

Zones, in disabled parking bays and on raised footpaths and kerbed areas. Vehicles are also regularly found to be parked in front of pedestrian and vehicle access points. The latter, where the vehicle access point is set aside for trunk drivers, can sometimes result in late or cancelled train times if drivers are unable to park their cars and get to work.

This situation is unsatisfactory and, as a result, requires some appropriate amendments to the Road Safety Act. The amendments will facilitate park-and-ride facilities being clearly designated with appropriate signage and also enable routine road rules parking controls to be enforced by transport operator authorised officers.

Miscellaneous minor and technical amendments

The opportunity has also been taken in the bill to make a number of largely miscellaneous minor or machinery amendments to public transport and related legislation.

For example, the bill will enable the delegation by ministers of administrative-type powers under the Terrorism (Community Protection) Act 2003. At present, the Premier is able to delegate certain responsibilities under the act to the relevant minister. Responsibilities to be delegated include overseeing the actions of a declared operator of essential services, for example, a declared transport operator. The relevant minister oversees preparation of risk management plans and participation in training exercises. However, currently the minister cannot delegate any of these responsibilities, thereby involving the minister in detailed administrative work which is better and more efficiently undertaken by the department. The amendments proposed enable the minister to delegate such tasks.

Some of the other general amendments will:

- make minor and miscellaneous modifications and clarifications to the operation of the taxi accreditation scheme and the commercial passenger vehicle driver accreditation scheme;

clarify the scope of the safety-based accreditation scheme for operators of larger passenger vehicles (buses) so that it could if necessary be extended to require accreditation of operators of non-motorised vehicles, for example horse-drawn carriages, should it be decided to develop future regulations suitable to those vehicles;

make it clear that the director of public transport can include reference to external material (for example, lists of bus routes) when determining certain

conditions, such as those in Victorian Fares and Ticketing Manual;

enable prosecutors from the public transport division in the Department of Infrastructure to prosecute marine offences;

better facilitate vegetation clearing near railway tracks for safety purposes;

Various other minor and technical amendments are also proposed.

This bill introduces further substantive policy and legislation changes as part of the government's continuing drive to modernise and improve transport across Victoria.

I commend the bill to the house.

Debate adjourned on motion of Mr KOTSRAS (Bulleen).

Debate adjourned until Thursday, 4 October.

EMERGENCY SERVICES LEGISLATION AMENDMENT BILL

11:20

Statement of compatibility

Mr CAMERON (Minister for Police and Emergency Services) tabled the following statement in accordance with the Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Emergency Services Legislation Amendment Bill 2007.

In my opinion, the Emergency Services Legislation Amendment Bill 2007, as introduced to the Legislative Assembly, is compatible with human rights protected by the charter. I base my opinion on reasons outlined in this statement.

Overview of the bill

The general purpose of the bill is to amend the Emergency Management Act 1986, County Fire Authority Act 1938, Metropolitan Fire Brigades Act 1938, Victoria State Emergency Services Act 2005 and Summary Offences Act 1966. The bill will clarify the powers and roles of the emergency services commissioner (the commissioner) and strengthen the role of the commissioner to report to the minister on emergency-related matters. It will also make routine amendments to agency-specific legislation to better enable them to discharge their emergency response roles.

This bill recognises that the impact of emergencies is often severe and that the nature and range of emergencies has significantly changed over time. The community values the

significant efforts of emergency services in responding to and recovering from emergencies, and the dangers in which emergency services workers and volunteer emergency workers are placed. This bill will reflect the values of promoting a safe and secure Victoria and of protecting our emergency services from harmful activities by increasing penalties. It will also create new offences to mitigate risks that undermine effective emergency responses.

Human rights issues

1. Human rights protected by the charter that are engaged by the bill

The following human rights protected by the charter are relevant to the bill:

1.1 Section 13: Privacy and reputation

(a) A person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

The right to privacy is engaged by three separate provisions:

- Clause 52 amends the Emergency Management Act to empower the commissioner to require an agency to disclose information which the commissioner reasonably believes is necessary to:

monitor compliance with a standard prepared under part 4A,

monitor the performance of an emergency services agency, or

advise, make recommendations and report to the minister.

Information provided for these specific purposes may involve the disclosure of personal information to the commissioner. This may be necessary to, for example, determine whether an emergency services agency attended at the correct premises by reference to the address of a person given during a '000' emergency call.

2. Clauses 34 and 93 amend the County Fire Authority Act and Metropolitan Fire Brigades Act (respectively) to enable the County Fire Authority (CFA) and Metropolitan Fire and Emergency Services Board (MFEBSB) to access any information regarding the location of water supplies on a person's property. The proposed amendment also clarifies existing rights to use water. Such powers are necessary to enable the CFA and MFEBSB to readily and promptly access sufficient water supplies to fight fires. Where the CFA or MFEBSB access water from a person's well or tank for firefighting purposes, the loss of water would be deemed to be fire damage within a person's insurance policy against fire, under the fire services' legislation.

Proposed amendments to the County Fire Authority Act, Metropolitan Fire Brigades Act and Emergency Management Act to enable the emergency services to direct a person to leave premises may also involve an interference with a person's home by providing powers of entry and evacuation. Where firefighters use reasonable force to evacuate a person who refuses to withdraw, bodily privacy may also be affected. These

amendments are at clauses 11, 13 and 35 in relation to the County Fire Authority Act, clauses 79, 90 and 92 in relation to the Metropolitan Fire Brigades Act, and clause 92 in relation to the Emergency Management Act.

To comply with section 13(a) of the charter, a person's privacy must not be unlawfully or arbitrarily interfered with.

Unlawful interference

No interference with privacy can take place except permitted by law. The circumstances in which the bill will authorise agencies to provide and access information are precise and circumscribed. The CFA may access information and premises for firefighting purposes, and emergency services can do so for the purpose of evacuating persons from emergency situations. The powers do not give broad discretions to the agencies to interfere with privacy.

Arbitrary interference

An interference with a person's privacy is not to be arbitrary where it is in accordance with the provisions, aims and objectives of the charter and is reasonable in the circumstances. It is clear that the charter aims to protect life. Each proposed amendment is consistent with the protection of life. The commissioner has an advisory role to assure the government that emergency services agencies are performing to an appropriate standard and that emergency services are not prevented from discharging their emergency response functions.

In each case, the proposed amendments involve powers which are exercisable to protect life, and which are constrained by clear and reasonable parameters. As such the proposed amendments do not involve unlawful or arbitrary interferences with privacy. Therefore while the right to privacy may be engaged, it is not limited.

1.2 Right to property

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law.

The right to property is engaged by three proposed amendments.

- Emergency services may direct evacuation from premises in an emergency area or state of disaster under the Emergency Management Act, from burning premises under the County Fire Authority and Metropolitan Fire Brigades acts (the fire services acts), and remove persons from land or premises where they interfere with the operations of the fire services. Further, provisions will clarify the emergency services' ability to direct movement around, and prevent entry to, the affected area. Directing the withdrawal of persons, or directing movement around emergency areas can temporarily deprive a person of that person's property if a person is forcibly evacuated from a burning premises or is unable to retrieve their property. If the property is subsequently destroyed, the deprivation is permanent. These amendments are at clauses 66 in relation to the Emergency Management Act, clauses 11, 13 and 21 in relation to the County Fire Authority Act, and clause 92 in relation to the Metropolitan Fire Brigades Act.

- 2 Clause 39 in relation to the Country Fire Authority Act and clause 105 in relation to the Metropolitan Fire Brigades Act create an offence to willfully resist or interfere with a fire induction panel. This may result in a person being denied access to, and use of, his or her property. However, fire indicator panels have a significant impact on public safety as they provide the location of the fire and facilitate a prompt response to the fire. Resisting fire panels can endanger public safety, as it may delay rescue attempts within the building or enable the spread of fire beyond the building.
- 3 Clause 34 in relation to the Country Fire Authority Act and clause 95 in relation to the Metropolitan Fire Brigades Act clearly existing rights to water. The chief officers can access and use persons' water or water from any wells or tanks for the purposes of discharging their functions under their Acts. While the use of a person's water deprives the person of their property, there are existing provisions within the fire services acts that compensate the owner of the water under policies of insurance.
- 4 Deposition of property under these provisions would be in accordance with the lawful exercise of a statutory power to direct the withdrawal of persons (including those with a pecuniary interest where they are interfering with the fire services or during a state of disaster), direct evacuation or movement, or to use water. Further, these powers are not arbitrary as they are in place to better enable the fire services and Victoria Police to protect life. Limitations on the right to property are more readily justifiable than limitations on the charter right to life. As such, these provisions also accord with the aims and objectives of the charter. Therefore, the right to property is not limited by these provisions.
- 1.3 *Freedom of movement*
- Section 12 of the charter states that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.
- The right to freedom of movement is limited by four separate proposals.
- Emergency services may order the withdrawal from premises affected by fire or declared emergencies and use reasonable force. If a person refuses to comply with an order to withdraw, Ordering the withdrawal and forcibly evacuating persons limits the charter right to free movement as it may prevent a person from remaining on property and requires a person to relocate to another place, which is a safer location away from the emergency. The use of force must be reasonable in accordance with the charter right not to be subjected to inhuman or degrading treatment under s. 10. These amendments are at clause 13 in relation to the Country Fire Authority Act and clause 79 in relation to the Metropolitan Fire Brigades Act.
 - Victoria Police in a declared emergency under the Emergency Management Act and the chief officers under the fire services acts will have clearer powers to direct the movement in emergency areas and fire affected areas. While these powers exist in the current legislation, this bill clarifies powers with respect to preventing persons entering an affected area, closing roads and directing traffic in emergency areas or areas likely to be affected by fire, and directing persons to leave such areas by the safest and shortest route. These amendments are at clause 66 in relation to the Emergency Management Act, clauses 11 and 21 in relation to the Country Fire Authority Act, and clause 92 in relation to the Metropolitan Fire Brigades Act.
 - Enable the fire brigades to direct the removal of a person if that person interferes with, or obstructs, the fire services in the course of their duties. This proposal limits fire movement by directing a person to leave a particular area and if the person refuses, to remove with reasonable force a person from the area. These amendments are at clauses 13 and 35 in relation to the Country Fire Authority Act, clauses 64 and 66 in relation to the Emergency Management Act, and clauses 90 and 105 in relation to the Metropolitan Fire Brigades Act.
 - Clause 134 amends the Summary Offences Act 1966 to create an offence to assault, resist or delay an operational CFA or MFEBSB member. Clause 105 will also provide an offence under the Metropolitan Fire Brigades Act to interfere with a fire brigade's appliances or equipment.
- In particular, it will be an offence under new section 75C of the Metropolitan Fire Brigades Act to drive over a fire hose. This has the effect of denying a person free movement in an area where the fire brigade is extinguishing a fire.
- Consideration of reasonable limitations — section 7(2)*

As the right to freedom of movement is limited by the bill, it is necessary to consider whether the limitation is reasonable under s. 7 of the charter.

 - The nature of the right being limited*

The right to move freely in Victoria is an aspect of the right to freedom of movement under section 12 of the Charter. The right to freedom of movement is not an absolute right at international law. While the right to free movement is an element of personal autonomy, there are circumstances that justify its limitation, for example, the protection of public safety.
 - The importance of the purpose of the limitation*

The limitation is important to better protect human life and facilitate an effective response to emergencies. The objective of providing for the removal of persons who interfere with the brigades is to ensure that the brigades can protect life and property in extremely difficult conditions.

The fundamental objective of the limitation is to protect human life while also recognising property rights. As fires are unpredictable and can cause significant damage and injury within a short time, the risk of injury or death is often extremely high for persons who remain in burning premises. Typically, fire brigades are the best qualified to determine the risk posed, based on an understanding of fire patterns, fire-fighting capabilities and the structural environment of the premises. The fire brigades may also protect a person's life in circumstances where a person may not fully understand or appreciate the dangers with which they are faced.

Free movement is restricted by requiring that a person be removed from, or restricted has or her entry into, an area in circumstances where:

- An 'emergency area' has been declared because the circumstances are such that it is necessary to exclude persons from the area.
- An area is affected by fire, or is likely to be affected by fire (based on a number of considerations, such as roads on which visibility is impaired due to smoke)
- A state of disaster has been declared

A person is in premises that are burning, or are threatened by fire, and

A person is interfering with a fire brigade or its equipment in the performance of the fire brigades' duties

If a person does not comply with a direction to withdraw or to refrain from interfering, he or she may be removed with reasonable force, but will not be detained. However, where a person interferes with equipment, the person may be charged or imprisoned.

(d) *The relationship between the limitation and its purpose*

The limitation of freedom of movement is rationally connected to the purpose of the promoting public safety and accords with the state's duty to take positive steps to protect life. By removing persons from a fire scene where such persons interfere with firefighters in the course of their duty, that persons is not only removed from an immediate danger, but is also unable to jeopardise the brigade's operations and potentially other persons' safety. Further, directing movement in and around the emergency better enables emergency services to protect the safety and security of persons affected by the emergency.

The limits imposed by these proposed amendments are proportionate to the objectives sought. Persons are directed to withdraw from the fire scene and are not detained against their will. The bill provides for persons to be directed away from the fire scene to a safer location by the safest and shortest route. Persons will generally be able to return to the fire scene once it is safe to do so.

The proposed amendments also aim to protect the MFEBSB against interference with appliances and fire hoses. Driving over a fire hose may cause extensive damage not only to the hose, but also to the water pump to which the hose is attached. If such equipment is damaged, the fire brigade's ability to effectively respond to the fire is compromised and the safety of crew and other persons may be affected. Significant public monies are also wasted to replace damaged equipment.

While it is reasonable to assume that the MFEBSB will take measures to minimise the restrictions of movement (for example, by providing a ramp over the fire hose where practicable), this is not always possible or effective. Instances have been reported of persons driving over fire hoses despite warnings of the potential damage.

Attaching a criminal penalty to willful interference with apparatus or driving over a fire hose is an effective means to help prevent damage to MFEBSB equipment, and deter

behaviour that may compromise fire fighting efforts and risk public safety.

(e) *Any less restrictive means reasonably available to achieve its purpose*

A less restrictive means of protecting firefighters from interference with their equipment would be to cordon off access to the area in which the MFEBSB is conducting its response activities. However, this would involve expending significant amounts of time and resources to establish a cordon which may waste valuable time in responding to the fire. Further, the emergencies are often unpredictable and can affect a large area. Response to such emergencies requires a mobile and flexible effort, and so a cordon would not always be effective. A cordon of area would not necessarily have the ability to deter certain behaviour that may put safety of firefighters and others at risk.

There does not appear to be any other less restrictive means reasonably available. Creating an offence provision achieves the objectives of the proposed amendment and is most appropriate for the unpredictable nature of emergencies.

(f) *any other relevant factors*

No other factors are considered relevant.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities. A person's right to free movement under section 12 of the charter is limited. However, this limitation is reasonable and proportionate and demonstrably justifiable in accordance with section 7 of the charter.

BOB CAMERON, MP
Minister for Police and Emergency Services

Second reading

Mr CAMERON (Minister for Police and Emergency Services) — 11:00:

That this bill be now read a second time.

The purpose of this bill is to amend the Country Fire Authority Act, Metropolitan Fire Brigades Act, Victoria State Emergency Service Act, Emergency Management Act, Summary Offences Act and other acts.

Since 1999 the Victorian government has strengthened the capability of the emergency services by rebuilding facilities, updating equipment and providing state-of-the-art communications technology. However, the emergency landscape is constantly changing, and we need to continue to work hard to make our world-class emergency services even stronger. This bill strengthens Victoria's already effective emergency management framework to better equip our emergency services to face an increasingly diverse range of emergencies.

The devastating impact of emergencies is fresh in the minds of Victorians. The most recent bushfire season