

No. 7 of 2007

Tuesday, 5 June 2007

On the

Accident Compensation Amendment
Bill 2007

Courts Legislation Amendment (Judicial
Education and Other Matters) Bill 2007

Outworkers and Contractors Legislation
Amendment Bill 2007

Payroll Tax Bill 2007

Professional Standards Amendment Bill
2007

State Taxation Acts Amendment Bill
2007

Superannuation Legislation Amendment
(Contribution Splitting and Other
Matters) Bill 2007

Wills Amendment Bill 2007

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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;

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.



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 Compensation Amendment Bill 2007
Courts Legislation Amendment (Judicial Education and Other Matters) Bill 2007
Outworkers and Contractors Legislation Amendment Bill 2007
Payroll Tax Bill 2007
Professional Standards Amendment Bill 2007
State Taxation Acts Amendment Bill 2007
Superannuation Legislation Amendment (Contribution Splitting and Other Matters) Bill 2007
Wills Amendment Bill 2007



Role of the Committee

The Scrutiny of Acts and Regulations Committee is an all-party Joint House Committee, which examines all Bills and subordinate legislation (regulations) presented to the Parliament. The Committee does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of non-partisan legislative scrutiny. These traditions have been developed since the first Australian scrutiny of bills committee of the Australian Senate commenced scrutiny of bills in 1982. They are precedents and traditions followed by all Australian scrutiny committees. Non-policy scrutiny within its terms of reference allows the Committee to alert the Parliament to the use of certain legislative practices and allows the Parliament to consider whether these practices are necessary, appropriate or desirable in all the circumstances.

The *Charter of Human Rights and Responsibilities Act 2006* provides that the Committee must consider any Bill introduced into Parliament and must report to the Parliament whether the Bill is incompatible with human rights.

Alert Digest No. 7 of 2007

Accident Compensation Amendment Bill 2007

Introduced	22 May 2007
Second Reading Speech	23 May 2007
House	Legislative Assembly
Minister responsible	Hon. Tim Holding MLA
Portfolio responsibility	Minister for Finance, WorkCover and the Transport Accident Commission

Purpose

The Bill amends the *Accident Compensation Act 1985* (the 'Act') to improve the effectiveness of the provisions relating to self-insurers and non WorkCover employers.

The Committee notes this extract from the Statement of Compatibility –

In particular, refinements are being made to the Accident Compensation Act 1985 to:

- *ensure the VWA can enforce compliance with all obligations by scheme swappers;*
- *remove any uncertainty about provisions relating to financial (bank) guarantees; and*
- *remove a discretion that existing self-insurers have in relation to tail claims and mandate that they hand back the management of such claims to the VWA before exiting to Comcare.*

Content and Committee comment

[Clauses]

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

[5]. Inserts new subsections (9), (10), (11) and (12) into section 242 of the Act creating an offence of non-compliance with a provision of Part VIA (Non-WorkCover Employers).

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

The Committee makes no further comment.

Courts Legislation Amendment (Judicial Education and Other Matters) Bill 2007

Introduced	22 May 2007
Second Reading Speech	23 May 2007
House	Legislative Assembly
Minister responsible	Hon. Tim Holding MLA
Portfolio responsibility	Minister for Finance

Purpose

The Bill amends the —

- *Supreme Court Act 1986*, the *County Court Act 1958*, the *Magistrates' Court Act 1989* and the *Victorian Civil and Administrative Tribunal Act 1998* to provide for judicial education;
- *Constitution Act 1975* in relation to the appointment, resignation and retirement of Supreme Court judges and certain judicial pensions;
- *Constitution Act 1975* and the *Supreme Court Act 1986* so that Masters can constitute the Court of Appeal in certain procedural applications in civil proceedings;
- *County Court Act 1958* in relation to certain appeals in respect to an order for costs, to the Court of Appeal in civil proceedings; and
- *Children, Youth and Families Act 2005* to provide for the continuation of the Koori Court (Criminal Division) of the Children's Court until 1 July 2009.

Content and Committee comment

[Clauses]

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

[3 to 7]. Part 2 of the Bill establishes a uniform scheme of professional development and continuing education and training for judicial officers of a court and of the VCAT.

[8]. Amends a number of provisions of the *Constitution Act 1975* in relation to the appointment, resignation and retirement of Supreme Court Judges. These amendments provide for the cessation of a judge's commission on the resignation of a judge, in writing, at any time prior to the compulsory retirement age applicable to the individual judge (this is either 70 or 72 years).

[9]. Inserts new section 83(1D) in the *Constitution Act 1975* to provide that a person who has resigned from the office of Judge of the Supreme Court in the circumstances set out in section 83(1C) and who has become permanently incapacitated before the age of 65, is entitled to a pension payable at the same rate that would have been paid to him or her had the person reached the age of 65 before becoming incapacitated.

Subclause (2) amends section 83(2)(b) of the *Constitution Act 1975* to provide that the spouse of a person who was formerly a judge is entitled to a reversionary pension, until death or remarriage, where the judge had resigned or retired or become inflicted with a permanent incapacity in any of the circumstances set out in section 83(1), (1A), (1B), (1C) or (1D). This amendment rectifies an anomaly in the *Constitution Act 1975* that unfairly denies a reversionary pension to spouses in certain circumstances.

[10]. Provides for the Court of Appeal to be constituted by a Master by amending both the *Constitution Act 1975* and the *Supreme Court Act 1986*. The intention of these amendments is to

provide Masters with the power to give or make judgments, orders and directions of a procedural nature in civil appeals. Amendments to the Rules of the Court will further clarify the extent of Masters' powers. It is intended that proceedings that are not of a procedural nature, most particularly the full hearing of an appeal, will continue to be heard and determined by judges of the Court of Appeal.

[12]. Continues the Koori Court (Criminal Division) of the Children's Court until 1 July 2009. Section 2 of the *Children, Youth and Families Act 2005* is the commencement provision. Section 2(3) of that Act provides that section 605 commences on 1 July 2007 if not proclaimed to commence on an earlier date. Section 605 would have had the effect of repealing the provisions establishing the Koori Court Division of the Children's Court.

Note: The Koori Court is a pilot project which was to run until 1 July 2007 unless extended by further delaying the repeal provisions.

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



Charter of Human Rights and Responsibilities Act 2006

The Committee notes that the Statement of Compatibility raises two provisions in the Bill that engage section 8 of the Charter (Recognition and equality before the law). The provisions are –

- *the continuation of the provisions relating to the establishment of the Koori Court (clause 12) may be considered to engage section 8(2) of the Charter in that the Court may be seen as discriminating against non-aboriginal children. However, the provisions also engage section 8(4) of the Charter in the sense that measures taken for the purpose of assisting groups of persons disadvantaged because of discrimination do not in themselves constitute discrimination.*
- *Clause 9 makes amendments that allow for a reversionary pensions for the spouse of a judge appointed to be a judge after the age of 60 overcome an age based discriminatory law which denied a reversionary pension to the spouse except where the judge was appointed before the age of 60.*

The Committee makes no further comment.

Outworkers and Contractors Legislation Amendment Bill 2007

Introduced	22 May 2007
Second Reading Speech	23 May 2007
House	Legislative Assembly
Minister responsible	Hon. Rob Hulls MLA
Portfolio responsibility	Minister for Industrial Relations

Purpose

The Bill amends the *Outworkers (Improved Protection) Act 2003* (the 'Act') to ensure that Victorian outworkers continue to enjoy the same standard of wages and conditions as federal award employees. The Bill also amends the *Owner Drivers and Forestry Contractors Act 2005* in relation to payment in lieu of notice in respect of fixed overhead costs.

Content and Committee comment

[Clauses]

[2]. Other than Parts 2 and 3 the provisions in the Bill will come into operation on Royal Assent. Part 2 (except clause 4(2)) is deemed to have come into operation on 27 March 2006. Clause 4(2) and Part 3 will come into effect on proclamation but not later than 1 January 2008.

Note: From the explanatory memorandum – *Part 2 of the Bill, except for clause 4(2), will have retrospective operation from the date that the Australian Fair Pay and Conditions Standard came into effect. This is to ensure that section 14A(1) of the Outworkers (Improved Protection) Act 2003 provides a clear, continuous entitlement to any conditions removed from federal awards and placed in the Australian Fair Pay and Conditions Standard as at that date. However, the penalty provisions in section 14A(2) of the Outworkers (Improved Protection) Act 2003 would have prospective effect only.*

[4]. Clause 4(1) substitutes a new section 14A(1) of the Act to provide that an outworker engaged by a person is entitled to the same benefits, terms and conditions as he or she would have under the Australian Fair Pay and Conditions Standard if the outworker were an employee of that person.

Clause 4(2) substitutes a new section 14A(2) of the Act and provides that a person who engages an outworker must not provide a benefit, term or condition of engagement to the outworker that is less than a benefit, term or condition that would apply under any federal award applicable to the clothing industry if the person were bound by the award, and the Australian Fair Pay and Conditions Standard, if the person were an employee of the person.

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

The Committee makes no further comment.

Payroll Tax Bill 2007

Introduced	22 May 2007
Second Reading Speech	23 May 2007
House	Legislative Assembly
Minister responsible	Hon. John Brumby MLA
Portfolio responsibility	Treasurer

Purpose

The Bill re-enacts and modernises the law relating to the payroll tax and removes obsolete references, and ensures consistency with the *Taxation Administration Act 1997*. The Bill will also harmonise Victorian payroll tax legislation with the equivalent payroll tax legislation in New South Wales, thereby increasing inter-jurisdictional consistency.

The Bill also repeals the *Pay-roll Tax Act 1971* and amends the *Taxation Administration Act 1997*.

Content and Committee comment

[Clauses]

[2]. Other than section 108 the Act will come into operation on 1 July 2007.

Note: Section 108 is dependent on the commencement of the Education and Training Reform Act 2006.

[6]. Sets out the basis for liability under the Bill, by providing that payroll tax is imposed on all taxable wages, being wages that are not exempt from tax, and that have the requisite connection to Victoria.

[48 to 66]. Part 4 of the Bill contains the payroll tax exemptions, which apply to certain types of employer and certain categories of wages. The exemptions include non-profit organisations; schools and certain other educational bodies; health care service providers, including hospitals, community health centres and ambulance services; municipal councils (and their subsidiaries in some cases), and unions or partnerships of municipal councils, and other special categories.

[67 to 81]. The provisions in Part 5 have the effect of grouping employers in certain circumstances. This prevents employers from reducing or avoiding their payroll tax liability by splitting their wages between a number of entities. Only one member of a group (the designated group employer) is entitled to claim the payroll tax threshold.

[82 to 85]. Part 6 provides for an annual adjustment of payroll tax, which gives employers the opportunity to review their tax paid for a financial year and make any necessary adjustments to correct overpayments or underpayments made during that year.

[102]. Repeals the *Pay-roll Tax Act 1971*.

The Schedule deals with calculation of Payroll tax.

The Committee makes no further comment.

Professional Standards Amendment Bill 2007

Introduced	22 May 2007
Second Reading Speech	23 May 2007
House	Legislative Assembly
Minister responsible	Hon. John Brumby MLA
Portfolio responsibility	Treasurer

Purpose

The Bill amends the *Professional Standards Act 2003* (the 'Act') to provide for the establishment of a new Professional Standards Council Fund and to close the existing fund and to provide for delegation powers and further regulation-making powers including powers relating to the payment of fees by members of occupational associations.

The Committee notes this extract from the Second Reading Speech –

The Professional Standards Act 2003 was passed as part of the national tort law reforms with the specific objectives of improving professional service standards and limiting the occupational liability of professionals in certain circumstances. The Victorian act is based on the NSW Professional Standards Act 1994. Similar legislation, based on the NSW Act, is now in effect in all other States and Territories.

Content and Committee comment

[Clauses]

[2]. Sections 5 and 8 come into operation on 1 July 2007 and the remaining provisions commence on Royal Assent.

[6]. Inserts new sections 52A and 52B to provide that the Council may delegate to the Secretary or to a person employed as an executive, as defined in Part 3 of the *Public Administration Act 2004*, in writing, any function of the Council except this power of delegation and the functions set out in Division 1 of Part 2 of the Act (relating to the preparation, approval, amendment and revocation of professional standards schemes), section 34 of the Act (relating to the duration of professional standards schemes) and Part 4 of the Act (relating to risk management strategies in and compliance audits of professional standards schemes).

[10]. Provides that this amending Act is repealed on 1 July 2008.

The Committee makes no further comment.

State Taxation Acts Amendment Bill 2007

Introduced	22 May 2007
Second Reading Speech	23 May 2007
House	Legislative Assembly
Minister responsible	Hon. John Brumby MLA
Portfolio responsibility	Treasurer

Purpose

The Bill amends the *Duties Act 2000* to provide clarification of the land rich duty provisions; and clarity and consistency in the administration of the demonstrator vehicle exemption and to change a heading to one Part of the motor vehicle duty provisions to better reflect its content.

The Bill also amends the *Taxation Administration Act 1997* with respect to penalty tax reduction to clarify the intent behind the penalty tax provisions in respect of 'voluntary' disclosures by taxpayers.

Content and Committee comment

[Clauses]

[2]. Provides that the proposed Act comes into operation on the day after the day on which it receives the Royal Assent.

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

The Committee makes no further comment.

Superannuation Legislation Amendment (Contribution Splitting and Other Matters) Bill 2007

Introduced	22 May 2007
Second Reading Speech	23 May 2007
House	Legislative Assembly
Minister responsible	Hon. Tim Holding MLA
Portfolio responsibility	Minister for Finance

Purpose

The Bill amends the *Emergency Services Superannuation Act 1986* to facilitate the splitting of superannuation contributions and makes miscellaneous amendments to the *Emergency Services Superannuation Act 1986*, the *Government Superannuation Act 1999*, the *State Employees Retirement Benefits Act 1979*, the *State Superannuation Act 1988*, the *Superannuation (Portability) Act 1989* and the *Transport Superannuation Act 1988*.

The Committee notes these extracts from the Statement of Compatibility –

Overview of Bill

The Bill is intended to facilitate the splitting of superannuation contributions between members of the ESSPLAN scheme and their spouses. The ESSPLAN scheme is a superannuation scheme provided for persons employed in Victorian emergency services under the Emergency Services Superannuation Act 1986 (Vic). The Bill will allow the Emergency Services Superannuation Fund to offer contribution splitting to their members. The purpose of permitting contribution splitting is to attract concessional tax benefits to the personal and employer contributions of members through the operation of the Superannuation Industry (Supervision) Act 1913 (Cth) (the Commonwealth Act). Members of the ESSPLAN scheme enjoy various concessional tax benefits because the ESSPLAN scheme is a 'complying superannuation fund' under the Commonwealth Act.

The Bill adopts the definition of 'spouse' provided for under section 10 of the Commonwealth Act which is restricted to married or heterosexual partners who live together on a genuine domestic basis as husband or wife. It does not extend to same-sex couples.

...

The human right protected by the Charter that is relevant to the Bill is the right to equal protection of the law without discrimination and to equal and effective protection against discrimination – section 8(3).

...

Discrimination' under the Charter is defined to mean discrimination within the meaning of the Equal Opportunity Act 1995 (Vic) on the basis of an attribute set out in section 6 of that Act. The attributes referred to in section 6 include sexual orientation.

...

The incorporation of the definition of 'spouse' from the commonwealth act into the bill has the effect that the Bill directly discriminates against members of the ESSPLAN scheme who have a same-sex partner who lives with the member on a genuine domestic basis on the basis of the attributes of sexual orientation.

...

The purpose of the adoption by the Bill of the definition of 'spouse' under the Commonwealth Act is to ensure consistency with the Commonwealth Act so that the splitting of superannuation benefits between a member and his or her 'spouse' (as defined) will attract the concessional tax benefits which flow from the Commonwealth Act.

...

The Bill does not enable contribution splitting between same-sex partners who live with their partner on a genuine domestic basis while facilitating contribution splitting between heterosexual

married or de facto couples. Thus, the Bill limits or interferes with the right to equal protection of the law without discrimination and to equal and effective protection against discrimination.

...

The Commonwealth Act does not recognise the splitting of superannuation contributions between same-sex partners.

...

Failing to legislate to provide for contribution splitting for heterosexual married or de facto couples would unnecessarily deprive those members of a potentially valuable benefit.

The proposed legislation defines 'spouse' by cross-referencing with the commonwealth act. Accordingly, should the commonwealth change its definition of 'spouse' to include same-sex couples, the Victorian legislation will automatically give effect to that broader definition.

...

I consider that the Superannuation Legislation Amendment (Contribution Splitting and Other Matters) Bill 2007 is compatible with the Charter of Human Rights and Responsibilities because, although it does limit, restrict or interfere with a human right, being the right to equal protection of the law without discrimination and to equal and effective protection against discrimination under section 8(3) of the charter, that limitation is reasonable and proportionate within the meaning of section 7(2) of the charter.

The Committee notes these extracts from the Second Reading Speech –

Members of ESSPLAN will be able to split personal and employer contributions with their spouse in respect of contributions made since 1 July 2006. Members may split contributions to an account held by their spouse, either within ESSPLAN or to a different fund within the superannuation system. This will enable spouses to share superannuation benefits and can improve the taxation position of some couples.

...

...it (the Bill) does not comply with the principles of Victoria's Charter of Human Rights and Responsibilities. The Victorian government has previously amended its legislation to include a definition of 'domestic couple' that does not discriminate on the basis of sexual orientation.

...

... if the Victorian government introduces superannuation legislation that does not mirror the Commonwealth's retirement incomes policy, the Commonwealth has the ability to remove the exempt public sector superannuation status of the ESSS. This in turn would mean that the ESSS would automatically cease to be a complying superannuation fund resulting in dire taxation and financial consequences for both the ESSS fund and its members.

...

...while the bill does limit the right to equal protection of the law without discrimination, the limitation is deemed reasonable and proportionate within the meaning of section 7(2) of the charter, as members would be significantly worse off should legislation permitting same-sex contribution splitting be passed.

Content and Committee comment

[Clauses]

[2]. Provides that the Act comes into operation on the day after the day on which it receives Royal Assent.

[8]. Insert new definitions into section 21 of the *Emergency Services Superannuation Act 1986* to provide for contribution splitting in the accumulation section of the Emergency Services Superannuation Scheme (ESSPLAN). The definitions are consistent with the *Income Tax Assessment Act 1936 (Cth)* and the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*.

[11]. Inserts a new section 21IA into the *Emergency Services Superannuation Act 1986* to provide for contribution splitting in the accumulation scheme of the ESSS, ESSPLAN to apply in respect of contributions made on or after 1 July 2006 provided the Board determines to offer the option of which notice is published in the Government gazette.

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

Charter of Human Rights and Responsibilities Act 2006



Victorian legislation incompatible with section 8 of the Charter ‘Recognition and equality before the law’– Commonwealth laws define ‘spouse’ as heterosexual married or de facto couples effectively denying same benefit to same sex couples – denial is a prohibited discrimination on the basis of sexual orientation – Equal Opportunity Act 1996, section 6(1) ‘sexual orientation’ – whether denial of benefit reasonable and proportionate – whether override declaration is necessary or desirable

The Committee notes the extracts from the Statement of Compatibility and the Second Reading Speech and observes that the Statement of Compatibility raises an issue that clearly engages the equal protection provision (section 8) of the Charter in respect to contribution splitting for the purposes of taxation benefits under Commonwealth superannuation legislation. The amendments in the Bill have the effect of adopting the definition of spouse used in the Commonwealth Act. The effect of this is that the taxation benefit is denied to same sex couples.

The Committee observes that the legislation will directly engage section 8(2) and (3) of the Charter which provides –

(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.

*The Committee further observes that ‘discrimination’ is defined by the Charter as discrimination within the meaning of the **Equal Opportunity Act 1995** on the basis of an attribute set out in section 6 of that Act. One of those attributes (section 6(1) prohibits discrimination on the grounds of ‘sexual orientation’.*

The Committee notes that section 31 of the Charter provides that the Parliament may declare that an Act or a provision of an Act has effect despite being incompatible with one or more of the human rights set out in the Charter. The Committee also observes that an override declaration will only be made in exceptional circumstances (section 31(4)).

Notwithstanding the reasoning given in the Statement of Compatibility and by the Minister to justify the amendments in respect to contribution splitting the Committee cannot conclude that the provisions are compatible with the Charter. The Committee considers that there may be some justification for the amendments in order that some couples have the taxation benefits but does not consider that these reasons alter the fact that the laws are incompatible with the non-discrimination provisions in section 8(2) of the Victorian Charter.

Having concluded that the amendments are incompatible with the Charter the Committee has considered whether even the strongest and most cogent section 7(2) analysis (reasonable limitations) can ever conclude that a law which discriminates on the basis of sexual orientation without any further qualification can be rendered compatible simply because a benefit may be obtained by other persons without that attribute. The Committee observes that

the denial of the benefit to same sex couples is absolute and unqualified. It is a denial on the basis of the attribute, notwithstanding, for example, the length of the relationship, even if that could be considered a legitimate criteria to impose a qualifying limitation which may then attract the taxation benefit.

The Committee then considered the question of the circumstances that would have to exist before 'the exceptional circumstances' threshold could ever be crossed so as to engage the 'override provisions' of the Charter.

The Committee considers that if the Parliament enacts legislation that permits discrimination on the basis of one of the protected attributes under the Charter to achieve consistency with Commonwealth laws, that this may amount to 'exceptional circumstances' within the meaning of section 31(4) of the Charter.

The Committee will seek further advice from the Minister whether the provisions should require an override declaration by the Parliament.

Pending the Minister's response the Committee draws attention to the provisions in the Bill.

The Committee makes no further comment.

Wills Amendment Bill 2007

Introduced	22 May 2007
Second Reading Speech	23 May 2007
House	Legislative Assembly
Minister responsible	Hon. Rob Hulls MLA
Portfolio responsibility	Attorney-General

Purpose

The Bill amends section 26 of the *Wills Act 1997* (the ‘Act’) to make further provision for the matters of which the Supreme Court must be satisfied before granting leave to someone to apply for an order authorising a statutory will to be made or revoked.

Note: The Act sets out the law relating to wills in Victoria and, amongst other things, allows the Supreme Court to authorise the making of a will on behalf of a person who does not have testamentary capacity (a statutory will), and the revocation of such a will.

Content and Committee comment

[Clauses]

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

[3]. Amends section 26(b) of the Act to provide that, before granting leave to someone to apply under section 21 of the Act for an order authorising a will to be made or revoked on behalf of a person who does not have testamentary capacity, the Court must be satisfied that the proposed will or revocation reflects what the intentions of the person on whose behalf the will is to be made or revoked *would be likely to be, or what the intentions of the person might reasonably be expected to be*, if he or she had testamentary capacity.

Note: The current section 26(b) provides –

Before granting leave to apply for an order under section 21, the Court must be satisfied that the proposed will or revocation accurately reflects the likely intentions of the person, if he or she had testamentary capacity.

[4]. The amendment will also apply to applications for leave to apply for an order under section 21 of the Act which are made before the commencement of the Bill but which have not yet been determined.

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

The Committee makes no further comment.

**Committee Room
4 June 2007**

Extracts from the Proceedings

The Minutes of the Committee show that the following Division took place during consideration of *Alert Digest No. 7 of 2007* on Monday 4 June 2007.

Superannuation Legislation Amendment (Contribution Splitting and Other Matters) Bill 2007

Motion—That the Committee write to the Minister as to whether the provisions in the Bill should require an override declaration by the Parliament.

Moved Mr Colin Brooks MLA
Seconded Mr Khalil Eideh MLC

Motion— That as an amendment to the Motion, that a copy of the correspondence to the Minister also be forwarded to the Premier.

Moved Mrs Inga Peulich MLC
Seconded Mr Ryan Smith MLA

The Committee divided.

Ayes, 3	Noes, 6
Mrs Inga Peulich MLC	Mr Carlo Carli MLA
Mr Ryan Smith MLA	Mr Colin Brooks MLA
Mr Edward O'Donohue MLC	Mr Khalil Eideh MLC
	Mr Ken Jasper MLA
	Mr Telmo Languiller MLA
	Ms Jaala Pulford MLC

The amendment was defeated.

The original motion passed in the positive.

Appendix 1

Index of Bills in 2007

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Gambling Regulation Amendment (Review Panel) Bill 2007	3
Health Professions Registration Amendment Bill 2007	6
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
Outworkers and Contractors Legislation Amendment Bill 2007	7
Parliamentary Legislation Amendment Bill 2007	2
Pay-roll Tax Amendment (Bushfire and Emergency Service) Bill 2007	2
Payroll Tax Bill 2007	7
Prahran Mechanics' Institute Amendment Bill 2007	2
Professional Standards Amendment Bill 2007	7
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
State Taxation Acts Amendment Bill 2007	7
State Taxation and Gambling Legislation Amendment (Budget Measures) Bill 2007	6
Statute Law Repeals Bill 2006	4
Statute Law Revision Bill 2006	5
Superannuation Legislation Amendment (Contribution Splitting and Other Matters) Bill 2007	7
Victims of Crime Assistance Amendment Bill 2007	2
Water Acts Amendment (Enforcement and Other Matters) Bill 2007	6
Water Amendment (Critical Water Infrastructure Projects) Bill 2006	1, 4
Water (Governance) Bill	1
Wills Amendment Bill 2007	7

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.

Accident Towing Services Bill 2007	5
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
Superannuation Legislation Amendment (Contribution Splitting and Other Matters) Bill	7

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	
Accident Towing Services Bill 2007	Roads and Ports	1.5.07	18.5.07	5 of 2007	6 of 2007
Fair Trading and Consumer Acts Amendment Bill 2007	Consumer Affairs	1.5.07	3.5.07	5 of 2007	6 of 2007