

**No. 8 of 2007**

**Tuesday, 19 June 2007**

**On the**

Gambling Regulation Amendment  
Bill 2007

Magistrates' Court and Coroners Acts  
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 imitiation; 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–**

Gambling Regulation Amendment Bill 2007

Magistrates' Court and Coroners Acts 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. 8 of 2007

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## Gambling Regulation Amendment Bill 2007

<b>Introduced</b>	6 June 2007
<b>Second Reading Speech</b>	7 June 2007
<b>House</b>	Legislative Assembly
<b>Minister responsible</b>	Hon. Daniel Andrews MLA
<b>Portfolio responsibility</b>	Minister for Gaming

### Purpose

The Bill amends the *Gambling Regulation Act 2003* (the 'Act') to—

- establish a system for the further regulation of gaming machines by providing for Ministerial orders to be made to limit the number of gaming machines in municipal districts, to amend the way in which regional limits are set and to make consequential amendments;
- improve customer protection by ensuring that if a person has \$1000 or more of accumulated credits on a gaming machine, those credits must be paid out entirely by cheque;
- amend the requirements for venue operators to lodge community benefit statements;
- extend the timeframe by a further 4 years regarding payments into the Community support Fund.

### Content and Committee comment

#### [Clauses]

[2]. Provides that the Bill (other than clause 11) comes into operation on the day after Royal Assent. Clause 11 comes into operation on a day to be proclaimed but not later than by 1 December 2007.

[6]. Substitutes a new section 3.2.4 in the Act and inserts a new section 3.2.4A. These sections provide for regional and municipal limits on gaming machines.



#### *Charter of Human Rights and Responsibilities Act 2006*

***Charter rights – property rights (section 20) – licence may be revoked – whether gaming licence is property for purposes of the Charter – no compensation payable by State for direction reducing gaming machines.***

*The Committee notes these provisions in the Gambling Regulation Act 2003 –*

#### ***3.2.4 Regional limits on gaming machines***

*(1) The Minister may from time to time, by order published in the Government Gazette —*

*(a) determine regions in the State for the purposes of this Chapter; and*

*(b) in respect of each region, specify the criteria which the Commission must use to determine the maximum permissible number of gaming machines available for gaming in the region.*

**3.2.5 No compensation payable**

*No compensation is payable by the State in respect of any direction given or anything done under or arising out of—*

*any direction given by the Commission under section 3.2.4.*

*The Committee notes this extract from the Statement of Compatibility –*

*The effect of an order made under clause 6 may be that the licensed operator of a gaming venue is deprived of the right to use one or more gaming machines that the operator was previously licensed to use.*

*As the right to use one or more gaming machines is established by licence issued by the Victorian Commission for Gambling Regulation, and is already subject to a number of conditions, it is probable that this licence does not give rise to a form of property that would engage section 20 of the Charter.*

*However, if clause 6 does engage section 20, clause 6 does not limit that right as it does not unlawfully or arbitrarily deprive a person of property.*

*This is because:*

- *the limitation would result from a Ministerial direction made in accordance with the requirements of the Gambling Regulation Act 2003,*
- *a determination about the removal of gaming machines would be made by the Victorian Commission for Gambling Regulation in accordance with the requirements of the Gambling Regulation Act 2003, including the application of the ministerial order and any criteria specified in the order,*
- *orders and determinations made in accordance with this clause are required to be published in the Government Gazette.*

*The process established by clause 6 for the setting of regional and municipal limits is sufficiently confined, precisely articulated and formulated and accessible to the public, so as to ensure that it is not arbitrary.*

*The Committee considers the provisions are compatible with any property rights within the meaning of section 30 of the Charter.*

[15]. Provides for the automatic repeal of this amending Bill on 1 December 2008.

***The Committee makes no further comment.***

# Magistrates' Court and Coroners Acts Amendment Bill 2007

<b>Introduced</b>	6 June 2007
<b>Second Reading Speech</b>	7 June 2007
<b>House</b>	Legislative Assembly
<b>Minister responsible</b>	Hon. Rob Hulls MLA
<b>Portfolio responsibility</b>	Attorney-General

## Purpose

The Bill amends the *Magistrates' Court Act 1989* to —

- clarify the application of the *Magistrates' Court Act 1989* to acting magistrates;
- clarify the capacity of the Chief Magistrate to assign duties to judicial registrars and to require them to carry out duties as assigned;
- streamline the adjournment of criminal proceedings into the Drug Court Division of the Magistrates' Court;
- extend the power of registrars of the Magistrates' Court to adjourn criminal proceedings that are in the mention system; and
- expand the range of Commonwealth and State officials who may witness statements to be tendered at committal proceedings;

The Bill also amends the *Magistrates' Court (Family Violence) Act 2004* to provide for the continuation of counselling order provisions to 30 October 2009;

The Bill further amends the *Coroners Act 1985* in relation to access to coroner's records and files.

## Content and Committee comment

### [Clauses]

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

[9]. Provides for general access to coroners' records and files by inserting new section 51 in the *Coroners Act 1985*.

New section 51(1) provides that *before* the completion of an investigation or inquest into a death or an investigation or inquest into a fire, a coroner may direct that the coroner's file, or any part of that file, is to be made available to any person or class of person as the coroner directs.

New section 51(2) provides that *after* the completion of an investigation or inquest into a death or an investigation or inquest into a fire the coroner's record and the coroner's file relating to that investigation or inquest is to be open to public access unless the coroner otherwise orders.

*Note: These provisions are subject to section 30E which excludes information about a child or other person from the public record in certain circumstances and section 58(1) which provides for a restriction on the publication of a report of an inquest, any part of the proceedings or any evidence given at an inquest where the coroner reasonably believes the publication would be likely to prejudice the fair trial of a person or be contrary to the public interest.*

The amendments to the Act are intended to provide by the Act, legislative support for an access to coroner's records scheme pending any changes that may result from a policy and legislation review

of the *Coroners Act 1985*. A review and extensive amendment to the *Coroners Act 1985* is expected, following the release of the Victorian Parliamentary Law Reform Committee's Report.



***Charter of Human Rights and Responsibilities Act 2006***

***The Committee notes the human rights compatibility statement and notes the competing human rights protected by the Charter of 'privacy' (section 13) and 'freedom of expression' – 'access to information' (section 15).***

*The Committee notes this extract from the Statement of Compatibility –*

*The limitation provides that the coroner is to decide if and when to release documents or files following an inquest. These clauses of the bill will, prima facie, intrude upon a person's privacy and reputation. The coroner is an independent quasi-judicial officer who will consider whether to disclose information on a case-by-case basis, taking into consideration the principles of open justice.*

...

*The limitation is designed to ensure that the quasi-judicial operation of the State Coroner's Office remains as that of balancing the right to privacy against the right to freedom of expression, whereby the charter provides that every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds. The limitation is designed to ensure that information obtained by the coroner, which may have implications for the community, can be released to the community.*

*The Committee accepts that the limitation to the right to privacy arising from the provisions in the Bill are reasonably proportionate and confined to achieve a legitimate purpose and is therefore compatible with Charter rights.*

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

***The Committee makes no further comment.***

**Committee Room**

**18 June 2007**

# Appendix 1

## Index of Bills in 2007

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## **Scrutiny of Acts and Regulations Committee**

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# Appendix 2

## Committee Comments classified by Terms of Reference

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### Alert Digest Nos.

#### Section 17(a)

*(i) trespasses unduly upon rights and freedoms.*

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*(vi) inappropriately delegates legislative power.*

Accident Towing Services Bill 2007	5
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*(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities.*

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## Appendix 3

### Ministerial Correspondence

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**Table of correspondence between the Committee and Ministers during 2006-07**

<b>Bill Title</b>	<b>Minister/ Member</b>	<b>Date of Committee Letter</b>	<b>Date of Minister's Response</b>	<b>Issue Raised in Alert Digest No.</b>	<b>Response Published in Alert Digest No.</b>
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
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