

No. 4 of 2007

Tuesday, 17 April 2007

On the

Gambling and Racing Legislation
Amendment (Sports Betting) Bill
2007

Howard Florey Institute of
Experimental Physiology and
Medicine (Repeal) Bill 2007

Infertility Treatment Amendment
Bill 2007

Road Legislation Amendment Bill
2007

Statute Law Repeals Bill 2006

Water Amendment (Critical Water
Infrastructure Projects) 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–

Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007
Howard Florey Institute of Experimental Physiology and Medicine (Repeal) Bill 2007
Infertility Treatment Amendment Bill 2007
Road Legislation Amendment Bill 2007
Statute Law Repeals Bill 2006

The Committee notes the following correspondence –

Water Amendment (Critical Water Infrastructure Projects) 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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Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007

Introduced	13 March 2007
Second Reading Speech	15 March 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') and the *Racing Act 1958* to make new provision for betting on sporting and other events.

Note: *Under the proposed legislation, it is an offence for a sports betting provider to offer bets on events held in Victoria without having a betting agreement in place with the relevant sports controlling body or else a determination of the Victorian Commission for Gambling Regulation (Commission). The betting agreement is to cover the payment of fees (if any) and the sharing of information.*

Content and Committee comment

[Clauses]

[2]. The provisions in the Bill come into operation on proclamation but not later than by 1 July 2008.



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

The Committee refers to its Practice Note No. 1 of October 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.

The Committee will seek further information from the Minister concerning the need or desirability for such an extended delay in bringing the Act into force.

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

[3]. Provides for the substitution of a new Part 5 (Approved Betting Competitions and Sports Betting) of Chapter 4 of the Act containing amendments related to the regulation of betting on sporting and other non-racing events. Responsibility for approving betting on sporting events is transferred from the Minister to the Victorian Commission for Gambling Regulation. The Bill will provide a mechanism to allow sports controlling bodies to negotiate with sports betting providers to provide sports betting on approved sporting events. There is to be a dispute resolution mechanism where a betting provider cannot reach agreement with a sports controlling body.

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New section 4.5.20 provides that a person whose interests are affected by a relevant decision of the Commission may apply to VCAT for a review of that decision.

The Bill creates new offences that –

- prohibits betting on specific contingencies that have been prohibited by the commission (4.5.29).
- prohibits a sports betting provider, based either in Australia or overseas, from offering bets on Victorian events without either the written agreement of the sports controlling body or else a binding determination of the commission (4.5.31).

The Bill also creates a dispute resolution mechanism for circumstances in which a betting provider and a sports controlling body are unable to reach an agreement.

The Committee notes the Statement of Compatibility in respect to Charter rights implications in respect to privacy and reputation and notes the summary contained in the Statement of Compatibility –

Each of these new sections may have implications for the privacy of gamblers, sports players and officials. However, none of the sections unlawfully or arbitrarily interfere with their right to privacy.*

In developing information policies and information-sharing arrangements, sporting bodies and sports betting providers must still comply with their obligations under privacy legislation. The new sections in no way limit or interfere with these obligations.

Consequently, the Bill is compatible with the right to privacy.

*Sections 4.5.14, 4.5.23 and 4.5.26

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

The Committee makes no further comment.

Howard Florey Institute of Experimental Physiology and Medicine (Repeal) Bill 2007

Introduced	13 March 2007
Second Reading Speech	15 March 2007
House	Legislative Assembly
Minister responsible	Hon. John Brumby MLA
Portfolio responsibility	Minister for Innovation

Purpose

The Bill repeals the *Howard Florey Institute of Experimental Physiology and Medicine Act 1971* (the 'Act') and provides for the transfer to another entity of all property, rights, liabilities and staff of the Howard Florey Institute of Experimental Physiology and Medicine.

The Committee notes the Preamble to the Bill –

The Howard Florey Institute of Experimental Physiology and Medicine Act 1971 was enacted to establish a body corporate known as the Howard Florey Institute of Experimental Physiology and Medicine ('the Institute').

It is proposed to establish a body to be called the Florey Neuroscience Institutes which will be involved in the establishment of a research centre to be called the Australian Centre for Neuroscience and Mental Health Research. The Institute will be involved in the Florey Neuroscience Institutes.

To facilitate the involvement of the Institute in the Florey Neuroscience Institutes it is expedient to repeal the Howard Florey Institute of Experimental Physiology and Medicine Act 1971 and to provide for the transfer of all property, rights and liabilities held, and staff employed, by the Institute to a company, limited by guarantee, incorporated under the Corporations Act that is to be the successor in law of the Institute.

Content and Committee comment

[Clauses]

[2]. The Bill will come into operation on 1 July 2007.

[4]. Repeals the Act.

[5]. Abolishes the former body (Howard Florey Institute of Experimental Physiology and Medicine), the Board and any Committee and provides that on the commencement day the new body is the successor in law of the former body.

[7]. Provides that any person employed by the former body immediately before the commencement day is to be regarded, on and from the commencement day, as having been employed by the new body under the same terms and conditions and as having accrued an entitlement to benefits equivalent to the entitlement accrued whilst an employee of the former body.

[9]. Provides that students undertaking studies at the former body may continue those studies at the new body on and from the commencement day on the same terms as conditions that applied to the students before that day.

[11]. Provides that the Governor in Council may make regulations under the Bill which contain provisions of a savings and transitional nature, and further provides that these provisions may be made retrospective in operation to a day on or after the commencement day.

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Note: *The explanatory memorandum states that the 'power of retrospectivity has been included in the Bill to ensure that the savings and transitional provisions in the regulations will operate effectively'.*

The Committee makes no further comment.

Infertility Treatment Amendment Bill 2007

Introduced	13 March 2007
Second Reading Speech	14 March 2007
House	Legislative Assembly
Minister responsible	Hon. Bronwyn Pike MLA
Portfolio responsibility	Minister for Health

Purpose

This Bill amends the *Infertility Treatment Act 1995* (the ‘Act’) in a manner consistent with amendments made to the *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002* of the Commonwealth (the Commonwealth Acts) by the *Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Act 2006* (the Commonwealth Amendment Act). The amendments are based on the 2005 recommendations of the Legislative Review Committee (also known as the Lockhart Committee).

The Committee notes this extract from the Second Reading Speech –

The Bill enables certain types of research involving embryos to be permitted provided that the research is approved by the NHMRC licensing committee (in accordance with legislated criteria) and that the activity is undertaken in accordance with a licence issued by the NHMRC licensing committee.

...

In no circumstances can any embryo be developed, outside the body of a woman, beyond 14 days.

...

Additionally, women who donate eggs through an assisted reproductive technology program must, under the Infertility Treatment Act 1995, be provided with mandatory counselling by an approved counsellor (section 16). The topics to be covered in counselling are specified in the Infertility Treatment Regulations 1997 (section 7). These legislative provisions enable women access to independent advice, support and information prior to donation.

Committee Hearings

The Committee held private hearings at a Committee meeting on 4 April 2007. The Committee received evidence from –

- Dr Nicholas Tonti-Filippini – Ethicist, Consultant.
- Professor Loane Skene – University of Melbourne – Deputy Chair of the Lockhart Review Committee (Commonwealth).
- Dr Jock Findlay, Member of the National Health and Medical Research Council and Chair of the Victorian Infertility Treatment Authority.

A transcript of the evidence provided by these witnesses to the Committee is available in hard copy at the Parliamentary library and will also be available on the Committee’s Website.

Submissions

The Committee received written submissions from the following persons and organisations –

- Dr Nicholas Tonti-Filippini – Ethicist, Consultant;
- Feminist International Network of Resistance to Reproductive and Genetic Engineering;
- Women’s Forum Australia;

- Hands Off Our Ovaries.

The Committee resolved to release the above submissions and copies may be obtained from the Committee office.

Content and Committee comment

In summary, the proposed amendments to Parts 2A and 4A of the Principal Act—

- retain existing prohibitions on activities such as the following—
 - placing a human embryo clone in the human body or the body of an animal;
 - importing or exporting a human embryo clone;
 - creating a human embryo by fertilisation of a human egg by human sperm, for a purpose other than achieving pregnancy in a woman;
 - creating or developing a human embryo by fertilisation of human egg by human sperm which contains genetic material provided by more than 2 persons;
 - developing a human embryo outside the body of a woman for more than 14 days;
 - making heritable alterations to a human genome;
 - collecting a viable human embryo from the body of a woman;
 - creating or developing a chimeric embryo;
 - developing a hybrid embryo beyond 14 days;
 - placing a human embryo in an animal, a human embryo into the body of a human other than into the female reproductive tract or an animal embryo in a human;
 - Importing, exporting or placing in the body of a woman, a prohibited embryo.
- enable certain types of research involving embryos to be permitted provided that the research is approved by the NHMRC Licensing Committee (in accordance with legislated criteria) and that the activity is undertaken in accordance with a licence issued by the NHMRC Licensing Committee. In summary, a person may apply for a licence to do the following—
 - use excess ART embryos;
 - create human embryos other than by fertilisation of a human egg by a human sperm, and use such embryos;
 - create human embryos (by a process other than fertilisation of human egg by human sperm) containing genetic material provided by more than 2 persons, and use such embryos;
 - create human embryos using precursor cells from a human embryo or a human foetus, and use such embryos;
 - undertake research and training involving the fertilisation of a human egg, up to but not including the first mitotic division, outside the body of a woman for the purposes of research or training;
 - create hybrid embryos by the fertilisation of an animal egg by human sperm, and develop such embryos up to, but not including, the first mitotic division provided that the creation or use is for the purposes of testing sperm quality and will occur in an accredited ART centre.
- Unless a shorter time is specified, the uses of embryos that may be authorised by a licence may only be authorised for development up to 14 days (excluding any period during which development is suspended). In no circumstances can any embryo be developed, outside the body of a woman, beyond 14 days.

[2]. The provisions in the Bill come into force on 12 June 2007.

[7]. Inserts in Part 2A of the Act two new offences related to licensing. New sections 21CA and 21CB are offence provisions involving use of embryos without a licence issued by the NHMRC Licensing Committee.

[10]. Substitutes a new section 21H of the Act to enable certain activities to be undertaken provided a licence has been granted by the NHMRC Licensing Committee. The purpose of the new section 21H(1) is to set out all of the activities for which a person may request a licence from the NHMRC Licensing Committee. If the activity does not fall within this list, it is not able to be licensed by the NHMRC Licensing Committee (this means that it is either

[26]. Repeals section 38E of the Act, which made it an offence to create a human embryo other than by fertilisation, or develop such an embryo. This will now be allowed under licence.

[38]. Provides for practices that are prohibited unless authorised by a licence.

[40]. Inserts transitional provisions to clarify that the amendments in the Bill in no way impact or invalidate any existing licences that may have been issued by the NHMRC Licensing Committee under section 21I.

Further, if a person applied for a licence under subsection 21H before these amendments take effect and the licence application has not been decided by the NHMRC Licensing Committee then the person is taken, on and from the commencement of the amendments made by the Bill, to have applied for the licence under section 21H, as amended by the Bill.

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



The Committee provides this report to Parliament pursuant to terms of reference provided in section 30 of the 'Charter' and section 17(a)(viii) of the Parliamentary Committees Act 2003 concerning incompatibility with human rights

1. Section 9 of the Charter (right to life)

Keywords: Right to life – Person defined as a human being – Charter excludes laws concerning abortion and child destruction – Whether embryo or foetus a 'human being' (person) for the purposes of the Charter

The Committee notes that the most fundamental of all human rights is that 'every person has the right to life and has the right not to be arbitrarily deprived of life' and that this right is recognised in International law as absolute.

The Committee observes that all human rights in the Charter are subject to the reasonable limitations provision in section 7 of the Charter (reasonable limitations that may be demonstrably justified in a democratic society). The Committee observes that given this absolute right recognised in International law any limitation would have to be exceptional and manifestly demonstrable.

The Committee notes that section 6 of the Charter provides that all persons have the human rights set out in Part 2 of the Charter. 'Person' is defined by section 3 of the Charter as meaning a 'human being'. The Charter provides no guidance or definition of 'human being'.

The Committee observes that the right to life in section 9 of the Charter is qualified by section 48 of the Charter which excludes from the Charter's ambit, laws in respect to 'abortion' and 'child destruction'. However, section 9 is otherwise unqualified and provides no guidance

*whether 'a human being' includes an embryo or foetus. The Committee observes that the common law legal position in Victoria is that a human being is not a legal person until he or she is born. The Committee further observes that the Human Rights Act 2004 of the Australian Capital Territory qualifies the right to life as a right 'applying to a person from the time of birth'.**

The Committee considered the difficult question of providing a definition of 'human being' for the purposes of the Charter right and concluded that as this area of law involved fundamental questions of ethics and personal conscience the Committee would instead, refer for Parliament's consideration the question of whether any of the provisions of the Infertility Treatment Amendment Bill 2007 tests or infringes the 'right to life' within the meaning of the Charter.

**Human Rights Act 2004 (ACT), section 9(2).*

2. Section 10(c) of the Charter (person must not be subjected to experimentation without full, free and informed consent)

Keywords: Medical and scientific research – embryo donation – non-therapeutic volunteer donors – medical risks – whether consent to experimentation full, free and informed.

The proposed legislation would allow the development of stem cell lines by somatic cell nuclear transfer ('SCNT'). To successfully pursue this research demands a sufficient supply of human eggs ('oocytes'). Ensuring women have full, free and informed consent in these circumstances presented the Committee with some challenging issues.

Egg donations are not like blood donations because the process involves significant discomfort, hardship and risks. Nor are donations like bone marrow or live organ donations in which there are substantial risks but the donations are clearly for therapeutic purposes rather than scientific research.

An egg donor for stem cell research is subject to the same treatment as an egg donor for IVF treatment. However the reason for the donation is quite different, since SCNT is to advance medical knowledge rather than reproduction. Egg donation after induced ovulation presents certain risks to the donor and the aim is non-therapeutic scientific research.

The Committee received a number of submissions and conducted a hearing. The Committee was presented with two conflicting arguments. Submissions argued that women should be free to make altruistic decisions to further science. Other submissions argued that science and women's welfare in egg donation are conflicting to the point that they are incompatible with the women's human rights. Some submissions referred to the World Medical Assembly's Helsinki Declaration. The Declaration of Helsinki is a statement of ethical principles to provide guidance to physicians and other participants in medical research involving human subjects. Relevantly the Declaration provides –

- 16. Every medical research project involving human subjects should be preceded by careful assessment of predictable risks and burdens in comparison with foreseeable benefits to the subject or to others. This does not preclude the participation of healthy volunteers in medical research. The design of all studies should be publicly available.*
- 17. Physicians should abstain from engaging in research projects involving human subjects unless they are confident that the risks involved have been adequately assessed and can be satisfactorily managed. Physicians should cease any investigation if the risks are found to outweigh the potential benefits or if there is conclusive proof of positive and beneficial results.*
- 18. Medical research involving human subjects should only be conducted if the importance of the objective outweighs the inherent risks and burdens to the subject. This is especially important when the human subjects are healthy volunteers.*
- 19. Medical research is only justified if there is a reasonable likelihood that the populations in*

which the research is carried out stand to benefit from the results of the research.

20. *The subjects must be volunteers and informed participants in the research project.*

The Helsinki declaration suggests that the researcher in medical research has to go beyond full, free and informed consent with the added obligation to do no harm.

In the hearings it was pointed out that that concerns of risks, informed consent and scientific research occur in other areas of medical research. In this research the obligations of medical researchers remains to reduce risk, secure informed consent and to protect the life and health of the person on whom biomedical research is being carried out.

It was suggested to the Committee that this puts healthy egg donors into the same category as other healthy subjects who are subject to experimental drugs and procedures under ethical board sanctioned medical research.

It is the Committee's belief that to ensure full, free and informed consent demands there are certain obligations on researchers. Researchers need to minimise risks. The donors must be sufficiently and independently informed of all known and potential risks. Donors must be aware of the discomfort of the procedure and they are only able to donate for altruistic reasons.

In the case of IVF patients who may be asked to donate eggs that have failed to fertilise or to share some fresh eggs, there must be a strict separation between the patient's treatment team and the researchers requesting the eggs, otherwise they might feel pressured to donate. Similarly relatives and co-workers of those doing research on eggs would be in a relationship of dependence with the researchers and therefore should not be allowed to provide eggs for research. Real care needs to be taken to ensure there are no financial or other inducements, and that vulnerable and dependent groups are not recruited.

The Committee considered that there are human rights concerns regarding issues of consent and relationships of dependency. In time these concerns may be addressed by the 'Ethical guidelines on the use of assisted reproductive technology in clinical practice and research', however the Committee notes that these guidelines have not been finalised in time for Members consideration of this Bill.

The Committee resolved to write to the Health Minister outlining these concerns and seeking further information concerning the following matters –

- 1. The independence from research entities of counselling services (medical and other counselling) provided to potential donors;*
- 2. The extent and nature of medical and other advice given to potential donors and whether such advice covers general and donor specific health risks that may arise from, or as a consequence of the medical procedures involved in embryo donation;*
- 3. Whether there will be provided post donation medical and other counselling and monitoring of the physical and mental health of donors;*
- 4. Whether donors will be entitled to free additional health insurance covering the general and specific risks arising out of or as a consequence of embryo donation;*
- 5. The practices and procedures to be established minimising the possible exploitation of women in vulnerable groups and the special care that may be needed to ensure 'informed consent' is realistic; and*
- 6. The extent of any prohibitions or regulation in respect to undue inducements to potential donors (other than reimbursement of reasonable direct costs and health insurance).*

Pending the Minister's advice the Committee draws attention to these matters.

3. *Statement of Compatibility*

Keywords: *Provisions of Bill fairly raise question of Charter right under section 10(c) concerning ‘full, free and informed consent’ – Sufficiency of Statement of Compatibility – Need for section 7(2) consideration – Parliamentary scrutiny of exercise of legislative power.*

The Committee notes the Statement of Compatibility (‘Statement’) provided by the Minister introducing the Bill states that no human rights issue is raised by the Bill.

However, the Committee does consider that the Bill fairly raises a Charter implication under section 10(c).

Section 10(c) of the Charter provides that –

‘A person must not be subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent’.

The Committee considers that material such as explanatory memoranda and statements of compatibility assist the Parliament in its deliberations and in particular assist the Committee in its scrutiny functions under the Charter and the Parliamentary Committees Act 2003. The Committee draws attention to Practice Note No. 1 of 2005 where it endorsed the following observation made by the Australian Senate’s Standing Committee on the Scrutiny of Bills –

‘The committee relies on the explanatory memorandum to explain the purpose and effect of the associated bill and the operation of its individual provisions. In particular, the committee expects that an explanation will be given for any provision within a bill that appears to test or infringe the committee’s terms of reference and provide reasons or justification for this.’

***Senate Standing Committee for the Scrutiny of Bills – The Quality of Explanatory Memoranda Accompanying Bills, 24 March 2004*

The Committee considers that where there is a reasonable prospect that a provision in a Bill may test or infringe Charter compatibility that issue should be drawn to the attention of the Parliament and a reasoned, even if brief, analysis of why the provision is nevertheless considered compatible with the Charter should be outlined.

The Committee observes that in some earlier Statements accompanying Bills there has been a brief reasoning why provisions that appear to test a Charter right are considered nevertheless to be compatible because of other competing public policy objectives.

In respect to this Bill the Committee considers that the Parliament would have been better informed with at least a brief discussion concerning the pivotal question of when human rights may be limited within the meaning of section 7(2) of the Charter.

In approaching the Committee’s new reporting function in respect to provisions that may test or infringe a Charter right the Committee will consider a statement of compatibility as having the same status as an explanatory memorandum and where the Committee considers a Statement to be inadequate the Committee will draw this to the attention of Members.

The Committee will write to the Minister expressing its concerns in respect to this Statement of Compatibility.

The Committee makes no further comment.

Road Legislation Amendment Bill 2007

Introduced	13 March 2007
Second Reading Speech	15 March 2007
House	Legislative Assembly
Minister responsible	Hon. Tim Pallas MLA
Portfolio responsibility	Minister for Roads and Ports

Purpose

The Bill —

- amends the nomination process under the “owner onus” provisions of the *Road Safety Act 1986* (the ‘Act’), the *Melbourne City Link Act 1995* and the *EastLink Project Act 2004* to replace the requirement for sworn statements or statutory declarations with a simpler written statement requirement;
- amends the “operator onus” provisions of the Act to ensure that a proceeding may be commenced against any person who again becomes a responsible person in relation to a motor vehicle or trailer not later than 12 months after that event;
- extends to trailers and towed motor vehicles certain evidentiary provisions of the Act;
- amends the *EastLink Project Act 2004* to redefine the meaning of trip; and allow the area for which the Freeway Corporation is a referral authority to be extended;
- amends the *Melbourne City Link Act 1995* to limit the roaming fee that may be charged by the relevant corporation for providing a roaming service in relation to the use of EastLink; and provide for the definition of tollway operator to include tollway operators in Victoria.

Content and Committee comment

[Clauses]

[2]. The provisions in the Bill other than of clauses 11, 12 and 18 will come into operation the day after Royal Assent. Clauses 11 and 12 will come into operation on or before 1 July 2007.

Clause 18 will come into operation on a day to be proclaimed. If not earlier proclaimed, it will come into operation on 1 January 2009.



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 assumes that clause 18 will come into operation when the EastLink project comes on stream.

The Committee refers to its Practice Note No. 1 of October 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.

The Committee will write to the Minister seeking a clarification of the explanatory memorandum in respect to clause 18.

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

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[3 and 4]. Amends sections 66 and 86 of the Act to introduce the new statement method for avoiding or transferring “owner onus” liability in respect of a traffic camera offence and parking infringement cases. The amendments remove references to statutory declarations and sworn statements and replace them with references to written statements.

It is an offence to make such a statement where the person making it knows the information it contains is false or misleading.

[5]. Inserts a new section 103M into the Act (transitional provision) that deals with the phasing in of the new statement method and how it replaces the current statutory declaration/sworn statement process. The new section will enable a person to use the new statement method as soon as the amendments set out in clauses 3 and 4 take effect, even if the offence was committed before then.

[6 and 7]. Amends section 87 and inserts a new section 124 of the *Melbourne City Link Act 1995* to introduce the new statement method for avoiding or transferring “owner onus” liability in respect of a tolling offence under that Act. The amendments parallel those to be made in respect of “owner onus” for traffic camera offences under clause 3—see the notes on clause 3 above and provides transitional provisions that deals with the phasing in of the new statement method and how it replaces the current statutory declaration/sworn statement process.

[8]. Amends section 219 of the *EastLink Project Act 2004* to introduce the new statement method for avoiding or transferring “owner onus” liability in respect of a tolling offence under that Act. Again, the amendments parallel those to be made in respect of “owner onus” for traffic camera offences under clause 3. No transitional provision is needed in relation to this provision because tolling has not commenced.

[10]. Amends proposed new section 84BI of the new operator onus provisions to provide that it is an offence for a person in an illegal user statement, known user statement, sold vehicle statement, unknown user statement or nomination rejection statement to provide information that the person knows to be false or misleading in a material respect.

[11]. Inserts a new section 3AC into the Act to provide that the driver of a motor vehicle which is towing a trailer is to be taken to be the “driver” of the trailer for the purposes of that Act.

[18]. Inserts a new Division 5 (Link roaming agreements) in Part 4 of the *Melbourne City Link Act 1995*.

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

The Committee makes no further comment.

Statute Law Repeals Bill 2006

Introduced	19 December 2006
Second Reading Speech	15 March 2007
House	Legislative Assembly
Minister responsible	Hon. Steve Bracks MLA
Portfolio responsibility	Premier

Purpose

The Bill revises the statute law of Victoria by repealing spent Acts.

Content and Committee comment

[Clauses]

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

[3]. Provides for the Acts listed in the Schedule to be repealed.

[4]. Provides for the repeal of Act 5 Vict No. 14 of New South Wales (1841 Bank of Australasia) to the extent that it applies to Victoria.

[5]. Provides for the automatic repeal of this Act on the first anniversary of the day on which it receives the Royal Assent.

Schedule

The Acts set out in the Schedule are spent in their operation and fall into 3 categories —

1. Spent Principal Acts (items 1.1 to 1.17).
2. Spent amending Acts (items 2.1 to 2.92) with transitional or substantive provisions. The amendments or repeals made by these Acts are wholly in operation and have amended or repealed the provisions of Acts they were enacted to amend or repeal. The transitional and saving provisions are no longer required because of the passage of time and subsequent enactments since the Acts were enacted. The substantive provisions are no longer required because they have taken effect or are spent. Any residual or continuing effect of the transitional and saving provisions and the effect of the validation provisions will be saved by section 14 of the *Interpretation of Legislation Act 1984*.
3. Spent amending Acts which are wholly in operation and have amended the Acts they were enacted to amend and contain no transitional or substantive provisions.

The Committee makes no further comment.

Ministerial Correspondence

Water Amendment (Critical Water Infrastructure Projects) Bill 2006

The Bill was introduced into the Legislative Assembly on 19 December 2006, by the Hon. John Thwaites 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 Comments

[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.

Minister's Response

Thank you for your letter of 13 February 2007 in relation to whether or not an Order under section 161O of the Water Act 1989 will be subject to disallowance by Parliament.

If parliament passes the Water Amendment (Critical Water Infrastructure Projects) Bill 2006, an Order declaring a critical water infrastructure project under section 161M or 161O of the Water Act 1989 will not be subject to disallowance by Parliament.

JOHN THWAITES MP

Minister for Water, Environment and Climate Change

Committee Room

16 April 2007

Appendix 1

Index of Bills in 2007

	Alert Digest Nos.
Control of Weapons Amendment (Penalties) Bill 2006	1
Drugs, Poisons and Controlled Substances Amendment (Repeal of Part X) Bill 2007	3
Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007	4
Gambling Regulation Amendment (Review Panel) Bill 2007	3
Howard Florey Institute of Experimental Physiology and Medicine (Repeal) Bill 2007	4
Infertility Treatment Amendment Bill 2007	4
Interpretation of Legislation Amendment Bill	1
Justice Legislation (Further Miscellaneous Amendments) Bill	1
Legal Profession Amendment Bill 2007	3
Livestock Disease Control Amendment Bill 2007	3
Major Events (Aerial Advertising) Bill 2007	3
Murray-Darling Basin Amendment Bill 2006	1
Nuclear Activities (Prohibitions) Amendment (Plebiscite) Bill 2007	3
Parliamentary Legislation Amendment Bill 2007	2
Pay-roll Tax Amendment (Bushfire and Emergency Service) Bill 2007	2
Prahran Mechanics' Institute Amendment Bill 2007	2
Public Prosecutions Amendment Bill 2006	1, 3
Road Legislation Amendment Bill 2007	4
Road Legislation (Projects and Road Safety) Bill	1
Senate Elections Amendment Bill 2006	1
Statute Law Repeals Bill 2006	4
Victims of Crime Assistance Amendment Bill 2007	2
Water (Governance) Bill	1
Water Amendment (Critical Water Infrastructure Projects) Bill 2006	1, 4

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

(vi) inappropriately delegates legislative power.

Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007	4
Road Legislation Amendment Bill 2007	4

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

Infertility Treatment Amendment Bill 2007	4
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	
Public Prosecutions Amendment Bill 2006	Attorney-General	13.2.07	26.2.07	1 of 2007	3 of 2007
Senate Elections Amendment Bill 2006	Attorney-General	13.2.07		1 of 2007	
Water Amendment (Critical Water Infrastructure Projects) Bill 2006	Water	13.2.07	20.3.07	1 of 2007	4 of 2007
Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007	Gaming	17.4.07		4 of 2007	
Roads Legislation Amendment Bill 2007	Roads and Ports	17.4.07		4 of 2007	
Infertility Treatment Amendment Bill 2007	Health	28.3.07		4 of 2007	