

the Board of Examiners may be informed about to include conduct while in tertiary education. The report also suggested that the Board of Examiners be able to require health assessments of applicants with serious mental health issues, including alcoholism and drug dependency, in circumstances where a question arises as to whether the impairment may affect their fitness to be admitted. Such health assessments provide the Board of Examiners with independent professional medical advice which can be used by the Board of Examiners to inform its decision to recommend an application for admission. The bill makes these amendments.

The amendments also make minor technical changes to application and admission procedures.

Separate to the report, the Legal Services Board and the Legal Services Commissioner have requested changes to their powers and processes to improve their regulatory functions. The Legal Services Board and the Legal Services Commissioner are relatively new Legal Profession Regulatory bodies established in December 2005 under the Legal Profession Act 2004. These amendments will improve their performance as local regulators.

These amendments are to:

clarify that a law practice is exempt from costs disclosure if the legal costs, excluding disbursements, are less than \$750, exclusive of GST

allow the Legal Services Commissioner to release costs lodged with the commissioner to a law practice if a complainant fails to attend mediation

allow settlement agreements certified by the Legal Services Commissioner to be lodged with the Magistrates' Court so that they can be enforced

provide the Legal Services Board with power to apply to the Supreme Court for a legal practitioner to be struck off the local roll where a legal practitioner has been found guilty of a criminal offence in any Australian jurisdiction or has had interstate regulatory action taken against them.

The sum effect of the implementation of the recommendations in the review of the Legal Education Report will ensure that all legal practitioners in Victoria are equipped through their pre-admission training and post-admission professional development to maintain high standards of legal practice throughout their careers. This bill, although only dealing with limited aspects of the review's recommendations, is another significant step in the government's program of

modernising and improving the regulation of the legal profession.

I commend the bill to the house.

Debate adjourned on motion of Mr CLARK (Box Hill).

Debate adjourned until Thursday, 2 August.

JUSTICE AND ROAD LEGISLATION AMENDMENT (LAW ENFORCEMENT) BILL

Statement of compatibility

Mr CAMERON (Minister for Police and Emergency Services) tabled following statement in accordance with 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 Justice and Road Legislation Amendment (Law Enforcement) Bill 2007.

In my opinion, the Justice and Road Legislation Amendment (Law Enforcement) Bill 2007, as introduced to the Legislative Assembly, is compatible with the human rights protected by the Charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The proposed bill contains amendments to the Magistrate' Court Act 1989, the Police Regulation Act 1958, the Road Safety Act 1986 and the Sex Offenders Registration Act 2004.

The amendments to the Magistrates' Court Act 1958 allow certain indictable offences in the Police Regulation Act 1958 and the Sex Offenders Registration Act 2004 to be heard and determined summarily.

The Police Regulation Act 1958 contains two sets of amendments contained in part 3 of the bill. The first set strengthens the offence of unlawfully dealing with information obtained by police personnel, increases the penalty, and introduces a new indictable offence where disclosure may endanger life or safety, assist in the commission of an indictable offence or interferes with the administration of justice. An increased penalty is also included for the comparable confidentiality offence applying to the Office of Police Integrity.

The purpose of the second set of amendments to the Police Regulation Act 1958 is to allow the Chief Commissioner of Police to give authorised media organisations access to the photographs of convicted persons taken at the time of their arrests or during police interviews or investigations. This scheme provides that photographs can only be given to a media organisation within six months of the person being found guilty of an offence, and can be subject to conditions.

Part 4 of the Bill amends the Road Safety Act 1986 to make it an offence for a person to continue to drive a motor vehicle if that person knows or ought to know that they have been given a direction to stop by a member of the police force, and makes minor amendments to the provisions concerning the surrender of a motor vehicle.

Part 5 of the bill contains a number of amendments to the Sex Offenders Registration Act 2004, the main features of which are:

a requirement that registrable offenders notify the Chief Commissioner of their telephone number, email address and internet service provider as applicable;

a requirement that a registrable offender report any changes to them having regular unsupervised contact with a child within three days after that change occurs;

amending the offence of disclosure of personal information held on the Register under the Act, providing that it is not an offence to disclose that information for purposes of law enforcement or judicial functions or activities, as required by law, or additionally, where the Chief Commissioner or a person authorised to have access to the register, believes on reasonable grounds that to do so is necessary to enable the proper administration of the act

a change to the definition of employment which will mean that a registered sex offender will be prohibited from engaging in child-related employment if it constitutes gain or reward other than through a contract of employment or contract of service;

the introduction of a new part to require any application for a change of name by a registrable offender to have the prior written consent of the Chief Commissioner of Police; and

a provision authorising a supervising authority to disclose personal information if they believe it is reasonably necessary for the proper administration of the Act, despite the provisions of the Information Privacy Act 2000.

Human rights issues

1. *Human rights protected by the charter that are relevant to the bill*

The human rights that the bill will have an impact upon or engage are as follows:

Section 9 — Right to life

This right encompasses the positive duty to provide an effective criminal justice and law enforcement system, including taking appropriate steps to safeguard the lives of those within its jurisdiction.

The proposed changes to the Sex Offenders Registration Act 2004 and the Police Regulation Act 1958 will promote confidence in the criminal justice system. The release of certain police photographs will enhance the ability of Victorians to report criminals who they suspect of having committed other offences, and will alert them to the identity of offenders. This will enhance Victoria Police's community policing function and will improve the faith that Victorians

have in their law enforcement officials by demonstrating successful prosecutions. The changes will also have a deterrent effect.

The bill enhances the right to life contained in the charter, by improving Victoria's criminal justice and law enforcement system. The changes to the Register of Sex Offenders advance the ability of Victoria Police to monitor sex offenders and this assists in the protection of Victorians, protecting them against crime.

Section 12 — freedom of movement

Part 4 of the bill makes it an offence for a person to continue to drive a motor vehicle if they have been directed to stop by a member of the police force. This provision engages with a person's right to move freely within Victoria as it restricts a person from continuing to drive where he or she has been given a direction to stop by police. Consideration must be given as to whether or not the limitation can be reasonably justified in accordance with section 7(2) of the charter.

Section 13(a) — privacy

There are a number of ways that provisions in the bill engage the right to privacy. The right to privacy concerns a person's 'private sphere' which should be free from government intervention or excessive unsolicited intervention by other individuals. This right is not an absolute right at international law and the Charter protects against unlawful or arbitrary interference with a person's privacy. An interference with privacy will not be unlawful provided it is permitted by law, is certain and is circumscribed so that there are not broad discretions. Arbitrariness will not arise provided that the restrictions on privacy are in accordance with the objectives of the Charter and are reasonable, given the circumstances.

Disclosure of personal information to the media:

Clause 7 provides that the Chief Commissioner of Police may give an authorised media organisation a photograph of a person, taken at the time of his or her arrest or during police interviews or investigations, after the person has been found guilty of an offence, and that the section will have effect despite the Information Privacy Act 2000 or the Freedom of Information Act 1982. The Bill provides a number of conditions about how this access is given, and includes matters that must, be considered by the Chief Commissioner in making the decision to the extent to which they can be ascertained at that time.

These provisions in the bill do engage with and infringe on a convicted person's right to privacy. The Chief Commissioner has discretion to give a photograph of a convicted person to a media organisation, but before release of the photograph must regard a number of matters including the public interest, the interests of the victim and any witnesses, and the interests of the person photographed. The matters are detailed to ensure that an appropriate balance is struck between the right to privacy of a convicted person, and the public interest in the release of a photograph. The list includes consideration of whether or not a victim or witness could be identified, hence enhancing the victim or witnesses' right to privacy, and the risk to a convicted person or their family if the photograph is given to a media organisation.

Clause 7 is necessary to allow the Chief Commissioner to release photographs of convicted persons, without recourse to the Freedom of Information Act 1985 which requires the

consent of the convicted person for release. This is an impractical mechanism and would result in very few, if any, photographs being released. There are currently no other less restrictive ways available to Victoria Police to release photographs of convicted persons. These provisions are introduced in response to the 2005 decision of the Victorian Civil and Administrative Tribunal in the case of *Smith v Victoria Police* [2005] VCAT 654. The scheme proposed in the bill provides a comprehensive system for the release of photographs of convicted persons with a requirement that appropriate matters be taken into account before release is made.

Unlawful

The interference with privacy is not unlawful as the Chief Commissioner's discretion is restricted by the list of matters to be considered. The Bill sets out the precise circumstances when the interference with privacy may be justified. Further the decision to give a photograph is made on a case by case basis according to the specific circumstances involved.

Arbitrary

The Chief Commissioner's power to give a photograph cannot be exercised in an arbitrary manner. The power is not ambiguous or open-ended. The giving of the photograph can be conditional and is only to authorised media organisations. If a media organisation breaches the conditions of its authorisation, this can be revoked by the Chief Commissioner

Therefore, while the power of the Chief Commissioner to give a photograph of a convicted person engages with the right to privacy, it does not infringe it.

The power to collect personal information:

Clauses 14 and 15 list a number of additional matters comprising personal information that a registrable offender is required to report to the Chief Commissioner under the Sex Offenders Registration Act 2004.

These clauses engage with the right to privacy of registrable offenders, but do not infringe that right as the proposed changes are not unlawful or arbitrary.

Unlawful

The additional information that is provided is circumscribed and precise, and the Bill does not grant any discretionary powers with respect to this information. As such the proposed changes do not represent an unlawful interference.

Arbitrary

The interference is not arbitrary with respect to requiring registrants' email addresses and internet service provider details. This is reasonable in the context of the Act's objectives in that an increasing number of sex offenders are using the internet to commit offences.

Restrictions on the disclosure of personal information

Clause 6 increases the penalty for an existing offence under section 102G of the Police Regulation Act 1958 for a person to disclose information gained through the performance of functions of the Office of Police Integrity if it is the person's duty not to disclose the information.

Clause 8 amends section 127A of the Police Regulation Act 1958 regarding the offences of unauthorised access, use or disclosure of information or documents by a member of police personnel, or a former member of police personnel.

Clause 17 restricts access to the Register of Sex Offenders and clause 18 makes it an offence for a person to disclose personal information from the register unless authorised.

These provisions enhance the right to privacy provided in the Charter by protecting Victorians against unauthorised disclosure of their personal information.

The power to share information

Clause 18 amends a provision of the Sex Offenders Registration Act 2004 to broaden the range of circumstances when disclosure of personal information from the Register of Sex Offenders to a government department, public statutory authority or a court will not constitute an offence. The new exception is when the Chief Commissioner or a person authorised to have access to the Register believes on reasonable grounds that the disclosure is necessary to enable the proper administration of this Act.

Clause 20 inserts a new provision in the Sex Offenders Registration Act 2004 allowing the Secretary of the Department of Justice and the Chief Commissioner of Police to share information with the Victorian Registrar of Births, Deaths and Marriages.

Clause 21 provides that a supervising authority under the Sex Offenders Registration Act 2004 can disclose personal information to another supervising authority for the purposes of that Act, notwithstanding the Information Privacy Act 2004.

These provisions engage with but do not infringe with the right to privacy, as the power or ability to share the information is for clearly defined purposes and is not unlawful or arbitrary.

Unlawful

The information that is to be shared is circumscribed and precise and relates to the operation of the Sex Offenders Registration Act 2004 or, in the case of clause 18, another law or Act. Clauses 18, 20 and 21 provide for a discretionary power with respect to the release of personal information, and this can only be done if the Chief Commissioner, Secretary or relevant supervising authority has reasonable grounds to believe it is necessary for the proper administration of the Act. As such the proposed changes do not represent an unlawful interference.

Arbitrary

The interference is not arbitrary as it relates to the more effective operation of the Act, and enhances the ability of various bodies to better coordinate and prevent sex offenders from avoiding the operation of the legislation.

Section 15(2) — the right to freedom of expression

The right in section 15(2) of the charter encompasses the right to seek and receive information. The provisions in part 3 allow the Chief Commissioner to release a photograph of a convicted person after considering the public interest and

other criteria. This enhances the right of Victorians to receive information about the working of the criminal justice system.

The right also includes the right to impart information and ideas, including unpopular ideas and to make statements of protest or criticism. This could include the changing of one's name. A person may seek to change their name in order to promote an idea, or to represent changes in their own view of their identity and the way they are perceived, for example in the case of a gender change or a change in family relationships. The ability to present a person's identity to the world by a name change is one means of expression. The provisions in part 5 of the Bill restrict the ability of a registrable offender under the Sex Offenders Registration Act 2004 to freely change their name. Consideration must be given as whether or not the limitation can be reasonably justified in accordance with section 7(2) of the Charter.

Section 17 — protection of families and children

Section 17(2) provides that a child has a right to protection in their best interests. The provisions in part 5 of the bill are essential for improving the operation of the Sex Offenders Registration Act 2004, by closing a loophole where registrable offenders could volunteer to work with children. These changes will enhance the rights of children in Victoria.

The release of police photographs under the proposed changes to the Police Regulation Act 1958 will also inform Victorians about the identity of convicted criminals, including possibly registrable offenders, and will also enhance this right.

There is a possibility that family members of a convicted person could be affected by the giving of a photograph. It is for this reason that the interests of these family members are included as a matter that may be considered by the Chief Commissioner in making a decision to give a photograph. Further, from 1 January 2008 the Chief Commissioner will be required to consider this right generally since section 38 of the Charter will make it unlawful for a public authority (including the Chief Commissioner) to act in a manner that is incompatible with a right or fail to give proper consideration to a right. While the rights of family members of a convicted person may be affected by the Bill, the Chief Commissioner can take their interests into account and the right will not be infringed.

Section 20 — property rights

This section in the charter provides that a person must not be deprived of their property otherwise than in accordance with law. The proposed changes to the Road Safety Act 1986 dealing with surrender of motor vehicles are lawful because the proposed deprivation of property can only occur under powers conferred by legislation that are confined, structured and reasonable in the circumstances. As such the right is not infringed.

2. Consideration of reasonable limitations — section 7(2)

Section 12 — freedom of movement

It is necessary to consider whether the limitation on right to freedom of movement is reasonable in accordance with section 7(2) of the Charter.

- (a) the nature of the right being limited

The right in section 12 to move freely within Victoria is not an absolute right in international human law and can be subject to reasonable limitations as reasonably justified.

- (b) the importance of the purpose of the limitation

The restriction in part 4 of the bill is necessary to enable police officers to properly control traffic and carry out their functions. The restriction is required to deter drivers from ignoring the lawful orders of law enforcement personnel.

- (c) the nature and extent of the limitation

The restriction on the freedom of movement is not a restriction on all movement, rather a restriction on continuing to drive a motor vehicle when directed to stop. The bill provides that a person will not commit an offence if they stop a vehicle as soon as practicable after being directed to stop.

- (d) the relationship between the limitation and its purpose

The restriction is proportionate to the harm that could be prevented, which could include risks to life of the driver, passengers, police officers and other road users.

- (e) any less restrictive means reasonably available to achieve its purpose

There is no other less restrictive way to achieve the same objective.

- (f) any other relevant factors

There are no other relevant factors.

The infringement on the right of freedom of movement can be reasonably justified in accordance with section 7(2) of the Charter.

Section 15(2) — The right to freedom of expression

The provisions in part 5 of the bill restrict a right of a registrable offender under the Sex Offenders Registration Act 2004 to seek a name change and infringe on the right to freedom of expression. It is necessary to consider whether the limitation on right to freedom of expression is reasonable in accordance with section 7(2) of the Charter. Further, section 15(3) of the Charter provides that freedom of expression can be lawfully restricted for the protection of public order.

- (a) the nature of the right being limited

The right of freedom of expression may be limited, as the Chief Commissioner can prevent a registrable sex offender from changing their name if it is not necessary or reasonable in the circumstances.

- (b) the importance of the purpose of the limitation

In this case the restriction on the right is necessary to protect public order in accordance with section 15(3) of the Charter. Further, the changes proposed will ensure that registered offenders do not avoid the provisions of the Sex Offenders Registration Act 2004 by changing their name.

- (c) the nature and extent of the limitation

The proposed bill does not absolutely prohibit their freedom of expression by a change of name, rather it restricts the ability to do so unless the Chief Commissioner of Police agrees. The Chief Commissioner must have regard for a number of factors when exercising this authority which are detailed in the Bill's provisions

(d) the relationship between the limitation and its purpose

The discretionary power of the Chief Commissioner to prevent a registrable sex offender from changing their name is necessary and proportionate to the harm involved and is required in order to ensure that the current legislation is effective.

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

There is no other less restrictive way to achieve the same objective.

(f) any other relevant factors

There are no other relevant factors.

The infringement on the right of freedom of expression can be reasonably justified in accordance with section 7(2) of the Charter.

Conclusion

The Justice and Road Legislation Amendment (Law Enforcement) Bill 2007 is compatible with the human rights protected by the Charter. The limitations on rights can be reasonably justified given the harm sought to be prevented, and the lack of alternative means to achieve the same outcomes. The Bill also enhances a number of rights in the Charter, namely the right to life, the right to freedom of expression and the protection of families and children.

BOB CAMERON
Minister for Police and Emergency Service

Second reading

Mr CAMERON (Minister for Police and Emergency Services) — I move:

That this bill be now read a second time.

This omnibus bill will contribute to fulfilling the government's 2006 election commitments. There are two overall objectives of the bill: to make Victoria safer and to strengthen police accountability.

The amendments will make Victoria safer:

by enhancing road safety initiatives especially relating to speed and driver behaviour;

by enhancing information exchange and management programs that help police and other agencies better manage and reduce the risks posed to the community by sex offenders; and

by providing increased powers and operational capacity for our police.

Further, the amendments will strengthen police accountability, balancing fairness and privacy, individual and community policing interests, in relation to

police information handling, especially the proper use and disclosure of sensitive information; and

release to the media of mugshots of offenders post-conviction.

I now turn to the four components of the bill in more detail.

Part 3 of the bill amends the Police Regulation Act 1958. That act provides a framework for the governance and administration for Victoria Police. This bill contains two sets of amendments to that act.

A. Release of mugshots

16:20

The bill will set up a process for release of mugshots of convicted offenders to the media. The government is of the view that Victoria Police needs to have the ability to release mugshots of convicted offenders in order to:

fulfil its community policing functions;

as a deterrence measure; and

as a means of enhancing the feeling of safety in the community and publicising the work of Victoria police and the criminal justice system.

The amendments are needed following a decision of the Victorian Civil and Administrative Tribunal (VCAT) in *Smith v. Victoria Police* in 2005. The Smith case involved the release of Mr Smith's 'mugshot' by police to the media, to elicit information about suspected other offences from victims not currently known to police. The police released the photo on the basis that it served law enforcement and community policing objectives (as provided for under the Information Privacy Act 2000). Mr Smith subsequently lodged a complaint with the privacy commissioner, who referred the matter to VCAT. The privacy commissioner also intervened in the proceedings and was joined as a party by VCAT.

The case resulted in significant media and community interest and calls for the government to act. In response, the Premier made a specific public commitment to ensure that mugshots remained publicly available. The proposed release policy balances the public interest in permitting photographs to be released in some circumstances with a person's right to privacy. In

