

# **No. 2 of 2008**

**Tuesday, 26 February 2008**

**On the**

Criminal Procedure Legislation  
Amendment Bill 2007

Crown Land (Reserves) Amendment  
(Carlton Gardens) Bill 2008

Port Services Amendment (Public  
Disclosure) Bill 2008

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## Glossary



- ‘**Article**’ refers to an Article of the International Covenant on Civil and Political Rights;
- ‘**Assembly**’ refers to the Legislative Assembly of the Victorian Parliament;
- ‘**Charter**’ refers to the Victorian *Charter of Human Rights and Responsibilities Act 2006*;
- ‘**child**’ means a person under 18 years of age;
- ‘**Committee**’ refers to the Scrutiny of Acts and Regulations Committee of the Victorian Parliament;
- ‘**Council**’ refers to the Legislative Council of the Victorian Parliament;
- ‘**court**’ refers to the Supreme Court, the County Court, the Magistrates’ Court or the Children’s Court as the circumstances require;
- ‘**Covenant**’ refers to the International Covenant on Civil and Political Rights;
- ‘**human rights**’ refers to the rights set out in Part 2 of the Charter;
- ‘**penalty units**’ refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (*currently one penalty unit equals \$110.12*).
- ‘**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 –**

Crown Land (Reserves) Amendment (Carlton Gardens) Bill 2008  
Port Services Amendment (Public Disclosure) Bill 2008

## **The Committee notes the following correspondence –**

Criminal Procedure 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.

# Alert Digest No. 2 of 2008

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## **Crown Land (Reserves) Amendment (Carlton Gardens) Bill 2008**

<b>Introduced</b>	5 February 2008
<b>Second Reading Speech</b>	6 February 2008
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Mr. Peter Batchelor MLA
<b>Portfolio responsibility</b>	Minister for Community Development

### **Purpose**

The Bill amends the *Crown Land (Reserves) Act 1978* (the 'Act') and provides for the management of land in the Carlton Gardens Reserve during special events.

### **Content and Committee comment**

#### **[Clauses]**

[2]. The amendments made by the Bill will commence on the day after Royal Assent.

[4]. Inserts a new Part 4A into the Act (new sections 29J to 29S).

New section 29J allows the Governor in Council, on the recommendation of the Minister responsible for the Act, to declare an event to be a special event for the purposes of this Part. The declaration must be published in the Government Gazette.

New section 29O allows for regulations made under section 13 of the Act and local laws made under the *Local Government Act 1989* to be suspended during all or part of the declaration period. These laws can only be suspended to the extent that they apply to the Carlton Gardens Reserve, and only during the declaration period.

New section 29R requires the Minister to give a copy of the special event management declaration to the committee of management of the Carlton Gardens Reserve within 7 days after it is published in the Government Gazette.

New section 29S requires the event organiser to restore the Carlton Gardens Reserve to a condition reasonably comparable to its condition before the special event period.

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

### **Charter Report**

#### **Keywords – Freedom of movement – Management of very small part of Victoria**

Charter s. 12 provides that people 'have the right to move freely within Victoria'.

The Committee notes that clause 4, inserting a new section 29L(2)(d) into the *Crown Land (Reserves) Act 1978*, provides that a special event management declaration may give the Secretary to the

Department of Sustainability and Environment or the Melbourne Convention and Exhibition Trust a power 'in relation to the Carlton Gardens Reserve' to 'fix opening and closing times for public access'.

The Statement of Compatibility remarks that the Bill 'might... be perceived to limit the right to freedom of movement', but argues that it is a reasonable limit on that right under the test set out in Charter s. 7(2).

The Committee observes that clause 4 affects a very small part of Victoria; does not appear to impose any significant constraints on Victorians' ability to move between parts of Victoria that fall outside of that area; does not target any particular individual or group; and is consistent with normal management of public property. The Committee therefore considers that clause 4 does not engage the Charter's right to freedom of movement.

*The Committee makes no further comment.*

## Port Services Amendment (Public Disclosure) Bill 2008

<b>Introduced</b>	6 February 2008
<b>Second Reading Speech</b>	6 February 2008
<b>House</b>	Legislative Council
<b>Member introducing Bill</b>	Hon. David Davis MLC
<b>Portfolio responsibility</b>	Minister for Roads and Ports
<b>Private Member's Bill</b>	

### Purpose

The Bill amends the *Port Services Act 1995* (the 'Act') to require the Port of Melbourne Corporation to undertake the immediate public disclosure of environmental monitoring of the Channel Deepening Project and for other purposes.

### Content and Committee comment

#### [Clauses]

[2]. The amendments come into operation on the day after Royal Assent.

[5]. Inserts new section 14B requiring the Port of Melbourne Corporation to cause to be published on the Port of Melbourne Corporation website and presented before Parliament certain environment management plans and related audits and directions the Port of Melbourne Corporation receives from the Minister in relation to the Channel Deepening project.

Where any Minister or public authority prepares or receives a report, statement or advice relating to the Channel Deepening Project and the environmental effects of such dredging a copy must be delivered immediately to the Corporation, and published.

[6]. Inserts new sections 91J and 91K concerning public disclosure of monitoring results relating to the Port of Melbourne Corporation.

The Port of Melbourne Corporation must ensure that any data received or obtained by it as a result of monitoring activities under an environment management plan is published on the Internet immediately on receipt by the Port of Melbourne Corporation or its delegate; and available in paper copy within 1 day of receipt by the Port of Melbourne Corporation or its delegate.

The Port of Melbourne Corporation must ensure that any response levels; or environmental limits; or contingency plans outlined in an environmental management plan under Part 6A are published on the Internet, adjacent to relevant information disclosed immediately upon final approval of the environment management plan.

[7]. The amending Act is repealed on the first anniversary of its commencement.

### Charter Report

**Keywords – Privacy and reputation – Expression – Fair hearing – Mandatory publication of statements and reports**

Charter s. 6 provides that 'only persons have human rights'. Charter s.13 gives people the right not to have their 'privacy or correspondence unlawfully or arbitrarily interfered with' or their 'reputation unlawfully attacked'. Charter s. 15(2) gives people 'the freedom to seek, receive and impart information'. Charter s. 24 gives criminal defendants and civil litigants a right to a decision by an

‘impartial court or tribunal after a fair and public hearing’. Charter s. 7(2) provides that human rights ‘may be subject under law only to such reasonable limits as can be demonstrably justified’.

The Committee notes clause 5, inserting a new section 14B into the *Port Services Act 1995*, requires the Port of Melbourne Corporation to publish various reports, directions and statements prepared by or for a Minister, the corporation or any other public authority relating to an environmental management plan prepared under Part 6A of the Act or the Channel Deepening Project and its environmental effects. The Committee also notes that new section 14B(2) requires that the Minister or public authority deliver reports, statements or advices received or prepared by them to the Corporation for publication. The Committee additionally notes that clause 6, inserting new sections 91J and 91K into the Act, require the publication of additional information received in relation to an environmental management plan.

The Statement of Compatibility remarks –

*The timely and open access to information is not only in accordance with the right to freedom of expression, but will assist in protection (sic) public health by allowing the public access to information on the environmental state of Port Phillip Bay.*

The Committee considers that clauses 5 and 6 promote the Charter right of Victorians to receive information.

However, the Committee observes that the release of some information may engage the Charter’s rights to privacy, reputation and a fair hearing in some circumstances. Whilst the documents to be published under clauses 5 and 6 largely relate to subject-matter that is the responsibility of public authorities and corporations (who do not have rights under the Charter), the Committee is concerned that some reports, statements and advices prepared by or for a Minister or public authority may incidentally contain private information about an individual or, possibly, information that may be prejudicial to an individual’s reputation or eventual litigation to which that individual is or becomes a party. The Committee therefore considers that clause 5, by requiring the blanket release of such information, may unlawfully interfere with the privacy and reputation of such individuals and may also potentially engage their right to a decision by an impartial court.

The Committee further notes that clause 5, inserting a new section 14B(3) into the Act, provides that new section 14B must be complied with ‘despite any other provisions of this Act or any other Act’. The Committee observes that this may exclude the operation of the *Information Privacy Act 2000*, the *Health Records Act 2001*, s. 18 of the *Supreme Court Act 1986* (on suppression orders) and the Charter.

*The Committee will seek further advice from the Member introducing the Bill concerning the following matters –*

- *whether or not clauses 5 and 6, to the extent that they may require the incidental release of personal information about individuals, may limit such individuals’ Charter right to privacy*
- *whether or not clauses 5 and 6, to the extent that they may require the incidental release of information that might prejudice an individual’s reputation or any proceedings to which they are or become a party, may limit such individuals’ Charter rights to reputation or a fair hearing*
- *if so, whether or not clauses 5 and 6 are reasonable limits on those rights according to the test set out in Charter s. 7(2).*

*Pending the Member’s response the Committee draws attention to the provisions.*

*The Committee makes no further comment.*

# Ministerial Correspondence

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## Criminal Procedure Legislation Amendment Bill 2007

The Bill was introduced into the Legislative Assembly on 20 November 2007 by the Hon. Rob Hulls MLA. The Committee reported on the Bill in Alert Digest No. 16 of 2007 tabled in the Parliament on 4 December 2007 and sought further information from the Minister.

The Minister's response was carried in Alert Digest No. 1 of 2008. After considering the response the Committee resolved to write to the Minister in the following terms:

*The Committee thanks the Attorney-General for his response.*

*The Committee notes that the Attorney-General refers to empirical studies from NSW and Scotland as a basis for concluding that 'it is possible to have sentence indications and discounts without inducing guilty pleas.' (emphasis added.) The Committee observes that neither of those jurisdictions had (at the time of the study) a sentence indication system, such as the one proposed in clauses 5 & 7. As the Committee observed in its report, the sentence indication procedure 'may place... defendants under heightened pressure to plead guilty.' **The Committee remains concerned that clauses 5 and 7 may be incompatible with defendants' Charter rights not to be compelled to plead guilty and reiterates its reference of this issue to Parliament for its consideration.***

*The Committee also notes that the Attorney-General's answer to the following query from the Committee:*

*5. If, due to a reconstitution of the court or a successful Crown appeal against sentence, a defendant who pled guilty after a sentence indication receives a higher sentence than the one indicated, will the defendant be automatically entitled to withdraw the guilty plea? If not, will defendants be warned of this possibility at the sentence indication hearing? (emphasis added)*

*did not address the second question. **The Committee refers to Parliament for its consideration the question of whether or not clauses 5 and 7, by not requiring that defendants to be warned of the possibility that a higher sentence than the one indicated may be imposed, is incompatible with defendant's Charter rights to a fair hearing.***

*The Committee further notes that the Attorney-General, after expressing his view that clause 15, which changes court practice by removing an express option to reserve a plea after a committal, does not limit the Charter right of defendants to freedom of expression, does not address the Committee's queries as to whether or not clause 15 falls within the Charter's provisions for limits on freedom of expression. The Committee reiterates its view that the removal of an option to not plead at all (including the treatment of the defendant's silence as a not guilty plea) may limit the defendant's right not to speak. **The Committee refers to Parliament for its consideration the questions of:***

- *whether or not clause 15 limits the Charter right not to speak*
- *if so, whether or not clause 15 is either:*
  - *reasonably necessary to respect others' rights or to protect national security, public order, public health or public morality, according to the test in Charter s. 15(3); or*
  - *a demonstrably justified reasonable limit on defendants' right not to speak according to the test in Charter s. 7(2)*

*The Committee additionally notes that the Attorney-General responds to the Committee's concern that clause 16 (which expands the definition of the summary offence of wilful damage without retrospective effect) may be contrary to Charter s. 27(3) (which requires that people who have not yet been sentenced be eligible for a reduced penalty) by arguing that the definition of the indictable offence of damaging property should not be changed retrospectively. The Committee observes that clause 16 does not affect*

*the definition of the indictable offence, but rather the definition of the summary offence. The Committee reiterates its view that clause 16, by not operating retrospectively, may be incompatible with the Charter right of people who damaged property to a value between \$500 and \$5000 and have not yet been sentenced to be 'eligible for the reduced penalty' that clause 16 makes available. **The Committee refers to Parliament for its consideration the question of whether or not clause 16 is compatible with Charter s. 27(3).***

*The Committee finally notes that the Attorney-General's response addresses in detail a number of rights engaged by the Bill that were not addressed in the Statement of Compatibility. The Committee observes that the Attorney-General has not responded to the Committee's concerns about that Statement of Compatibility.*

***The Committee will write to the Attorney-General with respect to the above additional concerns.***

*The Committee makes no further comment.*

**Committee Room  
25 February 2008**

# Appendix 1

## Index of Bills in 2008

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Infringements and Other Acts Amendment Bill 2007	1
Legislation Reform (Repeals No. 2) Bill 2007	1
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# Appendix 2

## Committee Comments classified by Terms of Reference

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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.*

Constitution Amendment (Judicial Pensions) Bill 2007 1

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

Relationships Bill 2007 1

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

Constitution Amendment (Judicial Pensions) Bill 2007 1

Crimes Amendment (Child Homicide) Bill 2007 1

Relationships Bill 2007 1



## Appendix 3

### Ministerial Correspondence

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

<b>Bill Title</b>	<b>Minister/ Member</b>	<b>Date of Committee Letter</b>	<b>Date of Minister's Response</b>	<b>Issue Raised in Alert Digest No.</b>	<b>Response Published in Alert Digest No.</b>
Working with Children Amendment Bill 2007	Attorney-General	19.9.07		12 of 2007	
Emergency Services Legislation Amendment Bill 2007	Police and Emergency Services	9.10.07		13 of 2007	1 of 2008
Animals Legislation Amendment (Animal Care) Bill 2007	Agriculture	31.10.07		14 of 2007	
Liquor Control Reform Amendment Bill 2007	Consumer Affairs	21.11.07	4.12.07	15 of 2007	1 of 2008
Police Regulation Amendment Bill 2007	Police and Emergency Services	21.11.07	6.12.07	15 of 2007	1 of 2008
Victorian Energy Efficiency Target Bill 2007	Energy and Resources	21.11.07	4.12.07	15 of 2007	1 of 2008
Criminal Procedure Legislation Amendment Bill 2007	Attorney-General	4.12.07	30.1.08	16 of 2007	1 of 2008