No. 1 of 2007

Tuesday, 13 February 2007

On the

Control of Weapons Amendment (Penalties) Bill 2006

Interpretation of Legislation Amendment Bill

Justice Legislation (Further Miscellaneous Amendments) Bill

Murray-Darling Basin Amendment Bill 2006

Public Prosecutions Amendment Bill 2006

Road Legislation (Projects and Road Safety) Bill

Senate Elections Amendment Bill 2006

Water Amendment (Critical Water Infrastructure Projects) Bill 2006

Water (Governance) Bill

Table of Contents

Glossary

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

Scrutiny of Acts and Regulations Committee

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.

Commencing 1 January 2007 section 30 of 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.

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 Charter of Human Rights and Responsibilities Act 2006 came into force on 1 January 2007.*

The Committee has considered the following Bills–

Control of Weapons Amendment (Penalties) Bill 2006
Interpretation of Legislation Amendment Bill
Murray-Darling Basin Amendment Bill 2006
Public Prosecutions Amendment Bill 2006
Senate Elections Amendment Bill 2006
Water Amendment (Critical Water Infrastructure Projects) Bill 2006

The Committee notes the following correspondence–

Justice Legislation (Further Miscellaneous Amendments) Bill
Road Legislation (Projects and Road Safety) Bill
Water (Governance) Bill

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.*

Summary of Comments

Public Prosecutions Amendment Bill 2006

[6]

Report to the Parliament pursuant to section 17(a)(i) of the *Parliamentary Committees Act 2003*, – 'trespasses unduly on rights or freedoms'.

The Committee notes the retrospective effect of the validating provision proposed by new section 55.

The Committee will write to the Attorney-General to seek advice whether he is aware of any person who has a legal proceedings on foot that may be adversely affected by the validating provision.

Pending further advice the Committee draws attention to the provision.

Senate Elections Amendment Bill 2006

[3]

Report to the Parliament pursuant to section 17 of the *Parliamentary Committees Act 2003*.

1. Section 17(a)(i) – 'trespasses unduly on rights or freedoms'

2. Sections 17(a)(viii) incompatible with Charter rights – Taking part in public life (section 18).

1. Section 17(a)(i) – Trespasses unduly on rights or freedoms

The Committee observes that the amendments made to the Act will have the effect of closing enrolments for a Federal election on the issue of the writs for the election and that a Federal election may be called spontaneously and with little or no public notice of the issue of the writs.

The Committee observes that potential electors that would otherwise be entitled to seek enrolment may be disenfranchised for that election.

The Committee refers to the Parliament the question whether closing eligibility for new enrolments at an election on the day writs are issued constitutes an undue abridgment to the right to vote.

2. Incompatible with Charter Rights – section 18 – Taking part in public life

The Committee notes that the right to vote in free and democratic elections for representatives in the legislature is a fundamental human right recognized in International law and by the Charter.

The Committee observes that the amendments made to the Victorian Act are necessary to avoid any inconsistency of a State law with Commonwealth laws under section 109 of the Australian Constitution.

The Committee observes that the amendments may have the effect of disenfranchising new electors who would have been eligible to enrol to vote in the period of seven days after the issue of writs for a Federal election. The Committee observes that unlike fixed term elections a Federal election may be called with little or no prior notice.

The Committee is of the opinion that the Parliament should consider whether the law unreasonably abridges the right of persons to vote and be elected at periodic elections that guarantee the free expression of the will of the electors.

The Committee further observes that had the amendments to this Act been introduced after 1 January 2007 they would have required a statement of compatibility pursuant to section 28 of the Charter and that that statement may have identified the amendments as being incompatible with the Charter rights of the right to vote.

The Committee notes that its reporting functions under section 30 of the Charter commenced on 1 January 2007 and requires the Committee to report to Parliament whether the provisions of any Bill are incompatible with human rights.

The Committee will seek further advice from the Attorney-General whether in his opinion the amendments to the Act may be incompatible with human rights.

Pending the Attorney-General's response the Committee draws attention to the provisions in the Bill.

Water Amendment (Critical Water Infrastructure Projects) Bill 2006

[3] – Disallowance of Orders

The Committee will write to the Minister to seek further advice concerning whether or not the Orders to be tabled under new section 161O will be subject to disallowance by the Parliament.

[5] – Charter of Human Rights and Responsibilities Act 2006

The Committee notes the amendments made by the Bill to provisions in the *Land Acquisition and Compensation Act 1986* (the 'Act') relevant to compensation for compulsory acquisition of land. The Committee considers that the amendments do not materially alter a persons right to compensation under the Act and do not appear to be incompatible with rights found in section 20 of the Charter.

Control of Weapons Amendment (Penalties) Bill 2006

Introduced	19 December 2006
Second Reading Speech	20 December 2006
House	Legislative Assembly
Minister responsible	Hon. Bob Cameron MLA
Portfolio responsibility	Minister for Police and Emergency Services

Purpose

The Bill amends the *Control of Weapons Act 1990* (the 'Act') to increase the penalty for importing, causing to be imported, manufacturing, selling, purchasing, displaying for sale or advertising for sale, possessing, carrying or using a prohibited weapon without an exemption or an approval. The Bill also increases the penalty for possessing, carrying or using a controlled weapon without lawful excuse.

The Committee notes this extract from the Second Reading Speech –

> *The Control of Weapons Act 1990 regulates access to non-firearms weapons in order to protect the community. Under the Act, non-firearms weapons are divided into three classifications – prohibited weapons, controlled weapons and dangerous articles.*

Content and Committee comment

[Clauses]

[2]. The provisions in the Bill come into operation on a day to be proclaimed but not later than by 1 July 2007.

[3]. Amends section 5(1) of the Act (*possessing, carrying, using, displaying or advertising for sale, selling, purchasing, causing to be imported or manufacturing a prohibited weapon without an exemption under section 8B or an approval under section 8C of the Act*) and provides that the penalty for an offence under that section is 240 penalty units or imprisonment for 2 years.

> Note: *The current penalty is 120 penalty units or imprisonment for 6 months.*

[4]. Amends section 6(1) of the Act (*possessing, carrying or using a controlled weapon without lawful excuse*) and provides that the penalty for an offence under that section is 120 penalty units or imprisonment for 1 year.

> Notes:
>
> 1. *The current penalty is 60 penalty units or imprisonment for 6 months.*
> 2. *Lawful excuse in section 6 includes—*
>
> - *the pursuit of any lawful employment, duty or activity; and*

- *participation in any lawful sport, recreation or entertainment; and*
- *the legitimate collection, display or exhibition of the article –*

but does include for the purpose of self-defence.

[5]. Provides for the automatic repeal of this amending Act on 1 July 2008.

The Committee makes no further comment.

Interpretation of Legislation Amendment Bill

Introduced	19 December 2006
Second Reading Speech	20 December 2006
House	Legislative Assembly
Minister responsible	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill amends the *Interpretation of Legislation Act 1984* (the 'Act') and provides for the updating of Acts and statutory rules to bring them into conformity with current drafting style.

> Note: *The Act makes provision for the construction, operation and shortening of language used in Acts and subordinate legislation (regulations). For example, the Act provides for a number of useful definitions commonly found in Acts and subordinate legislation (section 38) and provides for the commencement of Acts (sections 10 and 11).*

Content and Committee comment

[Clauses]

[2]. The provisions in the bill come into operation on Royal Assent.

[3]. Inserts new subsections (2A) and (2B) in section 10 of the Act to provide that the Clerk of the Parliaments must substitute the word "Bill" for the word 'Act' in a Bill's title after it has received passage through both Houses of the Parliament and before it is presented to the Governor for assent. The Act provides that the Clerk's alteration is not to be taken as an amendment of the Bill.

[4]. Inserts new subsections (3) and (4) in section 21A of the Act to provide that in reprinting an Act the Government Printer may omit the indorsement on the Act of the date of its passing.

[5]. Inserts a new section 54A in the Act which provides that the Chief Parliamentary Counsel, in preparing an Act or statutory rule for reprinting or other publication, may authorise an alteration to be made to text or other matter forming part of the Act or statutory rule to give effect to the style changes set out in Schedule 1 to the Act (being inserted by clause 6).

[6]. Inserts a new Schedule 1 to the Act introducing a number of style changes that may be made such as the removal of the hyphen for a range of words used in legislative drafting which begin with the word 'sub' (for example, "sub-section" will become "subsection"); the drafting of a heading for a Division or Subdivision will now only have the initial word of the heading and any proper noun capitalised; when words are defined in Acts or statutory rules they will now appear in bold italics with the double quotation marks being omitted; and section notes are to be set out in a different format.

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

The Committee makes no further comment.

Murray-Darling Basin Amendment Bill 2006

Introduced	19 December 2006
Second Reading Speech	20 December 2006
House	Legislative Assembly
Minister responsible	Hon. John Thwaites MLA
Portfolio responsibility	Minister for Water, Environment and Climate Change

Purpose

The Bill amends the *Murray-Darling Basin Act 1993* (the 'Act') to approve and ratify an amendment to the Murray-Darling Basin Agreement to facilitate the operation of the Murray-Darling Basin Commission's water business on appropriate commercial principles.

The Committee notes this extract from the Second Reading Speech –

> *As some members would be aware, the Murray-Darling Basin Agreement is an agreement between the Commonwealth, NSW, Victoria, South Australia, Queensland and the ACT, that articulates how governments will work together to manage the shared water, land and environmental resources of the Murray-Darling Basin. In doing so, it creates both a Ministerial Council and a Commission.*
>
> *The Murray-Darling Basin Agreement, and its predecessor, the River Murray Waters Agreement, has been in operation since 1914 and, over the years, has been refined to reflect our better understanding of best practice water management.*

Content and Committee comment

[Clauses]

[2]. The Act comes into operation on a day to be proclaimed.

> Note: *The explanatory memorandum provides that commencement by proclamation enables the timing of the commencement of the Act to coincide with the commencement of the corresponding Commonwealth, New South Wales, Queensland, South Australian and Australian Capital Territory Acts.*

[4]. Inserts new section 5B into the Act and declares that the Amending Agreement is approved.

[5]. Inserts Schedule 3 in the Act containing the *Murray-Darling Basin Agreement Amending Agreement 2006* as signed by the Prime Minister of the Commonwealth of Australia, the Premiers of Victoria, New South Wales, Queensland and South Australia and the Chief Minister of the Australian Capital Territory on 14 July 2006 and as revised by the Ministerial Council on 29 September 2006.

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

The Committee makes no further comment.

Public Prosecutions Amendment Bill 2006

Introduced	19 December 2006
Second Reading Speech	20 December 2006
House	Legislative Assembly
Minister responsible	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill amends the *Public Prosecutions Act 1994* (the 'Act') to enable –

- the Victorian Director of Public Prosecutions ('DPP') and Crown Prosecutors to receive and exercise powers to prosecute offences of another Australian jurisdiction in accordance with the authority conferred by the other jurisdiction; and
- the Directors of Public Prosecutions of other Australian jurisdictions or their legally qualified staff to be appointed as Crown Prosecutors so that they can prosecute Victorian offences.

The Committee notes this extract from the Second Reading Speech –

> *Under longstanding cooperative arrangements, the Victorian Director of Public Prosecutions and Commonwealth Director of Public Prosecutions have been able to prosecute offences against the laws of the other jurisdiction. This power is typically used to prosecute drug offences involving both Commonwealth (e.g., importation) and Victorian (e.g., trafficking) offences. It is a practical arrangement, which has worked effectively.*
>
> *It avoids the need for two prosecutions to be run by two separate prosecution agencies in relation to the one case for their own jurisdiction's offences.*
>
> *To facilitate those arrangements, the Public Prosecutions Act 1994 (Vic) enables the Commonwealth DPP and his or her staff to be appointed as Victorian Crown prosecutors so that they can prosecute Victorian offences. Conversely, the Victorian DPP and Crown prosecutors are authorised under the Commonwealth's Director of Public Prosecutions Act 1983 to prosecute Commonwealth offences. However, unlike the Commonwealth Act, the Victorian Act does not contain an explicit basis on which the Victorian DPP and Crown prosecutors can receive and exercise this Commonwealth authority. The Bill will remedy that gap.*
>
> *On occasions, the Victorian DPP or Crown prosecutors may be authorised to prosecute another State or Territories offences.*
>
> *Such authorities may be given where, for example, there may be a perceived conflict of interest in the other jurisdiction prosecuting one of its own staff. There is currently no explicit basis in the Public Prosecutions Act 1994 on which the Victorian DPP or Crown prosecutors receive such an authority or exercise powers under it. The Bill will make explicit their ability to do so.*
>
> *There is also a possibility of such a conflict-of-interest situation arising in Victoria. Currently, there is no explicit means under the Public Prosecution Act 1994 of authorising another jurisdiction's DPP or staff (other than the Commonwealth) to prosecute a Victorian offence in this situation. The Bill will provide that another jurisdiction's DPP or his or her staff may be appointed a Crown prosecutor to enable them to initiate and conduct the prosecution of Victorian offences.*
>
> *These amendments will provide an explicit statutory foundation for these cooperative arrangements to operate and assist to avoid any technical legal challenges in cases conducted under them.*

Content and Committee comment

[Clauses]

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

[3]. Amends section 22(1) of the Act by inserting a new paragraph (cc) to provide the DPP (with the consent of the Attorney-General) with a function of prosecuting the offences of other Australian jurisdictions in accordance with any authority to do so.

> Note: Clauses 3 and 5 – *An immunity from personal liability for anything necessarily or reasonably done or omitted to be done in good faith by the DPP in the performance of his or her functions under the Act (s. 46) will extend to this function.*

[4]. Amends section 32 of the Act by inserting a new sub-section (3A) to allow the DPP of another Australian jurisdiction or his or her legally qualified staff to be appointed as a Victorian Crown Prosecutor. Such an appointment will enable the appointed person to institute, prepare and conduct proceedings in relation to a Victorian offence.

[5]. Amends section 36(1) of the Act by inserting a new paragraph (ba) to provide a Crown Prosecutor, with the consent of the DPP, with a function of prosecuting the offences of other Australian jurisdictions in accordance with any authority to do so. A DPP of another jurisdiction, or a member of the staff of the office of that Director, who is appointed a Crown Prosecutor in Victoria under section 32(3A) does not require the consent of the Victorian Director of Public Prosecutions to prosecute offences in their home jurisdiction.

[6]. Inserts a new section 55 to validate actions taken before the commencement of the amendments made by this Bill that would have been valid had the amending Act been in operation at the time.

Report to the Parliament pursuant to section 17(a)(i) of the Parliamentary Committees Act 2003, – 'trespasses unduly on rights or freedoms'.

The Committee notes the retrospective effect of the validating provision proposed by new section 55.

The Committee will write to the Attorney-General to seek advice whether he is aware of any person who has a legal proceedings on foot that may be adversely affected by the validating provision.

Pending further advice the Committee draws attention to the provision.

The Committee makes no further comment.

Senate Elections Amendment Bill 2006

Introduced	19 December 2006
Second Reading Speech	20 December 2006
House	Legislative Assembly
Minister responsible	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill amends the *Senate Elections Act 1958* (the 'Act') as a consequence of amendments to the Commonwealth *Electoral Act 1918* to reduce the period for the close of the rolls for a Senate election.

The Committee notes this extract from the Second Reading Speech –

> *This Bill is necessary because of recent changes made by the Federal government to electoral processes.*
>
> *The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006 (Cth) (the federal act) was passed by the federal Parliament in June 2006. The Federal Act amended the Commonwealth Electoral Act 1918 to reduce the close of rolls period.*
>
> *Prior to the amendments, the Act provided for the rolls to close seven days after the writs for an election had been issued.*
>
> *The Commonwealth Electoral Act 1918 now provides that the rolls for a Federal election will close for new enrolments on the day the writs for the election are issued with the exception of 17-year-olds who turn 18 before election day and applicants for citizenship who will become citizens before election day. The rolls will close for enrolment updates on the third working day after the issue of the writs.*
>
> *The Governor-General, on the advice of the Prime Minister, issues the writs for the House of Representatives and the four territory senators, but the Senate is the States House so the individual States issue the writs for Senate elections in their respective States. In Victoria, this is done under section 4 of the Senate Elections Act 1958.*
>
> *Section 4 provides that the date fixed for the close of rolls for Senate elections shall be seven days after the issue date of the writ.*
>
> *Once the amendments to the Commonwealth Electoral Act 1918 commenced operation, section 4 of the Victorian Senate Elections Act 1958 became inconsistent by virtue of the operation of section 109 of the Australian Constitution. The proposed amendments will bring the timing of the close of the rolls for federal Senate elections into line with the Commonwealth Electoral Act 1918 by providing that the rolls close three working days after the issue date of the writ.*

Content and Committee comment

[Clauses]

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

[3]. Amends section 4 of the Act to ensure consistency with the Commonwealth *Electoral Act 1918* on the timing of the closure of the rolls for Federal Senate elections.

Notes:

1. *The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006 (Cth) (the Federal Act) was passed by the Federal Parliament in June 2006. The Federal Act amended the Commonwealth Electoral Act 1918 to reduce the close of rolls period. Prior to the amendments the Commonwealth Electoral Act provided for the rolls to close 7 days after the writs for an election had been issued.*

2. *Section 7 of the Charter recognises that a human right may be subject to limits as can be demonstrated or justified in a free and democratic society and recognises that human rights are, in general, not absolute rights, but must be balanced against each other and against other competing public interests.*

   The factors that may be taken into account when assessing whether a human right may be limited include[1] *–*

   - *the nature of the right,*
   - *the importance of the purpose of the limitation,*
   - *the nature and extent of the limitation,*
   - *the relationship between the limitation and its purpose and*
   - *any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.*

3. *The Charter provides –*

   <u>18. Taking part in public life</u>

   (1) Every person in Victoria has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives.

   (2) Every eligible person has the right, and is to have the opportunity, without discrimination —

   (a) to vote and be elected at periodic State and municipal elections that guarantee the free expression of the will of the electors; and

   (b) to have access, on general terms of equality, to the Victorian public service and public office.

4. *Section 9 of the Australian Constitution provides –*

   <u>Section 9 – Method of election of senators</u>

   The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws prescribing the method of choosing the senators for that State.

[1] Examples of laws that may reasonably limit human rights are those necessary to protect security, public order or public safety.

Times and places

The Parliament of a State may make laws for determining the times and places of elections of senators for that State.

Report to the Parliament pursuant to section 17 of the Parliamentary Committees Act 2003.

1. Section 17(a)(i) – 'trespasses unduly on rights or freedoms'

2. Sections 17(a)(viii) incompatible with Charter rights – Taking part in public life (section 18).

1. Section 17(a)(i) – Trespasses unduly on rights or freedoms

The Committee observes that the amendments made to the Act will have the effect of closing enrolments for a Federal election on the issue of the writs for the election and that a Federal election may be called spontaneously and with little or no public notice of the issue of the writs.

The Committee observes that potential electors that would otherwise be entitled to seek enrolment may be disenfranchised for that election.

The Committee refers to the Parliament the question whether closing eligibility for new enrolments at an election on the day writs are issued constitutes an undue abridgment to the right to vote.

2. Incompatible with Charter Rights – section 18 – Taking part in public life

The Committee notes that the right to vote in free and democratic elections for representatives in the legislature is a fundamental human right recognized in International law and by the Charter.

The Committee observes that the amendments made to the Victorian Act are necessary to avoid any inconsistency of a State law with Commonwealth laws under section 109 of the Australian Constitution.

The Committee observes that the amendments may have the effect of disenfranchising new electors who would have been eligible to enrol to vote in the period of seven days after the issue of writs for a Federal election. The Committee observes that unlike fixed term elections a Federal election may be called with little or no prior notice.

The Committee is of the opinion that the Parliament should consider whether the law unreasonably abridges the right of persons to vote and be elected at periodic elections that guarantee the free expression of the will of the electors.

The Committee further observes that had the amendments to this Act been introduced after 1 January 2007 they would have required a statement of compatibility pursuant to section 28 of the Charter and that that statement may have identified the amendments as being incompatible with the Charter rights of the right to vote.

The Committee notes that its reporting functions under section 30 of the Charter commenced on 1 January 2007 and requires the Committee to report to Parliament whether the provisions of any Bill are incompatible with human rights.

The Committee will seek further advice from the Attorney-General whether in his opinion the amendments to the Act may be incompatible with human rights.

Pending the Attorney-General's response the Committee draws attention to the provisions in the Bill.

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

The Committee makes no further comment.

Water Amendment (Critical Water Infrastructure Projects) Bill 2006

Introduced	19 December 2006
Second Reading Speech	20 December 2006
House	Legislative Assembly
Minister responsible	Hon. John Thwaites MLA
Portfolio responsibility	Minister for Water

Purpose

The Bill amends the *Water Act 1989* (the 'Act') to facilitate critical water infrastructure projects and makes a related amendment to the *Land Acquisition and Compensation Act 1986*.

The Committee notes this extract from the Second Reading Speech –

> *The purpose of this Bill is to facilitate the fast-tracking of critical water infrastructure projects.*

Content and Committee comment

[Clauses]

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

[3]. Inserts new Part 7B (new sections 161L to 161V) into the Act relating to critical water infrastructure projects.

New section 161M provides for the making of a project order, by which a project for the construction and operation of works is declared to be a critical water infrastructure project. The Premier may make a project order on the recommendation of the Minister, after the Minister has consulted with the Treasurer and the Minister administering the *Planning and Environment Act 1987*.

New section 161P requires the Premier to cause a copy of each order made under section 161M or section 161O to be presented to each House of Parliament within 14 sitting days after the order is made. A copy of the order must be accompanied by a statement of the reasons for making the order. That statement must be signed by the Premier.

Disallowance of Orders

The Committee will write to the Minister to seek further advice concerning whether or not the Orders to be tabled under new section 161O will be subject to disallowance by the Parliament.

New section 161V modifies the *Land Acquisition and Compensation Act 1986* in three ways.

First, it provides that where a facilitating Authority exercises the power to acquire land under section 130 of the Act for the purposes of a critical water infrastructure project, section 3(3) of the *Land Acquisition and Compensation Act 1986* does not apply to the extent that Part 7B of the Act is inconsistent with the *Land Acquisition and Compensation Act 1986*.

Section 3(3) of the *Land Acquisition and Compensation Act 1986* ('this Act') provides that –

> *If a provision of the special Act is inconsistent with a provision of this Act, the provision of this Act prevails.*

Secondly, it modifies the information that must be contained in a notice of intention to acquire land.

Thirdly, it provides that the regulations under the *Land Acquisition and Compensation Act 1986* and the forms prescribed under those regulations apply in relation to Part 7B of the Act with any modifications that are necessary to give effect to Part 7B.

Amendment to the Land Acquisition and Compensation Act 1986

[5]. Amends section 5 of the *Land Acquisition and Compensation Act 1986* and provides that subsection (1) does not apply in relation to any land in a project area specified under the new Part 7B of the *Water Act 1989*.

The Committee notes this extract from the Second Reading Speech –

> *… a water authority responsible for a critical water infrastructure project will be able to commence the formal process of acquiring land compulsorily without having to arrange for the relevant planning scheme to be amended to apply the public acquisition overlay to that land.*
>
> Notes:
>
> 1. *Section 5(1) of the Land Acquisition and Compensation Act 1986 provides that –*
>
>   *Reservation or certification of land required before acquisition*
>
>   *(1) The Authority must not commence to acquire any interest in land under the provisions of the special Act unless the land has been first reserved by or under a planning instrument for a public purpose.*
>
> 2. *Section 20 of the Charter provides –*
>
>   *A person must not be deprived of his or her property other than in accordance with law.*

Charter of Human Rights and Responsibilities Act 2006

The Committee notes the amendments made by the Bill to provisions in the Land Acquisition and Compensation Act 1986 (the 'Act') relevant to compensation for compulsory acquisition of land. The Committee considers that the amendments do not materially alter a persons right to compensation under the Act and do not appear to be incompatible with rights found in section 20 of the Charter.

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

The Committee makes no further comment.

Justice Legislation (Further Miscellaneous Amendments) Bill

The Bill was introduced into the Legislative Assembly on 2 May 2006, by the Hon. Rob Hulls MLA. The Committee considered the Bill on 29 May 2006 and made the following comments in Alert Digest No. 5 of 2006 tabled in the Parliament on 30 May 2006.

Committee's Comment

[23]

The Committee reports to the Parliament pursuant to a term of reference provided in sections 17(a)(iv) and 17(a)(vii) of the Parliamentary Committees Act 2003 – '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' and 'insufficiently subjects the exercise of legislative power to parliamentary scrutiny'.

The Committee notes that the amendments made by this clause to section 10 of the Working with Children Act 2005 will remove from the purview of the Committee the ability to report to the Parliament pursuant to section 21(1)(ga) of the Subordinate Legislation Act 1994 whether a provision in a statutory rule unduly requires or authorises acts or practices that may have an adverse effect on personal privacy with the meaning of the Information Privacy Act 2000.

The Committee observes that the current approved form to be used by applicants must be prescribed in statutory rules. The Committee observes that proposed section 10(2A)(g) will allow the Secretary of the Department of Human Services a discretion to require an applicant to provide 'any other information in relation to the applicant that the Secretary reasonably believes is appropriate'.

The Committee will seek further advice from the Minister concerning the reasons why it is considered necessary or desirable to amend the section in a manner that removes the Committee's ability to oversight the kinds of personal information to be provided by applicants in the approved form.

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

Minister's Response

Working with Children Check application form

Thank you for your correspondence dated 31 May 2006 regarding the Justice Legislation (Further Miscellaneous Amendments) Bill.

As raised in your letter, the Justice legislation (Further Miscellaneous Amendments) Act 2006 amended the Working with Children Act 2005 (Act) by:

(i) *Providing that the application form for a Working with Children Check (Check) is to be in the form approved by the Secretary to the Department of Justice, rather than in the form prescribed in the Working with Children Regulations 2006; and*

(ii) *Providing for the collection of certain particulars through the application form, including the name and contact details of each person who is engaging the applicant in child-related work and any other information in relation to the applicant that is reasonably believed to be appropriate by the Secretary (to the Department of Justice, rather that the Department of Human Services, as indicated in Alert Digest No. 5 of 2006 and quoted in your letter).*

It was deemed necessary to have an approved, rather than prescribed, form in order to permit continuous quality improvement in relation to the form during the early implementation of the Check system. This necessity became apparent during the introductory phase of the Check scheme, being 3 April to 30 June 2006. A prescribed form does not allow for timely adjustments to be made in response to any difficulties that are identified, in a way that an approved form does. The first amendment referred to above is Parliament's response to this issue.

Among the various obligations imposed on the Secretary by the Act, section 18 provides that if the Secretary—

- *gives an applicant an assessment notice, interim negative notice or negative notice, and*
- *is aware that the applicant is, or is proposed to be, engaged in child-related work by another person (employer) or is listed with an agency for child-related work (agency), and*
- *is aware of the identity of the employer or agency —*

the Secretary must give a copy of that notice to the employer or agency.

The Secretary determined that the collection of employer details was necessary in order to facilitate the primary purpose of the Act: to assist in the protection of children from sexual or physical harm (section 1(1)). A negative notice will only be issued to a person where it has been determined under the Act that the person is unsuitable to work with children. Where an employer has engaged such a person in child-related work, it is imperative – in order to protect the children with whom that person has contact in the course of their work – that the employer is notified (at the earliest opportunity) of that determination. Also, giving to employers a copy of an assessment notice issued to an applicant who has passed the Check, assists employers to satisfy themselves that the applicant is not unsuitable to undertake child-related work. Therefore, the notification requirement (in section 18) helps employers to fulfil their obligations under the Act and their duty of care obligations to children. The second amendment referred to above is Parliament's response to this issue.

In addition, the Secretary has decided to make mandatory the collection, through the application form, of the details of persons with whom the applicant will commence employment upon passing the Check (intended employers). This decision s based on the same reasons as those set out in the previous paragraph. Such collection is pursuant to the Secretary's ability to collect any other information in relation to the applicant that she reasonably believes is appropriate (as per the second amendment referred to above). Where a person applies for a Check but does not have any current or intended employers, the form requires them to record this fact.

The collection of information about applicants via the application form is designed to identify applicants correctly, duly process applications and, ultimately, further the purpose of the Act (being to assist in the protection of children from sexual or physical harm). I do not believe this unduly invades the privacy of applicants.

If you have any further queries in relation to this matter, please contact Mr Peter Hibbins, Director, Working with Children Check Unit on 8684 1218.

ROB HULLS MP
Attorney-General

9 October 2006

The Committee thanks the Attorney-General for this response.

Road Legislation (Projects and Road Safety) Bill

The Bill was introduced into the Legislative Assembly on 22 August 2006, by the Hon. Peter Batchelor MLA. The Committee considered the Bill on 11 September 2006 and made the following comments in Alert Digest No. 10 of 2006 tabled in the Parliament on 12 September 2006.

Committee's Comment

[2]

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

The Committee notes the delayed commencement provision for clauses 17 and 20 and will seek further information from the Minister concerning the need or desirability for such an extended delay in bringing the Act into force.

The Committee refers to its Practice Note No. 1 of 2005 in respect to delayed commencement provisions greater than one year from Royal Assent and notes that it will routinely request explanatory material where a provision infringes the one year rule.

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

Minister's Response

Thank you for your letter dated 13 September 2006 regarding the default commencement date of 1 July 2008 in relation to clauses 17 to 20 of the Road Legislation (Projects and Road Safety) Bill 2006.

In general terms, the delayed commencement of clauses 17 and 20 provides for the phased commencement of the new graduated licensing system. It reflects the period of time that it will take for novice drivers to progress through the new system from learners to probationary licence holders.

Clause 17 of the Bill amends section 21 of the Road Safety Act 1986 regarding probationary driver licences. The new provision continue the obligation to hold a probationary driver licence which has expired or been cancelled.

In addition, clause 17 allows for regulations to be made —

- *extending a probationary licence period (for example, where the driver has committed a specified offence or the licence has been suspended);*
- *requiring a probationary licence holder to comply with prescribed procedures and requirements;*
- *establishing different classes of probationary driver licences (to be termed P1 and P2); and*
- *requiring progression through those stages before a full driver licence can be obtained.*

Clause 20 makes further amendments regarding probationary licences that are consequential on the amendments made by clause 17. It enables the payment of a penalty or the recording of demerit points in respect of an offence detected by a safety camera and the fact that a person has paid an infringement notice to be used for determining the period for which he or she may be required to hold a probationary driver licence.

The graduated licensing scheme will not be retrospective and will have a staged implementation process to allow novice drive3rs subject to the scheme to progress from the new learner permit requirements to the new P1 licence class.

Section 13 of the Interpretation of Legislation Act 1984 provides that where a provisions of an Act which confers power to make regulations has a deferred commencement date, those regulations may be made at any time after the passing of the Act, but the regulations will not confer a right or impose an obligation on any person before the coming into operation of the provision. This means that deferral of the commencement of clause 17 need not delay the development and making f the regulations which it authorises, provided that those regulations do not actually come into operation earlier than 1 July 2008.

The reason why a default commencement date of 1 July 2008 is necessary in relation to clauses 17 and 20 is that the new probationary licensing regulations are intended to come into force one year after the implementation date of 1 July 2007 for new requirements for learner drivers. This will ensure that learner drivers under the age of 21, who will be required under the new graduated licensing system to hold a learner permit for 12 months and complete 120 hours of supervised driving experience to adequately prepare for the new driving test, are able to progress to the new P1 licence class.

There would be little point commencing the new two stage probationary licence system before 1 July 2008, as people under the age of 21 who obtain their learner permit on or after 1 July 2007 will need to hold that permit for a minimum of 12 months. Therefore the first novice drivers who will be required to hold a P1 licence, established by regulations made under clause 17, would not receive a P1 licence until 1 July 2008 at the earliest.

Drivers aged 21 or above when they obtain a learner permit will be required to hold the learner permit for a minimum sex months and will not be required to hold a P1 licence when they obtain their probationary licence.

I trust that this answers the query raised by the Scrutiny of Acts and Regulations Committee. If you need any further assistance, Timothy Lunn, Senior Solicitor, VicRoads (Tel: 9854 1968) would be please to assist.

Peter Batchelor MP
Minister of Transport

3 October 2006

The Committee thanks the Minister for this response.

Water (Governance) Bill

The Bill was introduced into the Legislative Assembly on 8 August 2006, by the Hon. John Thwaites MLA. The Committee considered the Bill on 21 August 2006 and made the following comments in Alert Digest No. 9 of 2006 tabled in the Parliament on 22 August 2006.

Committee's Comment

[54] – New section 122B

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'

The Committee notes the width of the power of delegation. A water corporation may by instrument, delegate to, 'with the consent of the Minister, any other person or body…any function, power or duty of the water corporation'. The Committee will seek further advice from the Minister in relation to the wide delegation powers.

[154] – New section 19F

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'

The Committee notes the width of the power of delegation. An Authority may by instrument, delegate to, 'with the consent of the Minister, any other person or body…any function, power or duty of the Authority.' The Committee will seek further advice from the Minister in relation to the wide delegation powers.

Minister's Response

Thank you for your letter dated 22 August 2006 in relation to the Scrutiny of Acts & Regulations Committee's (the Committee) request for further advice on the width of the power of delegation contained in clauses 54 and 154 in the Water (Governance) Bill 2006.

Clauses 54 and 154 of the Bill provide for a new section 122B to be inserted into the Water Act 1989 (Water Act) and a new section 19F to be inserted into the Catchment and Land Protection Act 1994 (CaLP Act). The sections are essentially identical and provide for the delegation by a water corporation (in the case of the Water Act) or the Authority (in the case of a Catchment Management Authority (CMA)). The proposed provisions limit the power to delegate to members of the board, officers of the entity or a committee appointed by the corporation or Authority (of which the members are either members of the board or officers of the entity), with consent of the Minister being required before a delegation may be made to any other person or body. The delegation cannot include the power to sub-delegate or make by-laws.

The proposed new sections replicate the power to delegate contained in the existing section 111 of the Water Act. That section currently applies to both water authorities and CMAs. The inclusion of a power to delegate in the two new sections as contained in the Bill is required as a consequence of the substitution of Part 6 of the Water Act with a new Part 6 to provide solely for water corporations (previously water

authorities), and for the governance provisions for the CMAs to be inserted into the CaLP Act.

The power to delegate within authorities, such as the proposed water corporations and CMAs, is typical of statutory entities appointed with such extensive responsibilities and broad range of functions. Water corporations, in particular, have responsibility for managing major infrastructure on behalf of the State, and for the provision of an essential service. Further, both water corporations and CMAs cover large geographic areas, and, in the case of the water corporations, may have a number of main offices. The capacity to delegate to suitably responsible persons is essential to the efficient and responsible management of these bodies.

With respect to the exercise of the power to delegate, I advise that the boards of these entities are chosen form among candidates appropriately qualified to manage entities of this nature. Water corporations and CMAs will also be subject to regulatory oversight and will be answerable to their responsible Minister. Both water corporations and CMAs will be required (as are the current water authorities and CMAs) to provide annual reports.

I am confident that the proposed power to delegate is necessary and will be exercised responsibly by the boards of water corporations and CMAs, as it has been in the past.

Than you for bringing this matter to my attention; I trust that the contents of this letter adequately address the Committee's concerns. Should the Committee have any further queries, the relevant officer in the Department of Sustainability and Environment dealing with this Bill is Allan McPherson, Director, Regulatory Policy, Water Sector Group, who can be contacted directly on 9637 9134.

JOHN THWAITES MP
Minister of Water

31 October 2006

The Committee thanks the Minister for this response.

Committee Room
12 February 2007

Appendix 1
Index of Bills in 2007

Alert Digest Nos.

Appendix 2
Committee Comments classified by Terms of Reference

Alert Digest Nos.

Section 17(a)

(i) trespasses unduly upon rights and freedoms

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

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

Senate Elections Amendment Bill 2006 1

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	