

No. 15 of 2007

Tuesday, 20 November 2007

On the

- Children's Services and Education
Legislation Amendment
(Anaphylaxis Management) Bill 2007
- Fair Trading and Consumer Acts Further
Amendment Bill 2007
- Gambling Legislation Amendment
(Problem Gambling and Other Measures)
Bill 2007
- Health (Fluoridation) Amendment Bill
2007
- Legislation Reform (Repeals No. 1)
Bill 2007
- Liquor Control Reform Amendment
Bill 2007
- Motor Car Traders Amendment
Bill 2007
- National Electricity (Victoria)
Amendment Bill 2007
- Police Regulation Amendment
Bill 2007
- Road Legislation Further Amendment
Bill 2007
- State Taxation and Accident
Compensation Acts Amendment
Bill 2007
- Transport Accident and Accident
Compensation Acts Amendment
Bill 2007
- Transport Legislation Amendment
Bill 2007
- Victorian Energy Efficiency Target
Bill 2007

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Glossary



- ‘**Article**’ refers to an Article of the International Covenant on Civil and Political Rights;
- ‘**Assembly**’ refers to the Legislative Assembly of the Victorian Parliament;
- ‘**Charter**’ refers to the Victorian *Charter of Human Rights and Responsibilities Act 2006*;
- ‘**child**’ means a person under 18 years of age;
- ‘**Committee**’ refers to the Scrutiny of Acts and Regulations Committee of the Victorian Parliament;
- ‘**Council**’ refers to the Legislative Council of the Victorian Parliament;
- ‘**court**’ refers to the Supreme Court, the County Court, the Magistrates’ Court or the Children’s Court as the circumstances require;
- ‘**Covenant**’ refers to the International Covenant on Civil and Political Rights;
- ‘**human rights**’ refers to the rights set out in Part 2 of the Charter;
- ‘**penalty units**’ refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (*currently one penalty unit equals \$110.20*).
- ‘**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–

Children’s Services and Education Legislation Amendment (Anaphylaxis Management) Bill 2007
Fair Trading and Consumer Acts Further Amendment Bill 2007
Gambling Legislation Amendment (Problem Gambling and Other Measures) Bill 2007
Health (Fluoridation) Amendment Bill 2007
Liquor Control Reform Amendment Bill 2007
Motor Car Traders Amendment Bill 2007
National Electricity (Victoria) Amendment Bill 2007
Police Regulation Amendment Bill 2007
Road Legislation Further Amendment Bill 2007
State Taxation and Accident Compensation Acts Amendment Bill 2007
Victorian Energy Efficiency Target Bill 2007

The Committee notes the following correspondence –

Legislation Reform (Repeals No. 1) Bill 2007
Transport Accident and Accident Compensation Acts Amendment Bill 2007
Transport Legislation Amendment Bill 2007



Role of the Committee

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

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

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Children's Services and Education Legislation Amendment (Anaphylaxis Management) Bill 2007

Introduced	30 October 2007
Second Reading Speech	1 November 2007
House	Legislative Assembly
Member introducing Bill	Hon. Maxine Morand MLA
Portfolio responsibility	Minister for Children and Early Childhood Development

Purpose

The Bill amends the *Children's Services Act 1996* to require a children's service to have an anaphylaxis management policy containing prescribed matters; and the *Education and Training Reform Act 2006* to require certain schools to have an anaphylaxis management policy as a minimum standard for registration of the school.

Content and Committee comment

[Clauses]

[2]. The provisions in the Bill come into force on proclamation but not later than by 14 July 2008.

[3]. Inserts a new section 26A in the *Children's Services Act 1996* to require the proprietor of a children's service to ensure that the service has in place an anaphylaxis management policy containing prescribed matters.

[5]. Amends section 4.3.1 of the *Education and Training Reform Act 2006* to set out the requirements for registration of a school by the Victorian Registration and Qualification Authority and adds a new requirement upon the Authority to not register a school that has enrolled a student diagnosed as being at risk of anaphylaxis unless it is satisfied that the school has developed an anaphylaxis management policy containing matters required by a Ministerial Order to be included in the policy.

[9]. Provides for automatic repeal of this amending Act on 14 July 2009.

Charter Report

Keywords – right to life – protection of children – anaphylaxis management policy – regulations and orders to set requirements for contents

Charter s. 9 gives everyone 'the right to life'. Charter s. 10(c) provides that people must not be 'subjected to medical treatment without consent.' Charter s. 17 provides that children have the right 'to such protection as is in his or her best interests'.

The Committee notes that clause 3, inserting a new s. 26A into the Act, requires proprietors of children's services to have an 'anaphylaxis management policy.' The Committee also notes that clause 5(2), amending s. 4.3.1 of the *Education and Training Reform Act 2006*, imposes a similar requirement on schools that know or ought to know that an enrolled student has been diagnosed as at risk of anaphylaxis. The Committee further notes that the Bill provides for regulations or a

Ministerial Order to specify requirements for the contents of such policies (clause 4, amending s.56 of the Act; and clause 5(2), amending s 4.3.1 of the *Education Training and Reform Act 2006*.)

The Committee observes that clauses 3 and 5(2) may promote the rights of children to life and to protection from the health consequences of anaphylaxis. The Committee also observes that, if medical treatment of children for anaphylaxis pursuant to a required program only occurs with the consent of their parents or guardians, then clauses 3 and 5(2) will not infringe children's right against non-consensual medical treatment. The Committee considers that any positive or negative impact of clauses 3 and 5(2) on children's rights will depend upon the content of the proposed regulations and Ministerial Order.

The Committee makes no further comment.

Fair Trading and Consumer Acts Further Amendment Bill 2007

Introduced	30 October 2007
Second Reading Speech	1 November 2007
House	Legislative Assembly
Member introducing Bill	Mr Tony Robinson MLA
Portfolio responsibility	Minister for Consumer Affairs

Purpose

The Bill amends the —

- *Fair Trading Act 1999* to –
 - re-enact in it the provisions of the *Frustrated Contracts Act 1959*;
 - include provisions consequent on the repeal of the *Hire-Purchase Act 1959*;
 - expand the powers of the Director to bring proceedings;
 - provide for certain matters to be privileged;
 - provide power to seek a court order to enforce compliance with certain requirements of the Director or an inspector;
 - improve generally the operation of that Act.
- *Owners Corporations Act 2006* to improve the operation of that Act;
- *Partnership Act 1958* to enable Early Stage Venture Capital Limited Partnerships to be registered and recognised in Victoria;
- *Shop Trading Reform Act 1996* to repeal provisions relating to special local shop closing times that regulate Sunday trading;
- *Subdivision Act 1988* to improve the operation of that Act;
- *Trade Measurement Act 1995* and the *Trade Measurement (Administration) Act 1995* to reflect changes to the national model legislation.

The Bill also repeals the *Frustrated Contracts Act 1959* and the *Hire-Purchase Act 1959*.

The Bill also amends various Consumer Acts to provide power to seek a court order to enforce compliance with certain requirements of the Director or an inspector.

Content and Committee comment

[Clauses]

[2]. Certain provisions will come into operation on Royal Assent. Parts 7 and 8 come into operation on 1 July 2008. Sections 3, 4, 10, 11, 53 to 56, 58 and 59 come into operation on proclamation but not later than by 1 December 2008.

Fair Trading Act 1999 – [3 to 11]

[4]. Inserts new Part 2C (new sections 32ZE to 32ZO) to re-enact the provisions of the *Frustrated Contracts Act 1959*.

Note: *This Act is to be repealed by clause 53 of the Bill.*

[6]. Inserts new section 152A in the Act to provide that the Director of Consumer Affairs Victoria, or an inspector, can certify to a court a person's failure, without reasonable excuse, to comply with a requirement under sections 106HA, 106I, 118 or 131. A certification cannot be made where that person has been charged with an offence against section 106HA, 106I(3) or 132. The court may then inquire into the case and may order the person to comply with the requirement.

If a proceeding is brought under this section in relation to a failure to comply with a requirement, the person to whom the failure relates cannot also be charged with an offence under section 106HA(2), 106I(3), or 132 as applicable. *Refer to Charter Report below.*

[8]. Amends section 163 to specify a minimum font size to be used in consumer documents.

[9]. Inserts section 163A in the Act to provide that a person is not liable for any loss or damage or injury sustained by any other person solely because the first person, *in good faith* makes a complaint to the Director of Consumer Affairs Victoria under section 103 of that Act; or produces or gives a document or any information or evidence to, the Director or an inspector appointed under the Act or before the VCAT regarding a matter that is or may be a contravention of the Act or another Consumer Act. *Refer to Charter Report below.*

[10]. Inserts clause 3 in Schedule 12 to save hire purchase agreements entered into prior to the repeal of the *Hire-Purchase Act 1959*.

Note: Clause 54 of the Bill repeals the Hire-Purchase Act 1959.

[49]. Amends section 59 of the *Trade Measurement Act 1995*, (which provides rights of appeal against a decision of the licensing authority) to provide rights of appeal in relation to (i) an amendment of a licence as well as the existing right to appeal a refusal of an application for a licence (through amendment of section 59(1)(a)); and (ii) in relation to a decision to cancel a licence because the weighbridge is no longer suitable as a public weighbridge.

[61]. Provides for the automatic repeal of this amending Act on 1 December 2009.

Charter Report

Keywords – Reasonable limits – Transfer of information relating to compliance with trading rules – Privacy – Reputation

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

The Committee notes that the Bill relates to the regulation of trading and the enforcement of that regulation. The Committee observes that such legislation inevitably engages a variety of human rights, but that reasonable provisions will typically satisfy Charter s.7(2), as well as internal limits on particular rights.

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

- **Privacy** (Charter s.13(a)): provisions for a court to order a person to obey existing statutory obligations to provide information or documents to investigators (clause 6, inserting a new section 152A into the *Fair Trading Act 1999*; and schedule 2, making similar provision for fifteen other statutes regulating trading.) (The Statement of Compatibility regards these provisions as engaging the Charter’s rights to freedom of expression and the privilege against self-incrimination.)
- **Reputation** (Charter s.13(b)): a provision exempting a good faith complaint or giving of information in a consumer matter from civil liability (e.g. an action for defamation) (clause 9, inserting a new section 163A into the *Fair Trading Act 1999*.)

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

The Committee makes no further comment.

Gambling Legislation Amendment (Problem Gambling and Other Measures) Bill 2007

Introduced	30 October 2007
Second Reading Speech	1 November 2007
House	Legislative Assembly
Member introducing Bill	Mr Tony Robinson MLA
Portfolio responsibility	Minister for Gaming

Purpose

The Bill amends the *Gambling Regulation Act 2003* to —

- require venue operators to conduct self-exclusion programs;
- require various licence holders and others to have a Responsible Gambling Code of Conduct;
- make it an offence for a venue operator or the holder of the wagering licence or the wagering operator to knowingly allow an intoxicated person to gamble;
- further limit the availability of automatic teller machines in gaming venues;
- impose further limits on venue operators with respect to the cashing of cheques by customers;
- ensure that the Victorian Commission for Gambling Regulation does not specify a gaming machine area that is located outdoors;
- amend the requirements relating to the order that the Minister makes in respect of community benefit statements;
- improve the operation and effectiveness of the restrictions on the use of Victorian race fields by wagering service providers;

The Bill also amends the *Casino Control Act 1991* —

- require a casino operator to have a Responsible Gambling Code of Conduct;
- further limit the availability of automatic teller machines in a casino;
- make it an offence for a casino operator to provide gaming machines outdoors;
- make it an offence for a casino operator to knowingly allow an intoxicated person to gamble in the casino; and

The Bill makes a consequential amendment to the *Liquor Control Reform Act 1998*.

Content and Committee comment

[Clauses]

[2]. Other than clauses 13 and 58 the provisions in the Bill come into operation on a day or days to be proclaimed but not later than by 1 December 2008. Clauses 13 and 58 will come into operation on 1 January 2010.

Note: In respect to clauses 13 and 58 the explanatory memorandum provides – *Those clauses introduce further restrictions on automatic teller machines in gaming venues and the casino. It is necessary to provide a substantial lead time for the commencement of the new restrictions to allow for the modification removal of automatic teller machines.*

Gambling Regulation Act 2003

[11]. Deals with self-exclusion programs and responsible gambling codes of conduct that have been approved by the Commission and makes such programs and codes a condition of a venue operator's licence.

[12]. Inserts new paragraphs (g) and (h) into section 3.4.25(1) of the Act to establish new grounds for disciplinary action against a venue operator of repeated breaches by the operator of its self-exclusion program and repeated breaches by the operator of its Responsible Gambling Code of Conduct.

[13]. Inserts new section 3.5.32A into the Act which imposes limits on the placement of automatic teller machines in gaming venues and the amount that can be withdrawn from those machines in a 24-hour period.

[14]. A venue operator must not cash a cheque for an amount greater than \$400 at an approved venue nor cash more than one cheque for any one person in a 24 hour period.

[15]. Inserts new section 3.5.33A to provide that a venue operator must not knowingly allow an intoxicated person to play a gaming machine.

[22]. Amends section 4.3.31(1) to include a new paragraph (ba) which makes repeated breaches of the licensee's Responsible Gambling Code of Conduct a ground for disciplinary action.

[23]. Inserts a new section 4.7.7 to provide that the holder of the wagering licence or the wagering operator must not knowingly accept a bet from a person who is in a state of intoxication.

[46]. Inserts a new paragraph (h) into section 8.5A.14(1) to include as grounds for disciplinary action that a commercial raffle organiser has repeatedly breached the licensee's Responsible Gambling Code of Conduct.

[49]. Inserts a new Part 6 into Chapter 10 of the Act dealing with self-exclusion programs.

Casino Control Act 1991

[55]. Amends section 20(1) of the Act to insert an additional ground for disciplinary action in respect to repeated breaches by the casino operator of their Responsible Gambling Code of Conduct.

[57]. Makes it a condition of a licence that an operator implement a responsible gambling code of conduct.

[58]. Inserts new section 81AAA into the Act which prohibits a casino operator from providing, or allowing another person to provide, within 50 metres of any entrance to casino, an automatic teller machine, if the machine allows a person to withdraw an amount of cash exceeding \$400 per 24 hours, per debit or credit card.

[59]. Inserts new section 81AAC into the Act to prohibit a casino operator from knowingly permitting a person to gamble or bet in the casino while they are in a state of intoxication.

[63]. Provides for the automatic repeal of this amending Act on the anniversary of its forced commencement (1 January 2010).

Charter Report

Keywords – Reasonable limits – Licensing and regulation of gaming venues – Freedom of Movement – Privacy – Property

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

The Committee notes that the Bill relates to the regulation of trading (specifically gambling) and the enforcement of that regulation. The Committee observes that such legislation inevitably engages a variety of human rights, but that reasonable provisions will typically satisfy Charter s.7(2), as well as internal limits on particular rights.

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

- **Movement** (Charter s.12): provisions making a gaming licence conditional on venue operators having a self-exclusion program that ‘enables’ venue operators to exclude people from a ‘gaming machine area’ who have voluntarily excluded themselves from that area (and have not opted out of the exclusion); and disciplining venue operators who repeatedly breach such a program (clauses 11 and 12, respectively inserting a new s.3.4.12A and amending s.3.4.25(1) of the *Gambling Regulation Act 2003*).
- **Privacy** (Charter s.13(a)): provisions requiring various licence applications to be accompanied by information as required by a controlling body (e.g. clause 6, inserting a new section 2.5.19C into the *Gambling Regulation Act 2003*; and clause 54, amending s.8(3) of the *Casino Control Act 1991*).
- **Property** (Charter s.20): provisions barring approvals for outdoor gaming areas (clause 7, amending ss.3.3.7 and 3.3.16 of the *Gambling Regulation Act 2003*; and clause 56, inserting a new section 62AA into the *Casino Control Act 1991*); barring venue operators from providing certain automatic teller machines in a venue (clause 13, inserting a new section 3.5.32A into the *Gambling Regulation Act 2003*; and clause 58, inserting a new section 81AAA into the *Casino Control Act 1991*); and barring venue operators from cashing certain cheques (clause 14, amending s.3.5.33 of the *Gambling Regulation Act 2003*).

In each instance the Statement of Compatibility contends that the respective rights are either not infringed or are subject only to reasonable limitations under Charter s.7(2). The Committee further observes that clause 6, inserting a new division 5A into the *Gambling Regulation Act 2003*, barring the commercial publication of a race field by a wagering service without approval from a controlling body, engages Charter s.15(2), which provides for **freedom of expression**.

Having considered the above Charter rights and provisions, the Committee is satisfied that the measures so engaged do not warrant any special mention or adverse comment in respect to possible incompatibility with human rights. In particular, the Committee considers that clause 6, which has the purpose of facilitating the monitoring and regulation of wagering service providers, is a lawful restriction on freedom of expression to protect public order under Charter s.15(3).

The Committee makes no further comment.

Health (Fluoridation) Amendment Bill 2007

Introduced	10 October 2007
Second Reading Speech	31 October 2007
House	Legislative Council
Member introducing Bill	Mr Peter Kavanagh MLC
Portfolio responsibility	Minister for Health
Private Members Bill	

Purpose

The Bill amends the *Health (Fluoridation) Amendment Act 1973* (the ‘Act’) to prevent the addition of fluoride to a public water supply unless first approved by a poll of voters in each municipal district or, if the municipal district is subdivided, in each ward of the municipal district, within the relevant water supply district.

Content and Committee comment

[Clauses]

[2]. Provides for the Act to come into operation on the day after Royal Assent.

[3]. Amends section 5 of the Act to prevent the fluoridation of a water supply except in compliance with section 5A.

[4]. Inserts a new section 5A requiring approval by a poll of voters before fluoride is added to a public water supply.

[5]. Provides for the automatic repeal of the Act on the first anniversary of its commencement.

Charter Report

Keywords – non-consensual medical treatment – protection of families and children – participation in public life – poll of voters as a condition for adding fluoride to a public water supply – health effects of fluoridation – exclusion of water where fluoride has already been lawfully added

Charter s.10(c) provides that people must not be ‘subjected to medical treatment without consent.’ Charter s.17 entitles both ‘families’ and ‘every child’ to protection. Charter s.18(1) provides that Victorians have the right (and must be given the opportunity) ‘to participate in the conduct of public affairs, directly or through representatives’.

The Committee notes that clause 4, inserting a new section 5A(1) into the *Health (Fluoridation) Act 1973*, requires a ‘poll of voters’ in a municipal district before fluoride can be added to ‘any public water supply’ in that district. The Committee also notes that new section 5A(2) exempts districts where fluoride has already been lawfully added. The Committee observes that clause 4 may promote the Charter’s rights against non-consensual medical treatment and to have the opportunity to participate directly in public affairs.

The Committee also notes the Statement of Compatibility’s argument that, if the premise that fluoridation has health concerns is correct, then clause 4 may promote the rights of families and children to protection. The Committee observes that, if the health benefits of fluoridation outweigh their health concerns, then clause 4 may limit the rights of families and children to protection. The Committee considers that the question of the health effects of fluoridation, and hence the compatibility of the new section 5A(1) with Charter s. 17, is a matter for Parliament.

The Committee also observes that the new section 5A(2) limits the new section 5A(1) by excluding families and children in areas where fluoride has already been lawfully added to the public water system.

The Committee refers to Parliament for its consideration the question of whether or not the proposed new section 5A(2) is a reasonable limit, according to the test in Charter s. 7(2), on the rights of families and children to protection, under Charter s. 17, from the health concerns (if any) of the fluoridation of water.

Liquor Control Reform Amendment Bill 2007

Introduced	3 October 2007
Second Reading Speech	1 November 2007
House	Legislative Assembly
Member introducing Bill	Mr Tony Robinson MLA
Portfolio responsibility	Minister for Consumer Affairs

Purpose

The Bill amends the *Liquor Control Reform Act 1998* (the 'Act') to —

- allow for the exclusion of persons from certain premises or areas in certain circumstances;
- strengthen both penalties for liquor licensing offences and enforcement powers;
- facilitate and provide support for voluntary liquor accords; and
- allow for bans of the inappropriate advertising or promotion of liquor sales and licensed premises.

Content and Committee comment

[Clauses]

[2]. Section 3 and Part 3 will commence on proclamation but not later than by 1 July 2008 and the remaining provisions of the Bill (clauses 4 to 7) will commence on a day or days to be proclaimed or 1 July 2009, whichever is sooner.



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

The Committee refers to Scrutiny Committee Practice Note No. 1 of October 2005 concerning delayed commencement provisions of more than 1 year from the time a Bill is introduced in the Parliament.

The Committee will request the Minister to draw this matter to the attention of his Department’s legislation officers.

The Committee will seek further advice from the Minister concerning the necessity to include such a delayed commencement provision.

[4 to 7]. Part 2 of the Bill establishes two new processes that can be applied in relation to specific locations to be determined by the Director of Liquor Licensing. These are banning notices that may be given by certain police members and exclusion orders that may be made by a court.

[5]. Inserts new Part 8A (new section 147 and 148 and 148A to 148R) regarding banning notices and exclusion orders into the Act.

New section 147 provides the Director of Liquor Licensing with the power to declare, by Order published in the Government Gazette, an area to be a designated area for the purposes of new Part 8A. The Director must consult the Chief Commissioner of Police before making an Order declaring a designated area.

Banning Notices

New section 148B empowers a relevant police member to issue a banning notice which bans the person for a maximum of 24 hours from the designated area or from all licensed premises in the designated area as set out in the notice given to the person.

A police member cannot give a banning notice to a person that bans the person from the whole of a designated area if the relevant police member believes or has reasonable grounds for believing that the person either lives or works in the designated area.

A person can be given more than one banning notice for the designated area or licensed premises within the designated area if the banning notices are given for separate specified offences.

New section 148D sets out the requirements in relation to a request that a person state their name and address.

Strict liability – reverse onus to establish evidentiary facts

New section 148F sets out 2 offences for contravening banning notices and failing to comply with directions of the police. There are two defences provided in respect to the strict liability offences, firstly the defence of reasonable mistaken belief about facts which had they existed, would not have meant that the conduct would not have constituted an offence and secondly, that the conduct constituting the offence was beyond the persons control and the person took reasonable precautions to avoid committing an offence.



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

Offence to contravene banning notice or failure to comply with direction – Strict liability offence – defence of reasonable mistake of fact or conduct beyond the control of defendant and reasonable precautions taken to avoid offence

The Committee accepts that in certain circumstances whether a person has a ‘lawful excuse’ or claims that there are causes beyond his or her control are matters in the peculiar knowledge of that person and that in these cases a strict liability offence may be appropriate requiring a defendant to prove on the balance of probabilities, the existence of some evidentiary fact by way of a defence to an alleged contravention.

The Committee also refers to these offences in the Charter Report below.

New section 148G sets out the powers of a member of the police force to direct a person who is the subject of a banning notice and who is in the designated area or licensed premises in contravention of the notice to leave that designated area or licensed premises.

New section 148H allows a member of the police force to use reasonable force in 2 circumstances related to banning notices.

Exclusion Orders

New section 148I gives jurisdiction to a court to make an exclusion order of up to 12 months where a court finds the offender guilty of a specified offence and that specified offence committed in a designated area. The Director of Public Prosecutions or a police member may bring an application for an exclusion order or the court may make an exclusion order on its own initiative.

Strict liability – reverse onus to establish evidentiary facts

New section 148J sets out the offences and specifies particular defences in relation to the contravention of an exclusion order and a failure to comply with directions given by the police. There are two defences provided in respect to the strict liability offences, firstly the defence of reasonable mistaken belief about facts which had they existed, would not have meant that the conduct would not have constituted an offence and secondly, that the conduct constituting the offence was beyond the persons control and the person took reasonable precautions to avoid committing an offence.



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

Offence to contravene exclusion order or fail to comply with direction – Strict liability offence – defences – reasonable mistake of fact – conduct beyond the control of defendant and reasonable precautions taken to avoid offence

The Committee accepts that in certain circumstances whether a person has a ‘lawful excuse’ or claims that there are causes beyond his or her control are matters in the peculiar knowledge of that person and that in these cases a strict liability offence may be appropriate requiring a defendant to prove on the balance of probabilities, the existence of some evidentiary fact by way of a defence to an alleged contravention.

The Committee also refers to these offences in the Charter Report below.

New section 148K sets out the powers of a member of the police force to direct a person who is the subject of an exclusion order and who is in the designated area or licensed premises in contravention of the order to leave that designated area or licensed premises.

New section 148L allows a member of the police force to use reasonable force in 2 circumstances related to exclusion orders. Reasonable force may be used to prevent a person from entering or re-entering a designated area or licensed premises or from attempting to do so in contravention of the terms of the exclusion order.

New section 148M empowers the person who is the subject of an exclusion order, the Director of Public Prosecutions or a member of the police force to apply for a variation of the exclusion order.

New section 148P sets out the information that the Director of Liquor Licensing or relevant police members may disclose to licensees or permittees or their employees or agents concerning persons banned or excluded under the new Part including a photograph of persons subject to notices and orders made under the Part.

New section 148Q provides for an offence applicable to a licensee or a permittee and an identical offence applicable to an employee or an agent of a licensee or a permittee if any of those persons knowingly permit a person who is the subject of a banning notice or an exclusion order to enter or re-enter the licensed premises in contravention of the notice or order.

[6]. Offences under the new Part may be proceeded against by way of infringement penalty notices.

[7]. Inserts new Schedule 2 into the Principal Act. Schedule 2 sets out the specified offences for the purposes of both banning notices and exclusion orders.

[21]. Inserts new section 108(4) and (5) to provide that a licensee or permittee must not supply liquor to a person who is in a state of intoxication or permit drunken or disorderly persons to be on the licensed premises or on any authorised premises.

New section 108(5) provides for 2 separate defences to a prosecution for this offence if the defendant did not know that drunken or disorderly persons were on the premises and if the defendant had taken reasonable steps to ensure that drunken or disorderly persons were not on the premises.



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

Offence to supply alcohol to is intoxicated or permit drunken or disorderly person to be on licensed or authorised premises – Strict liability offence – defences of reasonable mistake of fact or reasonable steps taken.

The Committee accepts that in certain circumstances whether a person is acting under a mistaken belief or has taken reasonable steps to avoid the particular liability encompassed by the offence that these matters are within the peculiar knowledge of that person and that in these cases a strict liability offence may be appropriate requiring the defendant to prove on the balance of probabilities the existence of some evidentiary fact by way of a defence.

The Committee also refers to these offences in the Charter Report below. .

[25]. Inserts new Division 6 in Part 8 of the Act in relation to voluntary liquor accords. The insertion of this new Division establishes a legislative basis and provides support for voluntary liquor accords.

Note: From the explanatory memorandum – *A liquor accord is a code of practice or agreement that affects such matters as the supply of liquor and the opening and closing of licensed premises and is entered into by one or more licensees or permittees, or both, with the approval of the Chief Commissioner of Police and the Director of Liquor Licensing. The definition of the term liquor accord makes it clear that the purpose of a liquor accord is to minimise the harm that arises from the misuse and abuse of alcohol.*

[28]. Provides for the automatic repeal of this amending Bill on the first anniversary of its forced commencement.

Charter Report

Keywords – Freedom of movement – Liberty – Presumption of innocence – Exclusion of certain people from areas affected by alcohol-related violence or disorder – Size of areas – Interim court orders and criminal prosecutions in areas later deemed invalid – Reversal of burden of proof

Charter s.12 gives every person ‘the right to move freely within Victoria’. Charter s.21(1) gives every person the ‘right to liberty’. Charter s.25(1) provides that people charged with a criminal offence are ‘to be presumed innocent until proved guilty’.

The Committee notes that clause 5 (inserting a new Part 8A into the Act) creates offences of entering or staying in a area or licensed premises contrary to a banning notice, police direction or exclusion order (new sections 184F & 148J) and permitting such persons to enter or re-enter licensed premises (new section 148Q); and authorises police to use reasonable force to remove

such persons or prevent their re-entry (new sections 184H & 148L.) The Committee considers that these provisions may infringe such persons' rights to freedom of movement and liberty.

The Statement of Compatibility remarks that the exclusions are subject to a number of constraints:

- the *areas* where banning notices and exclusion orders may apply are limited to those designated by the Director of Liquor Licensing, following consultation with the Chief Commissioner, that contain a public place, within 100 metres of a licensed premises, where alcohol-related violence or disorder has occurred (new section 147(1)) and that the Director must revoke the designation once the grounds no longer exist (new section 148A(1)(b))
- the *persons* who may be excluded are restricted to those suspected or found guilty (with a sentence of less than 12 months imprisonment) of committing specified offences in that area (new sections 148B(1) & 148I(1))
- the *bans* or *orders* are restricted to those that may prevent further specified offences by the person banned, are subject to a variety discretionary considerations and cannot bar a person from attending a place of residence or work (new sections 148B(3)-(4) and 148I(1)(c) & (6))
- the *time* of the bans are restricted to 24 hours (in the case of police orders concerning suspects) and 12 months (in the case of court orders concerning people who were found guilty) (new sections 148B(2) & 148I(4))

The Committee observes that there are no constraints as to the size of the area designated by the Director but rather that the area must merely *contain* a public place affected by relevant violence near licensed premises. The Committee also observes that courts are barred from issuing interim orders staying a designation of an area, including an invalid designation, unless there are exceptional circumstances (new section 148(1)). The Committee further observes that criminal prosecutions for contraventions banning notices or exclusion orders prior to a court's finding that a designated area is invalid will remain invalid (new Section 148(2)).

The Committee also notes that new sections 148F(3) & 148J(3) provide that the burden of proof is on criminal defendants to establish the defences of mistake of fact or reasonably unavoidable circumstances in relation to the new criminal offences of failure to comply with a banning notice, exclusion order or a related police direction. The Committee considers that these provisions may infringe such defendants' rights to be presumed innocent until proved guilty.

The Statement of Compatibility remarks that:

The purpose of the imposition of a burden of proof on the defendant is to provide the defendant with an opportunity to escape liability in circumstances of honest and reasonable mistake or total absence of fault, without undermining the ability to enforce compliance with banning notices and exclusion orders... [T]he onus only relates to matters that are within the knowledge of the defendant.... An evidential onus would be too easily discharged by a defendant and the prosecution would have difficulty in proving the absence of the defence beyond reasonable doubt... It is also relevant that this offence is one that carries a relatively small fine only.

The Committee observes that reasonable mistakes of fact and reasonably unavoidable circumstances are matters that are traditionally regarded as incompatible with criminal responsibility. The Committee also observes that the prosecution is typically required to prove the absence of such matters beyond a reasonable doubt (once they are raised on the evidence) and may do so by relying on circumstantial evidence, as well as any admissions or guilty conduct by the defendant. The Committee further observes that, whether criminal responsibility is proven or not, people who are the subject of banning orders or exclusion orders may still be removed by police under new sections 148H & 148L and must not be admitted into relevant licensed premises under new section 148Q.

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

- 1. Why is there no limit in new section 147(1) on the size of areas that may be designated by the Director of Liquor Licensing?*
- 2. Why does new section 148(1) prevent courts from making interim orders suspending a designation except in exceptional circumstances?*
- 3. Will new section 148(2) permit the prosecution of people who breach banning notices or exclusion orders despite a later finding by a court that the Director's designation of the relevant area was invalid?*
- 4. Given the availability of circumstantial evidence to disprove reasonable mistakes and reasonably unavoidable circumstances, the powers in new sections 148H & 148L and the criminal offence in new section 148Q, why are the reverse burdens of proof in new sections 148F(3) & 148J(3) necessary to enforce compliance with banning notices and exclusion orders?*

Pending the Minister's response, the Committee refers to Parliament for its consideration the question of whether or not clause 5 is a reasonable limit on the Charter's rights to movement, liberty and the presumption of innocence according to the test set out in Charter s.7(2).

Keywords – Reasonable limits – Regulation of licensed venues – Freedom of movement – Privacy – Freedom of expression – Property rights – Presumption of innocence

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

The Committee notes that the Bill relates to the regulation of trading (specifically liquor sales) and the enforcement of that regulation. The Committee observes that such legislation inevitably engages a variety of human rights, but that reasonable provisions will typically satisfy Charter s.7(2), as well as internal limits on particular rights.

The Statement of Compatibility identifies several amendments to the *Liquor Control Reform Act 1998* that are said to engage the following Charter rights:

- **Freedom of movement** (Charter s.12): A provision authorising private accords amongst licensees, with the approval of the Chief Commissioner and the Director of Liquor Licensing, to exclude particular members of the public from licenced premises for the purpose of minimising harm arising from the misuse or abuse of alcohol (clause 25, inserting new section 146B).
- **Privacy** (Charter s.13(a)): A provision for the disclosure of information concerning banning notices, exclusion orders and liquor accord bans, including identification details of the subject of those notices or orders, to licensees and their employees (clause 5, inserting new section 148P; and clause 25, inserting new section 146D).
- **Freedom of expression** (Charter s.15(2)): A provision barring licensees from permitting music to be performed or played at a volume that prevents conversation between patrons outside ordinary trading hours (clause 13(b), amending s.9); and requiring licensees to comply with a notice banning ads or promotions that the Director considers are 'likely to encourage irresponsible consumption of alcohol or is otherwise not in the public interest' (clause 23, inserting a new section 115A). The Committee observes the Director's authority to issue notices with respect to the 'public interest' under clause 23 will be subject to Charter ss.32(1) and 38, which generally require statutes to be interpreted and decisions to be made consistently with human rights.

- **Property rights** (Charter s.20): A provision for the temporary suspension of a licence where a senior police member believes that conduct in breach of the licence has occurred, will continue and may result in substantial harm, loss or damage to a person (clause 18, inserting a new section 96A).
- **Presumption of innocence** (Charter s.25(1)): Provisions placing an evidential burden on defendants charged with contravening a banning notice or exclusion order to raise the defence that the police officer failed to comply with his or her statutory obligations with respect to such orders (clause 5, inserting new sections 148F(5) & 148J(5)) and placing a reverse onus of proof on defendant licensees charged with admitting or supplying liquor to drunk people for the new defences of absence of knowledge and reasonable steps (clause 21(2), amending s. 108.). The Committee observes that the latter offence is subject to the common law defence of honest and reasonable mistake of fact, which imposes only an evidential burden on defendants.

In each instance the Statement of Compatibility contends that the respective rights are either not infringed or are subject only to reasonable limitations under s7(2). Having considered the above Charter rights and provisions, the Committee is satisfied that the measures so engaged do not warrant any special mention or adverse comment in respect to possible incompatibility with human rights.

The Committee makes no further comment.

Motor Car Traders Amendment Bill 2007

Introduced	30 October 2007
Second Reading Speech	1 November 2007
House	Legislative Assembly
Member introducing Bill	Hon. Tony Robinson MLA
Portfolio responsibility	Minister for Consumer Affairs

Purpose

The Bill amends the *Motor Car Traders Act 1986* (the ‘Act’) to regulate motor car auctions and to improve the operation of that Act and the *Interpretation of Legislation Act 1984* to insert a new definition of insolvent under administration and to make consequential amendments to other Acts.

Content and Committee comment

[Clauses]

[2]. Provides that the proposed Act will come into operation on a day or days to be proclaimed but not later than by 1 December 2008.

Police checks

[12]. Adds a new category of persons whom a motor car trader is prohibited from employing in any customer service position, requires motor car traders to check that potential employees are not prohibited prior to employing them and provides for a form to be prescribed for declarations by applicants of whether or not they are prohibited from being employed in such positions. The clause amends section 35A by inserting a new 35A(4) requiring police checks to be undertaken by persons employed in a customer service capacity.

Age based discrimination

[13]. Provides that a motor car trader cannot knowingly enter into dealings with a person under the age of 18 years in relation to new or used cars.

[14]. Amends section 43 of the Act to provide for cooling-off periods for car sales that in all instances will terminate three clear days after the purchaser signs the agreement for the sale of a motor car or sooner if the purchaser during the cooling-off period signs a waiver.

[16]. Inserts a new Part 3A in the Act (new sections 50C to 50J) to prohibit dummy bidding, allow vendor bids and otherwise regulate auctions of motor cars and provide for appropriate offences relating to such auctions.

[18 and 19]. Provides for disclosure obligations in respect to the previous ownership of motor vehicles at the request of a prospective purchaser, and provides for relevant offences.

[25]. Makes a number of amendments to section 77 including an amendment (new section 77(4A)) to allow a discretion to the Motor Car Traders Claim Committee whether to hold an oral hearing to admit or refuse a claim under the Motor Car Traders Guarantee Fund established by the Act.

[29]. Is a transitional provision (new section 121) which provides that the prohibitions on persons who can be employed as inserted by clause 12 do not apply to people employed prior to the commencement of that clause.

[33]. Provides that this proposed Act is repealed on 1 December 2009.

Charter Report

Keywords – Reasonable limits – Regulation of the trade in motor cars – Age discrimination – Privacy – Property – Fair hearing

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

The Committee notes that the Bill relates to the regulation of trading (specifically in motor cars) and the enforcement of that regulation. The Committee observes that such legislation inevitably engages a variety of human rights, but that reasonable provisions will typically satisfy Charter s.7(2), as well as internal limits on particular rights.

The Statement of Compatibility identifies several provisions amending the Act that are said to engage the following Charter rights:

Privacy (Charter s.13(a)): provisions requiring:

- prospective employees of a motor car trader’s business to obtain a police check (clause 12(4), amending s.35A);
- auctioneers to record and disclose the name and address of the owners and purchasers of motor cars sold at auction (clause 16, inserting new section 50J);
- motor car traders to display or provide the name and address of the last owner of motor cars they sell (clause 18, amending s.52, and clause 19, inserting a new section 53);
- claimants and specified public bodies to supply information relevant to a claim to the Motor Car Traders Claims Committee (clause 21, inserting new sections 68 and 69).

(The Statement of Compatibility regards these provisions as also engaging the Charter’s right to freedom of expression.)

Property rights (Charter s.20): a provision for the suspension of the trading licence of a partner or director if a corresponding partnership or body corporate’s licence is suspended (clause 9, amending s.29)

Fair hearing (Charter s.24(1)): a provision exempting the Motor Car Traders Claims Committee from any obligation to hold an oral hearing with respect to a claim (Clause 25(3) inserting new section 77(4A)).

The Committee also observes that, clause 13 substituting a new section 37 banning motor car trading with persons under 18, potentially engages the right against **age discrimination** under Charter s.8(3) (recognition and equality before the law).

In each instance the Statement of Compatibility contends that the respective rights are not infringed or are subject only to reasonable limits under Charter s.7(2). Having considered the above Charter rights and provisions, the Committee is satisfied that the measures so engaged do not warrant any special mention or adverse comment in respect to possible incompatibility with human rights.

The Committee makes no further comment.

National Electricity (Victoria) Amendment Bill 2007

Introduced	30 October 2007
Second Reading Speech	1 November 2007
House	Legislative Assembly
Member introducing Bill	Hon. Peter Batchelor MLA
Portfolio responsibility	Minister for Energy and Resources

Purpose

The Bill amends the *National Electricity (Victoria) Act 2005* (the '2005 Act') to —

- modify application of the National Electricity Law (the NEL) and the National Electricity Rules (the NER) for a limited period; and
- provide for the transfer of administration of the current Victorian electricity distribution pricing determination from the Essential Services Commission (the ESC) to the Australian Energy Regulator (the AER).

The Committee notes the following extract from the Second Reading Speech —

The Bill will facilitate implementation in the Victorian electricity sector of the next phase of the national energy market reform program under the Council of Australian Governments (COAG). In particular, the Bill contains transitional provisions with respect to the transfer of responsibility for economic regulation of electricity distribution from the Essential Services Commission (ESC) of Victoria to the Australian Energy Regulator (AER).

Content and Committee comment

[Clauses]

[2]. Other than clause 6 the provisions in the Bill will come into operation on proclamation but not later than by 1 January 2009. Clause 6 which makes a statute law revision amendment and which will commence on the day after the day the Bill receives the Royal Assent.

[5]. Inserts a new Part 4 (new sections 17 to 29) in the Act concerning transitional arrangements from the ESC to the AER.

[7]. Provides for the automatic repeal of the Bill on 1 January 2010.

Charter Report

Keywords – Transfer of information held by Essential Services Commission – Privacy & reputation – Property – Transition to the national electricity law – Reasonable limits

Charter s.13 gives people the right not to have their 'privacy unlawfully or arbitrarily interfered with' and their 'reputation unlawfully attacked.' Charter s.20 provides that people must not be deprived of property 'other than in accordance with law.'

The Committee notes that clause 5, inserting a new section 28 into the *National Electricity (Victoria) Act 2005*, authorises the transfer of information, including confidential information, held by the Essential Services Commission to the Australian Energy Regulator and exempts such transfers from adverse legal consequences. The Committee observes that such information may include private information of individuals. The Committee also observes that the exemption from legal consequences might deprive such individuals of rights to commence legal proceedings with respect to defamation or breach of contract. The Committee considers that clause 5 engages such individuals' rights to privacy, reputation and property.

The Committee further observes that clause 5 is restricted to information ‘that is reasonably required by the AER for the purposes of’ the new Part 4, which facilitates the transition to the national electricity law. The Committee considers that the transfer of information for this purpose is not arbitrary and is clearly defined by the law and, therefore, that clause 5 is compatible with the Charter’s rights to protection of privacy, reputation and property.

The Committee makes no further comment.

Police Regulation Amendment Bill 2007

Introduced	31 October 2007
Second Reading Speech	1 November 2007
House	Legislative Assembly
Member introducing Bill	Hon. Bob Cameron MLA
Portfolio responsibility	Minister for Police and Emergency Services

Purpose

The Bill amends the *Police Regulation Act 1958* (the 'Act') to –

- introduce testing of police members for alcohol or drugs of dependence, and
- separate the positions of the Director, Police Integrity and the Ombudsman and provide for the continuation of contempt powers for the Office of Police Integrity.

Content and Committee comment

[Clauses]

[2]. The provisions in the Bill come into force on proclamation but not later than by 1 January 2009.

Note: The explanatory memorandum provides – *This will allow time for regulations to be made, for police and other agency procedures and instructions to be updated and for affected persons to be notified of any new obligations.*

Breach of discipline

[4]. Adds two new circumstances that will constitute a breach of discipline under section 69(1) of the Act being –

- a failure to comply with a direction to submit to alcohol and drugs of dependence testing and (new section 85B),
- refusal to consent to a sample taken by a medical practitioner from a member of the force who is unconscious or otherwise unable to give his or her consent to the taking of the sample, being used in evidence (new section 85D).

[5]. Inserts a new Division 4A into Part IV of the Act (new sections 85A to 85H) to set out the process for drug and alcohol testing of police members.

Discretion to require testing for drugs and/ or alcohol

New section 85B inserts a power for the Chief Commissioner to direct a member of the force to provide a sample of breath, urine or blood for testing for the presence of drugs of dependence or alcohol.

To exercise the discretion the Chief Commissioner must reasonably believe the member—

- to be incapable of performing or inefficient in the performance of his or her duties because of the consumption of alcohol or a drug of dependence; or
- to have been involved in a critical incident as defined by new section 85A ; or
- ought to be tested for alcohol or a drug of dependence for the good order or discipline of the force.

A direction must not be given unless the Chief Commissioner is satisfied that the results of the test may be relevant to management of the member's performance of his or her duties, an investigation under Part IV or IVA of the Act or for any proceedings arising out of or in connection with any such investigation.

Immunity against legal proceedings – There is a protection against liability for a registered medical practitioner who takes a sample from a member of the force in compliance with a direction of the Chief Commissioner.

New section 85D provides that a registered medical practitioner may take a blood sample for testing for the presence of alcohol or a drug of dependence from a member involved in a critical incident who is *unconscious* or otherwise unable to comply with a direction to provide a sample. This will allow a sample to be taken in a relevant time period for analysis purposes even if the member cannot consent at that time. However, the member will have a chance to 'withdraw' their consent for that sample to be used for an evidential purpose once they become conscious.

New section 85E provides that evidence from a sample obtained under this new Division is generally inadmissible in any proceedings except in specified compensation health and discipline proceedings under the Act.

New sections 85F and 85G deal with confidentiality of test results and unlawful disclosure offences.

Office of Police Integrity

[8]. Amends section 102A(2) of the Act to remove the requirement that the Director of Police Integrity be the same person as the person who holds office as Ombudsman.

[9]. Inserts new sections 102AB to 102AH dealing with the appointment of Director, Police Integrity and provides for terms and conditions, resignation, suspension, removal and acting appointments relevant to that position. The Director may not accept any other employment without the written approval of the Governor in Council (s.102AB(3)(c)).

[11 to 13]. Deal with confidentiality and unlawful disclosure of information offences.

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

Charter Report

Keywords – Non-consensual medical treatment – Privacy – Requirement for certain police officers to undergo testing for alcohol or drug dependence – Investigations of deaths

Charter s.9 gives everyone the right 'not to be arbitrarily deprived of life.' Charter s.10(c) gives people the right of a person not to be 'subjected to medical treatment without his or her free consent' and Charter s.13(a) gives people the right not to have their 'privacy unlawfully or arbitrarily interfered with'.

The Committee notes that clause 5, inserting a new sections 85B and 85D into the *Police Regulation Act 1958*, authorises the Chief Commissioner to require certain members of the police force or police recruits to provide breath, urine or blood samples for the purpose of testing for alcohol or drug dependence. The Committee also notes that clause 4, amending s.69(1)(b), makes failure to consent, or failure of an officer sampled while unconscious to authorise analysis of the sample, a disciplinary offence, making the officer liable to fines or a variety of career sanctions, including dismissal. The Committee considers that these provisions may infringe the police officers' right against non-consensual medical treatment and engage their right to privacy, but observes that neither of these rights is absolute.

The Committee further notes that sampling directions may only be made where the results are relevant to the management of the member's performance or duties, or to an investigation or proceeding relating to performance or an incident where someone was killed or injured (new sections 85B(1), 85B(3) & 85C). The Statement of Compatibility provides –

It is essential that the Chief Commissioner has sufficient powers to effectively investigate cases where police actions has resulted in death or serious injury, to investigate and take action in cases where alcohol or drug use may be affecting the ability of an officer to carry out his duties, and to investigate and manage the performance of police officers. The provisions also serve to enable identification of officers with alcohol or drug problems so that treatment and rehabilitation can be provided.

The Committee further observes that the equivalent to Charter s.9 under the *International Covenant on Civil and Political Rights* has been interpreted as including an obligation on the state to fully investigate all unusual deaths. The Committee considers that clause 5 is a reasonable limit on the Charter right against non-consensual medical treatment, according to the test in Charter s.7(2), and does not infringe the Charter right to privacy.

Keywords – Fair hearing – Ban on admissibility or disclosure of the results of testing of police officers for drug or alcohol dependency – Where results of testing are relevant to a criminal defence

Charter s.24(1) provides that people charged with a criminal offence have ‘the right to have the charge decided after a fair hearing.’

The Committee notes that clause 5, inserting a new section 85E into the *Police Regulation Act 1958*, provides that evidence obtained as a result of alcohol or drug testing required by the Chief Commissioner is inadmissible in all proceedings, other than compensation, health and discipline proceedings, or proceedings arising out of a death or serious injury caused by the member tested. The Committee also notes that new sections 85F and 85G, clause 11 (amending s.102G) and clause 13 (amending s.102J), bar the disclosure of the results of any test other than to the person involved, the Office of Police Integrity, the Ombudsman (clause 12, inserting a new section 102IA) or in a compensation, health, discipline or critical incident proceeding. The Committee observes that these provisions together prevent criminal defendants from learning of or using the results of alcohol or drug testing of a police officer as part of their defence. The Committee therefore considers that the new section 85E, together with the bans on disclosure, may infringe some criminal defendants' rights to a fair hearing.

The Second Reading Speech remarks that new section 85E:

is important to protect the administration of justice being substantively and unreasonably delayed or blown out through irrelevant ‘fishing’ expeditions by criminal defence teams. For example, a police member may be involved in a critical incident during a search, and then test positive to a drug of dependence. It is not intended that the drug test result could be used by the party subjected to the search, to attempt to discredit a charge against him or her such as possession and handling of stolen goods resulting from the search.

The Committee observes that other rules of evidence, notably the requirement of relevance, the discretion to exclude prejudicial evidence, the limits on cross-examination under s.37 of the *Evidence Act 1958* and public interest immunity may prevent fishing expeditions of the type described by the Minister. However, unlike new section 85E and the prohibitions on disclosure contained in the Bill, these other rules permit the admission of such evidence where the public interest in admitting the evidence (including the rights of criminal defendants to fair hearings) outweighs the public interest in not admitting it (including police officers' rights to privacy.)

The Committee also observes that the High Court of Australia has held that a police officer's drug dependence, or the level of opiates in his or her blood, may be ‘a legitimate line of inquiry’ in certain trials (e.g. where a defendant alleges that drugs were planted by a police officer and a

question arises as to where the officer might have obtained the drugs), that prosecutors may have a duty to present such evidence and that a ban on admitting the evidence or cross-examining a police officer about it may cause a 'substantial miscarriage of justice' (*Wakeley & Bartling v R* [1990] HCA 23, [21]-[22].)

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

- 1. Will new section 85E prevent criminal defendants from making legitimate lines of inquiry as discussed by the High Court of Australia in *Wakeley & Bartling v R* [1990] HCA 23?*
- 2. Will the limitations on disclosure in new sections 85F, 85G and clause 11 prevent police or prosecutors from fulfilling their obligations to disclose relevant information to criminal defendants?*
- 3. Given the existing rules of evidence restricting irrelevant 'fishing expeditions', why is new section 85E needed?*

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

The Committee makes no further comment.

Road Legislation Further Amendment Bill 2007

Introduced	30 October 2007
Second Reading Speech	1 November 2007
House	Legislative Assembly
Member introducing Bill	Hon. Tim Pallas MLA
Portfolio responsibility	Minister for Roads and Ports

Purpose

The Bill amends the *Road Safety Act 1986* to —

- include provisions providing for fatigue management for drivers of certain heavy vehicles based on model legislation developed by the National Transport Commission for implementation throughout Australia;
- introduce a new offence for drivers who deliberately or recklessly enter level crossings when warning devices are operating or a train or tram is approaching;
- amend section 92 of the Act to add further purposes for which information in VicRoads' records may be used, namely—
 - assist in locating missing persons;
 - facilitate the reunion of families and friends;
 - facilitate road safety related research projects;
 - assist infrastructure managers to carry out the managers' functions under the *Road Management Act 2004*;
- clarify the operator onus provisions in Part 6AA for the purposes of tolling offences;
- enable VicRoads to delay sending a demerit point suspension notice if a demerit point notice is returned as undeliverable;
- enable regulations to be made in respect of learner drivers that make different provision for drivers of different ages, experience or other factors;
- enable regulations to be made providing for VicRoads to grant people under the age of 21 years probationary driver licences for longer terms than those that apply to older drivers;
- clarify that a Ministerial order that recognises laws of other States or Territories for the purposes of determining a person's liability for repeat drink-driving and drug-driving offences may include offences under laws that have been repealed or expired.

Part 3 of the Bill amends the *Chattel Securities Act 1997* to clarify provisions regarding the registration of security interests in motor vehicles, including clarification of the power to make regulations imposing fees, and the ability to waive or reduce those fees in certain circumstances.

Part 4 of the Bill amends the *EastLink Project Act 2004* to ensure that the tolling provisions in that Act are consistent with recent changes to operator onus offences and with those that apply under the *Melbourne City Link Act 1995*.

Part 5 of the Bill amends the *Melbourne City Link Act 1995* to apply recent changes to operator onus offences to City Link tolling, so that recipients of tolling invoices who were not driving can avoid responsibility by nominating the responsible person in relation to the vehicle.

Part 6 of the Bill amends the *Road Management Act 2004* to establish a new set of arrangements for the funding and management of street lighting on arterial roads between the State and local governments, and to make amendments in relation to road management functions.

Part 7 of the Bill amends the *Transport Act 1983* to transfer responsibility for the provisions regarding tow trucks from the Director of Public Transport and the Secretary to the Department of Infrastructure to VicRoads.

Content and Committee comment

[Clauses]

[2]. Some provisions in the Bill come into operation on the day after Royal Assent and other provisions commence on proclamation but with a longest forced commencement provision of not later than by 1 October 2008.

Road Safety Act 1986

Discrimination based on age of driver permitted – Equality before the law [5 and 6].

[5]. Inserts a new subsection (2A) into section 19 to provide that regulations which set out the procedures and requirements to be complied with before VicRoads can grant a driver licence, are able to provide for procedures and requirements that differ depending on the person's age, experience or any other factor.

[6]. Inserts a new subsection (4) into section 21 to provide that regulations may provide that probationary licences granted to people under the age of 21 years may have longer terms than the terms that usually apply to people who are 21 years of age or more. *Also refer to Charter report below.*

[9]. Inserts a new section 68B to provide that if a driver deliberately or recklessly enters a level crossing when warning lights or bells or a boom gate are operating; a train or tram is visible or has sounded a warning; or there is a blockage in the road beyond the crossing, he or she commits an offence. *Also refer to [15] below.*

[10 and 11]. Makes amendments related to tolling offences. Refer to Charter Report below and the Statement of Compatibility concerning collection and disclosure of information and relevant privacy issues.

Note: The Statement of Compatibility provides – *The amendments made by clauses 10 and 11 allow vehicle operators to provide personal information about a 'responsible person' they wish to nominate for the purposes of collecting a relevant toll under part 4 and part 5 of the bill which amend the EastLink Project Act 2004 and the Melbourne City Link Act 1995, respectively.*

Under amendments made by part 4 and part 5, the operator of a vehicle will have default liability to pay tolls charged to it, unless it can nominate another person as the person responsible for that payment. Making such a nomination will involve divulging personal information and will allow an enforcement agency to use that information to pursue the nominated person.

Right to property – confiscation or impoundment for offences

[15]. Inserts a new paragraph (ea) in subsection 84C(1) to make the new offence of deliberately or recklessly entering a level crossing (*see [9] above*) one of the offences that will give rise to the impoundment, immobilisation or forfeiture (after a third offence) of a motor vehicle under Part 6A. *Refer to Charter report below and the Statement of Compatibility.*

Disclosure of information – privacy

[16]. Inserts paragraphs (ic), (id) and (ie) into subsection 92(3). Section 92 of the Act prohibits use or disclosure of personal or commercially sensitive information held by VicRoads except for specified purposes listed in subsection (3). The new paragraphs will enable information to be used and disclosed for a number of further purposes including to enable a person or body approved by

the Minister to locate and contact missing persons or to facilitate reunion of families and friends. Also refer to *Charter Report* below and the *Statement of Compatibility*.

Freedom of movement – Presumption of innocence

[20]. Inserts a new Part 10A into the Act (new sections 191A to 191ZZZD) to establish a new scheme for managing heavy vehicle driver fatigue.

The Committee notes these extracts from the *Statement of Compatibility* –

Freedom of movement

New sections 191ZZJ and 191ZZK authorise an inspector under the Road Safety Act 1986 who believes the driver of a fatigue-regulated heavy vehicle has worked a period in excess of the maximum period allowed under a maximum work requirement, or who has taken a rest period that is shorter than the rest period required under a minimum rest requirement, to issue a written notice requiring the driver to take a rest or to work for a shorter period.

New section 191ZZL authorises an inspector under the Road Safety Act 1986 to issue a written notice requiring a driver to stop work immediately and not work again for a stated period if the inspector believes the driver is impaired by fatigue. An inspector may authorise a person who is qualified to do so to drive the vehicle to a suitable rest place.

These provisions engage a person’s right to freedom of movement in Victoria because they enable an inspector to require a person to rest before continuing to drive a fatigue-regulated heavy vehicle until certain requirements of rest are satisfied.

Presumption on innocence

The intent of the new provisions is to establish a scheme to properly manage fatigue in the drivers of heavy vehicles on an industry-wide basis, thus improving safety on Victorian roads. It aims to do so by imposing criminal liability, in cases where the driver of a heavy vehicle contravenes maximum work or minimum rest requirements, and in some cases work diary requirements, on a ‘chain of responsibility’ basis.

New section 191B defines ‘fatigue regulated heavy vehicle’. The requirements set out in new part 10A will generally apply to such vehicles. A ‘fatigue regulated heavy vehicle’ is a motor vehicle or combination with a gross mass of more than 12 tonnes, or a bus. Expressly excluded from the definition are trams, motor homes and vehicles that primarily operate off public roads, such as agricultural machinery and road building plant.

New sections 191D-191K impose duties on various persons (‘parties in the chain of responsibility’) who may be liable for an offence where a driver of a fatigue-regulated heavy vehicle contravenes a maximum work requirement, a minimum rest requirement or a work diary requirement.

These provisions also provide defences for parties in the chain of responsibility.

A person (other than an operator) who was in a position to influence the conduct of the driver will be able to invoke the reasonable steps defence set out in new section 191ZZP.

New section 191ZZP provides that for a person who has the benefit of the reasonable steps defence, it is a defence if the person charged establishes that:

- *the person did not know, and could not reasonably be expected to have known, of the contravention; and*
- *either the person took all reasonable steps to prevent the contravention or there were no steps the person could reasonably have taken to prevent the contravention.*
- *New section 191ZZQ sets out various matters to which a court may have regard when deciding whether things done or omitted to be done by a person charged constitute reasonable steps.*

- *New section 191ZZO(2) provides that a court must consider a person to have taken reasonable steps to prevent an act or omission that led to a contravention if the person establishes that they did certain things to prevent the act or omission. In general terms, those things include identifying and assessing (at or within specified times) aspects of their activities that may lead to a contravention of a fatigue management requirement, and taking steps to eliminate or minimise the risk.*
- *New section 191ZZS enables a person charged with a fatigue management offence to establish that they took all reasonable steps to prevent the contravention by providing proof that they complied with relevant standards and procedures, including an industry code of practice.*
- *New section 191ZZX provides that proceedings can be taken against more than one person who is liable to be found guilty of a fatigue management offence. Proceedings may be taken against a person regardless of whether proceedings have been taken against anyone else, and regardless of the outcome of those proceedings.*

Effectively, a number of people including the owner and persons involved in the scheduling of trips and the loading and consigning of goods may be deemed to have committed the same offence as the driver, unless they can establish the existence of the reasonable steps defence.

The scheme is intended to place an evidential onus on parties in the chain of responsibility to establish their innocence. The offences carry penalties.

The provisions engage the right to be presumed innocent until proven guilty under section 25(1) of the charter because various influencing persons and their associates are effectively deemed to be guilty until they establish that they are innocent. Overseas jurisprudence indicates that this kind of reverse onus provision has been widely held to amount to a limitation on the right to be presumed innocent.

Notes: From the explanatory memorandum – These provisions implement the National Transport Commission’s model legislation on fatigue management for drivers of heavy vehicles, subject to some minor departures. The current legislative provisions deal with driver working hours in somewhat narrow and prescriptive terms. The new model legislation is intended to address all aspects of the driver fatigue problem rather than focussing on hours of work.

New section 191D imposes a duty on a driver of a fatigue regulated heavy vehicle not to drive on a road while impaired by fatigue. A person charged with this offence does not have the benefit of the mistake of fact defence.

New section 191E imposes duties on other parties in the chain of responsibility (defined in new section 191A) to prevent driver fatigue. It requires that a party in the chain of responsibility take all reasonable steps to ensure that a person does not drive the vehicle on a road while the person is impaired by fatigue. A person charged with this offence does not have the benefit of the mistake of fact defence. The penalty for a party in the chain of responsibility failing to take all reasonable steps to ensure that a person does not drive while impaired by fatigue is the penalty for a critical risk offence.

New section 191F imposes duties on employers, contractors and operators and requires them to take all reasonable steps to ensure that their business practices will not cause or permit the driver to drive while impaired by fatigue, or in breach of applicable work/rest hours requirements.

New subsection 191G imposes a duty on a scheduler to take all reasonable steps to ensure that the driver’s schedule for driving the vehicle will not cause or permit the driver to drive while impaired by fatigue or in breach of work/rest requirements. A person charged with this offence does not have the benefit of the mistake of fact defence.

Section 191H imposes duties on consignors and consignees of goods for transport or transported by a regulated heavy vehicle and provides that they must take all reasonable steps to ensure that the terms of the consignment, including, for example, the delivery time, will not result in, encourage or provide an incentive to a driver, employer, prime contractor or operator to cause or permit the

driver to engage in unlawful conduct. A person charged with this offence does not have the benefit of the mistake of fact defence.

New section 191I imposes duties on loading managers and provides that they must take all reasonable steps to ensure that the arrangements for loading and unloading regulated heavy vehicles at the premises at which he or she is the loading manager will not cause or permit the driver to engage in unlawful conduct. A person charged with this offence does not have the benefit of the mistake of fact defence.

Each of the new sections 191L, 191M and 191N create offences for drivers who fail to observe applicable working times and rest times, and for other parties in the chain of responsibility who fail to ensure drivers do not contravene applicable work and rest times. Other parties in the chain of responsibility, except for operators, have the benefit of the reasonable steps defence.

Each of the new sections 191L, 191M and 191N also provide that a person charged with an offence under those sections does not have the benefit of the mistake of fact defence.

New sections 191O and 191P create offences for drivers who fail to observe stipulated hours, and for other parties in the chain of responsibility who fail to ensure drivers do so. Parties in the chain of responsibility, except for operators, have the benefit of the reasonable steps defence but a person so charged does not have the benefit of a mistake of fact defence.

New section 191Q requires drivers to observe maximum work times and minimum rest times specified in the certificate for the accreditation under which the driver is working and provides that other parties in the chain of responsibility must ensure that drivers do not contravene the applicable work and rest times. Other parties in the chain of responsibility, except for operators, have the benefit of the reasonable steps defence but do not have the benefit of the mistake of fact defence.

New section 191R sets out the circumstances in which a driver may, and must not, change from one work/rest hours option to a different work/rest hours option. A person charged with an offence under the section does not have the benefit of the mistake of fact defence.

New section 191W requires the owner of a fatigue regulated heavy vehicle to ensure that an odometer fitted to the vehicle is maintained to the standard specified by the Fatigue Authorities Panel. A person charged with an offence under this section does not have the benefit of the mistake of fact defence but provides that if a driver's employer or operator is charged with an offence they have the benefit of the reasonable steps defence.

New section 191X imposes obligations on employers, prime contractors, operators and schedulers to ensure driver compliance with the record keeping duties and provides that such a person, other than the operator, has the benefit of the reasonable steps defence but does not have the benefit of the mistake of fact defence.

Freedom of movement – Order to stop driving – 191ZZJ, 191ZZK, 191ZZL, 191ZZM

New sections 191ZZJ and 191ZZK authorise an inspector under the Act who believes the driver of a fatigue regulated heavy vehicle has worked a period in excess of the maximum period allowed under a maximum work requirement, or who has taken a rest period that is shorter than the rest period required under a minimum rest requirement, to issue a written notice requiring the driver to take a rest or to work for a shorter period.

New section 191ZZL authorises an inspector under the Act to issue a written notice requiring a driver to stop work immediately and not work again for a stated period if the inspector believes the driver is impaired by fatigue. An inspector may authorise a person who is qualified to do so to drive the vehicle to a suitable rest place.

New section 191ZZM authorises an inspector under the Act to issue a written notice requiring a driver to stop work and not work again for up to 24 hours where the driver has failed to produce a work diary upon request of the inspector; or produced a document that is not a work diary or which the inspector reasonably believes cannot be relied upon as an accurate record of time spent working or resting.

Reasonable steps defence

New sections 191O and 191ZZP sets out what constitutes reasonable steps and provides that a person who has the benefit of the reasonable steps defence under Part 10A has a defence to a charge for an offence against that section if the person charged proves that the person did not know, and could not reasonably be expected to have known, of the contravention; and either the person took all reasonable steps to prevent the contravention or there were no steps the person could reasonably have taken to prevent the contravention.

New subsection 191ZZT explains the effect of an offence provision which this section states that a person does not have the benefit of the mistake of fact defence, which is that the person is not able to rely on the defence of honest and reasonable mistake of fact.

New section 191ZZX provides that proceedings can be taken against more than one person who may be guilty of a fatigue related offence regardless of whether proceedings have been taken against anyone else, and regardless of the outcome of those proceedings.

New section 191ZZY provides that nothing in new Part 10A affects any power of a court, a tribunal, the Corporation or an inspector apart from Part 10A.

New section 191ZZZ provides that there cannot be any contracting out of obligations under Part 10A. A term of a contract that purports to limit the effect of that Part is void.

New section 191ZZZC sets out the decisions of VicRoads under Part 10A which are subject to internal review.



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

Criminal liability – reverse onus provisions – presumption of innocence – duties on persons in chain of responsibility to take reasonable steps to prevent contravention of scheme to regulate and manage driver fatigue – 191E, 191F, 191G, 191H, 191I

The Committee notes the provisions in the new Part 10A that place the onus on a person to demonstrate that they took reasonable steps to prevent the contravention (191ZZP) or that there were no steps that the person could have taken to prevent the contravention. The Committee notes that the defendant will need to lead some evidence relevant to establishing that defence and that relevant matters in deciding whether acts or omissions constitute reasonable steps are provided in new section 191ZZQ.

The Committee observes that many of the matters that may make up such a defence are matters not readily available to the prosecution but are more readily accessible to the defendant, that is, that the reasonable steps are in the peculiar knowledge of the defendant. The Committee considers that imposing the onus on the defendant in certain circumstances may be justified to provide a reasonable balance between the effective enforcement of a regulatory scheme, being the combating of driver fatigue, and the rights of defendants, being the ordinary

requirement in criminal / penalty offences that the prosecution prove it's case.

The Committee also notes the detailed Charter section 7(2) analysis in the Statement of Compatibility and further refers to the Charter report below.

[29]. Inserts new Schedules 3, 4 and 4A relevant to work and rest hours applicable to the provisions introduced by the Bill.

EastLink Project Act 2004

[47]. Substitutes for sections 204 and 205 of the *EastLink Project Act 2004* six new sections that replace the existing tolling offence with a process for the registration of vehicles for travel in a toll zone.

New section 204(1) makes it an offence to drive in a toll zone without being registered by the Freeway Corporation. Registration is achieved by entering into an agreement or arrangement with the Freeway Corporation under new sections 205A or 205B.

The offence occurs at the time of driving in the toll zone. This differs from the current provision in which the offence occurs at the time a demand for payment, for any relevant toll and administration fee for a trip, is not paid.

[62 to 73]. Part 5 of the Bill replaces the “owner onus” system with the “operator onus” system and thus brings the *Melbourne City Link Act 1995* system in relation to toll invoices into line with the system applicable to camera and parking offences under the *Road Safety Act 1986*, where the identity of the offender is not established at the time the offence is detected.

Note: From the explanatory memorandum – The “operator onus” system provides for a chain of nominations of persons who had “possession or control” of a vehicle detected using a tollway. Responsibility for the offence rests with the operator or the last person nominated who is unable or unwilling to nominate anyone else.

The current system is based on the nomination of “drivers” only. This approach is of limited value if the vehicle has passed from person to person several times before the offence was committed. In such situations, the vehicle’s operator may have no knowledge of the identity of the driver. Further, the existing system is of limited utility where companies or other organisations are links in the “chain” of control over the vehicle. For example, if a vehicle is leased to a company, the registered operator cannot nominate the company because a company cannot be the driver.

Melbourne City Link Act 1995

[64]. Deals with liability to pay toll and administration fees and substitutes “owner” with “operator” in section 72(2) of the Act thus deeming the operator of a vehicle to be the driver of that vehicle at the time it was driven in a toll zone.

[74 to 80]. Part 6 establishes a new set of arrangements for the funding and management of street lighting on arterial roads, with the cost being shared between the State (through VicRoads) and local governments.

[86]. Provides for the automatic repeal of this amending Act on 1 October 2009.

Charter Report

Keywords – Reasonable limits – Regulation of driving – Age discrimination – Movement – Privacy – Property – Imprisonment for breach of contract – Presumption of innocence

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

The Committee notes that the Bill relates to the regulation of common public behaviour (specifically driving) in order to promote public order and safety and for the enforcement of that regulation. The Committee observes that such legislation inevitably engages a variety of human rights, but that reasonable provisions will typically satisfy Charter s.7(2), as well as internal limits on particular rights.

The Committee observes that the Statement of Compatibility incorrectly refers to clause 15 as clause 16 and vice versa. The Committee also observes that the Statement incorrectly describes new section 191ZZP (inserted into the *Road Safety Act 1986* by clause 20) as placing an ‘evidential onus’ on criminal defendants, whereas it places an onus of proof on those defendants.

The Statement of Compatibility identifies several amendments of the *Road Safety Act 1986* that are said to engage the following Charter rights:

- **Age discrimination** (Charter s.8(3)): Provisions permitting different procedures for obtaining a licence and terms for probationary driver licences depending on the driver’s age (clauses 5 and 6, amending ss. 19 & 21)
- **Movement** (Charter s.12): Provisions amending how driving is licensed (clause 5, amending s.19); criminalising unsafe entry into a level crossing and providing for licence removal and forfeiture of a vehicle (clause 9, inserting a new s.68B); and authorising inspectors or courts to bar drivers of heavy vehicles from driving in certain circumstances (clause 20, inserting new sections 191ZZJ – 191ZZM; and clause 23, amending s.192)
- **Privacy** (Charter s.13(a)): Provisions requiring the owner of a vehicle to reveal personal information about the person who was responsible for it at the time of a tolling offence to avoid liability for that offence (clause 11, amending s.84BE); and permitting VicRoads to disclose private information for the humanitarian purposes, conducting road safety research, disclosing road safety information or advice, or for the purpose of issuing or defending proceedings relating to road management functions or infrastructure damage (clause 16, amending s.92).
- **Property** (Charter s.20): A provision including licence removal and vehicle forfeiture as penalties for people convicted of entering a level crossing unsafely (clause 15, amending s.84C)
- **Imprisonment for breach of contract** (Charter s.21(8)): Provisions extending existing criminal offences for non-payment of tolls, which are punishable by fines, given that non-payment of a fine may attract imprisonment under Division 2 of Part 12 of the *Infringements Act 2006* (clauses 9 & 15, inserting a new s.68B and amending s.84C.) The Committee observes that s.160(3) of the *Infringements Act 2006* (which provides for a court to find alternatives to imprisonment for fine default where it would be excessive, disproportionate or harsh to do otherwise) is likely to be interpreted, under Charter s.32(1), as barring imprisonment for a fine resulting from a failure to perform a contractual obligation.
- **Presumption of innocence** (Charter s.25(1)): Provisions making people in the chain of responsibility for a heavy vehicle driver’s actions criminally responsible for the driver’s contravention of rest requirements unless those people can prove that they were unaware of the contravention and took all reasonable steps to prevent it (clause 20, inserting new section 191ZZP); and requiring owners of vehicles that infringe tolling rules to nominate a responsible person in order to avoid liability for the offence (clause 10, amending s.84BB.) The

Committee observes that reverse onus provisions are not unusual in offence provisions that make one person criminally responsible for another's conduct.

In each instance the Statement of Compatibility contends that the respective rights are not infringed or are subject only to reasonable limits under Charter s.7(2). Having considered the above Charter rights and provisions, the Committee is satisfied that the all of the measures so engaged do not warrant any special mention or adverse comment in respect to possible incompatibility with human rights.

The Committee makes no further comment.

State Taxation and Accident Compensation Acts Amendment Bill 2007

Introduced	30 October 2007
Second Reading Speech	1 November 2007
House	Legislative Assembly
Member introducing Bill	Ms Maxine Morand MLA
Minister responsible	Mr John Lenders MLC
Portfolio responsibility	Treasurer

Purpose

The Bill amends the *Congestion Levy Act 2005* to provide –

- an exemption for parking spaces owned by consulates, consular officers and consular employees, and their family members;
- an indemnity which applies between owners and operators of public car parks; and
- an ability for owners of private car parks to pass through the full cost of the congestion levy to car park users, including any GST payable by the owner on the amount of the levy received from the user.

The Bill amends the *Land Tax Act 2005* to –

- clarify the land tax liability of land held by personal representatives of deceased estates during the period of administration of that estate;
- extend the principal place of residence exemption to land that is used and occupied as a principal place of residence by a person holding a right to reside on the land granted under a will;
- increase the period of the principal place of residence exemption for deceased estates;
- provide for the use of valuations of land based on occupancy on the land for assessing land tax;
- make miscellaneous amendments to the trust provisions.

The Bill also amends the *Accident Compensation Act 1985* to increase the scope for the Victorian Workcover Authority to provide car and home modification benefits to catastrophically injured workers.

Content and Committee comment

[Clauses]

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

[4]. Exempts certain parking spaces owned by consular officials from the congestion levy.

[5 to 7]. Amend the *Congestion Levy Act 2005* to provide an indemnity between owners and operators of public car parks and ensures that owners can pass on the full cost of the levy to car park users including GST. Clause 7 provides that these amendments apply from 1 January 2006 (the commencement of the Act). Where any liability arises to any person the Bill provides that they have 90 days from the commencement to pay the relevant amount. *Also refer to Charter report below.*

[22]. Makes amendments to section 99 of the *Accident Compensation Act 1985* concerning payments for vehicle or home modification costs in respect to persons suffering major injuries.

[24]. Provides that the benefits introduced by the Bill are to be indexed and are to apply to any injury whether before or after the commencement of the amendments.

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

Charter Report

Keywords – Property – Retrospective imposition of civil obligation to pay money to someone else – Whether in accordance with law

Charter s.20 provides that people must not be deprived of property ‘other than in accordance with law.’ A statutory deprivation of property will not breach Charter s.20 if it is for a non-arbitrary purpose and is proportionate to that purpose.

The Committee notes that two amendments to the *Congestion Levy Act 2005* potentially make individuals civilly liable to pay money to others:

- Clause 5 (inserting a new s.33A) requires one person to indemnify another for the amount of the congestion levy where the first person has the power to set car parking fees and the other is liable to pay the levy;
- Clause 6 (amending s.34(2)) requires a user of a parking space to pay the GST on the congestion levy to a car park owner.

The Committee considers that these clauses may engage the Charter’s right to property.

The explanatory memorandum remarks that the purpose of clause 5 is ‘to encourage owners and operators of public car parks to pass on the full cost of the levy to car park users through increased parking fees, which is consistent with the aim of the congestion levy to reduce traffic congestion’ and that the purpose of clause 6 is ‘to ensure that owners of private car parks can pass on the full cost of the congestion levy to car park users.’ The Committee observes that clause 7, inserting new sections 38 and 39 into the *Congestion Levy Act 2005*, makes these obligations retrospective to 1 January 2006 (when the Act commenced.)

While the Committee feels that the retrospective imposition of obligations may not achieve the purpose of changing the behaviour of drivers or car park owners, the Committee observes that clauses 5 and 6 redistribute liability for the congestion levy in an equitable, and hence non-arbitrary, manner. The Committee therefore considers that clauses 5, 6 and 7 do not infringe the Charter’s right to property.

The Committee makes no further comment.

Victorian Energy Efficiency Target Bill 2007

Introduced	31 October 2007
Second Reading Speech	1 November 2007
House	Legislative Assembly
Member introducing Bill	Hon. Peter Batchelor MLA
Portfolio responsibility	Minister for Energy and Resources

Purpose

The Act will promote the reduction of greenhouse gas emissions by establishing the Victorian Energy Efficiency Target scheme and will confer functions on the Essential Services Commission (the 'ESC') to administer the scheme.

Note: From the Statement of Compatibility – The purpose of the Bill is to promote the reduction of greenhouse gas emissions by establishing the Victorian Energy efficiency target (VEET) scheme. The VEET scheme operates so that individual consumers who undertake activities to abate the use of energy are entitled to create, or assign the right to create, energy efficiency certificates which can then be sold to retailers who are required to surrender a certain amount of certificates each year to the Essential Services Commission (commission).

The VEET scheme operates to promote activities that will contribute to a reduction in greenhouse gas emissions by consumers of electricity and gas and to encourage investment, employment and technology development in industries that supply goods or services which reduce the use of electricity and gas by consumers.

Content and Committee comment

[Clauses]

[2]. The Act will, subject to earlier proclamation, come into operation on 1 January 2009.

Note: From the Second Reading Speech – It is proposed to commence the scheme following the making of regulations under the Bill.

[9 to 26]. Part 3 of the Bill deals with energy efficiency certificates including the accreditation process under the scheme and the creation, form, content, transfer, registration, expiry and surrender of energy efficiency certificates.

[20]. Provides that a person who is not entitled to create certificates must not do so.

[41 to 55]. Part 7 provides for the ESC to appoint persons as authorised officers and makes provision for the exercise of entry and search powers.

[44]. Provides that an authorised officer may enter premises at any reasonable time to exercise monitoring powers. Entry must be with the occupier's consent or pursuant to a monitoring warrant.

[49 and 50]. Empowers an authorised officer to ask for relevant information or require the production of a relevant document where he or she has entered premises with consent or under a monitoring warrant.

[51]. Creates an offence of failing, without reasonable excuse, to answer a question or produce a document under clause 50.

Protection against self-incrimination – protection does not apply in respect to documents

[52]. Provides for protection against self-incrimination. The protection does not apply to the production of documents required to be kept under the Act notwithstanding their tendency to incriminate the person required to produce them.

[55]. Provides for an authorised officer to apply to a magistrate for a monitoring warrant.

[56]. Provides that an affected person in relation to a reviewable decision may request that the ESC reconsider that decision.

[60]. Empowers the ESC to require production of information and documents relevant to the operation of the Act. Such a requirement will be made by written notice. The power extends to compel a person to appear before the ESC.

[61]. Creates an offence of failing, without reasonable excuse, to comply with a notice under clause 60.

Protection against self-incrimination

[62]. Provides for protection against self-incrimination without any limitation in respect to the information provisions in section 60.

[65]. Creates two offences: disclosure of confidential or commercially sensitive information and use of such information to obtain a pecuniary advantage.

[68]. Creates the offence of knowingly providing false or misleading information or documents to the ESC.

[69]. Creates the offence of failing to provide documents to the ESC as required.

[76]. Requires a review of the Act to be undertaken by 31 December 2011.

[77 to 79]. Amends the *Essential Services Commission Act 2001* so as to enable it to perform the functions conferred on the ESC by the Bill.

[79]. Provides for the automatic repeal of the amending Part 9 of the Act on 1 January 2010.

Charter Report

Keywords – Reasonable limits – Carbon trading scheme – Privacy – Property

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

The Committee notes that the Bill relates to the regulation of trading (specifically carbon trading) and the enforcement of that regulation. The Committee observes that such legislation inevitably engages a variety of human rights, but that reasonable provisions will typically satisfy Charter s.7(2), as well as internal limits on particular rights.

The Statement of Compatibility identifies several provisions that are said to engage the following Charter rights:

Privacy (Charter s.13(a)): provisions –

- requiring applicants for accreditation to disclose information (or consent to the disclosure of information) considered necessary for the purposes of the Victorian Energy Efficiency Target scheme to the Essential Services Commission (clauses 9 & 10)

- requiring the disclosure of information in certificates, notices and registers pursuant to the scheme (clauses 21, 38(4), 58 & 59)
- providing for search of premises for items relating to certificates or scheme acquisitions pursuant to a monitoring warrant issued by a magistrate (clause 48(1)(a))
- requiring persons at a premises entered pursuant to a monitoring warrant to disclose information and documents relating to certificates or scheme acquisitions to an authorised officer (clauses 50 & 51)

(The Statement of Compatibility also regards these provisions as engaging the right to freedom of expression.)

Property (Charter s20): Provisions for the surrender of energy efficiency certificates if an accredited person breaches an undertaking not to claim a benefit under another scheme or if the certificate was created in breach of a criminal provision (clauses 38(2) & 40(2)); and the seizure of items as evidence of an offence (clause 48(1)(h))

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

Keywords – Privacy – Liberty – People with information or documents that are relevant to the operation of the Act – Requirement to provide information or documents or to appear before the Essential Services Commission – Criminal offence to fail to comply or to supply false information or documents

Charter s.13 gives people the right not to have their ‘privacy... unlawfully or arbitrarily interfered with’. Charter s.21(1) gives people ‘the right to liberty’.

The Committee notes that clause 60 empowers the Essential Services Commission to issue a written notice to any person the Commission believes ‘has information or a document that is relevant to the operation of the’ *Victorian Energy Efficiency Target Act 2007* (once it is enacted.) The Committee also notes that the notice can require that the information or document be supplied in a manner specified, including requiring the person to attend before the Commission. The Committee further notes that non-compliance (without a reasonable excuse) is a criminal offence (clause 61), as is the supply of false or misleading information or a false document (clause 68). The Committee considers that clause 60 engages the rights to privacy and liberty, as well as incidentally engaging the rights to movement and expression.

The Statement of Compatibility – which characterises clause 60 as only engaging the rights to movement and expression – remarks that the requirement to supply information can be justified as a reasonable limitation on the same grounds as clause 50 and that the requirement to attend before the commission can be justified as reasonable because ‘it is integral to the operation of the bill that the commission has the ability to make inquiries when investigating matters under the bill.’ The Committee observes that clause 60 may be considerably wider than clause 50, which does not include a power of summons and is limited to people at premises that are the subject of a court-ordered monitoring warrant and to questions relating to certificates, scheme acquisitions or information transferred under the Act. By contrast, clause 60 may permit inquiries and summons of any person, including non-participants in the VEET scheme, who happen to possess information or documents that are in any way relevant to how the scheme or the legislation operates.

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

- 1. Why does clause 60 refer generally to any person who the Essential Services Commission has reason to believe has information or documents, rather than setting out specific people or classes of people that may be given a notice by the Commission?*
- 2. Why does clause 60 refer generally to any information or documents that are 'relevant to the operation of this Act', rather than setting out specific matters that a person may be required to reveal to the Commission?*
- 3. Why does clause 60 include the power to summon an individual to appear before the Commission?*
- 4. Why is clause 60 directly enforced by criminal offence provisions, rather than by sanctions under the VEET scheme or a power for a court, on application, to order a person to comply with a particular request?*

Pending the Minister's response, the Committee refers to Parliament for its consideration of whether or not clause 60, in combination with the criminal offence provisions in clauses 61 and 68, is a reasonable limit on the rights to privacy and liberty according to the test set out in Charter s7(2).

The Committee makes no further comment.

Ministerial Correspondence

Legislation Reform (Repeals No. 1) Bill 2007

The Bill was introduced into the Legislative Assembly on 21 August 2007 by the Hon. John Brumby MLA. The Committee considered the Bill on 17 September 2007 and made the following comments in Alert Digest No. 12 of 2007 tabled in the Parliament on 18 September 2007.

Committee's Comment

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

Minister's Response

Thank you for your letter dated 19 September 2007 regarding the referral of the Legislation Reform (Repeals No. 1) Bill (the Bill) to the Scrutiny of Acts and Regulations Committee. This Bill forms part of the Government's initiative to reform and modernise Victoria's legislation by repealing spent and redundant legislation.

I have noted that it has been customary for Bills characterised as Statute Law Revision Bills to be referred to the Committee for consideration and report to Parliament.

The Bill was not initially referred to the Committee because it was not considered to be a Statute Law Revision Bill, as it forms part of the Government's wider Legislation Reform initiative. An earlier precedent for a like Bill was the Treasury Legislation (Repeal) Bill 2005, which repealed a number of redundant Acts in the Treasury portfolio, but was not referred to the Committee.

Whilst there is a distinction between Legislation Reform (Repeals) Bills and Statute Law Revision Bills, given the Committee's role in reviewing redundant legislation, I propose that any future Legislation Reform (Repeals) Bills be referred to the Committee for consideration and report to Parliament.

*Hon. John Brumby MP
Premier of Victoria*

30 October 2007

The Committee thanks the Premier for this response.

Transport Accident and Accident Compensation Acts Amendment Bill 2007

The Bill was introduced into the Legislative Assembly on 18 September 2007 by the Hon. Tim Holding MLA. The Committee considered the Bill on 8 October 2007 and made the following comments in Alert Digest No. 13 of 2007 tabled in the Parliament on 9 October 2007.

Committee's Comment

[19].

Explanatory memorandum – Retrospective application

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

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

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

The Committee will seek further explanatory material from the Minister.

[21].

Explanatory material – statute law revision

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

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

The Committee will seek further explanatory material from the Minister.

Charter Report

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

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

4. *In 3 above, in each such case, what is the purpose of applying the change retrospectively to any such class?*

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

Minister's Response

I refer to your letter to the Hon. Tim Holding MP, the Minister for Finance, WorkCover and the Transport Accident Commission (TAC), regarding Transport Accident and Accident Compensation Acts Amendment Bill 2007. I am responding to you as the Acting Minister for Finance, WorkCover and the TAC.

As the matters raised impact in different ways on the legislative regimes of the Victorian WorkCover Authority and the TAC, I have reported in the attached documents responses as they relate to each agency.

I can also advise that copies of the relevant Practice Notes have been provided to the legislation officers of both agencies.

I trust this information is of assistance to the Committee.

*John Lenders MP
Acting Minister for Finance, WorkCover and the Transport Accident Commission*

29 October 2007

Transport Accident Commission Response to the Scrutiny of Acts and Regulations Committee

Section 192 - Child Care

The Transport Accident (Amendment) Act 2004 introduced changes to child care and home services benefits. Section 15 of the amending act introduced two separate services:

- 1. Care of the child (60(2)(c)) and*
- 2. Home services (60(2)(d)) and post acute support.*

Section 192 of the Transport Accident Act 1986 (TA Act) requires that the revised child care and home services benefits apply only to persons injured on or after the 1 January 2005, when the 2004 Amendment Act came into force.

The 2004 Amendments also:

- 1. codified a VCAT ruling that a woman who was pregnant at the time of the accident was entitled to receive childcare assistance (s60(2AB));*
- 2. introduced ongoing home services benefits for people with a severe injury (s60(2AC)); and*
- 3. clarified that assistance under sections 60(2)(c) and 60(2)(d) could not exceed a combined total of 40 hours per week (s60(2AA)).*

The purpose of the proposed clause 19 in the 2007 Bill is to make a statute law revision amendment only to ensure that those injured before 1 January 2005 are subject to child care and housekeeping service provisions in place before the 2004 amendments, and that those injured after 1 January 2005 are subject to the revised arrangements, that being the clear intention of the 2004 amendments.

The provision does not reduce childcare or home services entitlements. The provision clarifies that for injuries that occurred prior to 1 January 2005, services are considered under the former criteria under sub-section 60(2)(c) and 60(2)(d) and thereafter considered under the provisions relating to childcare and home services as amended by the 2004 Act. These services are not available to anyone injured before 1 January 2005 as they are excluded by operation of section 192. People

injured pre 1 January 2005 instead receive childcare services if, pre-accident, they had been mainly engaged in the care of a child, domestic assistance or housekeeping services.

The inclusion of 60(2AA), 60(2AB) and 60(2AC) in section 192 will make no difference to a person's current entitlements:

- *The TAC follows the VCAT ruling in relation to pregnancy in any event, notwithstanding the lack of clarity in the law prior to clear provision being included in 2004;*
- *People with a severe injury had an ongoing entitlement to domestic services under the former provisions and this was not disturbed by the 2004 amendments; and*
- *The combined cap of 40 hours per week in relation to childcare and housekeeping (pre 2005) and childcare and home services (post 2005) was contained in the former section 60(2)(d) and is now contained in section 60(2AA).*

Section 134 - Statute Law revision

This clause is intended to replace the current definition of registered medical practitioner in Part 10 of the TA Act with a definition that defines a registered medical practitioner consistently by reference to the Health Professions Registration Act 2005, which came into effect on 1 July 2007.

The amendment was missed in the schedule of consequential amendments made by the Health Professions and Registration Act 2005. There are no adverse consequences arising from this amendment.

Charter Report

1. Definition of pre-injury weekly income

The proposed amendment does not remove employer paid superannuation contributions from the definition of pre-injury weekly income in section 6 of the TA Act.

In 2000, the TAC obtained senior counsel's advice that the correct interpretation of the term 'superannuation allowances' in section 6 is a reference to the payment made by the trustee of the superannuation fund to a member and is not a reference to the employer superannuation guarantee contribution.

The source of definition of "income from personal exertion" in section 6 of the TA Act is the original definition of income from personal exertion in the Income Tax Assessment Act 1936 (Cth).

In senior counsel's opinion the term 'superannuation allowances' needs to be interpreted in its proper context of 'pensions, superannuation allowances, retiring allowances' and 'retiring gratuities' which all refer to post employment sources of income.

Consequently, the TAC has historically considered that it was unable to fund employer superannuation contributions as there was no statutory provision to take into account any employer contribution to a superannuation fund.

It was also understood that the TA Act could not have contemplated funding the compulsory employer contribution as the TA Act came into operation in 1986 before the introduction of the Superannuation Guarantee (Administration) Act 1992.

The purpose of the proposed amendment is to make it quite clear that the status quo prevails and to avoid any confusion by removing the reference to superannuation allowances in section 6 of the TA Act.

There is no decision of the AAT, VCAT, the Supreme Court or Court of Appeal that gives rise to any legitimate expectation that the TAC should fund the employer superannuation guarantee contribution.

The Northern Territory decision of Hasting Deering (Australia) Ltd V Smith [2004] NTCA 13 was concerned with the provisions of the Work Health Act 1992 (NT) (WH Act). The Northern Territory

Court of Appeal held that a superannuation contribution was payable as the WH Act referred to normal weekly earnings and remuneration in whole or part other than by reference to the number of hours worked. This Northern Territory provision is quite different from the terms of section 6 of the TA Act.

Perhaps as a result of the Northern Territory decision, two applications for review were filed at VCAT by plaintiff lawyers to test if the reasoning in Hasting Deering could be applied to the TA Act. Those applications have been protected by clause 20, but this does not give rise to a legitimate expectation as they are in effect test cases.

The relevant provisions are deemed to have come into operation on 19 September (on Second Reading) to avoid the possibility of the receipt of many more applications for review in relation to current and past income assessments, all of which would then have been subject to the protection afforded to the current applicants under clause 20.

2. Assessment of Spinal Injuries

The Court of Appeal decision of Taylor only applies to the Accident Compensation Act 1985 (AC Act). The Court did not make any findings on how the direction in the AMA Guides to the Evaluation of Permanent Impairment 4th Edition ('the Guides') applied to the TA Act. Section 46A of the TA Act relating to the assessment of impairment is different from section 91 of the AC Act. Specifically, the legislation requires the TAC to determine impairment only once the condition is stabilised.

The Court of Appeal was given the opportunity to make findings on the application of the Guides to the TA Act when the TAC sought leave to intervene. However, the TAC's application was refused by the Court of Appeal.

Moreover, the Supreme Court decision in Bayliss v Transport Accident Commission (2004) 9 VR 267 ('Bayliss'), which held that the TAC was correct to ignore the direction in the Guides to assess spinal impairments pre-surgery, is still good law.

The TAC has, since the introduction of the Guides in May 1998, administered this provision consistently with that decision.

The proposed amendments to the TA Act enshrine the current practice and the Supreme Court's interpretation. The amendments do not retrospectively change an existing entitlement or the method of assessing the permanent impairment of a person injured in a transport accident.

3. Reduction of benefits

No provision in the proposed Bill is less generous to any class of injured persons than the law that existed at the time of their transport accident.

4. Purpose of retrospective changes

a) Clause 2(2), as discussed above, is to make a statute law revision amendment only to ensure that those injured before 1 January 2005 are subject to child care and housekeeping service provisions in place before the 2004 amendments, and that those injured after 1 January 2005 are subject to the revised arrangements, that being the clear intention of the 2004 amendments. No entitlements are adversely affected.

b) Clause 2(3) is to enable CPI indexation of the new impairment lump sum compensation benefits introduced in the 2004 amendments. The indexation needs to be back-dated to enable the monetary value of the 2004 benefit to be brought up to current dollar value and to support benefit indexation already undertaken by the TAC.

c) Clause 2(4) is to avoid the possibility of the receipt of many more applications to VCAT for review in relation to current and past income assessments, all of which would then have been subject to the protection afforded to current applicants under clause 20. The legislative amendments do not alter the existing entitlements of persons injured in a transport accident.

d) Clause 20 - Section 193 is intended to give equal access to all injured persons, regardless of the date of their transport accident, to a variety of increased benefits from the date the Bill is given Royal Assent.

Victorian WorkCover Authority Response to the Scrutiny of Acts and Regulations Committee

Charter Report

1. Clause 24 regarding clarification of employer superannuation as excluded from the definition of pre-injury average weekly income.

The proposed amendment does not remove employer paid superannuation contributions from the definition of pre-injury weekly income in section 5A of the Accident Compensation Act 1985 (“the Act”). The amendment clarifies the historical approach to assessing pre-injury average weekly earnings under the WorkCover scheme.

The relevant provisions are deemed to have come into operation on 19 September (on Second Reading) to avoid the possibility of the receipt of many more applications for review in relation to current and past income assessments.

2. Retrospective effect of Clause 28 in relation to assessment of spinal injuries

*The retrospective operation of Clause 28 in relation to spinal injury assessment under the WorkCover scheme is necessary in order to avoid the reopening of past claims before the Bill commences, which could mean the re-determining of past claims in line with the Court of Appeal decision of *Mountain Pine Furniture Pty Ltd v Taylor*.*

3. Less generous entitlements for injured workers pursuant to Clause 28

The Bill changes the way in which permanent impairment is assessed for injured workers with spinal injuries who have surgery. Of these workers, those whose level of impairment decreases (i.e. their condition improves) as a result of surgery, may receive less compensation under Clause 28.

4. Purpose of retrospective change to a class of injured workers in Question 3

The Bill changes the approach to assessment of workers’ spinal injuries following the Taylor decision and does this retrospectively, subject to the preservation of rights under Clause 28. The Bill applies retrospectively to this general group of injured workers and does not seek to distinguish in its effect, between workers whose spinal injuries improve, deteriorate or remain unchanged following surgical treatment. To do so would have the effect of magnifying inconsistencies in the approach to assessing spinal injury under the WorkCover system.

Transport Legislation Amendment Bill 2007

The Bill was introduced into the Legislative Assembly on 18 September 2007 by the Hon. Tim Holding MLA. The Committee considered the Bill on 8 October 2007 and made the following comments in Alert Digest No. 13 of 2007 tabled in the Parliament on 9 October 2007.

Committee's Comment

[13]

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

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

The Committee will seek further advice from the Minister.

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

[14]

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

Explanatory material

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

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

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

[Charter report]

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

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

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

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

The Committee further observes that the extent of the Charter’s protections against discrimination is defined in terms of the Equal Opportunity Act 1995’s definition of discrimination. The Committee is therefore concerned that clause 23 may operate to reduce the protections against discrimination presently provided for by the Charter.

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

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

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

Minister’s Response

Thank you for your letter of 9 October 2007 regarding the Transport Legislation Amendment Bill 2007.

I make the following comments in response to the Committee’s observations on the Bill.

Delayed commencement of greater than one year

The Committee noted the potential for the commencement of some provisions of the Bill to be delayed for more than one year.

I note that the bulk of the provisions in the Bill commence within 12 months of passage. For example, many provisions commence on the day after the day of the Royal Assent. However, clause 2(13) provides that some residual provisions; that is, those which do have a commencement nominated elsewhere in the section, will not commence before 1 January 2009 unless proclaimed to commence earlier. This approach has been taken for a minority of provisions. These provisions require a lead time just beyond 12 months due to the complexity of the proposals and, in particular, due to the matters required for implementation such as staff training, IT changes, preparation of guidelines and circulars, communications issues and other things.

Inadequate explanatory material

The Committee considers that the explanatory material for clause 14 is inadequate.

Clause 17 of the Bill added disqualification decisions to the list of decisions that can be reviewed by VCAT in relation to commercial passenger vehicle driver accreditation. This led to an examination of the disqualification section itself in section 169C of the Transport Act 1983. That section currently contains some incorrect text and clause 14 corrects this.

There is no point disqualifying a person who was refused driver accreditation mandatorily because they had a category 1 prior conviction, or because they are on a sex offender's register. The person is already excluded from eligibility so there is no point in any further action. So, text in the current Act concerning this scenario is misconceived and should be removed. On the other hand, when a person with a category 2 or category 3 prior convictions is refused, there is every point examining the prior convictions more closely to see if a disqualification is appropriate.

Clause 14(1) removes the unnecessary reference to category 1 from section 169(3)(b) and inserts necessary references to categories 2 and 3. Clause 14(2) removes from section 169C(5) two paragraphs that are only relevant to a person who was mandatorily refused because of being on a sex offenders register.

These changes are by way of correction only. They are policy neutral. For this reason, the Committee's comment that the clause "appears to have policy implications" which "should have been brought to the attention of the Parliament" is not correct.

However, the clause note does contain a small error. It states that the amendments are "to align" the disqualifying circumstances with circumstances of mandatory refusal. In fact, the clause note should refer to discretionary refusal.

Rights in criminal proceedings - evidentiary provisions relating to smartcards

The Committee asserts that the statement of compatibility for the Bill fails to address whether or not the new ticketing solution or myki smartcard amendments in the Bill deal with whether or not the provisions are compatible with the rights in the Charter in relation to criminal proceedings.

It was not necessary to deal with this issue in the statement of compatibility for the Bill for the reasons set out in detail in Attachment 1 to this letter. In particular, the ticketing offences to which the provisions relate are not criminal proceedings for the purpose of applying the Charter.

Queries about provisions relating to concessions for full fee-paying overseas students

The Committee has raised some questions in relation to clause 23 of the Bill as follows -

1. Why does clause 23 deem the Director's decisions to not be discrimination on the basis of "race", rather than nationality?

The purpose of the amendments is to confirm current policy in this area and, as part of that, to confirm that the policy is not discriminatory.

The new provision enables the Director of Public Transport to formally make conditions relating to entitlement to travel which give effect to the policy. The power only extends to overseas students. Overseas students are defined explicitly in the provision by reference to visa status not by reference to nationality or, obviously, race. The provision creates an exclusion from discrimination on the basis of "race" in the Equal Opportunity Act 1995 in order to dovetail with that Act but only in the very limited way permitted in the amendment.

The amendment does not actually create an exemption that would permit discrimination on the basis of race globally. The power of the Director of Public Transport to make a condition to effect the policy only extends to its coverage of overseas students who are defined narrowly as described earlier. It goes no further. It only applies to overseas students defined in terms of their relevant visa status.

The Government obviously has no intention of sanctioning racial discrimination in relation to this concession. The amendment is tied purely to visa status in order to avoid discrimination.

2. Will clause 23 permit the Director to specify a class of overseas students as ineligible for student concessions on public transport on the basis of race, colour, descent, ancestry, nationality, national origin, ethnicity or ethnic origin?

No. See explanation above.

3. Will clause 23 alter the definition of discrimination for the purposes of the Charter?

This is complex issue. It is a matter of statutory interpretation. Similar to the approach taken when the Charter was developed, it is best left to the courts to consider and determine should the issue arise in any future litigation.

4. If so, why hasn't Charter s.31 (sic) (override by Parliament) been complied with?

An override declaration under this section is only required where Parliament wishes to exclude the jurisdiction of the Supreme Court to make a declaration of incompatibility. There is no need for any action of this type. The Government is not seeking to override the Charter or, as part of that, to exclude the jurisdiction of the Supreme Court in this area. On the contrary, the Government is merely seeking to provide a secure statutory platform under section 32 of the Charter for its policy.

As the Committee has observed itself in its comments, the proposal complies with the Charter as it constitutes a reasonable limitation under section 7(2). As a result, the issue of overriding the Charter does not arise.

I trust this satisfies your queries. If you have any further queries, please contact Ian Shepherd, Deputy General Manager, PTD Legal (Statutory Policy & Legal), on 9655 1701.

*Lynne Kosky MP
Minister*

30 October 2007

Attachment 1 – Rights in criminal proceedings - evidentiary provisions relating to smartcards

The Statement of Compatibility is correct in relation to these provisions.

Clause 5 and 6 of the Bill insert new evidentiary provisions in respect of Smartcards. These provisions enable certificates to be issued by certain authorised persons in respect of matters such as: card number; card type; the name of the card holder; the use of the card; the entitlement to use public transport; and the accuracy of Smartcard devices.

A procedure is prescribed whereby notice is given by the Informant of the matters. A person who is a defendant to the proceedings may within a specified timeframe give notice that he or she requires the person giving the certificate to be called as a witness or that he or she intends to produce evidence rebutting the matters and the certificate.

If no notice is given, the certificate may be produced as evidence, without the maker being called, and is conclusive proof of the matters contained in it.

If a Defendant gives notice to the Informant that he or she requires the person to be called as a witness or that he or she intends to adduce evidence in rebuttal the certificate is merely deemed to be evidence of the facts contained in it.

However, in the case of a certificate in respect of prescribed processes under new section 230AD is issued, even where notice is given, the certificate will be conclusive proof where the witness is dead, unfit by reason of his or her bodily or mental condition, has ceased to be a person authorised and it is not reasonably practicable to secure his or her attendance, or cannot with reasonable diligence be found.

The relevant Charter rights

Section 24 of the Charter provides that “a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing”.

Section 25 (1) provides that “a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law”.

Section 25 (2) provides that a person charged with a criminal offence is entitled without discrimination to examine or have examined, witnesses against him or her, unless otherwise provided for by law”.

Is a ticketing offence a criminal offence?

Section 25 only applies to persons charged with a ‘criminal offence’.

It is questionable whether ticketing offences are ‘criminal’ offences for the purpose of section 25. It is arguable that the offences are civil penalties rather than criminal offences.

The only decision to date on the application of the Charter is R v Carl Williams.¹ Williams concerned sections 24 and 25 of the Charter in the context of an application for an adjournment of a criminal trial by the accused on the grounds that the adjournment was required to ensure the availability of “counsel of choice”. In that context, King J briefly described the scope of section 24 as follows:

Section 24 of the Act has the heading “Fair hearing” and gives the person charged with a criminal offence or a party to a civil proceeding the right to have the charge or proceeding decided by a competent independent and impartial court or tribunal after a fair and public hearing. This section thus equates the rights of a person charged with a criminal offence to the rights of a person who is a party to a civil proceeding. A civil proceeding is commenced by the issue of a writ or originating process and a person becomes a party to that process when the writ or originating motion is served upon them. A person is charged with a criminal offence

¹ R v Carl Williams [2006] VSC 2R.

either by way of arrest and information or by summons which is then served upon the person. At either of those stages a person becomes charged with a criminal offence.

Ticketing offences are infringement offences within the meaning of the Infringements Act 2006 (Section 212 Transport Act 1983). Neither an “information” nor a summons is necessary. Based upon King J’s approach, ticketing offences would not come within the scope of section 24 or the criminal limb of section 25.

The jurisprudence of other jurisdictions does not support as narrow approach as that suggested by King J. However, even applying a broader approach, ticketing offences may be regarded as ‘civil penalties’ rather than ‘criminal offences’. It is not within the scope of this advice to provide a detailed analysis of the comparative jurisdictions. However, the following summary is provided in relation to other jurisdictions for your reference.

New Zealand

In New Zealand, it has been held that the equivalent criminal process rights do not apply to parking infringement notices.²

United Nations and the ICCPR

*In respect of the International Covenant on Civil and Political Rights, the United Nations Human Rights Committee has not limited the application of the criminal limb of the fair trial and/or the criminal process rights to charges brought by way of summons or indictment. It has applied the rights to proceedings of military tribunals.³ It has also indicated that the scope of the right is not limited to matters classified in domestic law as criminal offences: see draft General Comment 32⁴; citing *Perterer v. Austria*.⁵*

However, the Committee has considered that the criminal process rights did not apply to penalties under the French Bankruptcy Act which it said were civil-law and not criminal-law penalties.⁶

Canada

*In Canada, the leading authority is *R v Wigglesworth*.⁷ In that case, Wilson J recognised that it is difficult to formulate a precise test to determine whether proceedings are criminal or penal and instead offered a more general formulation: a matter falls within the section “either because by its very nature it is a criminal proceeding or because a conviction in respect of the offence may lead to a true penal consequence.” According to Wilson J, penal consequences include “imprisonment or a fine which by its magnitude would appear to be imposed for the purpose of redressing the wrong done to society rather than to the maintenance of internal discipline within that limited sphere of activity.” The Court in *R v Wigglesworth* distinguished between those matters which are “of a public nature, intended to promote public order and welfare within a public sphere of activity” and those that are “primarily intended to maintain discipline, professional integrity and professional standards or to regulate conduct within a limited private sphere of activity.”⁸ It is these latter matters that do not fall within the scope of section 11 of the Canadian Charter unless such matters include penalties that are punitive.⁹ A penalty may be punitive if it is of a kind intended to address a social harm resulting from the conduct.¹⁰ Such a penalty could be in the form of a fine or a term of imprisonment.*

*In *R v Richard*¹¹ the criminal process rights were held to apply to offences under the Motor Vehicle Act. However, proceedings for such offences could be commenced in a number of ways: by laying of*

² *Llewelyn v Auckland City Council* (2006) 23 NZLR 711 (CA).
³ *Estrella v. Uruguay* (74/1980) (R.18/174), ICCPR, A/38/40 (29 March 1983).
⁴ Dated 28 November 2006.
⁵ (1015/2001), ICCPR, A/59/40 vol. 11 (8 July 2004) 231.
⁶ *Moraël v. France* (207/1986), ICCPR, A/44/40 (28 July 1989) 210 at paras. 9.3-9.5 and 9.7.
⁷ [1987] 2 SCR 541.
⁸ *R v Wigglesworth* (1989) 2 SCR 541, 560.
⁹ *R v Wigglesworth* (1989) 2 SCR 541, 561.
¹⁰ *R v Wigglesworth* (1989) 2 SCR 541, 561.
¹¹ [1996] 3 SCR 525.

an information before a judge; or by service of a ticket, which had to be accompanied by a notice of prosecution. The prosecution proceeded unless the amount stated in the ticket was paid.

United Kingdom and Europe

The fair trial rights in Article 6(1) of the European Convention on Human Rights applies “in the determination . . . of any criminal charge” against a person. Article 6(2) applies to “everyone charged with a criminal offence”.

In construing that article, the European Court of Human Rights applies three criteria (the “Engel” criteria):

- *the classification of the proceedings in domestic law;*
- *the nature of the offence;*
- *the nature and severity of the penalty.*
- *Domestic classification of a matter as civil or criminal is not determinative as to whether the rights under Article 6(1) or 6(2) apply.*

Applying these criteria, proceedings for tax evasion leading to large financial penalties, commitment to prison for non-payment of the community charge, the penalty regime imposed by the Immigration and Asylum Act 1999 on those responsible for clandestine entrants to the UK, contempt proceedings, and court martial proceedings have all been held to be criminal proceedings for the purposes of art 6. Proceedings in England and Wales whereby a defendant may be bound over to keep the peace or to be of good behaviour involve the determination of a criminal charge. On the other hand, forfeiture orders made against third parties, regulatory offences resulting only in disqualification, the imposition of a special supervision order designed to prevent rather than punish the commission of criminal offences, registration under the Sex Offenders Act 1997 anti-social behaviour orders, a decision of the Parole Board to recall a prisoner released on licence, and a determination under s 4A of Criminal Procedure (Insanity) Act 1964 have been held not to constitute criminal charges under art 6(1).

In Ozturk v Germany, the European Court of Human Rights held that the regulatory offence of careless driving which carried a penalty of a fine only.

There are a number of features of the ticketing offence regime that arguably make the scheme a civil penalty rather than a criminal offence, including:

- *Penalties are very small;*
- *The offences relate to the conditions of carriage, rather than public welfare. They are there to encourage compliance with the public transport scheme, which is now partly a private activity.*
- *Penalties are generally imposed by way of ticket, rather than criminal prosecution. It is the offender who initiates the review by the Court.*

On the other hand, we understand that if the person elects to proceed court, a conviction is recorded against the person. This is a strong indicator of a criminal offence.

Whether the rights are limited

Even if the courts take a broader approach than King J to the scope of the fair hearing and criminal process rights we consider that neither right is limited or any limit is justified. In particular, King J notes:

The right to a fair hearing in s 24 does not incorporate a right of the defence to surprise the prosecution. Although there is a history in Victorian criminal law of requiring full disclosure by the prosecution but not by the defence, this is not a practice shared by many other jurisdictions. Section 24 incorporates the principle of ‘equality of arms’. Where the prosecution is required to disclose all evidence in advance of a hearing, it cannot be said that the principle of equality of arms is breached by also requiring limited (or even full) disclosure by the defence.

The Committee thanks the Minister for this response.

The Committee observes that the definition of a 'criminal offence' for the purposes of Charter s.25 is not settled. The Committee also observes that many of the guarantees in Charter s.25(2) are also required by the right to a fair hearing in Charter s.24, which is applicable to both criminal and civil proceedings. The Committee therefore considers that, where a provision of a Bill engages or infringes Charter s.25(2) with respect to a matter that even arguably fits the definition of a criminal offence, the Statement of Compatibility should address whether and, if so, how that provision is compatible with Charter ss. 24 and 25(2).

**Committee Room
19 November 2007**

Appendix 1

Index of Bills in 2007

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Accident Towing Services Bill 2007	5, 6
Agent-General and Commissioners for Victoria Bill 2007	14
Animals Legislation Amendment (Animal Care) Bill 2007	14
Appropriation (2007/2008) Bill 2007	6
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Building Amendment Bill 2007	13
Building Amendment (Plumbing) Bill 2007	5
Children's Services and Education Legislation Amendment (Anaphylaxis Management) Bill 2007	15
Confiscation Amendment Bill 2007	11
Control of Weapons Amendment (Penalties) Bill 2006	1
Courts Legislation Amendment (Judicial Education and Other Matters) Bill 2007	7
Crimes Amendment (DNA Database) Bill 2007	6
Crimes Amendment (Rape) Bill 2007	12, 14
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Drugs, Poisons and Controlled Substances Amendment (Repeal of Part X) Bill 2007	3
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Fair Trading and Consumer Acts Further Amendment Bill 2007	15
Firearms Amendment Bill 2007	12
Fisheries Amendment Bill 2007	12
Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007	4
Gambling Legislation Amendment (Problem Gambling and Other Measures) Bill 2007	15
Gambling Regulation Amendment Bill 2007	8
Gambling Regulation Amendment (Review Panel) Bill 2007	3
Gene Technology Amendment Bill 2007	10
Graffiti Prevention Bill 2007	13
Grain Handling and Storage Amendment Bill 2007	10
Health (Fluoridation) Amendment Bill 2007	15
Health Professions Registration Amendment Bill 2007	6
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Infertility Treatment Amendment Bill 2007	4, 9
Interpretation of Legislation Amendment Bill	1
Justice and Road Legislation Amendment (Law Enforcement) Bill 2007	10, 12
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Justice Legislation (Further Miscellaneous Amendments) Bill	1
Land (Revocation of Reservations) Bill 2007	11
Legal Profession Amendment Bill 2007	3
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Livestock Disease Control Amendment Bill 2007	3
Magistrates' Court and Coroners Acts Amendment Bill 2007	8
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National Electricity (Victoria) Amendment Bill 2007	15
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Port Services Amendment Bill 2007	14
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Superannuation Legislation Amendment (Contribution Splitting and Other Matters) Bill 2007	7, 9
Transport Accident and Accident Compensation Acts Amendment Bill 2007	13
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Victims of Crime Assistance Amendment Bill 2007	2
Victorian Energy Efficiency Target Bill 2007	15
Victorian Workers' Wages Protection Bill 2007	14
Water Acts Amendment (Enforcement and Other Matters) Bill 2007	6
Water Amendment (Critical Water Infrastructure Projects) Bill 2006	1, 4
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Wills Amendment Bill 2007	7
Working with Children Amendment Bill 2007	12

Appendix 2

Committee Comments classified by Terms of Reference

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

Alert Digest Nos.

Section 17(a)

(i) trespasses unduly upon rights and freedoms.

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

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

Emergency Services Legislation Amendment Bill 2007	13
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(iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions;

Justice and Road Legislation Amendment (Law Enforcement) Bill 2007	10
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(vi) inappropriately delegates legislative power.

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

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

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

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

Animals Legislation Amendment (Animal Care) Bill 2007	14
Energy Legislation Further Amendment Bill 2007	13
Fair Trading and Consumer Acts Amendment Bill 2007	5
Graffiti Prevention Bill 2007	13
Infertility Treatment Amendment Bill 2007	4
Justice Legislation Amendment Bill 2007	12
Senate Elections Amendment Bill 2006	1

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Superannuation Legislation Amendment (Contribution Splitting and Other Matters) Bill 2007	7
Transport Accident and Accident Compensation Acts Amendment Bill 2007	13
Transport Legislation Amendment Bill 2007	13
Working with Children Amendment Bill 2007	12

Appendix 3

Ministerial Correspondence

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

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

Bill Title	Minister/ Member	Date of Committee Letter	Date of Minister's Response	Issue Raised in Alert Digest No.	Response Published in Alert Digest No.
Superannuation Legislation Amendment (Contribution and Other Matters) Bill 2007	Finance	5.6.07	3.7.07	7 of 2007	9 of 2007
Royal Children's Hospital (Land) Bill	Planning	7.8.07	20.9.07	10 of 2007	13 of 2007
Justice and Road Legislation Amendment (Law Enforcement) Bill 2007	Police and Emergency Services	7.8.07	20.8.07	10 of 2007	12 of 2007
Justice Legislation Amendment Bill 2007	Attorney-General	19.9.07	10.10.07	12 of 2007	14 of 2007
Working with Children Amendment Bill 2007	Attorney-General	19.9.07		12 of 2007	
Crimes Amendment (Rape) Bill 2007	Attorney-General	19.9.07	8.10.07	12 of 2007	14 of 2007
Emergency Services Legislation Amendment Bill 2007	Police and Emergency Services	9.10.07		13 of 2007	
Energy Legislation Further Amendment Bill 2007	Treasurer	9.10.07	23.10.07	13 of 2007	14 of 2007
Transport Accident and Accident Compensation Acts Amendment Bill 2007	Finance	9.10.07	29.10.07	13 of 2007	15 of 2007
Transport Legislation Amendment Bill 2007	Transport	9.10.07	30.10.07	13 of 2007	15 of 2007
Animals Legislation Amendment (Animal Care) Bill 2007	Agriculture	31.10.07		14 of 2007	
Equal Opportunity Amendment (Family Responsibilities) Bill 2007	Attorney-General	31.10.07		14 of 2007	
Port Services Amendment Bill 2007	Roads and Ports	31.10.07		14 of 2007	