

No. 5 of 2007

Tuesday, 1 May 2007

On the

Accident Towing Services Bill 2007

Building Amendment (Plumbing)
Bill 2007

Equal Opportunity Amendment Bill
2007

Fair Trading and Consumer Acts
Amendment Bill 2007

Gambling and Racing Legislation
Amendment (Sports Betting) Bill
2007

Statute Law Revision 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–

Accident Towing Services Bill 2007
Building Amendment (Plumbing) Bill 2007
Equal Opportunity Amendment Bill 2007
Fair Trading and Consumer Acts Amendment Bill 2007
Statute Law Revision Bill 2006

The Committee reports of the following Bills–

Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007

Useful provisions

Section 7(2) of the *Charter* provides –

When may human rights 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.

Alert Digest No. 5 of 2007

Accident Towing Services Bill 2007

Introduced	17 April 2007
Second Reading Speech	19 April 2007
House	Legislative Assembly
Minister responsible	Hon. Tim Pallas MLA
Portfolio responsibility	Minister for Roads and Ports

Purpose

The Bill establishes a regulatory framework for accident towing services in Victoria by —

- transferring powers, functions and responsibilities for industry regulation from the Director of Public Transport to VicRoads;
- remaking the existing regulatory framework in Division 8 of Part VI of the *Transport Act 1983*;
- deregulating the trade towing sector, as regulation of that sector is no longer necessary;
- introducing a modern accreditation regime to provide assurance that accident towing operators, depot managers and tow truck drivers are of suitable character and competence to provide relevant services;
- enabling the Minister to determine service standards in relation to complaints handling to facilitate improved service and for industry monitoring purposes;
- providing for improved and proportionate enforcement powers and sanctions.

Content and Committee comment

[Clauses]

[2]. Section 1 and 2 and clause 10 of Schedule 3 come into operation on the day after Royal Assent. The remaining provisions of the Bill are to come into operation on proclamation but not later than by 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 notes that the overwhelming majority of provisions in the Bill have a delayed commencement provision up to 1 January 2009.

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 further advice concerning the necessity or desirability for such a delayed commencement provision.

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

Licensing tow trucks

Part 2 [6 to 54] sets out the requirements for tow truck operators. It sets out requirements for the various types of licences, and deals with processes for the application, authorisation and issue of licences.

[32]. VicRoads may cancel or suspend a tow truck licence.

[41]. Provides that a police officer or an authorised officer may give directions to a tow truck licence holder or driver to leave a restricted road accident area where the member or officer believes the person's presence is causing an unwarranted obstruction, or is hindering efforts to deal with the accident. Subclause (3) provides that a person must not, without reasonable excuse, fail to comply with a direction given.

[42]. Sets out the requirements for the operation of regular tow trucks in a controlled area. Licence holders or drivers in a controlled area must not attend a road accident scene or tow accident damaged motor vehicles without authorisation from the allocation body and allocation of a job number.

[51]. Establishes restrictions on the use of licensed regular tow trucks in self-management areas. A self management area is an area declared to be a self management area.

[53]. Sets out rights to apply to VCAT for a review of a decision affecting an applicant for a tow truck licence or the holder of a tow truck licence.

Industry accreditation

Part 3 [55 to 96] deals with the accreditation from VicRoads of towing service business operators and depot managers.

[61]. VicRoads may require an applicant to supply further information or verify information supplied for the purposes of accreditation.

[62]. The Chief Commissioner of Police may notify VicRoads of any relevant findings of guilt of an applicant or relevant person in relation to the applicant for accreditation. Relevant person in relation to an applicant is defined in clause 3. It includes certain shareholders, managers and directors associated with management of the activities or business to which the application relates.

[77]. An accredited person must notify VicRoads within 7 days of changing address and must return the certificate of accreditation to VicRoads and must apply to VicRoads to amend the certificate or issue a replacement.

[79 to 86]. Deals with disciplinary action against the holder of an accreditation and sets out the type of disciplinary action that may be taken.

[87]. Provides that VCAT has original jurisdiction in relation to the mandatory refusal of an application for accreditation under clause 66(1)(a) or (b) or cancellation of accreditation.

[88]. Allows a person affected by certain decisions of VicRoads to apply to VCAT for review of that decision.

[92]. An accredited person (or where the person is a corporation, the nominated person) or a relevant person in relation to the accredited person, who is found guilty of an offence listed in

clause 1 or 2 of Schedule 1 (serious violent offences, fraud, dishonesty violence, sexual offences or drug trafficking) must notify VicRoads of the finding of guilt.

[93]. An accredited person to notify drivers employed or engaged by that person to drive a licensed tow truck of any suspension or cancellation of accreditation.

[96]. Empowers VicRoads to disclose information if VicRoads considers it necessary for the provision of safe accident towing services and publish information but so as not to identify any person.

Driver accreditation

Part 4 [97 to 140] deals with the accreditation of tow truck drivers. It requires persons seeking to drive tow trucks or accompany tow truck drivers to obtain accreditation from VicRoads to perform the activities associated with that role. The Part also makes provision for certificates of accreditation, disciplinary action and rights of review to VCAT.

[104]. The Chief Commissioner of Police may notify VicRoads of any *relevant* findings of guilt of an applicant for accreditation.

[106 and 107]. Respectively sets out the circumstances in which VicRoads may approve and must refuse an application for accreditation.

[109]. VicRoads may refuse an application for accreditation where the applicant cannot demonstrate that accreditation is warranted.

[111]. VicRoads may disqualify a person whom it has refused to accredit from applying for accreditation within a period determined by VicRoads, not exceeding five years.

[112]. A disqualified person may apply to VicRoads for a declaration that the disqualification ceases to have effect where there has been a relevant change of circumstances.

[118]. An accredited person must notify VicRoads within 7 days of changing address and must return the certificate of accreditation to VicRoads and must apply to VicRoads to amend the certificate or issue a replacement.

[124 and 125]. Sets out discretionary grounds for disciplinary action by VicRoads against an accredited person and sets out the type of disciplinary action that may be taken.

[131]. A person whose accreditation has been suspended on the basis of a charge may apply to VicRoads for a determination of compensation for lost income where that person is subsequently found not guilty or the charge is withdrawn or discharged.

[132]. VCAT has original jurisdiction in relation to the mandatory refusal of an application for accreditation under section 107(1)(b) or (c) or the cancellation of accreditation.

[133]. A person affected by certain decisions of VicRoads to apply to VCAT for review of that decision.

[137]. An accredited person employed or engaged by a person who holds a tow truck licence, must notify the holder of the tow truck licence of any suspension or cancellation of his or her accreditation within 28 days of receiving notice of this.

Part 5 [141 to 163] contains various provisions aimed at protecting vulnerable accident victims from undesirable conduct at road accident scenes including being subject to requests in relation to deciding on the subsequent storage and repair of accident damaged vehicles. It sets out the

requirement for tow truck drivers to obtain an authority to tow a vehicle from a road accident scene, and imposes various obligations on tow truck drivers and repairers.

[147]. A person must not obtain or attempt to obtain any form of authority or agreement for the preparation of a quotation or the repair of an accident damaged motor vehicle until the vehicle is stored at the address provided for on the written authority to tow the vehicle.

[148]. Prohibits soliciting or touting at a road accident scene in a controlled area for any business that is in the nature of towing of accident damaged motor vehicles by regular tow trucks; or storing of accident damaged motor vehicles; or repairing of accident damaged motor vehicles.

Enforcement provisions

Part 6 [164 to 204] provides for measures to determine and enforce compliance with the Act, regulations and service standards.

[164 to 172]. Provides for a demerit points system and sets out provisions such as expiry of demerit points, suspension of accreditation and review by VCAT.

[173]. Deals with infringement notices for specified offences as prescribed by the regulations. These offences are infringement offences for the purposes of the *Infringements Act 2006*. The penalty for each infringement is also to be set out in the regulations.

[174 to 177]. Provides for improvement notices to be issued by VicRoads and review by VCAT.

[178 to 180]. Deals with authorised officers for the purpose of enforcement of the legislation.

Entry, search and seizure powers

[181 to 204]. Deals with entry, search and seizure powers. The provisions include power to search tow trucks in a public place (181, 182); search of business premises with consent (186); entry to business premises without consent or warrant during business hours (188); the issue of judicial search warrants under the procedures and forms in accordance with the *Magistrates' Court Act 1989* (189); the formalities of executing a warrant (190 and 191); the seizure of things not mentioned in a warrant (192); the issue of embargo notices (when executing a judicial warrant to seize any thing) which restrain unauthorised dealings of equipment or other things (193); setting out how seized things must be dealt with (194 to 198).

[199]. Requires an occupier of premises that are being searched by an inspector to assist an inspector by giving information; producing documents; and giving reasonable assistance.

Self-incrimination not an excuse – limitation on use of information – no criminal proceedings may be brought other than for falsity of information

[200]. Provides that a person is not excused from complying with a requirement or direction made on the ground that complying may result in self-incrimination. However, information obtained from a natural person is not admissible in evidence against the person in criminal proceedings except in limited circumstances. The limited circumstances are where the person provides –

- false information;
- false name and address;
- documents required to be kept under the legislation, or obtained without the direct assistance of the person.

[201]. Empowers an inspector to direct an individual to state his or her name and business address where the inspector believes on reasonable grounds that the individual is, or may be, the holder of

an accreditation or licence. A person must comply immediately with the direction and a person must not knowingly provide a false name or address.

Part 7 of the Bill [205 to 210] contains provisions for the approval of codes of practice by the Minister. It is intended that codes of practice will contain operational guidelines and standards to give practical guidance to tow truck operators and drivers involved in providing accident towing services. A person does not incur any civil or criminal liability merely because of a failure to comply with a provision of an approved code of practice.

[214]. Empowers VicRoads to delegate any power under the Bill (other than the power of delegation) to a public sector employee employed by the Department of Infrastructure.

[216]. No compensation is payable (other than under section 131) to any person in respect of certain decisions or determinations made under the Act or in respect of a decision of VicRoads under Part 3 or 4 (industry and driver accreditation).

[223]. Empowers the Governor in Council to make regulations with respect to certain matters.

Part 9 [225 to 239] makes amendments to other Acts.



Charter of Human Rights and Responsibilities Act 2006

The Committee reports 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, 'incompatibility with human rights'.

The Committee notes the Statement of Compatibility identifies a number of provisions in the Bill that are said to reasonably engage Charter rights.

These Charter rights include –*

- 1. Freedom of movement – allowing police to direct persons to leave a restricted accident area; prohibiting attendance of tow truck licence holders in an accident scene in a 'controlled area'; or a 'self managed area' (s.41).*
- 2. Privacy – raised by sections requiring information to be provided for the purpose of giving effect to the purposes of the Act; allowing the Chief Commissioner of Police to notify VicRoads of certain relevant findings of guilt (s.62); powers of entry, search and seizure either by consent, without consent at business premises during business hours or by means of judicial warrant (s.188).*
- 3. Freedom of expression – prohibiting persons (who do not hold an authority to attend the scene) from soliciting business at an accident scene in a controlled area (s.147); requiring a person to give information, orally or in writing, to an inspector undertaking a search (s.199).*
- 4. Property rights – allowing an inspector to seize and remove documents or things (s.182); seizure of things not mentioned in a warrant (192) and the issue of embargo notices restraining property (193); restrict transfer, cancellation or suspension of licences (ss.29, 32).*
- 5. Freedom from self incrimination – inspectors searching premises may compel persons to assist by answering questions and providing documents or things (ss.199, 200).*

** Respectively the sections of the Charter engaged are 12, 13, 15(2) and (3), 20 and 25(2)(k).*

The Committee notes that provisions in the Bill are frequently encountered in licensing, accreditation or regulatory schemes such as those involving public transport or regulating professional bodies. Such regulatory schemes typically provide for accreditation or licensing,

disciplinary bodies, monitoring and enforcement provisions.

The Committee observes that the Statement of Compatibility includes a section 7(2) Charter analysis (when may rights be limited) for each of the major Charter rights considered to be engaged by the provisions in the Bill.

The Statement characterises all the Charter rights engaged by the Bill as rights that are not absolute rights and therefore may be subject to appropriate limitation or adaptation as may be demonstrably justified.

In each instance the Statement contends that the respective rights are legitimately and necessarily limited in a manner that is reasonable and necessary to achieve the purpose and that the limitations are rationally connected to the purpose sought to be achieved by the legislation. In each instance no less restrictive means is considered feasible to achieve the legislative intent of the Bill.

The Committee considers the most significant Charter right engaged by the provisions of the Bill are the rights in respect to freedom from self-incrimination.

Section 25(2)(k) of the Charter provides –

(2) A person charged with a criminal offence is entitled without discrimination to the following minimum guarantees—

(k) not to be compelled to testify against himself or herself or to confess guilt.

The section 7(2) discussion may be summarised as follows –

- (a) The nature of the right being limited – Section 25(2)(k) protects the right not to be compelled to give evidence or provide documents or things to persons in authority that may tend to incriminate the person giving the evidence information or thing.*
- (b) The importance of the purpose of the limitation – The limitation (compelling evidence or information to be given) is designed to give effect to the regulatory scheme by permitting effective enforcement and encouraging compliance.*
- (c) The nature and extent of the limitation – The section (200) compels evidence to be given but limits or quarantines its use so as not to apply directly to criminal proceedings other than for falsity of the information given.*
- (d) The relationship between the limitation and its purpose – The limitation is proportionate to achieve the enforcement and compliance purposes of the Act. The means are not disproportionate or heavy handed to achieve the purpose. The limitation is rationally connected to the purpose of effective enforcement and compliance.*
- (e) Any less restrictive means reasonably available to achieve the purpose – Are there means available to achieve the enforcement and compliance objects of the Act other than by compelling persons to give evidence or provide information.*

Having considered the Charter rights engaged by the Bill the Committee is satisfied that the measures so engaged do not warrant any special mention or adverse comment in respect to possible Charter incompatibility.

The Committee makes no further comment.

Building Amendment (Plumbing) Bill 2007

Introduced	17 April 2007
Second Reading Speech	19 April 2007
House	Legislative Assembly
Minister introducing Bill	Hon. John Thwaites MLA
Minister responsible	Hon. Justin Madden MLC
Portfolio responsibility	Minister for Planning

Purpose

The Bill amends the *Building Act 1993* (the 'Act') to enable the regulations under Part 12A of the Act to incorporate the Plumbing Code of Australia; enable registered plumbers to carry out specialised plumbing work on behalf of licensed plumbers; provide for certain restrictions and obligations relating to plumbers and expand the regulation-making powers particularly in relation to plumbing work.

Content and Committee comment

[Clauses]

[2]. The amendments come into operation on proclamation but not later than by 1 January 2008.

[13]. Substitutes new section 221ZZZA(1)(a) to enable compliance auditors to enter any residence or the land on which the residence is situated during the hours of 8 a.m. to 6 p.m. or outside those hours with the consent of the occupier of the residence or the land. The auditor must provide the reason for entering to the occupier before obtaining consent.

[19]. Substitutes section 229(2)(a) to enable authorised persons to enter, for the purposes of an inspection, any residence or land on which a residence is situated during 8 a.m. to 6 p.m. or outside those hours with the consent of the occupiers. An authorised person must inform the occupier of the purpose of the entry before obtaining consent for the entry.

Charter of Human Rights and Responsibilities Act 2006



The Committee observes that the Statement of Compatibility notes that the provisions (13 and 19) raise issues that may engage section 13 of the Charter (Right to privacy and reputation).

The Committee considers that building audits and inspections, of necessity require entry to a residence or land on which a residence is situated to undertake audits or inspections.

The Committee considers that the amended audit and inspection powers are reasonably adapted to achieve a legitimate purpose and therefore may be considered not to be unlawful, arbitrary or unduly limiting human rights within the meaning of the Charter.

The Committee makes no further comment.

Equal Opportunity Amendment Bill 2007

Introduced	17 April 2007
Second Reading Speech	19 April 2007
House	Legislative Assembly
Minister responsible	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill amends the *Equal Opportunity Act 1995* (the ‘Act’) to include a new attribute of *employment activity*. Discrimination will be prohibited on the basis of this attribute.

The Committee notes this extract from the explanatory memorandum –

This Bill seeks to provide further protection to Victorian employees where, in their individual capacity, they make a reasonable request to their employer for information about their employment entitlements or communicate concerns to their employer about whether they have been, are being or will be given their employment entitlements.

The Bill does this by inserting into the Equal Opportunity Act 1995 a new attribute of employment activity on the basis of which discrimination is prohibited. The attribute of employment activity is defined to describe the actions of the employee in asking reasonable questions or communicating concerns about their employment entitlements.

Content and Committee comment

[Clauses]

[2]. The provisions in the Bill come into operation on proclamation but not later than by 31 March 2008.

[3]. Inserts two new definitions in section 4(1) of the Act ‘*employment activity*’ and ‘*employment entitlements*’.

[4]. Inserts the new attribute of *employment activity* in section 6(c) of the Act on the basis of which discrimination is prohibited in the areas of activity set out in Part 3 of the Act.

Notes:

Charter sections engaged by the Bill –

3. *Definitions*

‘discrimination’, in relation to a person, means discrimination (within the meaning of the Equal Opportunity Act 1995) on the basis of an attribute set out in section 6 of that Act;

Note: *Section 6 of the Equal Opportunity Act 1995 lists a number of attributes in respect of which discrimination is prohibited, including age; impairment; political belief or activity; race; religious belief or activity; sex; and sexual orientation.*

8. *Recognition and equality before the law*

(2) *Every person has the right to enjoy his or her human rights without discrimination.*

(3) *Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.*

[5]. Provides for the automatic repeal of this amending Bill on 31 March 2009.

The Committee makes no further comment.

Fair Trading and Consumer Acts Amendment Bill 2007

Introduced	17 April 2006
Second Reading Speech	19 April 2007
House	Legislative Assembly
Minister introducing Bill	Mr Daniel Andrews MLA
Portfolio responsibility	Minister for Consumer Affairs

Purpose

The Bill amends the *Fair Trading Act 1999* (the 'Act'), the *Conveyancers Act 2006* and the *Motor Car Traders Act 1986*.

Content and Committee comment

[Clauses]

[2]. Saving Part 3 the provisions in the Bill come into operation on the day after Royal Assent. Part 3 which makes amendments to the *Conveyancers Act 2006* will come into operation on a day to be proclaimed but not later than by 1 July 2008 (the default commencement of that Act).

[8]. Inserts a new section 126B to facilitate the monitoring of embargo notices under section 126. The new section allows an inspector to apply to the Magistrates' Court for various orders and to apply to a magistrate for a search warrant. The relevant orders include an order requiring the owner of a thing to which an embargo notice, or the occupier of the premises where the thing is kept or required to be kept, to answer questions or produce documents at a time and place specified by the inspector; and the relevant search warrant would permit the inspector to enter the premises where the thing that is the subject of an embargo notice is kept or required to be kept. The warrant would allow the inspector to search for, seize, or secure against interference the thing named in the warrant, and to test the thing to determine if it complies with a safety standard prescribed under the Act, or a ban order made under that Act.

[9]. Amends section 129A to allow the Director to apply to a court for an order permitting the destruction of dangerous goods to which a prescribed safety standard applies. The Court may also order that costs of the destruction be paid by the owner of the goods.

[10]. Inserts a new section 154(1)(ba) to allow the court to make an asset freezing order in respect of money held in an account with an authorised deposit-taking institution (ADI).

[11]. Extends and applies the current operation of section 157 to sections 149A, 151A and 151B of the Act to allow a court that has made a finding of fact in injunctive proceedings under those sections where a person is found to have contravened the Act to use those findings as evidence in proceedings under section 158 and 159 (final court orders and in actions for damages).

[37]. Provides for the automatic repeal of the Act on 1 July 2009.



Charter of Human Rights and Responsibilities Act 2006.

The Committee observes that the Statement of Compatibility noted that a number of provisions in the Bill may reasonably engage Charter rights.

The Charter rights include –*

- 1. Privacy and reputation – raised by clause 8 allowing powers of entry which may include a*

residence if an embargo notice has been issued in respect of goods stored in a residence; clause 27 would permit the Authority discretion to divulge information (determinations under the Conveyancers Act 2006) to a member of the public in certain circumstances. A person may apply to the Authority to restrict personal details recorded on the register.

2. Freedom of expression – raised by clause 8 in respect to monitoring compliance of an embargo notice requiring persons (the owner of goods) to answer questions or produce documents. Such power may only be exercised after obtaining a judicial warrant. The power is subject to a privilege against self-incrimination found in section 133 of the Act.

Note: Charter right protecting against self-incrimination – Charter section 25(2)(k).

3. Property rights – clause 8 will allow for the seizure of goods named in a warrant. Clause 9 will allow for a court order to authorise the destruction of property that does not comply with a prescribed safety standard (poses a risk to public safety if not destroyed). Clause 10 will allow a court (after certain matters are proved) to authorise the freezing of assets in a bank account.
4. Fair hearing – clause 11 will permit a fact proven in earlier proceedings (such as by way of injunctive relief) to be used as evidence of the fact in later proceeding. However the contravention must be the same in both proceedings even if the remedy differs (e.g. a final remedy after injunctive relief).

* Respectively the rights are in Charter sections 13, 15, 20 and 24.

The Committee notes that provisions in the Bill are commonly found in regulatory Acts that typically include inspectorial powers, including powers to issue embargo notices, freezing of bank accounts and the seizure and destruction of goods detrimental to public health and safety.

Other than the request for further advice in respect to clause 11 (amending section 157) the Committee observes that the powers to be exercised are according to law (i.e. under judicial oversight) and are therefore not arbitrary. Further, the amendments may be considered to be proportionate and logically connected to achieving legitimate public policy purposes.

The Committee notes that provisions in the Bill are commonly found in regulatory Acts that typically include inspectorial powers, including powers to issue embargo notices, freezing of bank accounts and the seizure and destruction of goods detrimental to public health and safety.

Other than the request for further advice in respect to clause 11 (amending) section 157) the Committee observes that the powers to be exercised are according to law (i.e. under judicial oversight) and are therefore not arbitrary. Further, the amendments may be considered to be proportionate and logically connected to achieving legitimate public policy purposes.

The Committee notes that clause 11 amending section 157 will allow certain facts determined at an ex parte injunctive stage of proceedings to be used in later proceedings for final orders. The Committee is concerned to ensure that a party not present at earlier proceedings is not in any way disadvantaged by not being able to challenge at a final hearing or determination, a finding of fact made at the earlier proceeding.

The Committee will seek further advice from the Minister.

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

The Committee makes no further comment.

Statute Law Revision Bill 2006

Introduced	19 December 2006
Second Reading Speech	17 April 2007
House	Legislative Council
Minister introducing Bill	Mr John Lenders MLC
Minister responsible	Hon. Steve Bracks MLA
Portfolio responsibility	Premier

Purpose

The purpose of this Bill is to revise further the statute law of Victoria. The Bill makes minor amendments to 77 Acts to correct grammatical and typographical errors, to update references, and to repeal spent provisions.

Content and Committee comment

[Clauses]

[2]. Other than 3 specified items which have retrospective commencement provisions the amendments made by the Bill come into operation on the day after Royal Assent.

The reason for the retrospective commencement of an item is set out in the note on that item in the notes of the Schedule.



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

The Committee reviewed the retrospective amendments made by -

- *item 7.1 – Children and Young Persons Act 1989 (1 September 2006);*
- *item 57 – Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006 (10 October 2006); and*
- *item 61.1 – Sex Offenders Registration Act 2004 (1 December 2006).*

In each instance the Committee concluded that the retrospective amendments are justified.

[3]. Provides for the 77 Acts listed in the Schedule to be amended as set out in the Schedule.

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

The Committee makes no further comment.

Ministerial Correspondence

Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007

The Bill was introduced into the Legislative Assembly on 13 March 2007, by the Hon. Daniel Andrews MLA. The Committee considered the Bill on 16 April 2007 and made the following comments in Alert Digest No. 4 of 2007 tabled in the Parliament on 17 April 2007.

Committee Comment

[2]

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

The Committee 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.

Minister’s Response

Commencement of the Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007

I refer to your letter of 18 April 2007 about the commencement provision in the Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007 (the bill) which provides for a default commencement date of 1 July 2008. I understand that the Scrutiny of Acts and Regulations Committee is seeking information about the need for the bill to provide for a commencement date that, subject to its passage in Parliament, may be more than one year from the date of Royal Assent.

The bill contains amendments to the Gambling Regulation Act 2003 and the Racing Act 1958 to enhance the regulatory regime for sports betting. The measures will strengthen public confidence in the integrity of sporting events and the betting that takes place on those events and will enable sporting bodies to receive a fair share of the revenues from betting that takes place on their sports.

An important part of the regulatory regime is the creation of a mechanism that enables the Victorian Commission for Gambling Regulation (VCGR) to approve a sporting body as a sports controlling body for betting purposes. Where a sports controlling body is approved, a betting provider cannot offer bets without the written agreement of the sports controlling body. Before the regime can commence the VCGR needs to establish its processes for approving sports betting bodies and regulations need to be made, on the basis of the application process, to set application fees on a cost recovery basis.

This is an innovative regime that places Victoria at the forefront of the regulation of sports betting internationally.

Scrutiny of Acts and Regulations Committee

Given the unique nature of the regime, it is vital to ensure that the bill provides sufficient time to enable any unforeseen difficulties in the implementation phase to be effectively dealt with. Providing for an extended time between Royal Assent and default commencement ensures that this can occur.

*Hon Daniel Andrew MP
Minister for Gaming*

27 April 2007

The Committee thanks the Minister for this response.

**Committee Room
30 April 2007**

Appendix 1

Index of Bills in 2007

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Equal Opportunity Amendment Bill 2007	5
Fair Trading and Consumer Acts Amendment Bill 2007	5
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Road Legislation (Projects and Road Safety) Bill	1
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Victims of Crime Assistance Amendment Bill 2007	2
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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.

Fair Trading and Consumer Acts Amendment Bill 2007	5
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	27.4.07	4 of 2007	5 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	