendment Bill 2008 | 5, 7 |
| Compensation and Superannuation Legislation Amendment Bill 2008 | |
| Constitution Amendment (Judicial Pensions) Bill 2007 | 1, 6 |
| Consumer Credit (Victoria) and Other Acts Amendment Bill 2007 | 1 |
| Co-operatives and Private Security Acts Amendment Bill 2008 | 4 |
| Corrections Amendment Bill 2008 | 10, 12 |
| County Court Amendment (Koori Court) Bill 2008 | 10, 12 |
| Courts Legislation Amendment (Associate Judges) Bill 2008 | 3, 6 |
| Courts Legislation Amendment (Costs Court and Other Matters) Bill 2008 | 11 |
| Courts Legislation Amendment (Juries and Other Matters) Bill 2008 | 7 |
| Crimes Amendment (Child Homicide) Bill 2007 | 1, 4 |
| Crimes (Controlled Operations) Amendment Bill 2008 | 7 |
| Criminal Procedure Legislation Amendment Bill 2007 | 1, 2, 6 |
| Crown Land (Reserves) Amendment (Carlton Gardens) Bill 2008 | 2 |
| Dangerous Goods Amendment (Transport) Bill 2008 | 12, 13 |
| Drugs, Poisons and Controlled Substances Amendment Bill 2008 | 3, 4 |
| Drugs, Poisons and Controlled Substances (Volatile Substances) (Repeal) Bill 2008 | 6 |
| Education and Training Reform Amendment Bill 2008 | 4, 5 |
| Energy and Resources Legislation Amendment Bill 2008 | 5 |
| Energy Legislation Amendment (Retail Competition and Other Matters) Bill 2008 | 12 |
| Environment Protection Amendment (Landfill Levies) Bill 2008 | 4 |
| Essential Services Commission Amendment Bill 2008 | 4, 5 |
| Evidence Bill 2008 | 9, 11 |
| Family Violence Protection Bill 2008 | 9, 11 |
| Gambling Regulation Amendment (Licensing) Bill 2008 | 5, 8 |
| Greenhouse Gas Geological Sequestration Bill 2008 | 12 |
| Health Professions Registration Amendment Bill 2008 | 12 |
| Heritage Amendment Bill 2008 | 9 |
| Infringements and Other Acts Amendment Bill 2007 | 1 |
| Justice Legislation Amendment Bill 2008 | 5, 6 |
| Justice Legislation Amendment (Sex Offences Procedure) Bill 2008 | 4, 5 |
| Labour and Industry (Repeal) Bill 2008 | 10, 13 |
| Land (Revocation of Reservations) Bill 2008 | 4 |
| Land (Revocation of Reservations) (Convention Centre Land) Bill 2008 | 8 |
| Legislation Reform (Repeals No. 2) Bill 2007 | 1 |
| Legislation Reform (Repeals No. 3) Bill 2008 | 5 |
| Liquor Control Reform Amendment Bill 2007 | 1 |
| Local Government Amendment (Councillor Conduct and Other Matters) Bill 2008 | 12 |
| Local Government Amendment (Disclosure) Bill 2008 | 10 |
| Local Government Amendment (Elections) Bill 2008 | 8 |

| | |
|--|--------|
| Medical Research Institutes Repeal Bill 2008 | 11 |
| Medical Treatment (Physician Assisted Dying) Bill 2008 | 8 |
| Melbourne Cricket Ground Amendment Bill 2008 | 7 |
| National Gas (Victoria) Bill 2008 | 6, 9 |
| National Parks and Crown Land (Reserves) Acts Amendment Bill 2008 | 8 |
| Police Integrity Bill 2008 | 4, 5 |
| Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008 | 12, 13 |
| Police Regulation Amendment Bill 2007 | 1 |
| Port Services Amendment (Disposal of Material) Bill 2008 | 8 |
| Port Services Amendment (Public Disclosure) Bill 2008 | 2 |
| Professional Boxing and Combat Sports Amendment Bill 2007 | 1 |
| Prohibition of Human Cloning for Reproduction Bill 2008 | 12, 13 |
| Public Health and Wellbeing Bill 2008 | 6, 9 |
| Public Holidays Amendment Bill 2008 | 9 |
| Public Sector Employment (Award Entitlements) Amendment Bill 2008 | 5 |
| Relationships Bill 2007 | 1, 3 |
| Research Involving Human Embryos Bill 2008 | 12, 13 |
| Road Safety Amendment (Fatigue Management) Bill 2008 | 10 |
| Stalking Intervention Orders Bill 2008 | 12 |
| State Taxation Acts Amendment Bill 2008 | 6 |
| Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008 | 8 |
| Superannuation Legislation Amendment Bill 2008 | 8 |
| The Uniting Church in Australia Amendment Bill 2008 | 5 |
| Tobacco (Control of Tobacco Effects on Minors) Bill 2007 | 8 |
| Unclaimed Money Bill 2008 | 7 |
| Victoria Law Foundation Bill 2008 | 9 |
| Victorian Energy Efficiency Target Bill 2007 | 1 |
| Victorian Water Substitution Target Bill 2007 | 5 |
| Whistleblowers Protection Amendment Bill 2008 | 10 |
| Wildlife Amendment (Marine Mammals) Bill 2008 | 7 |
| Working with Children Amendment Bill 2007 | 3, 4 |

Appendix 2

Committee Comments classified by Terms of Reference

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

Alert Digest Nos.

Section 17(a)

(i) trespasses unduly upon rights or freedoms

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

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

| | |
|-------------------------|---|
| Relationships Bill 2007 | 1 |
|-------------------------|---|

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

| | |
|---------------------------------|--|
| Corrections Amendment Bill 2008 | |
|---------------------------------|--|

(vi) inappropriately delegates legislative power

| | |
|--|---|
| Essential Service Commission Amendmnet Bill 2008 | 4 |
|--|---|

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

| | |
|-----------------------------------|---|
| National Gas (Victoria) Bill 2008 | 6 |
|-----------------------------------|---|

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

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

Scrutiny of Acts and Regulations Committee

| | |
|---|----|
| Police, Major Crimes and Whistleblowers Legislation Amendment Bill 2008 | 12 |
| Primary Industries Legislation Amendment Bill 2008 | 13 |
| Relationships Bill 2007 | 1 |
| Superannuation Legislation Amendment Bill 2008 | 8 |

Section 17(b)

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

| | |
|---|----|
| Major Crime (Investigative Powers) and Other Acts Amendment Bill 2008 | 13 |
| Police Integrity Bill 2008 | 4 |
| Police, Major Crimes and Whistleblowers Legislation Amendment Bill 2008 | 12 |
| Stalking Intervention Orders Bill 2008 | 12 |

Appendix 3

Ministerial Correspondence

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

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

Scrutiny of Acts and Regulations Committee

| Bill Title | Minister/ Member | Date of Committee Letter | Date of Minister's Response | Issue Raised in Alert Digest No. | Response Published in Alert Digest No. |
|--|--|---------------------------------|------------------------------------|---|---|
| Courts Legislation Amendment (Associate Judges) Bill 2008 | Attorney-General | 11.03.08 | 13.05.08 | 3 of 2008 | 6 of 2008 |
| Drugs, Poisons and Controlled Substances Amendment Bill 2008 | Health | 12.03.08 | 03.04.08 | 3 of 2008 | 4 of 2008 |
| Education and Training Reform Amendment Bill 2008 | Education | 08.04.08 | 16.04.08 | 4 of 2008 | 5 of 2008 |
| Essential Services Commission (Amendment) Bill 2007 | Finance | 08.04.08 | 17.04.08 | 4 of 2008 | 5 of 2008 |
| Justice Legislation Amendment (Sex Offenders Procedure) Bill 2008 | Attorney-General | 08.04.08 | 21.04.08 | 4 of 2008 | 5 of 2008 |
| Police Integrity Bill 2008 | Police & Emergency Services | 08.04.08 | 18.04.08 | 4 of 2008 | 5 of 2008 |
| Children's Legislation Amendment Bill 2008 | Children & Early Childhood Development | 07.05.08 | 28.05.08 | 5 of 2008 | 7 of 2008 |
| Gambling Regulation Amendment (Licensing) Bill 2008 | Gambling | 07.05.08 | 11.06.08 | 5 of 2008 | 8 of 2008 |
| Justice Legislation Amendment Bill 2008 | Corrections | 07.05.08 | 23.05.08 | 5 of 2008 | 6 of 2008 |
| National Gas (Victoria) Bill 2008 | Energy & Resources | 30.05.08 | 24.06.08 | 6 of 2008 | 9 of 2008 |
| Public Health and Wellbeing Bill 2008 | Health | 24.06.08 | 17.07.08 | 6 of 2008 | 9 of 2008 |
| Building Amendment Bill 2008 | Planning | 30.07.08 | | 9 of 2008 | |
| Evidence Bill 2008 | Attorney-General | 30.07.08 | 13.08.08 | 9 of 2008 | 11 of 2008 |
| Family Violence Protection Bill 2008 | Attorney-General | 30.07.08 | 21.08.08 | 9 of 2008 | 11 of 2008 |
| Corrections Amendment Bill 2008 | Corrections | 19.08.08 | 08.09.08 | 10 of 2008 | 12 of 2008 |
| County Court Amendment (Koori Court) Bill 2008 | Attorney-General | 19.08.08 | 08.09.08 | 10 of 2008 | 12 of 2008 |
| Labour and Industry (Repeal) Bill 2008 | Industrial Relations | 19.08.08 | 06.10.08 | 10 of 2008 | 13 of 2008 |
| Abortion Law Reform Bill 2008 | Women's Affairs | 09.09.08 | 07.10.08 | 11 of 2008 | 13 of 2008 |
| Dangerous Goods Amendment (Transport) Bill 2008 | Finance | 07.10.08 | 15.10.08 | 12 of 2008 | 13 of 2008 |
| Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008 | Police and Emergency Services | 07.10.08 | 14.10.08 | 12 of 2008 | 13 of 2008 |
| Prohibition of Human Cloning for Reproduction Bill 2008 | Health | 07.10.08 | 20.10.08 | 12 of 2008 | 13 of 2008 |
| Research Involving Human Embryos Bill 2008 | Health | 07.10.08 | 20.10.08 | 12 of 2008 | 13 of 2008 |

Appendix 4

Submission concerning the Police, Major Crime & Whistleblowers Legislation Amendment Bill 2008



VICTORIA POLICE

Scrutiny of Acts and

15 OCT 2008

Regulations Committee

Christine Nixon APM
Chief Commissioner of Police

Victoria Police Centre
637 Flinders Street
Melbourne 3005
Victoria Australia
Telephone [61 3] 9247 6890
Facsimile [61 3] 9247 6869

P.O. Box 415
Melbourne 3005
Victoria Australia

Mr Carlo Carli MLA
Chairperson
Scrutiny of Acts & Regulations Committee
Parliament House
Spring Street
East Melbourne Victoria 3002

Dear Mr Carli

Police, Major Crime & Whistleblowers Legislation Amendment Bill 2008

I refer to the consideration of the Police, Major Crime & Whistleblowers Legislation Amendment Bill 2008 ('the Bill') in the Alert Digest No.12 of 2008 of the Scrutiny of Acts & Regulations Committee.

I note that on page 32 of the Alert Digest the Committee indicates that it:

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

Victoria Police strongly supports the Bill and has been extensively involved in its development. The Bill is an extremely important legislative initiative that will have a significant impact upon the future of Victoria Police. The provisions of the Bill will provide a means by which the management of Victoria Police will be modernised. In addition, the Bill's provisions will be crucial in the fight against police corruption.

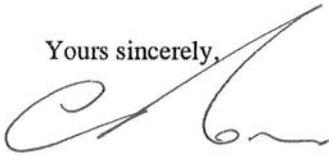
Confidence in the management and integrity of police is one of the most significant risks that Victoria Police faces. In recent years the organisation has made many important steps to strengthen the resistance of police to corruption. The Ceja Taskforce and the organisation's response to the Office of Police Integrity's investigation of the Armed Offenders Squad are obvious examples of such steps. The proposed reforms in the Bill will provide Victoria Police with effective tools of discipline and management to enable the next vital step forward in this fight against corruption.

In relation to the Chief Commissioner's loss of confidence and other dismissal powers, providing the Police Appeals Board with a power to award compensation instead of re-instatement is an appropriate means of balancing the rights of individual members with the expectations of the community and the operational needs of Victoria Police. It is appropriate that a lesser amount of compensation be available to those who have been dismissed following conviction for serious criminal offences. This reflects a community expectation that convicted criminals should not be rewarded for their crimes.

Deputy Commissioner Simon Overland, Deputy Commissioner Kieran Walshe, Assistant Commissioner (Ethical Standards) Luke Cornelius and/or I would be pleased to give evidence to the Committee in relation to the importance of the Bill's proposals in modernising policing and fighting corruption.

In addition, I would be happy for the Committee to treat this letter as a public document and publish it in a future Alert Digest.

Yours sincerely,



Christine Nixon APM
Chief Commissioner

14/10/08