



SCRUTINY OF ACTS AND
REGULATIONS COMMITTEE

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Scrutiny of Acts and Regulations Committee

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Terms of Reference

Section 17 of the *Parliamentary Committees Act 2003* sets out the statutory functions of the Scrutiny of Acts and Regulations Committee. These functions 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 on rights or freedoms;
 - (ii) makes rights, freedoms or obligations dependent on insufficiently defined administrative powers;
 - (iii) makes rights, freedoms or obligations dependent on 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 a 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 on 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.

Chairperson's Introduction

I am pleased to introduce the Scrutiny of Acts and Regulations Committee's Annual Review covering the calendar year 2007. There were 2 Committees during 2007, comprising an interim Committee established in December 2006 immediately following the State election and the Committee established in March 2007 for the remainder of the 56th Parliament.

In brief, the functions of the Committee are to review all Bills introduced into Parliament, to review regulations, to review and report on redundant or unclear Acts and to undertake specific inquiries that may be referred to the Committee either by a House of the Parliament or by a Minister.

From 1 January 2007 the *Charter of Human Rights and Responsibilities Act 2006* (the 'Charter') commenced operation giving the Committee a new human rights focus in the scrutiny of primary and subordinate legislation. The Charter requires the Committee to report to Parliament on any provision in a Bill or in regulations which is incompatible with the civil and political rights in Chapter 2 of the Charter. The enactment of the Charter and its new scrutiny reporting responsibility has presented challenging and interesting work for the Committee in its first year of operation.

In August 2007 the Speaker approved the appointment of Dr Jeremy Gans of the University of Melbourne as the Committee's Human Rights Adviser.

The Committee has been fortunate to have the continued and dedicated support of a professional secretariat, and I take this opportunity to thank our Senior Legal Adviser, Andrew Homer, for effectively leading our team during 2007. The Committee is also indebted to Helen Mason for her experienced guidance in the scrutiny of regulations, and to Simon Dinsbergs and Sonya Caruana for their efficient management and administrative support during the year.

Carlo Carli MP
Chairperson

March 2008

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.



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.

The Annual Review

This report provides an overview of the activities and functions of the Victorian Parliament's Scrutiny of Acts and Regulations Committee (the 'Committee') during the calendar year 2007. There are two publications that further describe the Committee's work during 2007, the Annual Review of Regulations considered in 2007¹ and the cumulative Alert Digest² concerning the scrutiny of Bills introduced in the Parliament in 2007.

The Committee's reports and other publications (including this report) are available on the Committee's website <www.parliament.vic.gov.au/sarc>.

The Committee

The Committee is established under the *Parliamentary Committees Act 2003*³ (the 'Act') as one of the 12 Joint House Committees of the Victorian Parliament. It is one of six Joint House Committees administered by the Department of the Legislative Assembly. The remaining six Joint House Committees are administered by the Department of the Legislative Council.

Membership of the Committee is drawn from Members of the Legislative Council (the 'Council') and the Legislative Assembly (the 'Assembly') and from both government and opposition members.

Brief history of the Committee

The Committee under its current name was established at the commencement of the 52nd Parliament in November 1992. Mr Victor Perton MLA (LP – Doncaster) became the Committee's first Chairman. Following the March 1996 State election, the Committee was reconstituted for the 53rd Parliament with Mr Peter Ryan MLA (NP – Gippsland South) as Chairman. The 53rd Parliament was dissolved in August 1999. The Committee of the 54th Parliament was reconstituted on 15 December 1999 with Ms Mary Gillett MLA (ALP – Werribee) elected Chair of the Committee. From March 2003, the Chairperson of the Committee in the 55th Parliament was Ms Lily D'Ambrosio MLA (ALP – Mill Park). In the current Parliament (56th) the Chairperson of the Committee (since December 2006) is Mr Carlo Carli MLA (ALP – Brunswick).

Prior to the Committee in its present form, the Parliament performed a scrutiny of subordinate legislation (regulations) function through the now defunct Legal and Constitutional Committee. Statute law revision Bills were at one time considered by the Statute Law Revision Committee which was established by the Parliament as a specific purpose committee to consider periodic statute law revision Bills. Such Bills were less frequent than in current times.

The Parliaments of the Commonwealth, New South Wales, Queensland and the Australian Capital Territory have parliamentary committees that perform comparable scrutiny of bills functions. All Australian Parliaments have committees that perform scrutiny of regulations.

Committee composition and membership

The Act⁴ requires that a Parliamentary Committee comprise not more than ten members, of whom at least two must be members of the Council and two of the Assembly.

During 2007 the Committee and the interim Committee consisted of nine members, five from the Assembly and four from the Council.

As in previous Parliaments, during 2007 the Committee and the interim Committee was composed of five members from the government and four members from opposition parties.

Committee members during 2007

The members of the Committee during 2007 were –

Interim Committee (from 19 December 2006 to 28 February 2007)

- Mr Carlo Carli MLA (Chairperson)
- Mr Colin Brooks MLA
- The Hon. Richard Dalla-Riva MLC
- Mr Khalil Eideh MLC
- Mr Nazih Elasmr MLC
- Mr Ken Jasper MLA
- Mr Andrew McIntosh MLA
- Ms Jaala Pulford MLC
- Mr Murray Thompson MLA

Committee (from 1 March 2007)

- Mr Carlo Carli MLA (Chairperson)
- Mr Ken Jasper MLA (Deputy Chairperson)
- Mr Colin Brooks MLA
- Mr Khalil Eideh MLC
- Mr Telmo Languiller MLA
- Mr Edward O'Donohue MLC
- Mrs Inga Peulich MLC
- Ms Jaala Pulford MLC
- Mr Ryan Smith MLA

The subcommittees

It is the custom of the Committee to establish, by special resolution the Regulation Review Subcommittee and the Redundant Legislation Subcommittee at the commencement of each new Parliament. The Committee may also, from time to time, establish other subcommittees that may be desirable to undertake specialist inquiry work.

Regulation Review

The functions of this Subcommittee are to review statutory rules, as defined by the *Subordinate Legislation Act 1994*, against specified terms of reference prescribed in that Act.⁵ Pursuant to other statutory reporting responsibilities, the Subcommittee must also review other certain special subordinate instruments.

The members of the interim Regulation Review Subcommittee during 2007 (from 13 February to 28 February 2007) were –

- Mr Ken Jasper MLA (Chair)
- Mr Carlo Carli MLA
- Mr Colin Brooks MLA
- Ms Jaala Pulford MLC
- Mr Murray Thompson MLA

The members of the Regulation Review Subcommittee during 2007 (from 9 March 2007) were –

- Mr Ken Jasper MLA (Chair)
- Mr Carlo Carli MLA

- Mr Colin Brooks MLA
- Mr Khalil Eideh MLC
- Mrs Inga Peulich MLC*
- Mr Ryan Smith MLA

*Retired from the Subcommittee on 16 April 2007.

Redundant Legislation

The Subcommittee was first established as a consequence of a long-standing Governor in Council reference first given to the Committee in 1994. The reference, which has been renewed in subsequent Parliaments, requires the Committee to review and make recommendations concerning Acts or other legislative instruments that are unclear, ambiguous or that may stand in need of redrafting.

During the year the Subcommittee had before it an inquiry into certain corporations laws that have been identified as possibly spent or redundant as a consequence of the State's referral in 2001 of its corporations powers to the Commonwealth government.

The members of the Redundant Legislation Subcommittee during 2007 were –

- Mr Edward O'Donohue MLC (Chairperson)
- Mr Carlo Carli MLA
- Mr Khalil Eideh MLC
- Mrs Inga Peulich MLC
- Ms Jaala Pulford MLC

Secretariat and consultants

Staffing

The Committee employs a small secretariat staff comprising an Executive Officer (Senior Legal Adviser), a Legal Adviser, Regulations and two administrative support staff. The secretariat of the Committee during 2007 comprised of –

- Mr Andrew Homer, Executive Officer and Senior Legal Adviser
- Mr Simon Dinsbergs, Assistant Executive Officer
- Ms Helen Mason, Legal Adviser, Regulations
- Ms Sonya Caruana, Office Manager

The Committee's office is located at Level 3, 55 St Andrews Place, Melbourne.

Consultants

During 2007 the Committee, with the approval of the Speaker, engaged the following external consultants –

- Dr Jeremy Gans, Human Rights Adviser (University of Melbourne);
- Ms Annette O'Callaghan, Redundant Legislation Adviser (Office of the Chief Parliamentary Counsel);
- Ms Alice Cashen, Redundant Legislation Assistant Adviser (Office of the Chief Parliamentary Counsel).

New Committee terms of reference – Charter of Human Rights and Responsibilities Act 2006

On 1 January 2007 provisions relevant to the Committee's functions and terms of reference came into force as a consequence of the enactment of the *Charter of Human Rights and Responsibilities Act 2006* (the 'Charter').

Section 30 of the Charter and its footnote provides –

30. Scrutiny of Acts and Regulations Committee

The Scrutiny of Acts and Regulations Committee must consider any Bill introduced into Parliament and must report to the Parliament as to whether the Bill is incompatible with human rights.

Note: The Scrutiny of Acts and Regulations Committee must also review all statutory rules and report to Parliament if it considers the statutory rule to be incompatible with human rights: see section 21 of the *Subordinate Legislation Act 1994*.

To reflect the Committee's new human rights functions and statutory reporting responsibilities the Schedule to the Charter made consequential amendments to the *Parliamentary Committees Act 2003* and the *Subordinate Legislation Act 1994*.

The amendments made to the *Parliamentary Committees Acts 2003* inserted the following provisions within section 17 –

17. Scrutiny of Acts and Regulations Committee

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

...

(fa) the functions conferred on the Committee by the Charter of Human Rights and Responsibilities;

A new paragraph was inserted in section 21 of the *Subordinate Legislation Act 1994* to reflect the same Charter reporting functions in respect to the scrutiny of statutory rules.

21. Review of statutory rules by the Scrutiny Committee

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

The Committee's work during 2007

The Committee's work during 2007 fell into four main areas –

- Scrutiny of Bills introduced into Parliament;⁶
- Scrutiny of subordinate legislation⁷ (regulations) and specified directives and other instruments;⁸
- Review of redundant, ambiguous or unclear legislation;
- Inquiries or the review of Acts that are referred to the Committee by a resolution of either the Council or the Assembly⁹ or by a Minister through an Order of the Governor in Council published in the Government Gazette.¹⁰

Section 17(a) – Scrutiny of Bills

The Committee considered 94 Bills during 2007. Pursuant to section 17(a) the Committee is required to consider any Bill introduced in the Council or the Assembly and report to the Parliament under eight separate heads of scrutiny, numbered sub-paragraphs (i) to (viii) –

- (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;

A list of the Bills considered by the Committee during 2007 and the tabling dates of the 16 separate Alert Digests in which they are found is shown in **Appendix 1**. The Bills on which the Committee made a substantive comment based on the respective scrutiny principles is shown in **Appendix 2**.

Section 17(a)(viii) – is incompatible with the human rights & Section 30, Charter of Human Rights and Responsibilities Act 2006

The *Charter of Human Rights and Responsibilities Act 2006* (the ‘Charter’) which commenced on 1st January 2007, added a new head to the Committee’s scrutiny of bills function: to report on whether any bill is ‘incompatible with the human rights set out in the Charter of Human Rights and Responsibilities.’ The Charter itself also provides that the Committee ‘must consider’ every bill and ‘must report’ on any incompatibility with human rights. The relevant human rights are set out in Part 2 of the Charter, which also contains a further provision (Charter s. 7(2)) that specifies when a Charter right ‘may be subject under law [to] limits’. A bill will be incompatible with human rights if it infringes a Charter right and does not satisfy the test in Charter s. 7(2). Commencing with *Alert Digest No. 12 of 2007* (in September), the Committee appended a separate ‘Charter report’ to its commentary on most bills.

The Committee reported on compatibility with human rights in fifteen out of sixteen Alert Digests in 2007. In *Alert Digest No. 7 of 2007*, the Committee reported to Parliament that the provisions of one bill (the *Superannuation Amendment (Contribution Splitting and Other Matters) Bill 2007*) were incompatible with the Charter s. 8, which provides Victorians with rights related to equality and non-discrimination. The Committee also drew attention to numerous provisions of other bills, referred certain rights issues they raised to Parliament for its consideration and made further inquiries to the relevant Ministers about these matters. In response to a query the Committee raised in *Alert Digest No. 12 of 2007* concerning the *Crimes (Rape) Amendment Bill 2007*, the government responded by introducing amendments to remedy the potential incompatibility of a provision altering the definition of incest with the rights of families to protection under s. 17 of the Charter.

The Charter also altered the practices of Parliament and, as a consequence, the practices of the Committee. Charter s. 28 requires that a member of Parliament who introduces a bill must lay a ‘statement of compatibility’ before both houses that states whether a bill is compatible with human rights and, if so, ‘how’. The obligation to state how a bill is compatible with human rights is unique to Victoria. In its *Practice Note No. 2*, the Committee determined that it would regard statements of compatibility as equivalent to explanatory memoranda and would write to Ministers if it regarded a statement as inadequate or unhelpful in describing provisions that may engage or infringe a Charter right.

The most significant occasion when the Committee raised such a concern was in relation to the *Infertility Treatment Bill 2007*, where the statement of compatibility advised Parliament that the Bill raised no Charter issues. In *Alert Digest No. 4 of 2007*, the Committee determined that the Bill engaged Charter s. 10(c), which gave Victorians the right not to be subjected to medical treatment or experimentation without full free and informed consent, and expressed the need for Parliament to be informed about whether the Bill was a reasonable limit on this right. The Committee also wrote to Ministers concerning statements of compatibility that addressed complex bills without identifying relevant provisions clearly (*Animals Legislation Amendment (Animal Care) Bill 2007*) or whose account of a bill’s compatibility with multiple, complex human rights was brief and perfunctory (*Criminal Legislation Amendment Bill 2007*). However, the Committee also commended a number of statements of compatibility on their comprehensive and helpful analysis of human rights issues raised by bills.

Charter s. 31 gives Parliament a new power, in ‘exceptional circumstances’, to make an ‘override declaration’ in relation to a provision of a bill, which suspends the effect of the Charter on that provision for five years. In its report on the *Superannuation Amendment (Contribution Splitting and Other Matters) Bill 2007*, the Committee considered whether or not the need to achieve consistency with Commonwealth legislation was an exceptional circumstance. In relation to both that Bill and the *Transport Legislation Amendment Bill 2007*, the Committee sought further advice from the Minister about whether an override declaration should be made.

Bills where submissions were received during 2007

Within the relevant terms of reference the Committee welcomes public submissions concerning Bills currently before the Parliament. The Committee is aware of the onerous time constraints applying to such submissions. The strict timelines for making submissions arise from the necessity for the Committee to table a report on Bills for the assistance of Members, prior to the resumption of the debate after the second reading speech is delivered. This tight timetable may mean that as little as 2 weeks may be available for the receipt of a submission after a Bill is Second Read in Parliament.

Where need arises and time permits, the Committee reserves the right to invite evidence to be given before it at a private or a public hearing. In special circumstances the Committee may delay making a report on a Bill in order to hold public hearings or receive written submissions.

During 2007 the Committee received submissions in respect of the following Bills.

Infertility Treatment Amendment Bill 2007 (Alert Digest No. 4)

The Bill raised important issues concerning the voluntary donation of embryos for stem-cell research raising the human rights issues of full, free and informed consent to medical research / experimentation and the extent of medical and other risks to donors.

Written submissions were received from –

- *Dr Nicholas Tonti-Filippini*, Ethicist, Consultant;
- *Dr Renate Klein and Ms Belinda Morris*, Feminist International Network of Resistance to Reproductive and Genetic Engineering (FINRRAGE) Australia;
- *Katrina George*, Director, Women’s Forum Australia; and
- Hands Off Our Ovaries.

In addition, the Committee took verbal evidence on 4 April 2007 from –

- *Dr Nicholas Tonti-Filippini*;
- *Professor Loane Skene*, University of Melbourne – Deputy Chair, Lockhart Review Committee (Commonwealth); and
- *Dr Jock Findlay*, Chair of the Victorian Infertility Treatment Authority.

Justice and Road Legislation Amendment (Law Enforcement) Bill 2007 (Alert Digest No. 10)

An issue was raised concerning the use of agency (police) photographs of prisoners by the media.

Written submissions were received from –

- *Helen Versey*, Victorian Privacy Commissioner; and
- *Ben Schokman and Philip Lynch*, Human Rights Law Resource Centre.

Justice Legislation Amendment Bill 2007 (Alert Digest No. 12)

- *Human Rights Law Resource Centre*

Graffiti Prevention Bill 2007 (Alert Digest No. 13)

- *Law Institute of Victoria*

Section 17(b) – Scrutiny of Bills – Section 85, Constitution Act 1975

Pursuant to section 17(b) of the *Parliamentary Committees Act 2003*, the Committee has a statutory reporting responsibility in relation to Bills which include provisions that repeal, alter or vary the jurisdiction of the Supreme Court. This responsibility has a nexus to the unique ‘manner and form’ requirements found in section 85 of the *Constitution Act 1975*. The Act requires the Committee to report to the Parliament as to whether such provisions are, in all the circumstances, appropriate and desirable.

Of the 94 Bills considered in 2007, only one (1)¹¹ contained a section 85 *Constitution Act 1975* provision. In comparison in 2006 of the 87 Bills introduced three (3) contained section 85 provisions. Bills containing a section 85 *Constitution Act 1975* provision are listed in **Appendix 2**.

A selection of noteworthy Bills considered in 2007

1. New principal Acts

The *Accident Towing Services Bill 2007* established a new principal Act to regulate accident towing services in Victoria.

The *Graffiti Prevention Bill 2007* is a new principal Act creating graffiti-related offences and providing search and seizure powers for the police force and power for a Council to enter private property to remove graffiti.

The *Major Events (Aerial Advertising) Bill 2007* provides a new Act regulating and managing aerial advertising in proximity to major sporting and other events.

The *Victorian Energy Efficiency Target Bill 2007* introduces a new Act to promote reduction of greenhouse gas emissions by establishing the Victorian Energy Efficiency Target scheme.

The *Victorian Workers’ Protection Bill 2007* is a new principal Act seeking to ensure that employers pay wages in money and sets out the method of that payment. The new Act also regulates the ability of an employer to make deductions from an employee’s wages.

2. Amending Acts

The *Children’s Services and Education Legislation Amendment (Anaphylaxis Management) Bill 2007* amends two education Acts to require schools to have an anaphylaxis management policy and to include such a policy as a minimum standard for registration of schools.

The *Courts Legislation Amendment (Judicial Education and Other Matters) Bill 2007* amongst other amendments, provided for the continuation of the Koori Court until 1 July 2009.

The *Crimes Amendment (DNA Database) Bill 2007* amends the *Crimes Act 1958* to enable national automatic matching of data on a national DNA database.

The *Crimes Amendment (Rape) Bill 2007* amended the *Crimes Act 1958* in respect to the legal tests to be applied in the crime rape and in respect to jury directions to be given in rape trials.

The *Criminal Procedure Legislation Amendment Bill 2007* amends several Acts and amongst other matters will allow courts to give sentencing indications and to identify sentence discounts, and abolishes reserve pleas after committals proceedings.

The *Equal Opportunity Amendment Bill 2007* introduced a prohibition against discrimination on the basis of the new attribute of ‘employment activity’. The attribute is defined to describe the actions of an employee in asking reasonable questions or communicating concerns about their employment entitlements.

The *Equal Opportunity Amendment (Family Responsibilities) Bill 2007* amends the principal Act to expand the circumstances that may constitute discrimination against parents and carers in employment and employment-related areas. A relevant employer must not unreasonably refuse to accommodate the parental or career responsibilities of a person offered employment.

The *Freedom of Information Amendment Bill 2007* amends the principal Act to, amongst a number of other matters, remove certain application fees and to provide for a procedure for a person to be declared a vexatious applicant.

The *Infertility Treatment Amendment Bill 2007* amended the principal Act to make it consistent with Commonwealth legislation enabling certain types of research involving embryos to be permitted provided it was approved by the regulator. The amendments allow women to donate eggs for purely research purposes.

The *Justice and Road Legislation Amendment (Law Enforcement) Bill 2007* amended, amongst other Acts, the *Police Regulation Act 1958* to allow certain types of photographs to be released to the media.

The *Nuclear Activities (Prohibitions) Amendment (Plebiscite) Bill 2007* facilitates the holding of a State plebiscite in Victoria in the event that the Commonwealth Government took action to support or allow the construction of a nuclear facility in Victoria.

The *Parliamentary Legislation Amendment Bill 2007* renamed and altered the functions of a parliamentary committee and re-named another committee. The Bill further made provision to increase the maximum number of members eligible to serve on a committee.

The *Police Regulation Amendment Bill 2007* amends the principal Act to introduce alcohol and drug testing for members of the force and separated the positions of the Director, Police Integrity and the Ombudsman.

The *Road Legislation Further Amendment Bill 2007* amends the principal Act to make provisions for fatigue management for drivers of certain heavy vehicles; create a new offence for deliberately entering level crossings when warning devices are operating or when a train is approaching; and to allow VicRoads to use information to locate missing persons to facilitate family reunion.

The *Senate Elections Amendment Bill 2006* sought to amend the principal Act as a consequence of amendments to the Commonwealth *Electoral Act 1918* to reduce the period for the close of the rolls for a Senate election.

The *Summary Offences Amendment (Upskirting) Bill 2007* amends the principal Act to establish new offences of observing, capturing or distributing visual images of the genital or anal region of a person's body.

The *Wills Amendment Bill 2007* amended the principal Act to modify the test in respect to the matters the Supreme Court must be satisfied of before granting leave to someone to apply for an order authorising a statutory will to be made or revoked.

3. Private Members Bills

The *Crimes (Decriminalisation of Abortion) Bill 2007* proposed amendments to the *Crimes Act 1958* to abolish any common law offences of unlawful abortion.

The *Health (Fluoridation) Amendment Bill 2007* proposed to amend the 1973 principal Act by preventing the addition of fluoride to a public water supply unless approved by a poll of voters in the relevant water supply district.

The *Summary Offences Amendment (Body Piercing) Bill 2007* proposed to amend the *Summary Offences Act 1966* to restrict the body piercing of a child without the prior consent of the child's parent or guardian.

4. Statute Law Revision Bills

The *Legislation Reform (Repeals No. 1) Bill 2007* was the first of a number of foreshadowed smaller statute law revision Bills that are to be progressively introduced to further remove spent and redundant legislation from the statute books. The Bill repealed 15 Acts amongst them, 3 principal Acts.

The *Statute Law Repeals Bill 2006* repealed 282 spent or redundant Acts listed in a Schedule to the Bill. The repeals included 17 redundant principal Acts.

The *Statute Law Revision Bill 2006* made minor corrections to 77 Acts. The amendments corrected minor typographical, spelling, grammatical and cross-referencing errors. The amendments included 3 corrections that were sought to be applied retrospectively.

Ministerial correspondence related to Bills

Ministerial response turnaround time continues to vary, with some Ministers responding to the Committee's correspondence within days and others over extended periods. On occasion the Committee has needed to follow up requests for further advice with a courtesy reminder letter.

In the previous Parliament (55th) the Committee did not receive responses concerning two Bills, the *Public Sector Acts (Further Workplace Protection and Other Matters) Bill* and the *Funerals Bill*. In relation to the *Funerals Bill* the Committee commented on a delayed commencement provision and notes that the *Funerals Act 2006* came into operation on 1 November 2007, approximately 15 months after it was introduced in the Parliament.

The results of the Committee's work

One of the main functions of the Committee is to review Bills introduced into a House of the Parliament and to report to the Parliament on the use of certain legislative practices in those Bills. The heads of legislative scrutiny are listed in sections 17(a)(i) to (viii) of the *Parliamentary Committees Act 2003*. The ongoing feedback the Committee receives suggests that Members are assisted by the information provided in Alert Digests, which often include important extracts from the second reading speech and the explanatory memorandum.

There is frequent anecdotal evidence amongst government legal and legislation officers that the role and functions of the Committee are well understood, and that legislation that may test or infringe the Committee's terms of reference will require appropriate explanation justifying their inclusion.

Statistical summary of Bills considered by the Committee from 2003 to 2007

Table 1 – Number of Bills considered by the Committee and of those the number having section 85 Constitution Act 1975 provisions.

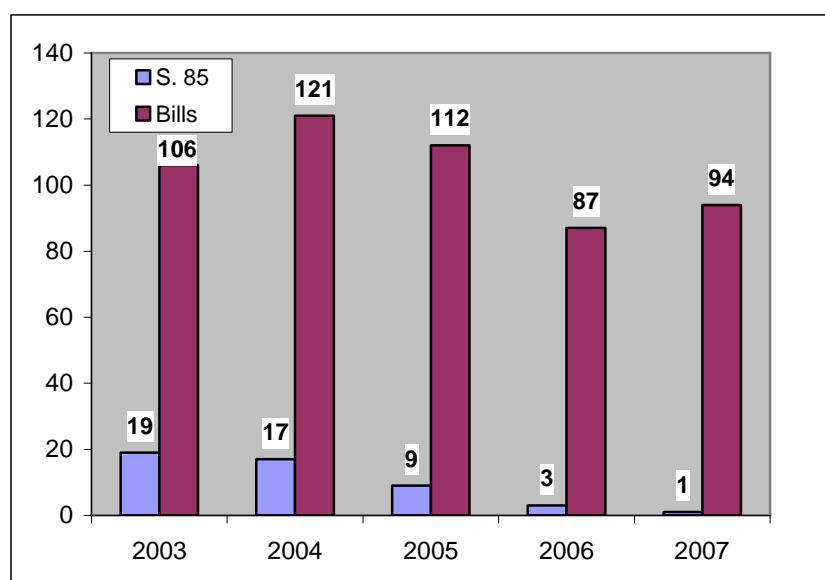
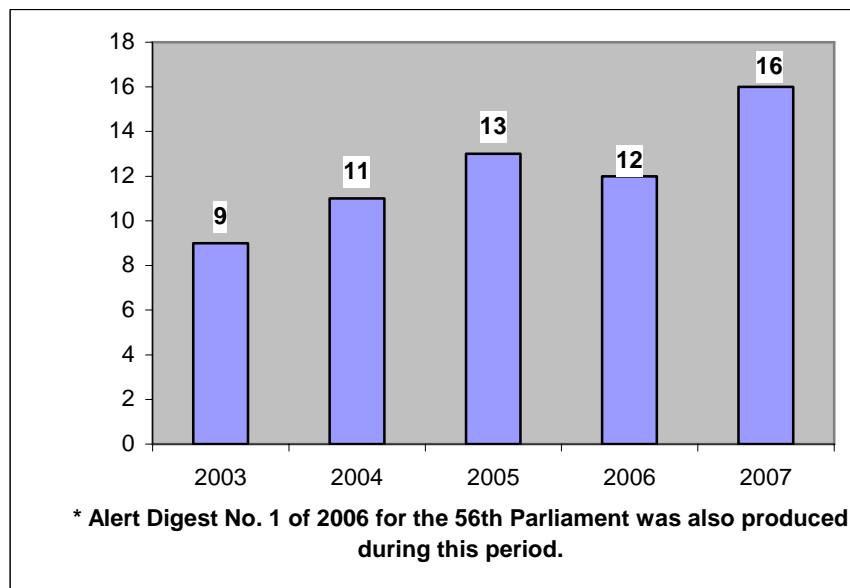


Table 2 – Number of Alert Digests tabled in Parliament



Scrutiny of Subordinate Legislation

Section 17(d) – Subordinate Legislation Act 1994

The Regulation Review Subcommittee held 9 meetings during 2007. During those meetings it considered 201 statutory rules. Of those statutory rules considered by the Subcommittee, 43 were accompanied by regulatory impact statements. The statutory rules examined by the Subcommittee during 2007 are shown at **Appendix 5**. The Committee did not make any adverse reports to Parliament during 2007 concerning regulations. However of the statutory rules examined during 2007, the Subcommittee had concerns with 6 and wrote to responsible Ministers seeking clarification. In each case the Subcommittee received satisfactory responses to the issues raised. The Committee intends to release its Annual Review of statutory rules considered during 2007 by mid-2008.

Section 17(e) – Environment Protection Act 1970

The Regulation Review Subcommittee did not consider any state environment protection policies or waste management policies during 2007 under this term of reference.

Redundant, Unclear or Ambiguous legislation

Section 17(g) – Review of Acts referred to the Committee

In early 2007 the Committee was referred a new inquiry concerning the question of whether certain corporations laws should remain on the Victorian statute books following the referral of the State's corporations powers to the Commonwealth government in 2001. The Committee expects to table its report late in 2008. The terms of reference of this inquiry, including the list of initial Acts identified for consideration, is shown as **Appendix 7**.

Other referrals to the Committee

Section 17(f) – Reports pursuant to the Co-operative Schemes (Administrative Actions) Act 2001

The Committee was not required to report to the Parliament during 2007 on any Act sought to be declared pursuant to the *Co-operative Schemes (Administrative Actions) Act 2001*.

Section 33 – Referrals to Joint Investigatory Committees

During 2007 the Committee received three Parliamentary referrals in respect to statute law revision Bills. The Committee's reports were tabled respectively in April, May and October 2007.

Committee budget and expenditure¹²

<i>Budget</i>	<i>Actual</i>	<i>Budget</i>	<i>Actual</i>	<i>Budget</i>
2005/2006	2005/2006	2006/2007	2006/2007	2007/2008
\$367,710	\$353,4400	\$378,696	\$277,783	\$459,372*

* Six months to 1 January 2008 actual expenditure of \$219,628 or 47.8% of Budget.

Committee publications released during 2007

The Committee has published the following reports and papers in print and also on its website during 2007 –

- Report on the Statute Law Repeals Bill 2006, *April 2007*
- Report on the Statute Law Revision Bill 2006, *May 2007*
- Annual Review 2006, Regulations 2006, *August 2007*
- Annual Review 2006, *August 2007*
- Report on the Legislation Reform (Repeals No. 1) Bill 2007, *October 2007*

A chronological list of all Committee reports and publications dating from the inception of the Committee in 1992 to the present day is provided in **Appendix 4**.

Reports due to be published during 2008

- Report on the Legislation Reform (Repeals No. 2) Bill 2007, *February 2008*
- Alert Digests on Bills introduced during 2008, *from February 2008*
- Reports to Parliament, Alert Digests No. 1 of 2006 & Nos. 1 to 16 of 2007, *March 2008*
- Annual Review 2007, Regulations 2007, *mid-2008*
- Redundant Corporations Laws Inquiry, *December 2008*

The Charter of Human Rights and Responsibilities Act 2006

Background

On 2 May 2006 the Attorney-General, the Hon. Rob Hulls MP introduced a Bill in the Legislative Assembly entitled the *Charter of Human Rights and Responsibilities* (the 'Charter'). The Second Reading Speech was delivered on 4 May 2006 and the Act received Royal Assent on 25 July 2006. The Committee reported on the Charter in Alert Digest No. 5 of 2006.¹³

Part 2 of the Charter¹⁴ prescribes well known human rights reflected in a number of international agreements and declarations concerning principles broadly described as civil and political rights. These principles include, amongst many others, the right to equal protection of the law, prohibition against torture and servitude, liberty of the person, freedom of expression and rights in criminal proceedings. The rights prescribed in Part 2 apply to natural persons and not to corporations.¹⁵

Other than the provisions in the Charter in respect to the duty of a 'public authority' (as defined by the Charter¹⁶) to comply with Charter principles, the Act and the interpretive function of the Supreme Court the Act, came into operation on 1 January 2007. The remaining provisions commenced on 1 January 2008.

Parliament's new functions and duties under the Charter

The Charter invests a number of duties and functions on the Parliament, the Committee and on members introducing Bills into a House of the Parliament. In brief these duties and functions are –

- *Section 28, Statements of compatibility* – A member of Parliament who proposes to introduce a Bill into a House of Parliament must cause a statement of compatibility (a ‘statement’) to be prepared in respect of that Bill and cause it to be laid before the House into which the Bill is introduced before delivering his or her second reading speech on that Bill. The use of the word ‘member’ clearly indicates that the tabling requirement also applies to private members Bills.

Note: Section 28 is not characterised as a constitutional ‘manner and form’ provision rendering any Act invalid for failure to comply with the procedural requirement imposed by the section. Indeed, section 29 of the Charter immediately clarifies the consequence of any such failure or oversight by providing that ‘a failure to comply with section 28 in relation to any Bill that becomes an Act does not affect the validity, operation or enforcement of that Act or any other statutory provision’.

- *Section 30, Scrutiny of Acts and Regulations Committee* – The Scrutiny of Acts and Regulations Committee must consider any Bill introduced into Parliament and must report to the Parliament as to whether the Bill is incompatible with human rights. The term ‘human rights’ is defined in section 3 of the Charter as the civil and political rights in Part 2.

A footnote to section 30 of the Charter provides that there is a corresponding function on the Committee to report on statutory rules that are considered incompatible with human rights. This additional reporting function is found in a separate amendment to the *Subordinate Legislation Act 1994*.¹⁷

“Note: The amendments made by the Charter to the Subordinate Legislation Act 1994 include an additional procedural requirement (new section 12A) for the responsible Minister to prepare a human rights certificate in respect of a proposed statutory rule unless it is an exempt statutory rule such as court rules.”

- *Section 31, Override by Parliament* – This section of the Charter invests an override declaration power in the Parliament to pass legislation notwithstanding an Acts incompatibility with one or more of the Charter rights. Such an override declaration then extends to any subordinate instrument made under that Act. A member introducing a Bill containing an override must make a statement in the House in which the Bill is introduced explaining the exceptional circumstances that justify the inclusion of the override declaration.

An override declaration statement by a member must be made –

- during the second reading speech for the Bill that contains the override; or
- after not less than 24 hours’ notice is given of the intention to make the statement but before the third reading of the Bill; or
- with the leave of the House of Parliament at any time before the third reading of the Bill.

The section makes it plain that an override should only be made in exceptional circumstances. However, the section provides no guidance by means of a definition or otherwise as to what circumstances may be considered to be ‘exceptional’. In this respect it is instructive to observe the provisions of *Article 4* of the International Covenant on Civil and Political Rights which provides –

Article 4.1 In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their

obligations under international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin.

Note: *The Covenant goes on to provide that no derogation may be made in respect to certain civil and political rights such as the right to life, the prohibition against slavery, torture and cruel and unusual punishment and a number of others. These are considered immutable and non-negotiable principles of human rights.*

Were an exceptional circumstance to arise and an override passed by the Parliament then, to the extent of the declaration, the Charter does not apply to that provision. There are at least two consequences that flow from that, and they are, that the provision is not subject to judicial review by way of a declaration of incompatible interpretation by the Supreme Court¹⁸, and a public authority is not bound by any obligation to act in a way that is compatible with a human right and not bound to consider relevant human rights in making a decision. Essentially, the override cloaks the provision with a Charter immunity or by-pass.

One balancing aspect of such an override declaration is that the relevant provision(s) sunset 5 years after commencement or at an earlier time if this is specified. Parliament however may re-new the override at any time.

The override declaration is not a ‘manner and form’ constitutional provision and no absolute or special majority is necessary for its effect to take effect, a simple majority is sufficient. As with the procedural requirements concerning statements of compatibility the section provides that a failure to make an override statement does not affect the validity, operation or enforcement of that Act or of any other statutory provisions.

New powers, functions and duties of the Supreme Court, the Attorney-General, Ministers and public bodies

The Supreme Court – Where no override declaration is in place the Supreme Court is vested with a power to make a declaration of inconsistent interpretation under the Charter. However, as with the failure to observe procedural requirements in sections 28 and 31 (see above) such a declaration does not render the Act or the provision ineffective. The clear purpose of all these ‘notwithstanding failure’ provisions is to preserve parliamentary supremacy over the Charter. The human rights model adopted by Victoria was never intended to create constitutionally entrenched rights. As in the case of the *Human Rights Act 2004 (A.C.T.)* the Victorian Charter is an Act of the Parliament and may be amended, re-enacted or repealed in the ordinary course of Parliamentary practice and procedure.

Public Authorities – In respect to government agencies and other bodies undertaking public functions the Act provides that it is unlawful for a ‘public authority’ to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human rights. Where a public authority breaches this duty the failure may be evidence in legal proceedings of administrative error but only in situations where a person has an existing avenue for relief or review other than under the provisions of the Charter itself.¹⁹ The Charter however, provides that no award of damages may be made for a breach of the Charter but does not affect an award of damages under any other existing entitlement. The intent of the provision is not to found a new head of action for remedy absent any existing cause of action. That is, a breach of a Charter duty is not a new recognizable cause of action on its own.

The Victorian Equal Opportunity and Human Rights Commission – The Charter renames the Victorian Equal Opportunity Commission as the Victorian Equal Opportunity and Human Rights Commission (the ‘Commission’) and invests in it new functions broadly characterised as educative, reporting and reviewing and monitoring the Charter’s operation.²⁰ Further, the Commission may intervene in, and be a party to, any legal proceedings where a question of law arises that relates to the application or the interpretation of the Charter.

The Attorney-General – The Attorney-General has the right to intervene in, and be joined as a party to any legal proceedings in which a question of law arises that relates to the application of the Charter or the interpretation of a statutory provision in accordance with the Charter. The Attorney-General must cause

certain reports of the Commission to be laid before the Parliament and must cause a review to be made of the Charter after 4 and 8 years of its operation. These reviews must be tabled in the Parliament.²¹

Ministers – Where the Supreme Court makes a declaration of inconsistent interpretation the Minister administering the statutory provision in respect of which the declaration is made, must within 6 months of receiving the declaration, prepare a written response to the declaration and cause a copy of that response to be laid before each House of Parliament and published in the Government Gazette.²²

Committee issues Practice Note No. 2

In August 2007, the Committee adopted its second Practice Note. The adoption of this second Practice Note, as with the first one in October 2005, is intended to be advisory in character. The main purpose of Practice Notes are to inform legislation and legal officers in government agencies and departments of the Committee's reporting practices and information requirements concerning particular provisions in Bills that test the Committee's terms of reference. The first Practice Note covered a series of matters mainly concerned with the sufficiency of explanatory material to be found in the clause notes and the second Practice Note concerned two issues of on-going concern to the Committee being –

- the requirement under the *Charter of Human Rights and Responsibilities Act 2006* that a Member introducing a Bill prepare a Statement of Compatibility with the Bill and to cause that Statement to be laid before the House of Parliament into which the Bill is introduced before giving his or her second reading speech;
- the assistance of clause notes provided in explanatory memoranda concerning amendments to Acts characterised as statute law revision amendments.

The Committee's Practice Notes are reproduced in **Appendix 6**.

Committee website

The Committee continues to maintain a comprehensive and frequently updated website. The Committee's website provides links to the Department of Premier and Cabinet (DPC) website, which has comprehensive information concerning Victorian statutes, including the Bills currently before Parliament. The DPC website provides information on the Bills and the accompanying explanatory memoranda in PDF and Microsoft Word formats. Further, the DPC site has a link to the Parliamentary Hansard site, giving easy access to second reading speeches and statements of compatibility (on Bills) tabled pursuant to Charter requirements.

The Committee's website also includes the contact and membership details of counterpart Australasian scrutiny committees.

Scrutiny of Acts and Regulations Committee - Parliament of Victoria - Mozilla Firefox

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SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

Recent Updates: [Human Rights Adviser position] [Alert Digest No 6 of 2007] [Infertility Treatment Amendment Bill 2007] [Report on the Statute Law Revision Bill 2006] [Practice Note No 1]

- Role
- Membership
- Publications
- Alert Digests (Reports on Bills)
- Current Inquiries
- Subcommittees
- What's New
- Inquiry Process
- Other Scrutiny Committees



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Endnotes

- 1 To be published mid-2008.
- 2 To be published in March 2008.
- 3 *Parliamentary Committees Act 2003*, s. 5(k).
- 4 *Parliamentary Committees Act 2003*, s. 21(1).
- 5 *Subordinate Legislation Act 1994*, s. 21.
- 6 *Parliamentary Committees Act 2003*, ss. 17(a) and (b).
- 7 The scrutiny of statutory rules (regulations) predates the formation of the Committee and was performed by a number of predecessor parliamentary committees such as the Legal and Constitutional Committee (now defunct).
- 8 *Subordinate Legislation Act 1994*, s. 21; *Environment Protection Act 1970*, ss. 18D, 49AN and 70C; *Road Management Act 2004*, ss.23(4) & 30(2); *Port Services Act 1995*, s.184(2); *Radiation Act 1995*, s.5(2); *Estate Agents Act 1980*, ss.10C(2) & 45A(2); *Fundraising Appeals Act 1998*, s.16A(6); *Fair Trading Act 1999*, s.32NA(7); *Rail Corporations Act 1996*, s.38C(2); *Fisheries Act 1995*, s.151(8B); and *Rail Safety Act 2006*, s.104(3).
- 9 *Parliamentary Committees Act 2003*, ss. 33(1)(a) and (b).
- 10 *Parliamentary Committees Act 2003*, s. 33(1)(b).
- 11 *Criminal Procedure Legislation Amendment Bill 2007*.
- 12 Budgets and expenditure include current inquiry budgets, staff salaries, superannuation and training, office expenses, Members allowances and interstate and overseas travel.
- 13 Tabled on 30 May 2006.
- 14 *Charter of Human Rights and Responsibilities Act 2006*, ss. 8-27.
- 15 *Charter of Human Rights and Responsibilities Act 2006*, s. 6(1).
- 16 *Charter of Human Rights and Responsibilities Act 2006*, s. 4.
- 17 The Schedule of the *Charter of Human Rights and Responsibilities Act 2006* inserts a new section 21(ha) in the *Subordinate Legislation Act 1994*.
- 18 *Charter of Human Rights and Responsibilities Act 2006*, s. 36.
- 19 *Charter of Human Rights and Responsibilities Act 2006*, s. 39.
- 20 *Charter of Human Rights and Responsibilities Act 2006*, ss. 40-42.
- 21 *Charter of Human Rights and Responsibilities Act 2006*, ss. 34 and 43-45.
- 22 *Charter of Human Rights and Responsibilities Act 2006*, s. 37.

Appendix 1

Index of Bills Reported 2007

	Alert Digest Nos.
Accident Compensation Amendment Bill 2007	7
Accident Towing Services Bill 2007	5, 6
Agent-General and Commissioners for Victoria Bill 2007	14
Animals Legislation Amendment (Animal Care) Bill 2007	14
Appropriation (2007/2008) Bill 2007	6
Appropriation (Parliament 2007/2008) Bill 2007	6
Building Amendment Bill 2007	13
Building Amendment (Plumbing) Bill 2007	5
Children's Services and Education Legislation Amendment (Anaphylaxis Management) Bill 2007	15
Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2007	16
Confiscation Amendment Bill 2007	11
Control of Weapons Amendment (Penalties) Bill 2006	1
Courts Legislation Amendment (Judicial Education and Other Matters) Bill 2007	7
Crimes Amendment (DNA Database) Bill 2007	6
Crimes Amendment (Rape) Bill 2007	12, 14
Crimes (Decriminalisation of Abortion) Bill 2007	10
Criminal Procedure Legislation Amendment Bill 2007	16
Drugs, Poisons and Controlled Substances Amendment (Repeal of Part X) Bill 2007	3
Education and Training Reform Miscellaneous Amendments Bill 2007	13
Electricity Safety Amendment Bill 2007	14
Emergency Services Legislation Amendment Bill 2007	13
Energy Legislation Amendment Bill 2007	9
Energy Legislation Further Amendment Bill 2007	13, 14
Equal Opportunity Amendment Bill 2007	5
Equal Opportunity Amendment (Family Responsibilities) Bill 2007	14, 16
Fair Trading and Consumer Acts Amendment Bill 2007	5, 6
Fair Trading and Consumer Acts Further Amendment Bill 2007	15
Firearms Amendment Bill 2007	12
Fisheries Amendment Bill 2007	12
Freedom of Information Amendment Bill 2007	16
Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007	4
Gambling Legislation Amendment (Problem Gambling and Other Measures) Bill 2007	15
Gambling Regulation Amendment Bill 2007	8
Gambling Regulation Amendment (Review Panel) Bill 2007	3
Gene Technology Amendment Bill 2007	10
Graffiti Prevention Bill 2007	13
Grain Handling and Storage Amendment Bill 2007	10
Health (Fluoridation) Amendment Bill 2007	15
Health Professions Registration Amendment Bill 2007	6
Howard Florey Institute of Experimental Physiology and Medicine (Repeal) Bill 2007	4
Infertility Treatment Amendment Bill 2007	4, 9

Interpretation of Legislation Amendment Bill	1
Justice and Road Legislation Amendment (Law Enforcement) Bill 2007	10, 12
Justice Legislation Amendment Bill 2007	12, 14
Justice Legislation (Further Miscellaneous Amendments) Bill	1
Land (Revocation of Reservations) Bill 2007	11
Legal Profession Amendment Bill 2007	3
Legal Profession Amendment (Education) Bill 2007	10
Legislation Reform (Repeals No. 1) Bill 2007	12, 13, 15
Liquor Control Reform Amendment Bill 2007	15
Livestock Disease Control Amendment Bill 2007	3
Magistrates' Court and Coroners Acts Amendment Bill 2007	8
Major Events (Aerial Advertising) Bill 2007	3
Melbourne and Olympic Parks Amendment Bill 2007	14
Motor Car Traders Amendment Bill 2007	15
Murray-Darling Basin Amendment Bill 2006	1
National Electricity (Victoria) Amendment Bill 2007	15
Nuclear Activities (Prohibitions) Amendment (Plebiscite) Bill 2007	3
Outworkers and Contractors Legislation Amendment Bill 2007	7
Parliamentary Legislation Amendment Bill 2007	2
Parliamentary Salaries and Superannuation Amendment Bill 2007	10
Pay-roll Tax Amendment (Bushfire and Emergency Service) Bill 2007	2
Payroll Tax Bill 2007	7
Planning and Environment Amendment Bill 2007	9
Police Regulation Amendment Bill 2007	15
Port Services Amendment Bill 2007	14, 16
Prahran Mechanics' Institute Amendment Bill 2007	2
Professional Standards Amendment Bill 2007	7
Public Prosecutions Amendment Bill 2006	1, 3
Road Legislation Amendment Bill 2007	4, 11
Road Legislation Further Amendment Bill 2007	15
Road Legislation (Projects and Road Safety) Bill	1
Royal Children's Hospital (Land) Bill 2007	10, 13
Senate Elections Amendment Bill 2006	1
State Taxation Acts Amendment Bill 2007	7
State Taxation and Accident Compensation Acts Amendment Bill 2007	15
State Taxation and Gambling Legislation Amendment (Budget Measures) Bill 2007	6 *
State Taxation Legislation Amendment (Housing Affordability) Bill	1
Transport Accident and Accident Compensation Acts Amendment Bill 2007	15
Transport Legislation Amendment Bill 2007	15
Statute Law Repeals Bill 2006	4
Statute Law Revision Bill 2006	5
Summary Offences Amendment (Body Piercing) Bill 2007	10
Summary Offences Amendment (Upskirting) Bill 2007	9
Superannuation Legislation Amendment (Contribution Splitting and Other Matters) Bill 2007	7, 9
Transport Accident and Accident Compensation Acts Amendment Bill 2007	13
Transport Legislation Amendment Bill 2007	13
Victims of Crime Assistance Amendment Bill 2007	2
Victorian Energy Efficiency Target Bill 2007	15
Victorian Workers' Wages Protection Bill 2007	14
Water Acts Amendment (Enforcement and Other Matters) Bill 2007	6
Water Amendment (Critical Water Infrastructure Projects) Bill 2006	1, 4

* Alert Digest No. 1 of 2006 (for the 56th Parliament).

Water (Governance) Bill	1
Wills Amendment Bill 2007	7
Working with Children Amendment Bill 2007	12

Tabling Dates

2007

Alert Digest No. 1	13 February 2007
Alert Digest No. 2	27 February 2007
Alert Digest No. 3	13 March 2007
Alert Digest No. 4	17 April 2007
Alert Digest No. 5	1 May 2007
Alert Digest No. 6	22 May 2007
Alert Digest No. 7	5 June 2007
Alert Digest No. 8	19 June 2007
Alert Digest No. 9	17 July 2007
Alert Digest No. 10	7 August 2007
Alert Digest No. 11	21 August 2007
Alert Digest No. 12	18 September 2007
Alert Digest No. 13	9 October 2007
Alert Digest No. 14	30 October 2007
Alert Digest No. 15	20 November 2007
Alert Digest No. 16	4 December 2007

2006

Alert Digest No. 1	20 December 2006
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Appendix 2

Committee Comments classified by Terms of Reference

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 or freedoms

Justice Legislation Amendment Bill 2007	12
Public Prosecutions Amendment Bill 2006	1
Senate Elections Amendment Bill 2006	1
Working with Children Amendment Bill 2007	12

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

Emergency Services Legislation Amendment Bill 2007	13
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(iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions

Justice and Road Legislation Amendment (Law Enforcement) Bill 2007	10
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(vi) inappropriately delegates legislative power

Accident Towing Services Bill 2007	5
Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007	4
Road Legislation Amendment Bill 2007	4
Royal Children's Hospital (Land) Bill	10
Transport Legislation Amendment Bill 2007	13

(vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny

Transport Accident and Accident Compensation Acts Amendment Bill 2007	13
Transport Legislation Amendment Bill 2007	13

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

Animals Legislation Amendment (Animal Care) Bill 2007	14
Criminal Procedure Legislation Amendment Bill 2007	16
Energy Legislation Further Amendment Bill 2007	13
Fair Trading and Consumer Acts Amendment Bill 2007	5
Graffiti Prevention Bill 2007	13

Infertility Treatment Amendment Bill 2007	4
Justice Legislation Amendment Bill 2007	12
Liquor Control Reform Amendment Bill 2007	15
Police Regulation Amendment Bill 2007	15
Senate Elections Amendment Bill 2006	1
Superannuation Legislation Amendment (Contribution Splitting and Other Matters) Bill 2007	7
Transport Accident and Accident Compensation Acts Amendment Bill 2007	13
Transport Legislation Amendment Bill 2007	13
Victorian Energy Efficiency Target Bill 2007	15
Working with Children Amendment Bill 2007	12

Section 17(b)

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

Criminal Procedure Legislation Amendment Bill 2007	16
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Appendix 3 Ministerial Correspondence

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

Bill Title	Minister/ Member	Date of Committee Letter	Date of Minister's Response	Issue Raised in Alert Digest No.	Response Published in Alert Digest No.
Justice Legislation (Further Miscellaneous Amendments) Bill	Attorney-General	31.5.06	13.10.06	5 of 2006	1 of 2007
Water (Governance) Bill	Water	22.8.06	1.11.06	9 of 2006	1 of 2007
Funerals Bill	Attorney-General	22.8.06		9 of 2006	
Public Sector Acts (Further Workplace Protection and Other Matters) Bill	Industrial Relations	13.9.06		10 of 2006	
Road Legislation (Projects and Road Safety) Bill	Transport	13.9.06	18.10.06	10 of 2006	1 of 2007
Serious Sex Offenders Monitoring (Amendment) Bill	Corrections	16.10.06		12 of 2006	
Public Prosecutions Amendment Bill 2006	Attorney-General	13.2.07	26.2.07	1 of 2007	3 of 2007
Senate Elections Amendment Bill 2006	Attorney-General	13.2.07		1 of 2007	
Water Amendment (Critical Water Infrastructure Projects) Bill 2006	Water	13.2.07	20.3.07	1 of 2007	4 of 2007
Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007	Gaming	17.4.07	27.4.07	4 of 2007	5 of 2007
Roads Legislation Amendment Bill 2007	Roads and Ports	17.4.07	19.8.07	4 of 2007	11 of 2007
Infertility Treatment Amendment Bill 2007	Health	28.3.07	3.7.07	4 of 2007	9 of 2007
Accident Towing Services Bill 2007	Roads and Ports	1.5.07	18.5.07	5 of 2007	6 of 2007
Fair Trading and Consumer Acts Amendment Bill 2007	Consumer Affairs	1.5.07	3.5.07	5 of 2007	6 of 2007
Superannuation Legislation Amendment (Contribution and Other Matters) Bill 2007	Finance	5.6.07	3.7.07	7 of 2007	9 of 2007
Royal Children's Hospital (Land) Bill	Planning	7.8.07	20.9.07	10 of 2007	13 of 2007
Justice and Road Legislation Amendment (Law Enforcement) Bill 2007	Police and Emergency Services	7.8.07	20.8.07	10 of 2007	12 of 2007
Justice Legislation Amendment Bill 2007	Attorney-General	19.9.07	10.10.07	12 of 2007	14 of 2007

Scrutiny of Acts and Regulations Committee

Bill Title	Minister/ Member	Date of Committee Letter	Date of Minister's Response	Issue Raised in Alert Digest No.	Response Published in Alert Digest No.
Working with Children Amendment Bill 2007	Attorney-General	19.9.07		12 of 2007	
Crimes Amendment (Rape) Bill 2007	Attorney-General	19.9.07	8.10.07	12 of 2007	14 of 2007
Emergency Services Legislation Amendment Bill 2007	Police and Emergency Services	9.10.07		13 of 2007	
Energy Legislation Further Amendment Bill 2007	Treasurer	9.10.07	23.10.07	13 of 2007	14 of 2007
Transport Accident and Accident Compensation Acts Amendment Bill 2007	Finance	9.10.07	29.10.07	13 of 2007	15 of 2007
Transport Legislation Amendment Bill 2007	Transport	9.10.07	30.10.07	13 of 2007	15 of 2007
Animals Legislation Amendment (Animal Care) Bill 2007	Agriculture	31.10.07		14 of 2007	
Equal Opportunity Amendment (Family Responsibilities) Bill 2007	Attorney-General	31.10.07	19.11.07	14 of 2007	16 of 2007
Port Services Amendment Bill 2007	Roads and Ports	31.10.07	29.11.07	14 of 2007	16 of 2007
Liquor Control Reform Amendment Bill 2007	Consumer Affairs	21.11.07		15 of 2007	
Police Regulation Amendment Bill 2007	Police and Emergency Services	21.11.07		15 of 2007	
Victorian Energy Efficiency Target Bill 2007	Energy and Resources	21.11.07		15 of 2007	

* From the commencement of the 56th Parliament and ending on 31 December 2007.

Appendix 4

Committee Reports and Other Papers

Chronological Listing of Committee Reports and Other Papers

Reports to Parliament	
Alert Digest Nos. 1 to 10; Cumulative Report Nos. 1 and 2	March to May 1993
First Report on Subordinate Legislation, Annual Report concerning Statutory Rules Series 1991	March 1993
Second Report on Subordinate Legislation, Port of Melbourne Authority (Transport, Handling and Storage of Dangerous Substances and Oils) Regulations 1992	March 1993
Operation of the Subordinate Legislation Act 1962	March 1993
Commencement by Proclamation	April 1993
First Report on the Operation of Section 32 of the Interpretation of Legislation Act 1984 concerning: Local Government (Reporting and Accounting) Regulations 1993	May 1993
Report by the Honourable B.A.E. Skeggs, MLC	
Discussions with the Select Committee on the Scrutiny of Delegated Powers, House of Lords, Westminster	October 1993
Third Report on Subordinate Legislation, Annual Report concerning Statutory Rules Series 1992	October 1993
Review of the Victorian Equal Opportunity Act 1984, Interim Report	October 1993
Report upon an Inquiry into the Operation of the Subordinate Legislation Act 1962	November 1993
Second Report on the Operation of Section 32 of the Interpretation of Legislation Act 1984 concerning: Water (Annual Reporting) (Amendment) Regulations 1993	November 1993
Review of the Victorian Equal Opportunity Act 1984, Final Report	November 1993
Proceedings of the Australasian and Pacific Conference on Delegated Legislation and Scrutiny of Bills, July 1993	November 1993
World Conference on Human Rights, Austria	November 1993
Reports to Parliament	
Alert Digest Nos. 11 to 20 of 1993	July to November 1993
Fourth Report on Subordinate Legislation, Land Tax (Further Amendment) Regulations 1993	March 1994
Scrutiny of Acts and Regulations Committee, First Annual Report	April 1994
Reports to Parliament	
Alert Digest Nos. 1 to 7 of 1994	March to May 1994
Redundant and Unclear Legislation, First Report	November 1994
Fifth Report on Subordinate Legislation, Annual Report concerning Statutory Rules Series 1993	November 1994
Report on the Australian Federalism Conference, July 1994	November 1994
Reports to Parliament	
Alert Digest Nos. 8 to 14 of 1994	August to November 1994
Sixth Report on Subordinate Legislation, Stock (Hormonal Growth Promotants Status Declarations) Regulations 1994	March 1995
Scrutiny of Acts and Regulations Committee, Second Annual Report	March 1995
Possible repeal of the Carriers and Innkeepers Act 1966, Discussion Paper	April 1995
Seventh Report on Subordinate Legislation, Environment Protection (Scheduled Premises and Exemptions) Regulations 1994	May 1995
Discussion Paper No. 1, Section 85 of the Constitution Act 1975	May 1995
Reports to Parliament	
Alert Digest Nos. 1 to 8 of 1995	March to June 1995
Discussion paper No. 1 on the Scrutiny of National Scheme Legislation and the Desirability of Uniform Scrutiny Principles	August 1995
Eight Report on Subordinate Legislation, Annual Report concerning Statutory Rules Series 1994	September 1995

Scrutiny of Acts and Regulations Committee

Redundant and Unclear Legislation, Review of the Trade Unions Act 1958	November 1995
Redundant and Unclear Legislation, Second Report	November 1995
Reports to Parliament	
Alert Digest Nos. 9 to 14 of 1995	August to November 1995
Review of the Evidence Act 1958 (Vic) and Review of the Role and appointment of Public Notaries	October 1996
Scrutiny of Acts and Regulations Committee, Third Annual Report	November 1996
Redundant and Unclear Legislation, Review of the Hire Purchase Act 1959	December 1996
Redundant and Unclear Legislation, Review of Unlawful Assemblies and Processions Act 1958, Issues Paper	December 1996
Abalone – Taking Stock – Information Paper	
Review of the Fisheries (Abalone) Regulations 1996 under the Subordinate Legislation Act 1994	December 1996
Reports to Parliament	
Alert Digest Nos. 1 to 10 of 1996	March 1997
Scrutiny of Acts and Regulations Committee, Fourth Annual Report	April 1997
Ninth Report on Subordinate Legislation, Annual Report Concerning Statutory Rules Series 1995 and 1996	May 1997
Redundant and Unclear Legislation, Third Report	December 1997
Reports to Parliament	
Alert Digest Nos. 1 to 12 of 1997	December 1997
Redundant and Unclear Legislation, Review of the Carriers and Innkeepers Act 1958	May 1998
Tenth Report on Subordinate Legislation, Annual Report Concerning Statutory Rules Series 1997	May 1998
Scrutiny of Acts and Regulations Committee, Fifth Annual Report	May 1998
The Right to Silence: An Examination of the Issues, Discussion Paper	June 1998
Reports to Parliament	
Alert Digests Nos. 1 to 8 of 1998	December 1998
Inquiry into the Right to Silence, Final Report	March 1999
Scrutiny of Acts and Regulations Committee, Sixth Annual Report	May 1999
Eleventh Report on Subordinate Legislation, Annual Report concerning Statutory Rules Series 1998	May 1999
Redundant and Unclear Legislation, Review of the Unlawful Assemblies and Processions Act 1958	May 1999
Reports to Parliament	
Alert Digests Nos. 1 to 6 of 1999	September 1999
Redundant and Unclear Legislation, Review of the Constitutional Convention Act 1972	May 2000
Report on the Statute Law Revision Bill	October 2000
Inquiry into the Subordinate Legislation Act 1994, Discussion Paper	November 2000
Reports to Parliament	
Alert Digests Nos. 1 to 11 of 2000	February 2001
Scrutiny of Acts and Regulations Committee, Annual Review 2000	February 2001
Committee Newsletter No. 1	March 2000
Annual Review 2000, Regulations 1999 and 2000	April 2001
Redundant and Unclear Legislation, Inquiry into the Summary Offences Act 1966, Discussion Paper	May 2001
Report on an Interim Privacy Code for Members of the Victorian Parliament	May 2001
Committee Newsletter No. 2	August 2001
Privacy Code for Members of the Victorian Parliament, Frequently Asked Questions and Compliance Checklist	October 2001
Report pursuant to Parliamentary Committees Act 1968, section 4D(cb) concerning the intended declaration and proclamation of the National Crime Authority (State Provisions) Act 1984 as a relevant State Act for the purposes of the Co-operative Schemes (Administrative Actions) Act 2001	November 2001
Redundant and Unclear Legislation, Inquiry into the Summary Offences Act 1966, Final Report	November 2001
Reports to Parliament	
Alert Digests Nos. 1 to 13 of 2001	February 2002
Scrutiny of Acts and Regulations Committee, Annual Review 2001	February 2002
Report pursuant to Parliamentary Committees Act 1968, section 4D(cb) concerning the intended declaration and proclamation of the Classification (Publications, Films and Computer Games) (Enforcement) Act 1995 as a relevant State Act for the purposes of the Co-operative Schemes (Administrative Actions) Act 2001	February 2002
Final Report on a Privacy Code of Conduct for Members of the Victorian Parliament	March 2002
Report on the Statute Law (Further Revision) Bill	March 2002
Review of the Vagrancy Act 1966, Discussion Paper	April 2002
Improving Victoria's Parliamentary Committee System	May 2002
Parliamentary Review of ANZAC Day Laws, Discussion Paper	June 2002

Committee Newsletter No. 3	July 2002
Inquiry into Electronic Democracy, Discussion Paper	September 2002
Review of the Vagrancy Act 1966, Final Report	September 2002
Inquiry into the Subordinate Legislation Act 1994	September 2002
Annual Review 2001, Regulations 2001	October 2002
Parliamentary Review of ANZAC Day Laws, Report	October 2002
Reports to Parliament	
Alert Digests Nos. 1 to 9 of 2002	April 2003
Annual Review 2002	August 2003
Annual Review 2002, Regulations 2002	November 2003
Discrimination in the Law, Discussion Paper	December 2003
Reports to Parliament	
Alert Digests Nos. 1 to 9 of 2003	February 2004
Annual Review 2003	May 2004
Annual Review 2003, Regulations 2003	May 2004
Victorian Electronic Democracy, Discussion Paper	November 2004
Redundant and Unclear Legislation, Report concerning the Maintenance Act 1965, Marriage Act 1958 and the Perpetuities and Accumulations Act 1968	November 2004
Victorian Electronic Democracy, Report on Evidence Obtained in North America – August 2004	November 2004
Discrimination in the Law, Progress Report: Summary of Submissions, Statutory Compliance Defences and Human Rights Protections	December 2004
Report on the Statute Law Revision Bill	February 2005
Reports to Parliament	
Alert Digests Nos. 1 to 11 of 2004	March 2005
Annual Review 2004	March 2005
Annual Review 2004, Regulations 2004	May 2005
Victorian Electronic Democracy, Final Report	May 2005
Discrimination in the Law, Interim Report	June 2005
Discrimination in the Law, Final Report	September 2005
Reports to Parliament	
Alert Digests Nos. 1 to 13 of 2005	March 2006
Annual Review 2005	March 2006
Report on the Statute Law (Further Revision) Bill	March 2006
Annual Review 2005, Regulations 2005	July 2006
Reports to Parliament	
Alert Digests Nos. 1 to 12 of 2006	November 2006
Report on the Statute Law Repeals Bill 2006	April 2007
Report on the Statute Law Revision Bill 2006	May 2007
Annual Review 2006	August 2007
Annual Review 2006, Regulations 2006	August 2007
Legislation Reform (Repeals No. 1) Bill 2007	October 2007
Legislation Reform (Repeals No. 2) Bill 2007	February 2008
Reports to Parliament	
Alert Digests No. 1 of 2006 and Nos. 1 to 16 of 2007	February 2008

Appendix 5

Regulations considered in 2007

Statutory Rules Series 2006

Regulation Impact Statements

- SR No. 62 – Plant Health and Plant Products Regulations 2006
- SR No. 64 – Prostitution Control Regulations 2006
- SR No. 66 – Transfer of Land (Fees)(Amendment) Regulations 2006
- SR No. 68 – Building Regulations 2006
- SR No. 84 – Sustainable Forests (Timber Harvesting) Regulations 2006
- SR No. 86 – Transport (Ticketing) Regulations 2006
- SR No. 96 – Rail Safety Regulations 2006
- SR No. 99 – Retirement Villages (Contractual Arrangements) Regulations 2006
- SR No. 100 – Estate Agents (Retirement Villages) Regulations 2006
- SR No. 118 – Land Regulations 2006
- SR No. 130 – Victorian State Emergency Service Regulations 2006
- SR No. 143 – Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2006
- SR No. 153 – Owner Drivers and Forestry Contractors Regulations 2006
- SR No. 157 – Australian Grands Prix (Formula One) Regulations 2006
- SR No. 159 – Water Industry Regulations 2006
- SR No. 172 – Livestock Disease Control Regulations 2006

Exceptions under Section 8

Section 8(1)(a) – Fee Increases

- SR No. 85 – Planning and Environment (Fees)(Indexation) Regulations 2006
- SR No. 91 – Zoological Parks and Gardens (Fees) Regulations 2006
- SR No. 116 – Intellectually Disabled Persons’ Services (Fees) Regulations 2006
- SR No. 121 – National Parks (Fees and Charges)(Amendment) Regulations 2006
- SR No. 123 – Country Fire Authority (Amendment) Regulations 2006
- SR No. 142 – Metropolitan Fire Brigades (Fees and Charges) Regulations 2006

Section 8(1)(b) – Court Rules

- SR No. 97 – Supreme Court (Chapter VI Amendment No.9) Rules 2006
- SR No. 102 – Supreme Court (Chapter I Amendment No.3) Rules 2006
- SR No. 161 – Supreme (Chapter VI Amendment No.10) Rules 2006
- SR No. 162 – Supreme Court (Chapter I Amendment No.4) Rules 2006
- SR No. 163 – Supreme Court (Intellectual Property) Rules 2006
- SR No. 164 – Magistrates’ Court Civil Procedure (Amendment No.16) Rules 2006
- SR No. 165 – Victorian Civil and Administrative Tribunal (Amendment No.17) Rules 2006
- SR No. 166 – County Court (Chapter II Amendment No.6) Rules 2006
- SR No. 167 – County Court (Chapter I Amendment No.19) Rules 2006
- SR No. 168 – County Court (Chapter I Amendment No.20) Rules 2006

- SR No. 169 – Supreme Court (Chapter I Amendment No.5) Rules 2006
- SR No. 170 – Magistrates’ Court Civil Procedure (Amendment No.17) Rules 2006
- SR No. 171 – Supreme Court (Chapter 1 Amendment No.6) Rules 2006
- SR No. 178 – Magistrates’ Court Civil Procedure (Amendment No.18) Rules 2006
- SR No. 179 – Magistrates’ Court (Criminal Procedure)(Further Amendment) Rules 2006

Section 8(1)(d)(iii) – Extension of Operation

- SR No. 88 – Subordinate Legislation (Agricultural and Veterinary Chemicals (Control of Use) Regulations 1996 – Extension of Operation) Regulations 2006
- SR No. 92 – Subordinate Legislation (Heritage (Historic Shipwrecks)(General) Regulations 1996 – Extension of Operation) Regulations 2006
- SR No. 126 – Subordinate Legislation (Firearms Regulations 1997 – Extension of Operation) Regulations 2006
- SR No. 129 – Subordinate Legislation (Shop Trading Reform (Polls) Regulations 1996 – Extension Of Operation) Regulations 2006
- SR No. 131 – Subordinate Legislation (Supreme Court (Sheriff’s Fees) Regulations 1996 – Extension of Operation) Regulations 2006
- SR No. 147 – Subordinate Legislation (Travel Agents Regulations 1997 – Extension of Operation) Regulations 2006
- SR No. 160 – Subordinate Legislation (Transport Accident Regulations 1996 – Extension of Operation) Regulations 2006

Exemptions under Section 9

Section 9(1)(a) – No Appreciable Economic or Social Burden

- SR No. 90 – Administration and Probate (Deposit of Wills)(Fees) Regulations 2006
- SR No. 94 – Second-Hand Dealers and Pawnbrokers (Exemption) Regulations 2006
- SR No. 101 – Domestic (Feral and Nuisance)(Animals Amendment) Regulations 2006
- SR No. 103 – Infringements (General)(Amendment) Regulations 2006
- SR No. 107 – Parliamentary Salaries and Superannuation (Provision of Vehicles) Regulations 2006
- SR No. 109 – Fisheries (Documentation) Regulations 2006
- SR No. 122 – Fisheries (Further Amendment) Regulations 2006
- SR No. 140 – Conservation, Forests and Lands (Infringement Notice)(Fisheries) Regulations 2006
- SR No. 149 – Catchment and Land Protection (Amendment) Regulations 2006
- SR No. 150 – Conservation, Forests and Lands (Catchment and Land Protection Infringement Notice)(Amendment) Regulations 2006
- SR No. 152 – Financial Management (Amendment) Regulations 2006
- SR No. 154 – Plumbing (Shower Head) Regulations 2006
- SR No. 156 – World Swimming Championships Regulations 2006
- SR No. 173 – Infringements (General)(Miscellaneous Amendment) Regulations 2006
- SR No. 175 – Road Safety (General)(Safety Cameras and Other Amendments) Regulations 2006

Section 9(1)(b) – National Uniform Legislation Scheme

- SR No. 176 – Road Safety (Vehicles)(Heavy Vehicle Fees) Regulations 2006

Section 9(1)(c) – Of a Fundamentally Declaratory or Machinery Nature

- SR No. 82 – Road Safety (General)(Vehicle Impoundment) Regulations 2006
- SR No. 89 – Electoral (Amendment) Regulations 2006
- SR No. 93 – Retirement Villages (Records and Notices)(Amendment) Regulations 2006
- SR No. 95 – Consumer Credit (Victoria)(Administration) Regulations 2006
- SR No. 104 – Bail (Amendment) Regulations 2006
- SR No. 105 – Estate Agents (General, Accounts and Audit) (Amendment) Regulations 2006
- SR No. 106 – Estate Agents (Infringements) Regulations 2006
- SR No. 108 – Veterans (Patriotic Funds) Regulations 2006
- SR No. 110 – Mineral Resources Development (Further Amendment) Regulations 2006
- SR No. 111 – Extractive Industries Development (Amendment) Regulations 2006
- SR No. 112 – Co-Operative Housing Societies (Amendment) Regulations 2006

SR No. 113 – Agricultural and Veterinary Chemicals (Control of Use)(Infringement Notices)(Amendment) Regulations 2006
 SR No. 114 – Livestock Disease Control (Amendment) Regulations 2006
 SR No. 115 – Plant Health and Plant Products (Amendment) Regulations 2006
 SR No. 117 – Valuation of Land (General Valuation) (Amendment) Regulations 2006
 SR No. 119 – Children and Young Persons (Children’s Court) (Amendment) Regulations 2006
 SR No. 124 – Transport (Tow Truck)(Amendment) Regulations 2006
 SR No. 125 – Sentencing (Mental Health)(Amendment) Regulations 2006
 SR No. 127 – Sex Offenders Registration (Amendment) Regulations 2006
 SR No. 128 – Racing (Specified Race-Course) Regulations 2006
 SR No. 132 – Corrections (Victims Register)(Amendment) Regulations 2006
 SR No. 133 – Serious Sex Offenders Monitoring (Amendment) Regulations 2006
 SR No. 134 – Conservation, Forests and Lands (Infringement Notice) (Amendment) Regulations 2006
 SR No. 135 – Planning and Environment (Amendment) Regulations 2006
 SR No. 136 – Building (Amendment) Regulations 2006
 SR No. 137 – Heritage (Infringement Notice)(Amendment) Regulations 2006
 SR No. 139 – Transport (Conduct)(Amendment) Regulations 2006
 SR No. 141 – Conservation, Forests and Lands (Infringement Notice) (National Parks Amendment) Regulations 2006
 SR No. 144 – Sentencing (Amendment) Regulations 2006
 SR No. 148 – Motor Car Traders (Amendment) Regulations 2006
 SR No. 151 – Catchment and Land Protection (Register of Interests) Regulations 2006
 SR No. 155 – Parliamentary Allowances (Amendment) Regulations 2006
 SR No. 177 – Water Industry (Prescribed Persons)(Amendment) Regulations 2006

Section 9(1)(3) – Premier's Certificate

SR No. 120 – Tobacco (Grand Prix Events) Regulations 2006
 SR No. 146 – Trade Measurement (Interim) Regulations 2006

Exceptions and Exemptions under Combined Sections

Section (9)(a) and (c) – No Appreciable Economic or Social Burden and Fundamentally Declaratory or Machinery Nature

SR No. 76 – Infringements (General) Regulations 2006
 SR No. 138 – Transport (Infringements)(Further Amendment) Regulations 2006
 SR No. 145 – Infringements (General)(Further Amendment) Regulations 2006
 SR No. 158 – Road Safety (General)(Infringements) Regulations 2006
 SR No. 174 – Mental Health (Patient’s Rights) Regulations 2006

Statutory Rules Series 2007

Regulation Impact Statements

SR No. 2 – Plumbing (Heat Pumps Amendment) Regulations 2007
 SR No. 12 – Fisheries (Aquaculture Licences, Fees, Levies and Royalties) Regulations 2007
 SR No. 15 – Pipelines Regulations 2007
 SR No. 36 – Guardianship and Administration (Fees)(Interim) Regulations 2007
 SR No. 37 – Extractive Industries Development Regulations 2007
 SR No. 40 – Architects (Amendment) Regulations 2007
 SR No. 41 – Aboriginal Heritage Regulations 2007
 SR No. 42 – Evidence (Transcript Fees) Regulations 2007
 SR No. 45 – Subdivision (Registrar’s Fees) Amendment Regulations 2007
 SR No. 48 – Trade Measurement Regulations 2007
 SR No. 53 – Equipment (Public Safety) Regulations 2007
 SR No. 54 – Occupational Health and Safety Regulations 2007

SR No. 60 – Disability Regulations 2007
SR No. 61 – Education and Training Reform Regulations 2007
SR No. 63 – Drugs, Poisons and Controlled Substances (Health Professions Amendment) Regulations 2007
SR No. 68 – Transport (Passenger Vehicles)(Amendment) Regulations 2007
SR No. 69 – Transport (Taxi Cabs)(Amendment) Regulations 2007
SR No. 75 – Water (Resource Management) Regulations 2007
SR No. 77 – Environment Protection (Scheduled Premises and Exemptions) Regulations 2007
SR No. 78 – Valuation of Land (General and Supplementary Valuation)(Amendment) Regulations 2007
SR No. 79 – Estate Agents (Fees) Regulations 2007
SR No. 80 – Heritage (Historic Shipwrecks) Regulations 2007
SR No. 82 – Agricultural and Veterinary Chemicals (Control of Use) Regulations 2007
SR No. 89 – Radiation Regulations 2007
SR No. 100 – Gambling Regulation (Sports Betting Fees)(Amendment) Regulations 2007
SR No. 108 – Transfer of Land (Fees)(Further Amendment) Regulations 2007
SR No. 109 – Tobacco Regulations 2007

Exceptions under Section 8

Section 8(1)(a) – Fees Increases

SR No. 38 – Road Safety (Drivers)(Fees Amendment) Regulations 2007
SR No. 51 – Chattel Securities (Fees Amendment) Regulations 2007
SR No. 59 – Working with Children (Amendment) Regulations 2007
SR No. 66 – Transfer of Land (Fees)(Amendment) Regulations 2007
SR No. 67 – Country Fire Authority (Charges) Regulations 2007
SR No. 85 – Plumbing (Fees Amendment) Regulations 2007

Section 8(1)(b) – Court Rules

SR No. 5 – Supreme Court (Chapter 1 Amendment No.7) Rules 2007
SR No. 6 – Supreme Court (Chapter VI Amendment No.11) Rules 2007
SR No. 24 – Children, Youth and Families (Children’s Court Family Division) Rules 2007
SR No. 27 – Supreme Court (Chapter I Amendment No.8) Rules 2007
SR No. 30 – Magistrates’ Court (Criminal Procedure) (Infringements Court) Rules 2007
SR No. 33 – Magistrates’ Court (Criminal Procedure) (Infringements Court Venue) Rules 2007
SR No. 43 – Victims of Crime Assistance (Procedure) Rules 2007
SR No. 44 – Supreme Court (Chapter V Amendment No. 3) Rules 2007
SR No. 52 – Victorian Civil and Administrative Tribunal (Amendment No.18) Rules 2007
SR No. 56 – Magistrates’ Court (Committals)(Amendment) Rules 2007
SR No. 57 – Magistrates’ Court (Criminal Procedure)(Amendment) Rules 2007
SR No. 86 – Magistrates’ Court (Judicial Registrars)(Amendment) Rules 2007
SR No. 87 – Court Security (Amendment) Regulations 2007
SR No. 91 – Supreme Court (Chapter I Amendment No.9) Rules 2007
SR No. 92 – Supreme Court (Chapter II Amendment No.7) Rules 2007
SR No. 93 – Supreme Court (Chapter VI Amendment No.12) Rules 2007
SR No. 94 – Supreme Court (Chapter VI Amendment No.13) Rules 2007

Section 8(1)(d)(iii) – Extension of Operation

SR No. 4 – Subordinate Legislation (Health (Medical Radiation Technologists) Regulations 1997 – Extension of Operation) Regulations 2007
SR No. 13 – Subordinate Legislation (Equipment (Public Safety) (Incident Notification) Regulations 1997 – Extension of Operation) Regulations 2007
SR No. 34 – Subordinate Legislation (Estate Agents (General, Accounts and Audit) Regulations 1997 – Extension of Operation) Regulations 2007

- SR No. 47 – Subordinate Legislation (Estate Agents (Professional Conduct) Regulations 1997 – Extension of Operation) Regulations 2007
- SR No. 55 – Subordinate Legislation (Professional Boxing and Martial Arts Regulations 1997 – Extension of Operation) Regulations 2007
- SR No. 95 – Subordinate Legislation (Births, Deaths and Marriages Registration Regulations 1997 – Extension of Operation) Regulations 2007
- SR No. 96 – Subordinate Legislation (Co-Operatives Regulations 1997 – Extension of Operation) Regulations 2007
- SR No. 97 – Subordinate Legislation (Estate Agents (Contracts) Regulations 1997 – Extension of Operation) Regulations 2007
- SR No. 98 – Subordinate Legislation (Chattel Securities Regulations 1997 – Extension of Operation) Regulations 2007

Exemptions under Section 9

Section 9(1)(a) – No Economic Burden

- SR No. 14 – Road Safety (Vehicles) (Hybrid Vehicles Amendment) Regulations 2007
- SR No. 22 – Audit (Public Bodies)(Amendment) Regulations 2007
- SR No. 23 – Catchment and Land Protection (Amendment) Regulations 2007
- SR No. 28 – Coroners Regulations 2007
- SR No. 31 – Legal Profession (Amendment) Regulations 2007
- SR No. 39 – Road Safety (Vehicles)(Fees Amendment) Regulations 2007
- SR No. 58 – Victorian Civil and Administrative Tribunal (Fees)(Amendment) Regulations 2007
- SR No. 64 – City of Melbourne (Docklands Co-Ordination Committee) Regulations 2007
- SR No. 65 – Docklands (Register of Rights) Regulations 2007
- SR No. 81 – Terrorism (Community Protection)(Prescribed Standards) Regulations 2007
- SR No. 83 – Agricultural and Veterinary Chemicals (Control of Use)(Infringement Notices)(Amendment) Regulations 2007
- SR No. 84 – Drugs, Poisons and Controlled Substances (Precursor Chemicals) Regulations 2007
- SR No. 90 – Road Safety (Vehicles)(Heavy Vehicles Fees Amendment) Regulations 2007

Section 9(1)(b) – National Uniform

- SR No. 16 – Electricity Safety (Equipment Efficiency)(Amendment) Regulations 2007
- SR No. 46 – Fair Trading (Safety Standard)(Babies' Dummies) Regulations 2007

Section 9(1)(c) – Fundamentally Declaratory

- SR No. 8 – Associations Incorporation (Infringement Penalties Amendment) Regulations 2007
- SR No. 9 – Co-Operatives (Infringement Penalties Amendment) Regulations 2007
- SR No. 10 – Fund Raising Appeals (Infringement Penalties Amendment) Regulations 2007
- SR No. 11 – Residential Tenancies (Amendment) Regulations 2007
- SR No. 17 – Tobacco (Victorian Health Promotion Foundation)(Membership Amendment) Regulations 2007
- SR No. 18 – Sex Offenders Registration (Amendment) Regulations 2007
- SR No. 19 – Building and Construction Industry Security of Payment (Amendment) Regulations 2007
- SR No. 20 – Transport (Infringements)(Penalties) Regulations 2007
- SR No. 32 – Subordinate Legislation (Amendment) Regulations 2007
- SR No. 70 – Transport (Infringements)(Amendment) Regulations 2007
- SR No. 71 – Road Safety (General)(Prescribed Devices and Operator Onus Amendment) Regulations 2007

Section 9(1)(3) – Premier's Certificate

- SR No. 3 – Legal Profession (Practising Certificate Fees)(Interim) Regulations 2007
- SR No. 7 – Estate Agents (Fees)(Interim) Regulations 2007
- SR No. 72 – Road Safety (Drivers)(Young Drivers) Interim Regulations 2007
- SR No. 73 – Road Safety (General)(Young Drivers) Interim Regulations 2007
- SR No. 74 – Road Safety (Road Rules)(Young Drivers) Interim Regulations 2007

Exceptions and Exemptions under Combined Sections

Section (9)(a) and (c) – No Appreciable Economic or Social Burden and Fundamentally Declaratory or Machinery Nature

SR No. 1 – Road Safety (Road Rules)(School Days) Regulations 2007

SR No. 21 – Children, Youth and Families Regulations 2007

SR No. 25 – Domestic Building Contracts Regulations 2007

SR No. 26 – Health Services (Community Health Centre Elections) (Amendment) Regulations 2007

SR No. 29 – Borrowing and Investment Powers (Guarantees) Regulations 2007

SR No. 35 – Accident Compensation (Employer Claim Report Revocation) Regulations 2007

SR No. 49 – Transport Accident Regulations 2007

SR No. 50 – Gene Technology Amendment Regulations 2007

SR No. 62 – Health Professions Registration Regulations 2007

SR No. 76 – Environment Protection (Prescribed Waste)(Amendment) Regulations 2007

SR No. 88 – Crimes (Certified Statement of Conviction) Regulations 2007

Appendix 6

Practice Notes

Practice Note No. 1

The Committee adopted the following Practice Note on 17 October 2005.

The Practice Note advises legal and legislation officers of the Committee's expectations in respect to information that should be provided to the Parliament concerning provisions in Bills that test or invoke the Committee's terms of reference.

In its scrutiny of Bills the Committee may initially make an adverse report to Parliament in its Alert Digest in respect to a number of legislative practices included in a Bill that appear to test or invoke the Committee's terms of reference in section 17 of the *Parliamentary Committees Act 2003* (the 'Act').

Where the Committee makes an initial adverse comment it will draw the provision to the attention of Parliament and will note that further advice will be sought from the responsible Minister. The Minister's response is published in the next Alert Digest upon receipt. To avoid needless Ministerial correspondence the Committee strongly prefers that explanatory material be provided at the time a Bill is introduced in Parliament in either the Second Reading Speech and or the explanatory memorandum.

Provisions frequently of concern to the Committee include –

1.1 Unexplained Retrospective Provisions

Where a Bill contains a provision that has retrospective operation (deeming, validating or backdated to the time of an announcement or 'press release') the Committee would expect that the Parliament will be provided with an explanation why it is desirable or necessary for the provision to be retrospective. The explanation should include the reason why a specific retrospective date is chosen, and provide sufficient information whether the retrospectivity may detrimentally affect any person. Where there is insufficient information provided to the Parliament, the grounds for an initial adverse report by the Committee will be that such a provision may constitute an undue trespass to rights and freedoms within the meaning of section 17(a)(i) of the Act.

1.2 Unexplained Wide Delegation of Powers and Functions Provisions

Where a Bill provides for a delegation of powers or functions in wide or unlimited terms, such as a delegation to 'any person', the Committee expects that Parliament will be informed as to the reasons why it is desirable or necessary to employ such a wide or unlimited delegation of powers. Where there is insufficient information provided to the Parliament the grounds for an initial adverse report by the Committee will be that such a provision may make rights, freedoms or obligations dependent upon insufficiently defined administrative powers within the meaning of section 17(a)(ii) of the Act.

1.3 Unexplained Commencement by Proclamation or Delayed Commencement in excess of 12 months

Where a Bill provides for the commencement of an Act by proclamation and no forced commencement provision is provided OR where the commencement is more than 12 months from Royal Assent, the Committee expects that Parliament will be informed as to the reasons why it is desirable or necessary to

employ such a commencement provision. Where there is insufficient information provided to the Parliament, the grounds for any initial adverse report by the Committee will be that such a provision may constitute an inappropriate delegation of legislative power within the meaning of section 17(a)(vi) of the Act.

1.4 Insufficient or Unhelpful Explanatory Material

The Committee will write to Ministers where, in the Committee's opinion, explanatory material (clause notes and/ or the Second Reading Speech) are unhelpful in describing the purpose or effect of a key provision. On one occasion the Committee noted a clause note concerning professional disciplinary matters stated that '*Clause 3 amends section 23*'. The Committee considers that there would be very few, if any, circumstances where such brevity could be appropriately characterised as 'explanatory'. The Committee considers that clause notes are critical, particularly where the provision deletes or substitutes certain words in a section where it would be problematic comprehending the amendment in its full context without some aide memoir as to its purpose and intent.

The Committee endorses the following remarks from a recent report of the Senate Standing Committee for the Scrutiny of Bills –

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

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

In particular the Committee will comment on deficient or inaccurate explanatory material provided in respect to the following types of legislative provisions –

- Powers of arrest, detention and deprivation of liberty
- Search and seizure powers without judicial warrant
- Creation of strict or absolute liability offences
- Reversal of onus of proof in criminal (or civil penalty) offences
- Abridgment of the right to silence or the privilege against self-incrimination
- Freedom of communication, assembly, movement, association, religion or conscience
- Infringement of the right to vote
- Denial of or failure to advise of, judicial or merits review of administrative decisions
- Denial or abridgment of the principle of 'fair trial' or the principles of natural justice
- Acquisition of property without adequate compensation
- Privacy of information and health records
- Inappropriately delegates legislative power (ie. allow regulations to alter the provisions of an Act, or allow regulations to establish a tax (as distinct from a fee for service or penalty)).

The grounds for an adverse report where an explanatory memorandum is plainly deficient or inadequate is that such a provision may test or invoke one or more of the Committee's terms of reference.

Committee Room
17 October 2005

Practice Note No. 2

The Committee adopted the following Practice Note on 6 August 2007.

The Practice Note advises Victorian Government legislation officers of the Committee's expectations in respect to information that should be provided to the Parliament concerning provisions in Bills that engage the Committee's terms of reference.

In its scrutiny of Bills the Committee may initially make an adverse report to Parliament in its Alert Digest in respect to a number of legislative practices included in a Bill that appear to engage or infringe the Committee's terms of reference in section 17 of the *Parliamentary Committees Act 2003*.

Where the Committee makes an initial adverse comment it will draw the provision to the attention of Parliament and will note that further advice will be sought from the responsible Minister. The Minister's response is published in the next Alert Digest. To avoid needless Ministerial correspondence the Committee strongly prefers that explanatory material[†] be provided at the time a Bill is introduced in Parliament.

The Committee notes the following matters –

2.1 Statement of Compatibility – section 28 of the Charter[‡]

The Committee will write to Ministers where, in the Committee's opinion, a Statement of Compatibility is inadequate or unhelpful in describing the purpose or effect of provisions in a Bill that may engage or infringe a Charter right.

The Committee has determined that it will characterise a Statement of Compatibility as a form of explanatory memoranda equivalent in status to an explanatory memorandum accompanying a Bill.

The Committee considers that the provision to Parliament of reasonable explanatory material is critical to the Parliament's exercise of legislative power in an informed manner.

The Committee once again endorses the following remarks from a report of the Senate Standing Committee for the Scrutiny of Bills –

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

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

2.2 Statute law revision type amendments and their explanatory notes

The Committee frequently encounters provisions in Bills that include one or more house keeping amendments in the form of statute law revision amendments. These amendments typically correct minor spelling, grammatical or cross-reference errors. On other occasions they may repeal spent or redundant provisions in Acts.

The Committee observes that often the explanatory memorandum in respect to such amendments will simply provide 'Clause 27 – makes statute law revision amendments'. The Committee does not consider this is a useful explanation of the purpose of the statute law revision. By way of contrast, when the Committee deals with Statute Law Revision Bills an explanation is always provided for each item sought to be amended. Some examples found in a recent statute law revision Bill will demonstrate this point –

[†] Explanatory material includes: (1) a Statement of Compatibility made under section 28 of the *Charter of Rights and Responsibilities Act 2006*; (2) an explanatory memorandum (clause notes) and (3) Ministerial correspondence.

[‡] *Charter of Human Rights and Responsibilities Act 2006*.

Item 26 – *Firearms Act 1996* – amends section 3 to repeal the definition of airgun as it is not in the correct alphabetical order.[§]

Item 75 – *Water Act 1989* – amends section 33U(1)(e) to remove an unnecessary full stop; section 64GB(8) to remove an unnecessary hyphen; section 259(1)(c) to remove an unnecessary comma, and section 306(1)(b) to remove an unnecessary word.^{**}

In the future scrutiny of Bills the Committee will seek reasoned explanatory material which succinctly characterises the revision or correction sought to be made.

Example:

Clause 13 makes statute law revision amendments. – Unhelpful

Clause 13 removes an unnecessary word /punctuation / corrects a cross reference in section 128 OR repeals section 128 as the provision is now spent and any remaining transitional or savings effect is preserved by the operation of section 14 of the Interpretation of Legislation Act 1984. – Acceptable

Committee Room,
6 August 2007

[The Committee's Practice Notes are available from – www.parliament.vic.gov.au/sarc]

[§] *Statute Law Revision Bill 2006, Schedule.*

^{**} *Statute Law Revision Bill 2006, Schedule.*

Appendix 7

Redundant and Unclear Legislation – Corporations laws

On 1 March 2007 the Mr Batchelor moved a resolution in the Legislative Assembly in the following terms –

That under s. 33 of the *Parliamentary Committees Act 2003* the following matters be referred to the joint investigatory committees specified:

- (17) To the Scrutiny of Acts and Regulations Committee — for inquiry, consideration and report by the last sitting day in 2008:
- (a) in conjunction with Chief Parliamentary Counsel, make recommendations on —
- (i) Acts of Parliament and provisions of Acts of Parliament which are unnecessary or redundant; and
 - (ii) legislative instruments made under an Act of Parliament and provisions of legislative instruments made under an Act of Parliament, which are unnecessary or redundant; and
 - (iii) Acts of Parliament and provisions of Acts of Parliament which are unclear, ambiguous or should be re-drafted; and
 - (iv) legislative instruments made under an Act of Parliament and provisions of legislative instruments made under an Act of Parliament which are unclear, ambiguous or should be re-drafted;
- (b) the implications of the national corporations regulatory framework and whether as a consequence of the referral of corporations powers to the Parliament of the Commonwealth any Victorian Acts should be repealed and if so whether any existing provisions should be saved by inclusion into other appropriate legislation; this consideration should include:
- (i) *Companies Act 1961*;
 - (ii) *Companies Act 1975*;
 - (iii) *Companies (Application of Laws) Act 1981*;
 - (iv) *Securities Industry Act 1975*;
 - (v) *Securities Industry (Application of Laws) Act 1981*;
 - (vi) *Marketable Securities Act 1970*;
 - (vii) *Collusive Practices Act 1965*;

and, in the conduct of this inquiry, the Committee is requested to pursue the primary objects of reducing the number and complexity of Victorian Acts and legislative instruments, and ensuring that Acts and instruments are clearly expressed in accordance with modern drafting practices.