

# **No. 8 of 2008**

**Tuesday, 24 June 2008**

**On the**

Gambling Regulation Amendment  
(Licensing) Bill 2008

Land (Revocation of Reservations)  
(Convention Centre Land) Bill 2008

Local Government Amendment  
(Elections) Bill 2008

Medical Treatment (Physician Assisted  
Dying) Bill 2008

National Parks and Crown Land  
(Reserves) Acts Amendment Bill 2008

Port Services Amendment (Disposal of  
Material) Bill 2008

Summary Offences Amendment  
(Tattooing and Body Piercing) Bill 2008

Superannuation Legislation Amendment  
Bill 2008

Tobacco (Control of Tobacco Effects on  
Minors) Bill 2007

# Table of Contents

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	<b>Page Nos.</b>
<b>Alert Digest No. 8 of 2008</b>	
Land (Revocation of Reservations) (Convention Centre Land) Bill 2008	1
Local Government Amendment (Elections) Bill 2008	2
Medical Treatment (Physician Assisted Dying) Bill 2008	6
National Parks and Crown Land (Reserves) Acts Amendment Bill 2008	12
Port Services Amendment (Disposal of Material) Bill 2008	14
Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008	15
Superannuation Legislation Amendment Bill 2008	18
Tobacco (Control of Tobacco Effects on Minors) Bill 2007	21
<b>Ministerial Correspondence</b>	
Gambling Regulation Amendment (Licensing) Bill 2008	25
<b>Appendices</b>	
1 – Index of Bills in 2008	29
2 – Committee Comments classified by Terms of Reference	31
3 – Ministerial Correspondence	33

## 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 \$113.42*).
- ‘**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 of the **Charter** provides –

### **Human rights – what they are and when they may 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 Committee has considered the following Bills –**

Land (Revocation of Reservations) (Convention Centre Land) Bill 2008  
Local Government Amendment (Elections) Bill 2008  
Medical Treatment (Physician Assisted Dying) Bill 2008  
National Parks and Crown Land (Reserves) Acts Amendment Bill 2008  
Port Services Amendment (Disposal of Material) Bill 2008  
Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008  
Superannuation Legislation Amendment Bill 2008  
Tobacco (Control of Tobacco Effects on Minors) Bill 2007

## **The Committee notes the following correspondence –**

Gambling Regulation Amendment (Licensing) Bill 2008



### **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 report to the Parliament whether the Bill is incompatible with human rights.

# Alert Digest No. 8 of 2008

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## Land (Revocation of Reservations) (Convention Centre Land) Bill 2008

<b>Introduced</b>	10 June 2008
<b>Second Reading Speech</b>	12 June 2008
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Peter Batchelor MLA
<b>Minister responsible</b>	Hon. Gavin Jennings MLC
<b>Portfolio responsibility</b>	Minister for Environment and Climate Change

### Purpose

The Bill revokes the permanent reservation of certain lands in the Yarra River Wharf and Polly Woodside areas under the *Crown Land (Reserves) Act 1978*. The two parcels of land are currently reserved for public purposes specifically, '*wharf and associated tourist facilities*' (Yarra River Wharf area) and for '*conservation of an area of historic interest*' (Polly Woodside area). These reservations are proposed to be removed to enable commercial leases to be executed to allow the new public facilities to become fully operational.

**Note:** Extract from the Statement of Compatibility – *no individuals have any proprietary interest in the affected land.*

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

## Local Government Amendment (Elections) Bill 2008

<b>Introduced</b>	10 June 2008
<b>Second Reading Speech</b>	12 June 2008
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Mr Richard Wynne MLA
<b>Portfolio responsibility</b>	Minister for Local Government

### Purpose

The Bill amends the *Local Government Act 1989* (the 'Act') and the *City of Melbourne Act 2001* (the 'Melbourne Act') to facilitate the conduct of local government elections.

- The 'election period' for local government elections is to be amended to specify that it commences on the last day of nominations and as a consequence the 'caretaker' provisions for councils will apply for a period of 32 days before the election day, rather than 57 days as is currently required.
- The date for the close of nominations will be changed to 32 days before the election for all council elections, replacing the current arrangement where nominations close on different days for postal and attendance elections.
- The time for the close of nominations will change from 4:00 p.m. to 12 noon, which will bring it into line with the practice in State elections.
- Provisions allow for the date of a by-election to be delayed by up to 50 days when necessary to ensure that election processes do not occur during the Christmas and summer holiday period.
- The Bill amends some candidate nomination processes, including a requirement that each candidate must sign their nomination declaration in the presence of the returning officer or provide an appropriate statutory declaration explaining why they cannot do so. This effectively requires candidates to nominate in person.
- A person whose position as councillor on a council becomes vacant as a result of a particular failure in office will not be eligible to nominate as a candidate for election to that council for a period of four years.
- People who are owners or occupiers of single vehicle car parks or single boat moorings will no longer be entitled to enrol to vote unless they have another entitlement as a resident or ratepayer.
- Statutory corporations will no longer be entitled to appoint an office bearer to be on the voters roll. Office bearers in statutory corporations are accountable to other levels of government and should not be voters in council elections.

### Content and Committee comment

#### [Clauses]

[2]. The provisions in the Bill will come into operation on 15 August 2008.

[3]. Amends certain definitions in the Act including the definition of **rateable property** to exclude a property that is used solely for the purpose of parking a single vehicle or mooring a single vessel. This means that a person or corporation whose only claim to an entitlement would be in relation to such a property may not exercise the right of entitlement to vote in Council elections. The clause also amends the definitions of **body** and **corporation** to

exclude statutory corporations for the purposes of the relevant sections of the Act concerning entitlement to vote at Council elections.

[12]. Amends section 23A of the Act to clarify that a person entitled to enrol is not compelled to do so.

New section 23A(2) is a transitional provision which ensures that any person or corporation, whose enrolment entitlements are altered by the enactment of this Bill, receives written notification of the changes in sufficient time to exercise any relevant right of entitlement before the next general election.

[23]. Amends section 70 to limit the ability of a person to nominate for a Council if they have lost their position on the Council for a specified failure to undertake the responsibilities of office. Such a person may not nominate election to that Council for a period of 4 years. The new provision applies to councillors after the commencement of the amendments. A nomination in contravention of the provision is void.

**Note:** *A specified failure is a failure to take the oath of office or being absent at 4 consecutive meetings without the leave of the Council, or failing to attend a call of the Council under section 85 of the Act.*

[39]. Amends the definition of rateable property in section 3 of the Melbourne Act to exclude a property that is solely used for the purpose of parking a single vehicle or mooring a single vessel. This means that a person or corporation whose only claim to an entitlement would be in relation to such a property may not exercising right of entitlement to vote in Melbourne City Council elections.

***Rights or Freedoms – Representative government – Right to vote – Right to stand for and hold public office***

*The Committee draws attention to the provisions in the Bill concerning entitlement to vote and disqualification from seeking public office.*

*The relevant provisions are –*

- *Clause 3 – excludes statutory corporations from the franchise in Council elections.*
- *Clause 23 – proposes to exclude certain persons from nominating as a candidate at a Council election if they have been removed from office at that Council because of a specific failure on their part.*
- *Clause 39 – excludes from the franchise persons whose only property interest within a municipality is a single car park or a single boat mooring.*

*The Committee notes that electoral laws may prescribe matters concerning franchise limitations and qualification and disqualification to hold or nominate for public office.*

*The question whether these laws prescribe reasonable and non-discriminatory franchise and eligibility limitations is for the Parliament as a whole to consider and determine.*

[44]. Amends section 11C of the Melbourne Act and is a transitional provision which ensures that any person or corporation, whose enrolment entitlements are altered by the enactment of the Bill, receives written notification of the changes in sufficient time to exercise any relevant right of entitlement for the next general election.

[49]. This amending Act is repealed on the first anniversary of its commencement.

## Charter Report

### Right to vote and be elected at municipal elections – Reductions in eligibility – Whether reasonable limits

Charter s. 7(2) provides that human rights may be ‘subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society’. Charter s. 18(2)(a) provides that every ‘eligible person has the right... to vote and be elected at... municipal elections.’

The Committee notes that clause 3(5), amending s. 3 of the *Local Government Act 1989*, removes single car spaces and single boat moorings from the definition of ‘rateable property’. The Committee observes that this change has the effect of narrowing the entitlement granted by s. 13 of the *Local Government Act 1989* for adult owners of such property to be enrolled on the voters’ roll in respect of local government elections. The Committee therefore considers that clause 3(5) may limit the Charter right of such owners to vote at municipal elections.

The Statement of Compatibility remarks:

*It is proposed to exclude from the franchise, people whose only interest is in relation to a single vehicle car park or a single boat mooring because the extent of their direct interests in council governance is substantially less than that of residents and owners or occupiers of more substantial properties and does not warrant the same voting rights.*

The Committee also notes that clause 23, amending s. 70 of the *Local Government Act 1989*, provides that a Councillor who ceases to be a Councillor in some circumstances (including failure to take an oath or attend meetings) cannot nominate again for that Council for a period of four years. The Committee observes that this change has the effect of widening the disqualifications for otherwise eligible persons for election to a Council set out in s. 29 of the *Local Government Act 1989*. The Committee therefore considers that clause 23 may limit the Charter right of such persons to be elected at municipal elections.

The Statement of Compatibility remarks:

*The proposal to prevent a person from nominating for a council if they have been removed from office at that council because of a specific failure on their part recognises that there are standards that are required of people who hold public office and that the community is entitled to be represented by people who will properly perform their duties as councillor.*

The Committee observes that two of the disqualifications introduced by clause 23 depend on decisions by:

- a Council, in refusing to grant leave to a Councillor to be absent for four consecutive ordinary meetings (new section 70(2A)(b))
- the Minister for Local Government, in determining that a Councillor did not have a reasonable excuse for failing to attend or remain at a call of the Council (new section 70(2A)(c))

The Committee considers that the compatibility of clauses 3(5) and 23 with Charter s. 18(2)(a) may depend on whether or not they are reasonable limits according to the test set out in Charter s. 7(2). The High Court has recently held, with respect to election rights under the Commonwealth Constitution, that a novel disqualification of a person otherwise entitled to suffrage must ‘be reasonably appropriate and adapted to serve an end which is consistent or compatible with the maintenance of the constitutionally prescribed system of representative government’: *Roach v Electoral Commission* [2007] HCA 43, [85]. The Court ruled that a disqualification may be invalid if it is broader than the purpose of the disqualification or if the disqualification is capricious.

***The Committee refers to Parliament for its consideration the questions of whether or not:***

- ***clause 3(5), by excluding owners of single car and vessel spaces from eligibility to vote as ratepayers, is a reasonable limit on the Charter right of otherwise eligible ratepayers to vote in municipal elections***
- ***clause 23, by excluding disqualifying persons on the basis of prior removal as a Councillor (including on grounds that depend on decisions by a Council or the Minister for Local Government), is a reasonable limit on the Charter right of otherwise eligible candidates to be elected in municipal elections***

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

## Medical Treatment (Physician Assisted Dying) Bill 2008

Introduced	28 May 2008
Second Reading Speech	11 June 2008
House	Legislative Council
Member introducing Bill	Ms. Colleen Hartland MLC
Private Member's Bill	

### Purpose

The purpose of the proposed Act is to —

- to recognise the right of a mentally competent adult person, who is suffering intolerably from a terminal illness or advanced incurable illness, to request a doctor to provide medical assistance that allows that person to end his or her life peacefully;
- to grant a doctor who does so immunity from liability in criminal, civil and disciplinary proceedings;
- to provide procedural protections against the possibility of abuse of the rights recognised by the Act.

### Content and Committee comment

#### [Clauses]

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

#### ***Conditions under which the treating doctor may provide assistance***

[5]. Sets out the conditions that must be followed under which a ***'treating doctor'*** may provide ***'assistance'*** to a ***'mentally competent'*** ***'adult'*** person suffering from an ***'incurable illness'*** or ***'a terminal illness'*** (a ***'sufferer'***) to end his or her life.

- Notes:**
1. Words in ***'bold italics'*** above are defined in clause 3 of the Bill.
  2. ***'assistance'*** includes any one or more of: the giving of information, the prescribing of a drug, the preparation of a drug, the providing of a drug, and the providing of assistance to the sufferer to ingest a drug. It does not include assistance by injection through a needle.
  3. Section 6A of the ***Crimes Act 1958*** provides – *The rule of law whereby it is a crime for a person to commit or attempt to commit suicide is hereby abrogated.*

The Committee notes the summary of the safeguards outlined in the Member's Second Reading Speech –

#### ***Safeguards for the patient***

- *The sufferer must be an adult, mentally competent and a resident of Victoria.*
- *The sufferer must be fully informed about the diagnosis and prognosis, possible treatments and risks, and palliative care options, by an experienced doctor. Where necessary, a psychiatric assessment and treatment is sought.*
- *The doctor must be satisfied that the patient is terminally ill or has an advanced incurable illness, with no realistic prospect of recovery and is suffering intolerably.*
- *The doctor must be satisfied that the request for assistance is the patient's voluntary decision and is not the result of coercion.*

- *The second opinion must be sought from another experienced doctor, confirming the diagnosis, prognosis, patient's request and mental competence. At least one of these doctors must be experienced in the patient's illness.*
- *Neither doctor may be related to the sufferer-- or to each other-- by blood, marriage or close personal relationship.*
- *There is a cooling-off period of at least 48 hours for the terminally ill, and two cooling-off periods of at least 14 days and 48 hours for those with an advanced incurable illness.*
- *At any stage the patient may revoke their decision.*
- *The sufferer must ingest the drug themselves or with the assistance of a person who has been registered as their agent.*
- *An injection is not permitted.*
- *The treating doctor and the doctor providing the second opinion will not be allowed to assist the terminally ill adult to take the drug.*
- *The state coroner is notified of a request for assistance, the appointment of any agent, the fulfilment of a prescription and of a death. The coroner provides an annual report to Parliament.*
- *The treating doctor, anyone who witnesses documents or provides assistance in any way cannot benefit financially or otherwise, whether directly or indirectly, from an assisted death.*
- *There are penalties of up to 14 years in prison or a \$250 000 fine for attempting to unduly influence a sufferer to make a request for physician-assisted dying.*

***Rights or freedoms – Right to life – Public interest in prescribing laws concerning the unlawful termination of life – Rights of the individual to chose to terminate their life – Immunity from liability of persons assisting death – Whether assisted death is an undue trespass on rights or freedoms***

*The Committee notes the provisions in the Bill concern matters of fundamental and competing rights. The provisions necessarily involve a careful balancing of the necessary public interest in preserving life and establishing laws concerning criminal conduct in terminating life, and on the other hand, the right of a mentally competent adult to have their wishes respected in choosing not to endure further intolerable suffering in the face of a terminal or incurable illness.*

*The Committee draws the Parliament's attention to the provisions in the Bill in particular the clause concerning the conditions and safeguards in respect to an assisted death (clause 5); the immunities from criminal liability provided to certain persons (clauses 7 and 8), and the decriminalisation of certain conduct that may otherwise attract a criminal sanction connected with an assisted termination of life (clause 17).*

*The Committee considers that whether the measures in the Bill are necessary or justified is a matter of conscience for each Member to consider. The Committee notes that if the Parliament considers the Bill to be necessary or justified, the question then for Members to consider is whether the provisions provide appropriate procedural safeguards for the sufferer and necessary immunities for persons assisting the sufferer.*

*The Parliament should consider whether the provisions in the Bill achieve a proportionate and reasonable balancing of the public interest in providing for appropriate laws concerning the unlawful termination of life and the right of self-determination in the face of intolerable suffering.*

*The Committee draws particular attention to clauses 5, 7, 8 and 17.*

[7]. **Immunity from proceedings** – Provides immunity from criminal, civil and disciplinary liability and proceedings in respect of assistance or being present at an assisted death. The clause provides immunity for the treating doctor, a nurse, health care provider, an agent, pharmacist or a person is present at or before the assisted death. The clause does not provide immunity from liability for negligence in providing assistance or prescribing a drug.

[8]. A doctor, nurse, lawyer or other individual is immune from criminal, civil or disciplinary proceedings in relation to providing information or advice to a sufferer, agent or sufferer's relatives in good faith concerning this Act or what can be done under the Act.

[9]. **No duty to assist** – A doctor is not under any duty to provide assistance under this Act but must inform the sufferer that other doctors may be willing to provide assistance. A doctor who fails to do so is guilty of an offence. Penalty – 5 penalty units.

A health care provider is not under any duty to participate in the provision of assistance to a sufferer under this Act. If a health care provider is unable or unwilling to permit assistance to be given and the sufferer transfers his or her care to another health care provider, the former health care provider must, on request, transfer a full copy of the patient's relevant medical records to the new health care provider.

[10]. **Non-victimisation** – Provides that a professional organisations or associations must not censure or discipline or subject to other penalty or loss, a person who assists or refuses to assist a sufferer end their life.

[11]. **Resuscitation unlawful** – A person who knows or should reasonably know that a sufferer has ingested a drug to end his or her life under the provisions of this Act must not resuscitate or attempt to resuscitate the sufferer. Penalty: a fine not exceeding 1,000 Penalty Units and/or imprisonment of not more than 5 years.

[17]. **Actions not criminal conduct** – Declares that, neither permissible actions taken under nor a death resulting from, the provisions of this Act constitutes suicide, aiding or abetting suicide, mercy killing, manslaughter or homicide.

[19]. **Parliamentary oversight** – The State Coroner must provide an annual report to Parliament with details concerning the nature and frequency of assistance and deaths under this Act. The report must not allow the identification of any individual sufferer or doctor. The State Coroner's report must be reviewed by a joint, all-party Parliamentary Committee.

[21]. **Severance of void provisions in contracts** – Any will, contract (or an obligation owing under a contract or agreement) or other agreement, whether or not in writing or executed or made before or after the commencement of this Act, is void to the extent that it affects whether a sufferer may make or rescind a request for assistance under this Act, or the giving of such assistance. The clause does not apply to an employment or other engagement contract, or published code of conduct, between a health care provider and a person so employed or engaged, in relation to the giving of such assistance.

[22]. **Insurance or annuity policies** – The sale, procurement or issuing of any life, health or accident insurance or annuity policy or the rate charged for such a policy must not be conditioned on or affected by the making or rescinding of a request for assistance under this Act or the giving of such assistance with the exception of any new policy commenced and which is not a renewal, within 366 days of the death of the sufferer under the provisions of this Act.

## Charter Report

### **Right to Life – Assisting suicide of people with terminal or incurable illnesses – Whether limits the state’s duty to protect life – Whether arbitrary deprivation of life – Whether reasonable limit**

Charter s. 7(2) provides that human rights may be ‘subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society’. Charter s. 9 provides that everyone has ‘the right to life’ and ‘the right not to be arbitrarily deprived of life.

The Committee notes that clause 5 authorises a doctor to ‘provide assistance’ to an adult with a terminal or incurable illness to ‘end his or her life’. The Committee also notes that clauses 7, 8 and 17 provide people who are involved in assisting suicide pursuant to clause 5 with immunity from criminal, civil and disciplinary liability other than liability for negligence. The European Court of Human Rights has held that the right to life:

*enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction... This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.*

The court also held that this principle extends to suicide<sup>\*</sup>: *Keenan v United Kingdom* [2001] ECHR 242 [89]-[92]. Speaking of laws in some European nations that are similar to the Bill, the Court has also held that:

*the extent to which a State permits, or seeks to regulate, the possibility for the infliction of harm on individuals at liberty, by their own or another's hand, may raise conflicting considerations of personal freedom and the public interest that can only be resolved on examination of the concrete circumstances of the case.*

*(Pretty v United Kingdom* [2002] ECHR 427, [41])

The Committee therefore considers that clauses 5, 7, 8 and 17 engage the Charter right of people with terminal or incurable illnesses to life.

The Committee also notes that clauses 5, 6, 12, 14 and 15 set down a number of conditions that limit or control the authority to assist a patient’s suicide. The Committee observes that people who commit suicide may do so because of mental illness, external pressures or poor decision-making. The Committee therefore considers that clauses 5, 6, 12, 14 and 15 engage the Charter right of people with terminal or incurable illnesses not to be arbitrarily deprived of life.

The Statement of Compatibility remarks:

*In my opinion, the Bill is entirely consistent with the Charter on the right to life. The right to seek a peaceful death in no way impedes anyone's right to life; the rights are mutually compatible and can coexist without conflict.*

*The autonomous nature of a patient's request and action, with strict safeguards and a rigorous process to prevent lawful abuse, means that life is not 'arbitrarily deprived' (i.e. against the sufferer's beliefs or wishes).*

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<sup>\*</sup> The term ‘suicide’ is used in this report to encompass both physician assisted dying and other acts of a person to end his or her own life.

***The Committee refers to Parliament for its consideration the questions of whether or not:***

- ***clauses 5, 7, 8 and 17, by exempting some acts of assisting suicide from criminal, civil and disciplinary liability, breach the state's duty under Charter s. 9 to protect people with terminal or incurable illnesses from suicide***
- ***clauses 5, 6, 12, 14 and 15 permit the assistance of a suicide that is the result of mental illness, external pressure or poor decision-making***

***and, if so, whether or not the Bill's provisions are a reasonable limit on the Charter rights of people with terminal or incurable illnesses to life and to not be arbitrarily deprived of life according to the test set out in Charter s. 7(2)***

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**Freedom of belief – Duty to inform patients that other doctors may be willing to assist them to suicide – Duty to supply medical records for the purpose of assisting a suicide – Duty not to censure lawful assistance of suicide – Ban on attempts to resuscitate patients lawfully assisted to suicide – Whether reasonable limit**

Charter s.7(2) provides that human rights may be 'subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society'. Charter s.14 provides that no-one may be 'coerced or restrained in a way that limits his or her freedom to have or adopt a belief in practice'.

The Committee notes that the Bill contains the following provisions that are applicable to people who are not involved in the assistance of a person with a terminal or incurable illness to suicide:

- clause 9(1): doctors who decline to provide assistance under the Bill 'must tell the sufferer that other doctors may be willing to provide assistance'
- clause 9(2): health care providers who do not provide assistance under the Bill must, on request, transfer a full copy of the patient's relevant medical records to the new health care provider
- clause 10: professional organizations and associations must not apply prejudicial pressure or penalties for things done by someone lawfully under the Bill. (The restraint also applies to health care providers, but not to providers that do not permit their facilities or associations to provide assistance under the Bill.)
- clause 11: no-one may try to resuscitate a person who takes a drug to end his or her life pursuant to the Bill

The Committee observes that clause 9 may require a person who has a conscientious objection to suicide to play a role in a process that leads to a suicide. The Committee also observes that clauses 10 and 11 may require a person who has a conscientious objection to suicide to refrain from conduct that they believe is necessary to denounce or prevent a suicide. The Committee therefore considers that clauses 9, 10 and 11 may limit the Charter right of people to be coerced or restrained in a way that limits their freedom to adopt their beliefs in practice.

***The Committee refers to Parliament for its consideration the questions of whether or not:***

- ***clause 9, by requiring doctors to inform patients that other doctors may be willing to assist them to commit suicide and by requiring health care providers to forward a copy of a patient's relevant medical records to a new health care provider who might assist that patient to commit suicide, limit the Charter freedom of those***

***doctors and employees of health care providers not to be coerced to act in a way that is contrary to their beliefs about suicide***

- ***clause 10, by barring professional organizations and associations from engaging in prejudicial pressure or penalties for things done lawfully under the Bill, limits the Charter freedom of members of those entities not to be restrained in a way that is contrary to their beliefs about suicide***
- ***clause 11, by barring people from trying to resuscitate people who have taken a drug to end their life in accordance with the Bill, limits the Charter freedom of people not to be restrained in a way that is contrary to their beliefs about suicide***

***and, if so, whether or not any limitation is reasonable under the test set out in Charter s. 7(2).***

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

## National Parks and Crown Land (Reserves) Acts Amendment Bill 2008

<b>Introduced</b>	10 June 2008
<b>Second Reading Speech</b>	12 June 2008
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Peter Batchelor MLA
<b>Minister responsible</b>	Hon. Gavin Jennings MLC
<b>Portfolio responsibility</b>	Minister for Environment and Climate Change

### Purpose

The Bill —

- creates Cobboboonee National Park and Cobboboonee Forest Park in far south-west Victoria;
- adds approximately 300 hectares to seven existing national, state and other parks and makes some minor excisions from existing parks;
- specifies Cobboboonee and Otway forest parks as 'restricted Crown land' under the *Mineral Resources (Sustainable Development) Act 1990*;
- provides for the control and management of water-related infrastructure in two natural features reserves by Melbourne Water Corporation; and
- repeals several spent provisions and makes some consequential and other amendments to the *National Parks Act 1975*, *Crown Land (Reserves) Act 1978* and the *Forests Act 1958*.

### Content and Committee comment

#### [Clauses]

[2]. Some provisions come into force on the day after Royal Assent the remaining provisions come into force on proclamation but not later than by 30 June 2009.

[6, 8, and 19] *Property rights – existing permits and licences*

**Note:** From the Statement of Compatibility –

*New section 66(c) of the Crown Land (Reserves) Act 1978 (inserted by clause 19) provides, in relation to Cobboboonee Forest Park, that when the park is created, the land forming the park is deemed to be unalienated land of the Crown, freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests.*

*However, there are no proprietary interests in the affected land and therefore this clause does not deprive any person of property. To the extent (if any) that licences, permits and other authorities constitute some form of property right, new section 66(d) of the Crown Land (Reserves) Act 1978 (inserted by clause 19) provides for all licences, permits and other authorities to be continued.*

*Similarly, in relation to Cobboboonee National Park, to the extent (if any) that a drainage licence, firewood licence, apiary licence or tour operator licence constitutes some form of property right, the Bill provides for these to be saved. In particular, new section 32R of the National Parks Act 1975 (inserted by clause 6) continues an existing agreement in relation to a drain in the park until its expiry; new section 71 of the National Parks Act 1975 (inserted by clause 8) continues firewood licences pre-existing the park until their expiry; new section 72 of the National Parks Act 1975 (inserted by clause 8) continues any tour operator licence pre-existing the park until its expiry; and new section 73 of the*

*National Parks Act 1975 (inserted by clause 8) continues apiary rights pre-existing the park until their expiry.*

*It is noted that new section 71(1) provides that any existing firewood licences are to continue in force until the earlier of their expiry or 30 June 2010. There are no existing licences which expire after 30 June 2010. Accordingly, this section will not result in the early termination of any existing firewood licences.*

[9]. *Native title preserved* – Inserts clause 4 in Schedule One A (Native Title not affected) to the *National Parks Act 1975* to declare that the amendments made to the Act by the Bill are not intended to affect native title rights and interests other than where they are affected or are authorized to be affected by or under the *Native Title Act 1993 (Cth)*.

**Note:** From the Statement of Compatibility –

*Section 19 – Cultural rights*

*Section 19 provides for the right for Aboriginal persons to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.*

*The proposed Cobboboonee National Park and Cobboboonee Forest Park are subject to a Federal Court determination that non-exclusive native title rights and interests exist. The area is also subject to an Indigenous Land Use Agreement ('ILUA') made between the state of Victoria and the Gunditjmarra people under the Native Title Act 1993 (Cth).*

*The Bill does not deprive any Aboriginal person of a relationship with the subject land and does not affect existing native title rights and interests nor the ILUA. Therefore, there is no limitation on the cultural rights of Aboriginal persons.*

[25]. This amending Act is to be repealed on 30 June 2010.

**The Committee makes no further comment.**

## Port Services Amendment (Disposal of Material) Bill 2008

<b>Introduced</b>	28 May 2008
<b>Second Reading Speech</b>	11 June 2008
<b>House</b>	Legislative Council
<b>Member introducing Bill</b>	Ms Sue Pennicuik MLC
<b>Private Member's Bill</b>	

### Purpose

The Bill amends the *Port Services Act 1995* to prohibit the Port of Melbourne Corporation (the 'Corporation') or the Victorian Regional Channel Authority (the 'Authority') from placing or disposing certain prohibited excavated or dredged material (the 'material') in Port of Melbourne waters or in the port waters of the Authority.

### Content and Committee comment

[3 and 4]. Insert new sections 14A and 22 into the Act in respect to the Corporation and the Authority', defining the material as material that is –

- noxious or poisonous; or
- harmful or potentially harmful to the health, welfare, safety or property of human beings; or
- poisonous or harmful or potentially harmful to animals, birds, wildlife, fish or other aquatic life; or
- poisonous or harmful or potentially harmful to plants or other vegetation; or
- detrimental to any beneficial use made of the waters in which it is placed or disposed of.

The clause also provides that before material is placed or disposed of the Corporation or the Authority must carry out tests that are reasonably necessary to determine whether the material is prohibited by the Act.

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

## Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008

<b>Introduced</b>	10 June 2008
<b>Second Reading Speech</b>	12 June 2008
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Rob Hulls MLA
<b>Portfolio responsibility</b>	Attorney-General

### Purpose

The Bill amends the *Summary Offences Act 1966* (the 'Act') to –

- increase the maximum penalty for the existing offence of tattooing or performing a 'like process' on a person aged under 18 years from 5 penalty units to 60 penalty units.
- define 'like process' as including scarification, tongue splitting, branding and beading.
- make it an offence for a body piercer to perform a non-intimate body piercing on a person aged under 16 years unless consent is provided by a parent or guardian.
- make it an offence for a body piercer to perform an intimate body piercing on a person aged under 18 years.
- make it an offence for a body piercer to employ, direct or allow a person aged under 16 years to perform illegal piercings on young people (the body piercing offences only apply to persons aged 16 or more).

### Content and Committee comment

#### [Clauses]

[2]. The provisions in the Bill come into operation on proclamation but not later than by 1 January 2009.

[4]. *New offences* – Inserts a new Division 6 into Part I of the Act (new sections 43, 43A, 44 and 44A) dealing with body piercing.

New section 43A is a proviso that the new offence provisions do not apply to legitimate health services provided in good faith. The section also excludes the defence of consent under the Act or at common law.

New section 44 makes it an offence for a body piercer to conduct an *intimate piercing* on a person under the age of 18 years. This applies to body piercing on a person's genitalia, anal region, perineum or nipples. It is a defence where the defendant proves that he or she had seen an evidence of age document indicating that the person was aged 18 years or above.

A body piercer must not employ a person under the age of 16 to perform body piercing in an attempt to subvert the new intimate body piercing offence.

New section 44A makes it an offence for a body piercer to perform a *non-intimate body piercing* on a person under the age of 16 years, without the consent of the young person and his or her parent or guardian. Consent must be written and given in person.

It is a defence to the offence where the defendant proves that he or she had seen an '*evidence of age document*' indicating that the person was aged 16 years or above.

It is an offence for a body piercer to subvert the new non-intimate body piercing offence, by employing a person under the age of 16 years to perform illegal procedures.

[6]. Provides for the automatic repeal of this amending Act on 1 January 2010.

## Charter Report

### **Age discrimination – Freedom of expression – Protection of children – Ban on intimate body piercing for under 18 year olds by commercial body piercers – Whether reasonable limit – Whether in best interests of children**

Charter s. 7(2) provides that human rights may be ‘subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society’. Charter s. 8(2) provides that everyone ‘has the right to enjoy his or her human rights without discrimination.’ Discrimination includes discrimination on the basis of ‘age’. Charter s. 15(2) provides that everyone ‘has the right to freedom of expression’ including in any ‘medium chosen by him or her’. Charter s. 17(2) provides that ‘every child has the right... to such protection as is in his or her best interests’.

The Committee notes that clause 4, inserting a new section 44 into the *Summary Offences Act 1966*, makes it an offence for a commercial body piercer to pierce ‘the genitalia, anal region, perineum or nipples’ of ‘a person under the age of 18 years’. The Committee observes that body piercing, including intimate body piercing is a form of expression. The Committee therefore considers that clause 4 engages the Charter right of persons under 18 to enjoy their right to freedom of expression without discrimination on the basis of age.

The Statement of Compatibility remarks:

*Clause 4 of the Bill also prohibits intimate body piercing from being conducted on a person aged under 18 years. Victorian law places great importance on protecting children and young people from inappropriate, sexual contact from adults, and deterring indecent and obscene behaviour... Clause 4 is in keeping with this general protection provided to children...*

*The limitations in the Bill accord with standard industry practice across reputable body piercing operators... The limitations in the Bill also accord with other age-based restrictions on access to goods and services, such as tobacco, liquor gaming, films and literature.*

The Committee observes that male nipples are not typically considered sexual. The Committee also observes that existing bans on bodily procedures on persons under 18 are limited to permanent procedures (e.g. female genital mutilation, tattooing and the ‘like processes’ added by the Bill’s clause 3(1).) The Committee further observes that Victorian criminal law generally prohibits sexual conduct with people under 16 but only prohibits sexual contact with 16 and 17 year-olds by people who care for, supervise or have authority over them. The Committee additionally observes that Victorian offences concerning obscene conduct are limited to public conduct. The Committee finally observes that Victorian and Commonwealth prohibitions on access of minors to sexual films and literature are subject to a classification process that takes account their artistic value.

Whilst the Committee considers that a ban on body piercing of persons under 16 is a reasonable limit on the Charter’s equality rights in accordance with the test in Charter s.7(2), the Committee is concerned that a ban on intimate body piercing (including nipple piercing for males) of 16 and 17 year-olds may be disproportionate to the goal of protecting children from inappropriate sexual conduct.

The Committee also considers that clause 4 engages the Charter right of children to such protection as is in their best interests. The Statement of Compatibility remarks:

*The Bill engages, though does not limit, this right, because it seeks to protect children from risks to their health and wellbeing associated with body piercing.*

Whilst the Committee considers that clause 4 promotes the health of children to the extent that it protects them from the health dangers of piercing, the Committee is concerned that a ban on commercial body piercing may cause some children to pierce themselves or obtain piercing services from non-commercial body piercers.

***The Committee refers to Parliament for its consideration the questions of whether or not clause 4:***

- ***by banning the piercing of the nipples (including male nipples) and genital regions of 16 and 17 year-olds, is, a reasonable limit on the Charter right to equal enjoyment of the right to freedom of expression without discrimination on the basis of age according to the test set out in Charter s. 7(2); and***
- ***by limiting or banning body piercing of children by commercial body piercers is compatible with the Charter right of children to such protection as is in their best interests.***

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

## Superannuation Legislation Amendment Bill 2008

<b>Introduced</b>	10 June 2008
<b>Second Reading Speech</b>	12 June 2008
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon. Tim Holding MLA
<b>Portfolio responsibility</b>	Minister for Finance

### Purpose

The Bill amends the *Emergency Services Superannuation Act 1986* (the 'Act') and related legislation in order to provide members of the former State Superannuation Fund and their spouses, access to a number of superannuation accumulation products such as allocated pensions, top-up and spouse accounts.

The Bill will —

- allow all members (active members, deferred beneficiaries, and pension recipients) of the former State Superannuation Fund (SSF), and their spouses, to access the ESSPLAN accumulation and post-retirement products;
- allow such persons to make contributions of a concessional and non-concessional nature and permit the acceptance of rollovers and transfers from other superannuation funds into ESSPLAN accumulation and post-retirement products;
- provide benefits to returning members as provided for in the *Victoria Police Workplace Agreement 2007*;
- permit the Emergency Services Superannuation Board (ESSB) to offer ESSPLAN members access to binding death benefit nominations in accordance with the Commonwealth's *Superannuation Industry Supervision Regulations 1993* (SIS);
- provide the ESSB with the power to contract a third party for the express purpose of providing financial advice to members;
- clarify that in carrying out its duties the ESSB must have regard to the interests of contributing employers (as well as the interests of Scheme members); and
- make an unrelated amendment to the *Victorian Managed Insurance Authority Act 1996* to extend from one year to five year the maximum period by which the Minister may direct the Victorian Managed Insurance Authority to provide insurance or an indemnity.

### Content and Committee comment

#### [Clauses]

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

[9]. Amends or substitutes a number of definitions in section 21 of the Act. A definition for 'eligible spouse' is substituted to link it with the definition in the *Superannuation Industry (Supervision) Act 1993* (Cth).

**Note:** The current Commonwealth definition does not extend to same sex partners (Refer to Charter Report below).

[24]. The amending Act is repealed one year after the date of its commencement.

## Charter Report

### **Sexuality discrimination – Entitlement to spouse accounts for superannuation – Adoption of Commonwealth definition of spouse that excludes same-sex partners – Conformity with Commonwealth and pre-existing schemes – Whether reasonable limit**

Charter s. 8(3) provides that everyone 'has the right to equal protection of the law without discrimination'. Discrimination includes discrimination on the basis of 'sexual orientation'.

The Committee notes that clause 9, amending s. 21 of the *Emergency Services Superannuation Act 1986*, defines 'eligible spouse' as a 'spouse' under s. 10 of the *Supervision Industry (Supervision) Act 1993* (Cth), which is presently defined as including a person with whom a person lives as 'husband or wife'. The Committee observes that this definition may exclude same-sex partners of members of ESSSuper from requesting a 'spouse account' under s. 21JA of the *Emergency Services Superannuation Act 1986*. The Committee therefore considers that clause 9 may limit the Charter right of the same-sex spouses of ESSSuper members to equal protection of the law without discrimination on the basis of sexual orientation.

The Statement of Compatibility remarks:

*The purpose of adopting the definition of spouse in commonwealth legislation is to ensure that the ESSSuper is a 'complying superannuation fund' under the commonwealth act which allows members of the scheme to enjoy various concessional tax benefits... if the Bill were to adopt a definition of 'spouse' which did not conform with the definition in the commonwealth act, this could result in dire financial consequences for both the scheme and its members through the loss of valuable tax concessions.*

*Further... if the Bill adopted a definition of 'spouse' which included same-sex partners in relation to the former State Superannuation Fund members, this would mean that former State Superannuation Fund members would be provided with access to products not available to existing ESSSuper member's same-sex partners.*

The Committee observes that clause 10 of Schedule 4 of the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Bill 2008 (currently before the Commonwealth Parliament) will amend s. 10 of the *Superannuation Industry (Supervision) Act 1993* (Cth) to cover same-sex partners. If the Bill is enacted in its present form, the new definition will commence on 1 July 2008.

The Committee recalls its report in its *Alert Digest No. 7 of 2007* on the *Superannuation Legislation Amendment (Contribution Splitting and Other Measures) Bill 2007*, which was to the same effect of clause 9. The Committee wrote:

*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.*

The Committee observes that Charter s. 7(2) provides that Charter rights 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'. The Committee is therefore concerned that the purpose of conforming with the Commonwealth's superannuation scheme in its present form may be outside the terms of Charter s. 7(2) and, therefore, that clause 9 may be incompatible with the Charter.

***The Committee refers to Parliament for its consideration the question of whether or not clause 9, by limiting eligibility for spouse accounts to opposite-sex partners (unless the Commonwealth Parliament changes the relevant definition), is a reasonable limit on the Charter right to equal protection of the law without discrimination on the basis of sexual orientation according to the test set out in Charter s. 7(2).***

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

## Tobacco (Control of Tobacco Effects on Minors) Bill 2007

<b>Introduced</b>	5 December 2007
<b>Second Reading Speech</b>	11 June 2008
<b>House</b>	Legislative Council
<b>Member introducing Bill</b>	Mr. Damien Drum MLC
<b>Private Member's Bill</b>	

### Purpose

The Bill amends the *Tobacco Act 1987* (the 'Act') and the *Road Safety Act 1986* to –

- prohibit smoking in a vehicle while a person under the age of 18 years is present; and
- prohibit the sale of tobacco products that have been declared by the Minister to be prohibited tobacco products; and
- prohibit the sale, purchase, possession and use of tobacco products by persons under the age of 18 years; and
- extend tobacco controls at underage music/dance events to persons under the age of 18 years.

### Content and Committee comment

#### [Clauses]

[2]. The provisions in the Bill commence on proclamation but not later than by 1 July 2009.

[4]. *New offence* – Inserts a new section 5S creating an offence of smoking in a motor vehicle whether it is in motion or not, while a person under the age of 18 is also in the vehicle (also refer to clause 14 below).

[5]. Inserts new section 10A in the Act to provide that the Minister may declare a tobacco product or a class of tobacco products is a prohibited tobacco product (flavoured tobaccos).

[6]. *New offence* – Inserts new section 11B preventing children under the age of 18 from selling tobacco or tobacco products in a retail outlet and requires a person operating a tobacco retailing or wholesaling business to not permit a person under 18 years to sell a tobacco product. An exemption applies to persons engaged in a small family-owned and operated business with no more than five employees and in which the selling of tobacco or tobacco products is not the main business.

[7]. *New offence* – Inserts a new subsection 12(1A) to provide that a person must not request another whom he or she know or believes to be under 18 to purchase a tobacco product.

[8]. *New offences* – Inserts new sections 12A, 12B and 12C.

New section 12A provides that a person under 18 years must not, smoke in a public place, purchase a tobacco product; obtain a tobacco product from a vending machine or possess a tobacco product in a public place.

New section 12B provides that a minor must not claim to be over 18 for the purposes of smoking, purchasing, obtaining from a vending machine or possessing a tobacco product in a public place.

Section 12C provides that a person must not knowingly allow an evidence of age document to be used to contravene this Act, and must not deface or alter an evidence of age document for the purposes of contravening this Act.

[9]. *Defence repealed* – Repeals section 15K of the Act. The section declares that a person under 18 years does not commit an offence by possessing, purchasing or using tobacco or tobacco products at underage music/dance events.

[10]. *Inspector may ask name and address* – Inserts new section 36C in the Act empowering appropriate inspectors to request the name, age and address of a person or persons whom the inspector believes, on reasonable grounds to be in breach of the new offences in section 12A (purchasing, possessing or using tobacco or tobacco products) or 12B (misrepresenting age).

The clause also makes it an offence for a person to refuse to supply his or her name to an authorised inspector when requested to do so and makes it offence to give a name, age, address or business other than the correct details or to give false details.

[12]. *Infringement penalty notice may be notified to parent or guardian and require child to undertake anti-tobacco education* – Creates a new section 38A in the Act allowing additional steps required by an infringement notice issued to persons under 18 years, and which may include: (a) the formal notification of parents or guardians of persons under 18 found to be in breach of the Act and (b) requiring persons under 18 in breach of the Act to complete an approved anti-tobacco education program.

[14]. Amends the definition of traffic infringement in the *Road Safety Act 1986* to include an offence against new section 5S of the Act (refer to clause 4 above).

[15]. This amending Act is repealed on the first anniversary of its commencement.

## Charter Report

### Protection of children – Criminalisation of tobacco purchase, use and possession by minors – Whether in best interests of children

Charter s.7(2) provides that human rights may be ‘subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society’. Charter s.17(2) provides that ‘every child has the right to such protection as is in his or her best interests’.

The Committee notes that clause 8, inserting a new section 12A in the *Tobacco Act 1987*, criminalises the purchase and (in public places) use and possession of tobacco products by children. The Committee considers that clause 8 engages the Charter right of children to protection in their best interests.

The Statement of Compatibility remarks:

*The overall objective of the Bill is consistent with section 17 of the Charter relevant to the protection of children....*

*Smoking is a major public health issue for the community. Evidence suggests that up to 90 per cent of smokers began smoking when they were teenagers. The Bill will operate, with other measures, to discourage smoking by persons of less than 18 years...*

*...Similar legislation operates in some USA states and there is evidence to suggest they are effective in supplementing education and public awareness programs to reduce the incidence of under-age smoking.*

The Second Reading Speech remarks:

*PUP laws, as they are known, are common in the United States where they supplement existing education and public awareness programs. The success of these measures has been documented after a seven-year study by a research team made up of staff from DePaul University, the University of Chicago, Loyola University, the University of Illinois and the University of Florida.*

Whilst the Committee considers that any measure that prevents smoking by children is in their best interests, the Committee observes that the effect of criminalisation on smoking by children, whether positive or negative, is unknown. The study referred to in the Second Reading Speech states:

*A significant problem with evaluation of these PUP law studies is that the reliance on only self-report data, as youth may underreport smoking when laws are strictly enforced to avoid further penalties. Also, the lack of rigorous study designs with random assignment and proper control groups limit the ability to infer causality.... It is not known how youth who violate PUP laws perceive various consequences, or what effects these consequences have on their tobacco use.*

*(Behaviour Modification (2007); 31; 713: 718.)*

***The Committee refers to Parliament for its consideration the question of whether or not clause 8 is compatible with the Charter right of children to such protection as is in their best interests.***

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



# Ministerial Correspondence

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## Gambling Regulation Amendment (Licensing) Bill 2008

The Bill was introduced into the Legislative Assembly on 16 April 2008 by the Hon. Tony Robinson MLA. The Committee considered the Bill on 5 May 2008 and made the following comments in Alert Digest No. 5 of 2008 tabled in the Parliament on 6 May 2008.

### Committee's Comment

#### Charter Report

#### **Property rights – Removal of entitlement and legitimate expectation to the grant of a licence – Agent or associate of the holder of a licence – Whether a human being**

*Charter s. 3 defines a 'person' to mean a 'human being'. Charter s. 6(1) provides that 'only persons have human rights'. Charter s. 20 provides that a person 'must not be deprived of his or her property other than in accordance with law.'*

*The Committee notes that clause 26 inserts a new section 11.1.8 into the Gambling Regulation Act 2003 that provides that:*

*For the avoidance of doubt, a person does not have any entitlement to, or legitimate expectation of, the grant of a wagering and betting licence or keno licence only because the person is or was—*

- (a) the holder of the wagering licence and gaming licence that were issued on 15 August 1994; or*
- (b) the holder of a gaming operators licence; or*
- (c) an agent or associate of a person described in paragraph (a) or (b).*

*The Committee observes that this clause may remove an existing entitlement or legitimate expectation that a person would obtain a licence. The Committee also observes that the European Court of Human Rights has held that an analogous right to Charter s. 20 in the European Convention for the Protection of Human Rights and Fundamental Freedoms extends to a right not to be deprived of an existing legitimate expectation of a future claim to property (including a licence.)*

*Whilst the Committee observes that corporations do not have Charter rights, the Committee is concerned that one or more persons who are the subject of new section 11.1.8 (especially para. (c)) may be human beings.*

***The Committee will seek further information from the Minister as to whether any of the persons who are the subject of new section 11.1.8 are human beings. Pending the Minister's response, the Committee draws attention to this provision.***

### Minister's Response

*I refer to your letter of 7 May 2008 regarding the Gambling Regulation Amendment (Licensing) Bill 2008 ("the Bill") and, in particular, clause 26 of the Bill and its relevance to the property right recognised by the Charter of Human Rights and Responsibilities ("the Charter").*

Clause 26 proposes to insert a new section 11.1.8 into the Gambling Regulation Act 2003 to provide that:

*“For the avoidance of doubt, a person does not have any entitlement to, or legitimate expectation of, the grant of a wagering and betting licence or keno licence only because the person is or was—*

- (a) the holder of the wagering licence and gaming licence that were issued on 15 August 1994, or*
- (b) the holder of a gaming operator's licence; or*
- (c) an agent or associate of a person described in paragraph (a) or (b).”*

### **No Existing Legitimate Expectations**

*The Committee has observed that this clause may remove an existing entitlement or legitimate expectation that a person would obtain a licence.*

*The Government has performed a comprehensive review of the wagering, betting and keno arrangements in Victoria and has decided to establish a licensing regime for the grant of a new wagering and betting licence and the grant of a new keno licence. The new wagering and betting licence will not be attached by legislation to the licence to operate gaming machines. The new keno licence will also not be attached by legislation to a gaming operator's licence.*

*In the context of establishing new licensing regimes, it is the Government's view that all interested parties should be permitted to apply for the new licences on an equal footing, without being able to rely, as far as possible, on any benefits of having previously held some form of gambling licence under the Gambling Regulation Act 2003.*

*For this reason, the current holder of the wagering licence and gaming licence and the current holder of a gaming operator's licence should be afforded the same rights as any other interested entities, but need not be afforded any other special rights merely because they currently hold such licences. The licences they hold are not the same licences as the proposed new wagering and betting licence and keno licence that are the subject of the Bill.*

*Clause 26 does not remove an existing entitlement or legitimate expectation that a person would obtain one of the new licences; it clarifies, for the avoidance of doubt, that an existing entitlement or legitimate expectation does not exist.*

### **Property Rights for a Human Being**

*You have asked whether, by use of the word “person”, clause 26 of the Bill would deprive a human being from his or her property other than in accordance with law, especially in relation to paragraph (c) of the clause.*

*The proposed section 4.3A.3(3) in clause 9 of the Bill and proposed section 6A.3.3(3) in clause 18 of the Bill both provide that only a person who is not a natural person (i.e. a human being) may register an interest, and therefore be eligible to be invited to apply for, a wagering and betting licence or a keno licence (“a relevant licence”).*

*As the entities referred to in paragraphs (a) and (b) of the proposed section 11.1.8 of the Act are corporate entities, the property right for human beings recognised by the Charter does not apply to them.*

*Similarly, any person to which paragraph (c) of the proposed section 11.1.8 would apply, whether an agent or an associate of the current licensees, may not be a natural person in order to be eligible to register an interest in a relevant licence and hypothetically claim an existing entitlement or legitimate expectation of obtaining a relevant licence. As the entities referred to in paragraph (c) of the proposed section 11.1.8 of the Act must necessarily not be a natural person, the property right for human beings recognised by the Charter does not apply to them.*

*HON TONY ROBINSON MP  
Minister for Gaming*

*11 June 2008*

***The Committee thanks the Minister for this response.***

**Committee Room  
23 June 2008**



# Appendix 1

## Index of Bills in 2008

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### Alert Digest Nos.

Animals Legislation Amendment (Animal Care) Bill 2007	3, 4
Appropriation (2008/2009) Bill 2008	6
Appropriation (Parliament 2008/2009) Bill 2008	6
Cancer Amendment (HPV) Bill 2008	5
Children's Legislation Amendment Bill 2008	5, 7
Constitution Amendment (Judicial Pensions) Bill 2007	1, 6
Consumer Credit (Victoria) and Other Acts Amendment Bill 2007	1
Co-operatives and Private Security Acts Amendment Bill 2008	4
Courts Legislation Amendment (Associate Judges) Bill 2008	3, 6
Courts Legislation Amendment (Juries and Other Matters) Bill 2008	7
Crimes Amendment (Child Homicide) Bill 2007	1, 4
Crimes (Controlled Operations) Amendment Bill 2008	7
Criminal Procedure Legislation Amendment Bill 2007	1, 2, 6
Crown Land (Reserves) Amendment (Carlton Gardens) Bill 2008	2
Drugs, Poisons and Controlled Substances Amendment Bill 2008	3, 4
Drugs, Poisons and Controlled Substances (Volatile Substances) (Repeal) Bill 2008	6
Education and Training Reform Amendment Bill 2008	4, 5
Energy and Resources Legislation Amendment Bill 2008	5
Environment Protection Amendment (Landfill Levies) Bill 2008	4
Essential Services Commission Amendment Bill 2008	4, 5
Infringements and Other Acts Amendment Bill 2007	1
Gambling Regulation Amendment (Licensing) Bill 2008	5, 8
Justice Legislation Amendment Bill 2008	5, 6
Justice Legislation Amendment (Sex Offences Procedure) Bill 2008	4, 5
Land (Revocation of Reservations) Bill 2008	4
Land (Revocation of Reservations) (Convention Centre Land) Bill 2008	8
Legislation Reform (Repeals No. 2) Bill 2007	1
Legislation Reform (Repeals No. 3) Bill 2008	5
Liquor Control Reform Amendment Bill 2007	1
Local Government Amendment (Elections) Bill 2008	8
Medical Treatment (Physician Assisted Dying) Bill 2008	8
Melbourne Cricket Ground Amendment Bill 2008	7
National Gas (Victoria) Bill 2008	6
National Parks and Crown Land (Reserves) Acts Amendment Bill 2008	8
Police Integrity Bill 2008	4, 5
Police Regulation Amendment Bill 2007	1
Port Services Amendment (Disposal of Material) Bill 2008	8
Port Services Amendment (Public Disclosure) Bill 2008	2
Public Health and Wellbeing Bill 2008	6
Public Sector Employment (Award Entitlements) Amendment Bill 2008	5
Professional Boxing and Combat Sports Amendment Bill 2007	1
Relationships Bill 2007	1, 3
State Taxation Acts Amendment Bill 2008	6
Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008	8
Superannuation Legislation Amendment Bill 2008	8
The Uniting Church in Australia Amendment Bill 2008	5
Tobacco (Control of Tobacco Effects on Minors) Bill 2007	8

Unclaimed Money Bill 2008	7
Victorian Energy Efficiency Target Bill 2007	1
Victorian Water Substitution Target Bill 2007	5
Wildlife Amendment (Marine Mammals) Bill 2008	7
Working with Children Amendment Bill 2007	3, 4

# Appendix 2

## Committee Comments classified by Terms of Reference

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Note: This Appendix lists Bills under the relevant Committee terms of reference where the Committee has raised issues requiring further correspondence with the appropriate Minister.

### Alert Digest Nos.

#### Section 17(a)

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

Constitution Amendment (Judicial Pensions) Bill 2007 1

##### **(ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers.**

Relationships Bill 2007 1

##### **(vi) inappropriately delegates legislative power.**

Essential Service Commission Amendmnet Bill 2008 4

##### **(vii) insufficiently exercises legislative power to parliamentary scrutiny**

National Gas (Victoria) Bill 2008 6

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

Children's Legislation Amendment Bill 2008 5

Constitution Amendment (Judicial Pensions) Bill 2007 1

Crimes Amendment (Child Homicide) Bill 2007 1

Drugs, Poisons and Controlled Substances Amendment Bill 2008 3

Education and Training Reform Amendment Bill 2008 4

Gambling Regulation Amendment (Licensing) Bill 2008 5

Justice Legislation Amendment Bill 2008 5

Justice Legislation Amendment (Sex Offenders Procedure) Bill 2008 4

Police Integrity Bill 2008 4

Relationships Bill 2007 1

#### Section 17(b)

##### **(i) and (ii) repeals, alters or varies the jurisdiction of the Supreme Court**

Police Integrity Bill 2008 4



## Appendix 3 Ministerial Correspondence

**Table of correspondence between the Committee and Ministers during 2007-08**

<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>
Working with Children Amendment Bill 2007	Attorney-General	19.09.07	19.03.08	12 of 2007	4 of 2008
Emergency Services Legislation Amendment Bill 2007	Police and Emergency Services	09.10.07	-	13 of 2007	1 of 2008
Animals Legislation Amendment (Animal Care) Bill 2007	Agriculture	31.10.07	12.12.07	14 of 2007	4 of 2008
Liquor Control Reform Amendment Bill 2007	Consumer Affairs	21.11.07	04.12.07	15 of 2007	1 of 2008
Police Regulation Amendment Bill 2007	Police and Emergency Services	21.11.07	06.12.07	15 of 2007	1 of 2008
Victorian Energy Efficiency Target Bill 2007	Energy and Resources	21.11.07	04.12.07	15 of 2007	1 of 2008
Criminal Procedure Legislation Amendment Bill 2007	Attorney-General	04.12.07	30.01.08	16 of 2007	1 of 2008
Crimes Amendment (Child Homicide) Bill 2007	Attorney-General	05.02.08	25.02.08	1 of 2008	4 of 2008
Constitution Amendment (Judicial Pensions) Bill 2007	Attorney-General	05.02.08	21.05.08	1 of 2008	6 of 2008
Professional Boxing and Combat Sports Amendment Bill 2007	Sport, Recreation and Youth Affairs	05.02.08		1 of 2008	
Relationships Bill 2007	Attorney-General	05.02.08	03.03.08	1 of 2008	3 of 2008
Criminal Procedure Legislation Amendment Bill 2007	Attorney-General	28.02.08	07.05.08	2 of 2008	6 of 2008
Port Services Amendment (Public Disclosure) Bill 2008	Hon. David Davis MLC	28.02.08		2 of 2008	

**Scrutiny of Acts and Regulations Committee**

<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>
Courts Legislation Amendment (Associate Judges) Bill 2008	Attorney-General	11.03.08	13.05.08	3 of 2008	6 of 2008
Drugs, Poisons and Controlled Substances Amendment Bill 2008	Health	12.03.08	03.04.08	3 of 2008	4 of 2008
Education and Training Reform Amendment Bill 2008	Education	08.04.08	16.04.08	4 of 2008	5 of 2008
Essential Services Commission (Amendment) Bill 2007	Finance	08.04.08	17.04.08	4 of 2008	5 of 2008
Justice Legislation Amendment (Sex Offenders Procedure) Bill 2008	Attorney-General	08.04.08	21.04.08	4 of 2008	5 of 2008
Police Integrity Bill 2008	Police & Emergency Services	08.04.08	18.04.08	4 of 2008	5 of 2008
Children's Legislation Amendment Bill 2008	Children & Early Childhood Development	07.05.08	28.05.08	5 of 2008	7 of 2008
Gambling Regulation Amendment (Licensing) Bill 2008	Gambling	07.05.08	11.06.08	5 of 2008	8 of 2008
Justice Legislation Amendment Bill 2008	Corrections	07.05.08	23.05.08	5 of 2008	6 of 2008
National Gas (Victoria) Bill 2008	Energy & Resources	27.05.08		6 of 2008	