

No. 3 of 2007

Tuesday, 13 March 2007

On the

Drugs, Poisons and Controlled
Substances Amendment (Repeal of
Part X) Bill 2007

Gambling Regulation Amendment
(Review Panel) Bill 2007

Legal Profession Amendment Bill
2007

Livestock Disease Control
Amendment Bill 2007

Major Events (Aerial Advertising)
Bill 2007

Nuclear Activities (Prohibitions)
Amendment (Plebiscite) Bill 2007

Public Prosecutions Amendment
Bill 2006

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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 \$107.43*).
- ‘**Statement of Compatibility**’ refers to a statement made by a member introducing a Bill in either the Council or the Assembly as to whether the provisions in a Bill are compatible with Charter rights.
- ‘**VCAT**’ refers to the Victorian Civil and Administrative Tribunal;



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–

Drugs, Poisons and Controlled Substances Amendment (Repeal of Part X) Bill 2007
Gambling Regulation Amendment (Review Panel) Bill 2007
Legal Profession Amendment Bill 2007
Livestock Disease Control Amendment Bill 2007
Major Events (Aerial Advertising) Bill 2007
Nuclear Activities (Prohibitions) Amendment (Plebiscite) Bill 2007

The Committee notes the following correspondence–

Public Prosecutions Amendment Bill 2006

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.

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Drugs, Poisons and Controlled Substances Amendment (Repeal of Part X) Bill 2007

Introduced	27 February 2007
Second Reading Speech	28 February 2007
House	Legislative Assembly
Minister responsible	Hon. Bronwyn Pike MLA
Portfolio responsibility	Minister for Health

Purpose

The Bill amends the *Drugs, Poisons and Controlled Substances Act 1981* (the 'Act') and the *Confiscation Act 1997*. The repeal of Part X of the Act will close the Drug Rehabilitation and Research Fund and provide for the transfer of all money standing to the credit of the Fund to the Consolidated Fund.

The amendment to the *Confiscation Act 1997* will repeal a spent transitional provision relating to the Drug Rehabilitation and Research Fund.

Content and Committee comment

[Clauses]

[2]. Sections 1, 2 and 6 come into operation on the day after Royal Assent. Sections 3, 4, 5 and 7 come into operation on 1 July 2007.

[3]. Repeals Part X of the Act to terminate the Drug Rehabilitation and Research Fund.

Note: The Explanatory memorandum provides –

The Fund historically received revenue from fines collected in relation to drug related crime and revenue from asset confiscation from drug related crime. When the Confiscation Act 1997 came into effect in 1998, funds collected from asset confiscations were redirected to the Consolidated Fund. The closure of the Fund will mean that all funds collected from drug related crime, as well as asset confiscations, will now be redirected to the Consolidated Fund.

[5]. Repeals a redundant reference in section 157(10) of the *Confiscation Act 1997*.

[7]. Provides for the automatic repeal of this amending Act one year after all of its provisions have come into operation.

The Committee makes no further comment.

Gambling Regulation Amendment (Review Panel) Bill 2007

Introduced	27 February 2007
Second Reading Speech	28 February 2007
House	Legislative Assembly
Minister responsible	Hon. Daniel Andrews MLA
Portfolio responsibility	Minister for Gaming

Purpose

The Bill amends the *Gambling Regulation Act 2003* (the ‘Act’) to establish a Review Panel to report to the Minister on certain processes.

Content and Committee comment

[Clauses]

[2]. The provisions in the Bill come into operation on proclamation but not later than by 1 December 2007.

[3]. Inserts a new Part 2A into Chapter 10 of the Act.

New section 10.2A provides that a Review Panel is established, sets out the functions of the Review Panel and specifies that the Review Panel is to consist of between 3 and 4 persons, including the chairperson, who are to be appointed by the Governor in Council on the recommendation of the Minister. The chairperson of the Review Panel must have previously been a judge of a specified court in Australia and is to be on the terms and conditions, including remuneration, determined by the Governor in Council.

In consultation with the Minister, the Secretary will be required to ensure that a published report does not include any information that is protected from public release under Chapter 10 of the Act or is or could be the subject of legal professional privilege.

The proposed section 10.2A.12 gives the Minister the power to give a written direction to a relevant entity to take all reasonable steps to address any finding or implement any recommendation contained in a report of the Review Panel. The Minister may then request the Review Panel to report to the Minister on a relevant entity’s compliance with such a direction.

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

The Committee makes no further comment.

Legal Profession Amendment Bill 2007

Introduced	27 February 2007
Second Reading Speech	28 February 2007
House	Legislative Assembly
Minister responsible	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General

Purpose

This Bill seeks to amend the *Legal Profession Act 2004* (the 'Act') to reflect amendments to the national model provisions that form part of the Act, and generally to improve the operation of the Act.

Note: The national model provisions were developed through the Standing Committee of Attorneys-General and provide the basis for consistent regulation of the legal profession across Australia. Victoria has agreed to use its best endeavours to introduce legislation to give effect to core national model provisions, as well as to any amendments to those provisions. Core provisions are those that have been identified as requiring consistency across all jurisdictions. The amendments to the Act based on the national model provisions will improve national consistency in legal profession regulation across Australia and facilitate national practice by reducing compliance costs for national law firms.

Content and Committee comment

[Clauses]

[2]. With the exception of two provisions, the amendments to the Act will commence the day after Royal Assent or six months after Royal Assent (sections 48 and 49). The exceptions are —

- section 6(1) amends section 2.2.2(2)(e) of the Act as a result of the amendments to the *Workplace Relations Act 1996 (Cth)* and is deemed to have commenced operation on the day that the Commonwealth amendments commenced on 27 March 2006. The amendment substitutes the words 'workplace agreement' for 'certified agreement'.
- section 6(2) inserts a new section 2.2.2(ea) comes into force on proclamation but not later than by 1 July 2008. This section refers to the *Conveyancers Act 2006* (not yet in force). The amendment will commence at the same time as the *Conveyancers Act 2006* is proclaimed. If that Act is not proclaimed, both it and this amendment will commence on 1 July 2008;

Note: Extract from the explanatory memorandum of the *Conveyancers Bill 2006* –

The Bill introduces a new system of regulation and licensing for conveyancers. Almost two years have been allowed for the development of the system which will include a number of regulations and education programs about the new system software before the provisions of the Bill come into operation by default.

The Committee notes the amendments made by clauses 6(1) and 6(2) of the Bill and accepts that the use of retrospective and delayed commencement provisions respectively are appropriate in the circumstances.

[22]. Inserts a new 2.2.6A in the Act to require notification by lawyers to local regulatory authorities of regulatory action taken in another Australian jurisdiction. The new provision requires a person to notify the Supreme Court and Legal Services Board about any order made in another Australian jurisdiction recommending that their name be removed from the local roll.

[23]. Broadens the type of regulatory action taken in an overseas jurisdiction about which a person is required to give notice to the Supreme Court and the Legal Services Board.

[65]. Makes amendments to Chapter 4 of the Principal Act (Complaints and Discipline) and add to the list of conduct that is capable of constituting unsatisfactory professional conduct or professional misconduct.

Information disclosure requirements by an ADI (authorised deposit-taking institution)

[70]. Substitutes a new section 5.6.6 to clarify the requirements on an ADI to disclose or provide information, without charge, about a law practices trust accounts at the request of an external intervener (a supervisor, manager or receiver) appointed for a law practice. There are penalties for ADIs who do not comply.

The Committee notes this extract from the Statement of Compatibility concerning clause 70 –

The provision will require “authorised deposit-taking institutions” (ADIs) to disclose to an external intervener the bank account details of associates of law practices and third parties. An external intervener may be appointed by either the Supreme Court or the Legal Services Board to intervene in a law practice where there are serious issues of financial mismanagement. The external intervener may require access to bank account details held by an ADI in the course of conducting their investigation. This may have implications for the privacy of the associates of a law practice and in limited circumstances, third parties who are not associates of the law practice.

Whilst it is relevant to consider the human right relating to privacy, the provision is not considered to unlawfully or arbitrarily interfere with the right because of the criteria set out in the new section, namely:

- *the ADI does not have to disclose the information to the external intervener unless the intervener produces evidence of their appointment*
- *there are additional criteria for requiring disclosure of a third party’s bank account details. This is that the external intervener has reasonable grounds to believe that trust money has, without the authorisation of the person who entrusted the money to the law practice, been deposited into the account of the third party.*

Note: Section 13 (Privacy and reputation) of the Charter provides –

A person has the right (a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and (b) not to have his or her reputation unlawfully attacked.



Charter of Human Rights and Responsibilities Act 2006
Charter, section 13 – ‘Privacy and reputation’

The Committee notes the Statement of Compatibility in respect to clause 70 which concerns the disclosure of financial details by an ADI to an appointed external intervener for a law practice. The Committee observes that before exercising any powers under the Act the external intervener must have formed a reasonable belief that trust money has been dealt with other than in accordance with the Act and must provide proof to the ADI of his or her appointment in relation to the law practice concerned.

In the circumstances the Committee is satisfied that no issue of incompatibility is raised within the meaning of section 13 of the Charter.

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

The Committee makes no further comment.

Livestock Disease Control Amendment Bill 2007

Introduced	27 February 2007
Second Reading Speech	28 February 2007
House	Legislative Assembly
Minister responsible	Hon. Joe Helper MLA
Portfolio responsibility	Minister for Agriculture

Purpose

The Bill amends the *Livestock Disease Control Act 1994* (the ‘Act’) to improve the administration and enforcement of the Act, and to make changes to the cattle compensation scheme.

Content and Committee comment

[Clauses]

[2]. Provides that other than sections 6, 7 and 8 the other provisions of the Bill come into operation on the day after Royal Assent.

Note:

Sections 6, 7 and 8 of the Bill come into operation on a day to be proclaimed. These sections make amendments to facilitate an agreement between Victoria and the trustee of the Cattle Disease Contingency Fund Trust (the ‘trustee’) for funding compensation for tuberculosis in cattle. There is no forced commencement date because clauses 6, 7 and 8 are intended to commence when that agreement is in place. That agreement has not yet been signed by all parties to the agreement. The provisions will be brought into operation when that agreement is signed.

The Committee notes the absence of a forced commencement provision and considers that in the circumstances referred to in the explanatory memorandum commencement by proclamation is acceptable.

[3]. Amends section 3(1) of the Act to expand the definition of “fittings” in respect to contact with livestock or livestock products.

[4]. Amends section 15 of the Act to include fittings and fodder, which an inspector knows or reasonably suspects have been in contact with diseased livestock, within the scope of items that an inspector may dispose of or destroy to prevent the further spread of the disease.

Notes: Section 20 of the Charter provides –

‘A person must not be deprived of his or her property other than in accordance with law’.

[6 to 8]. These clauses respectively make amendments to sections 71 and 72 of the Act and repeal section 77 of the Act dealing with payments into and out of the Cattle Compensation Fund.

[9]. Amends section 113 of the Act to broaden the circumstances in which an inspector can issue a disinfection notice. An inspector will be able to issue a disinfection notice if he or she believes on reasonable grounds that a vehicle or any premises or place where livestock or livestock products are kept or commonly kept is infected with a disease.

Notes: Section 11 of the Charter (relevant subsections) provides –

(2) *A person must not be made to perform forced or compulsory labour.*

- (3) *For the purposes of sub-section (2) "forced or compulsory labour" does not include—*
- (b) *work or service required because of an emergency threatening the Victorian community or a part of the Victorian community; or*
 - (c) *work or service that forms part of normal civil obligations.*

[10]. Provides for the automatic repeal of the amending Act on the first anniversary of the first day on which all the provisions of the amending Act have commenced.



Charter of Human Rights and Responsibilities Act 2006

The Committee notes the Minister's Statement of Compatibility. The Committee notes that the amendments made by clauses 3, 4 and 9 may raise issues of Charter compatibility.

Section 7(2) of the Charter provides Parliament guidance as to when human rights may be limited. The section relevantly provides –

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 limitation; 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.*

Charter, section 20 – 'Property rights'

Clauses 3 and 4 deal with the destruction or disposal of property in the event of their possible contamination due to a cattle disease outbreak. The Committee observes that where destruction is not necessary a disinfection notice may be issued in respect to the property. The Committee considers that given competing public policy interests sought to advanced by these provisions that the amendments may be considered to be reasonably proportionate and necessary for the deprivation of property rights. The amendments may therefore be considered to be 'in accordance with law' within the meaning of section 20 of the Charter.

Charter, section 11 – 'Freedom from forced work'

Clause 9 amends section 113 of the Act to broaden the circumstances in which an inspector can issue a disinfection notice. Where a disinfection notice is issued an inspector may require that disinfection take place within a particular time and in a particular manner.

The Committee considers that such a disinfection notice falls within the exemptions to the prohibition against forced or compulsory work referred to in section 11 of the Charter. The Committee also observes that a limitation to human rights may also be warranted taken into account section 7(2) Charter factors.

The Committee makes no further comment.

Major Events (Aerial Advertising) Bill 2007

Introduced	27 February 2007
Second Reading Speech	28 February 2007
House	Legislative Assembly
Minister responsible	Hon. James Merlino MLA
Portfolio responsibility	Minister for Sport, Recreation and Youth Affairs

Purpose

The purpose of the Bill is to provide a new Act to regulate, manage and control aerial advertising at major events in Victoria. For this purpose the Bill also makes consequential amendments to other Acts.

The Committee notes this extract from the Second Reading Speech –

The purpose of this Bill is to prohibit aerial ambush marketing at major events in Victoria. This is in order to preserve an attractive commercial environment for our events and protect Victoria's competitive advantage in the major events market.

Victoria has previously legislated to prohibit aerial ambush marketing at the Melbourne 2006 Commonwealth Games and the 12th FINA World Championships.

This Bill will place a similar prohibition for other major events in Victoria and will also allow the State and event organisers to pursue civil remedies. The aim is to provide the strongest possible deterrent to aerial ambush marketing at our major events.

Content and Committee comment

[Clauses]

[2]. The Act comes into operation on the day after Royal Assent.

[3]. Provides important definitions of terms used in the Act including “aerial advertising”, “event organiser”, “specified event”, “specified time” and “specified venue”.

[4]. Enables major events not specified in section 3 to be declared for the purposes of the Act by the making of event Orders by Order of the Governor in Council on the recommendation of the Minister. The Order must be published in the Government Gazette.

[7]. Requires the Minister to present an Order made under this Part to each House of Parliament within 7 sitting days after publication of the Order in the Government Gazette.

[10]. Creates an offence relating to unauthorised commercial aerial advertising. The clause makes it an offence to display or cause the display of commercial aerial advertising without an aerial advertising authorisation during the specified time for a specified event if the advertising is within sight of the specified venue; and the content of the advertising can be seen without the aid of optical apparatus (other than contact lenses or spectacles).

Notes:

- (1) The maximum penalties for the offence is 400 penalty units for an individual and 2400 penalty units for a body corporate.
- (2) The clause provides exemptions for aircraft being used for emergency services, information or news reporting purposes.

Scrutiny of Acts and Regulations Committee

- (3) An offence is not committed if a person who would otherwise be committing an offence is flying within sight of another specified event and has an aerial advertising authorisation for that event.

[12]. Establishes an authorisation process for commercial aerial advertising.

[15]. Enables the Secretary to delegate any of the Secretary's powers under this Part, other than this power of delegation, to a public service executive employed under Part 3 of the *Public Administration Act 2004* or to a body corporate established under an Act for a public purpose.

[16]. Enables the State or event organisers on application to a court to seek injunctive relief restraining a person from engaging in conduct that contravenes clause 10 or related conduct such as aiding or abetting a person to contravene clause 10.

[18]. Enables a person to bring an action for damages.

[19 to 22]. Deals with the appointment of authorised officers for the purposes of the Act.

[23 to 34]. Deals with powers of inspection, search warrants and seizure of things and documents.

Section 23 enables an authorised officer to apply to a magistrate for a search warrant and specifies the matters to be stated in the warrant including the suspected offence and any conditions attaching to the warrant. The search warrant must be in the form prescribed under the *Magistrates' Court Act 1989* and is subject to the rules applying to warrants under that Act.

Other sections deal with the ordinary incidental requirements pertaining to search warrants and seizure such as the requirement of authorised officers executing search warrants to announce themselves before entry and the production of identity cards by authorised officers the practice and procedure for the seizure of things and documents relevant to a warrant and for the giving of information and documents to authorised officers exercising powers under the Act.

Privilege against self-incrimination provided but not for the production of documents

[35]. Declares that it is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing required under this Part if this would incriminate the person. The privilege does not extend to refusing or failing to produce a document.

[48]. Amends the *Magistrates' Court Act 1989* to enable the indictable offence in clause 10 of the Bill to be tried summarily in the Magistrates' Court.

[49]. Amends the *World Swimming Championships Act 2004* to provide that this Bill does not apply to aerial advertising that is covered by that Act.



Charter of Human Rights and Responsibilities Act 2006

The Committee notes that the amendments made by clauses 10, 23, 26 and 30 may raise issues of Charter compatibility.

The Committee notes that section 7(2) of the Charter provides Parliament guidance as to when human rights may be limited. The section provides –

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 limitation; 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.*

Charter, section 15 – ‘Freedom of expression’

Clause 10 creates an offence of unauthorised commercial aerial advertising. The offence raises the issues concerning ‘freedom of expression’. Section 15 provides –

- (1) *Every person has the right to hold an opinion without interference.*
- (2) *Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria and whether –*
 - (a) *orally; or (b) in writing; or (c) in print; or (d) by way of art; or (e) in another medium chosen by him or her.*
- (3) *Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary—*
 - (a) *to respect the rights and reputation of other persons; or (b) for the protection of national security, public order, public health or public morality.*

The Committee notes the section 7(2) Charter factors (when human rights may be limited) considered in the Statement of Compatibility provided by the Minister. Some of the relevant factors mentioned are –

The right to freedom of expression is often described as essential to the operation of a democracy. It is considered that the right to freedom of expression includes commercial advertising in the nature sought to be restricted by the Bill. ... the right to freedom of expression enables people to participate in political debate... ...It is an important right in international law.

...

...the courts have historically afforded less protection to freedom of commercial expression than either political or artistic expression.

...

The purpose of the limitation in the Bill is to protect the commercial interests of legitimate sponsors from the unauthorised ambush advertising of their competitors.

...

...the Bill only prohibits deliberate aerial ambush advertising of a commercial nature and does not seek to limit the rights of individuals making statements of a non-commercial nature.

...

...the Bill only limits unauthorised aerial advertising and does not prevent an individual from pursuing other advertising opportunities.

The Committee observes that the provisions in the Bill seek to prevent ambush or opportunistic advertising that may undermine legitimate sponsorship of major events. The Committee is of the opinion that the limitation has a logical and proportionate nexus to the purpose of the limitation.

Charter, section 20 – ‘Property Rights’

The Committee notes Part 5 of the Bill (clauses 19 to 41) include provisions concerning search and seizure powers under judicial warrant which allow authorised officers to seize property believed to be involved with offences under the Act.

The Committee notes that the seizure powers are part of an enforcement scheme to give effect to the purposes of the Act. In these circumstances the Committee considers that the provisions do not permit a person to be deprived of his or her property other than in accordance with law, within the meaning of section 20 of the Charter.

Parliamentary Committees Act 2003, section 17(a)(i) – ‘trespasses unduly upon rights or freedoms’

‘Freedom of speech or political communication’

The Committee notes that freedom of speech is a fundamental right and freedom for the maintenance of a representative and democratic form of government.

The Committee notes that it has previously considered Bills raising questions relevant to freedom of communication in respect to the Racial and Religious Tolerance Bill in 2001 [Alert Digest No. 6 of 2001] and the Terrorism (Community Protection) (Amendment) Bill [Alert Digest No. 1 of 2006].

In these previous reports the Committee considered the High Court’s development of the doctrine of implied rights of freedom of political communication in cases such as Lange v. Australian Broadcasting Corporation (1997) 71 ALJR 818). For present purposes the Committee notes that this developing doctrine includes the principles that –

- *The freedom of communication which the Constitution protects is not absolute.*
- *The freedom will not invalidate a law enacted to satisfy some other legitimate end if the law satisfies two conditions, namely – (i) the object of the law is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government; and (ii) the law is reasonably appropriate and adapted to achieving that legitimate object or end.*

The Committee refers to the Parliament the question whether the provisions in the Bill constitute an abridgment of the right to free speech or communication to the extent that the provisions ‘unduly trespasses on rights or freedoms’.

The Committee makes no further comment.

Nuclear Activities (Prohibitions) Amendment (Plebiscite) Bill 2007

Introduced	27 February 2007
Second Reading Speech	28 February 2007
House	Legislative Assembly
Minister responsible	Hon. Peter Batchelor MLA
Portfolio responsibility	Minister for Energy and Resources

Purpose

The Bill amends the *Nuclear Activities (Prohibitions) Act 1983* (the 'Act') to facilitate the holding of a plebiscite in Victoria in the event that the Commonwealth Government takes action to support or allow the construction of a prohibited nuclear facility in Victoria.

Content and Committee comment

[Clauses]

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

[3]. Inserts a new Part III into the Act to provide for a plebiscite to obtain the views of the people of Victoria where the Minister is satisfied that the Commonwealth Government has taken, or is likely to take, any step to support or allow construction of a prohibited nuclear facility in Victoria.

The provisions of the *Electoral Act 2002* relating to the holding of a referendum are adapted and applied for the purposes of a plebiscite.

Provision is made for distribution to voters of a pamphlet containing arguments for and against the Proposal that is the subject of the plebiscite which is to be posted to all voters by no later than 14 days before the voting day (the day fixed by the writ for the taking of votes).

Provision is made under this section for the Minister to decide that all voting at a plebiscite is to be by means of postal voting.

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

The Committee makes no further comment.

Ministerial Correspondence

Public Prosecutions Amendment Bill 2006

The Bill was introduced into the Legislative Assembly on 20 December 2006, by the Hon. Rob Hulls MLA. The Committee considered the Bill on 12 February 2007 and made the following comments in Alert Digest No. 1 of 2007 tabled in the Parliament on 13 February 2007.

Committee's Comments

[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.

Minister's Response

Thank you for your letter of 13 February 2007 regarding the Committee's consideration of the Public Prosecutions Amendment Bill. In your letter you sought further clarification regarding clause 6 of the Bill, in particular whether there is any person who has legal proceedings on foot that may be adversely affected by the validating provision.

I can advise that I am not aware of any current proceedings that would be adversely affected by clause 6 of the Bill.

I hope this information is of assistance

*ROB HULLS MP
Attorney-General*

26 February 2007

The Committee thanks the Minister for this response.

**Committee Room
9 March 2007**

Appendix 1

Index of Bills in 2007

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Public Prosecutions Amendment Bill 2006	1, 3
Road Legislation (Projects and Road Safety) Bill	1
Senate Elections Amendment Bill 2006	1
Victims of Crime Assistance Amendment Bill 2007	2
Water (Governance) Bill	1
Water Amendment (Critical Water Infrastructure Projects) Bill 2006	1

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
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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		1 of 2007	