



## 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 Land (Revocation of Reservations) Bill.

In my opinion, the bill, as introduced in 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 bill will provide for the revocation of;

the public purposes reservation relating to the bed and banks of Lake Condah, in order to transfer that land to the Gunditjmarra people;

the reservations relating to certain lands at South Melbourne, Daylesford and Beechworth; and

the revocation of a Crown grant of the Roman Catholic Orphan Asylum at South Melbourne and the revocation of a Crown grant for benevolent asylum purposes at Beechworth.

### Human rights issues

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

Section 12 of the charter which protects the right to freedom of movement is relevant to the bill. Section 12 stipulates 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's broad focus is to protect against arbitrary restrictions on people's ability to move freely. A particular aspect of the right is protection of people's ability to choose their own route when exercising their right to move freely within the state. Whether the right applies depends upon how land that has been reserved for public purposes has been used. The bill will touch upon this aspect of the right.

Presently, subject to some constraints on access, the open areas of the land and beds of Lake Condah are available to people to choose as part of their route when moving freely within Victoria.

When the bill removes the public purposes reservations for Lake Condah the public's ability to enter and pass through these areas will be limited. This consequence can be perceived as a limitation on the right to freedom of movement protected by section 12 of the charter.

Section 20 of the charter, which protects against deprivation of property other than according to law, also requires consideration in the context of this bill. This is because clause 8(a) of the bill provides that on the removal of reservations lands are deemed to be unalienated lands of the Crown, freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests. In doing so, this clause could be perceived to take away proprietary interests, which would amount to a deprivation of

property in contravention of section 20 of the charter. However, there will not be any deprivation of property, because there are no leases or other proprietary interests in the lands affected by clause 8(a).

For these reasons, it is not expected that this bill will deprive any person of property rights protected by section 20 of the charter, and, accordingly, there will not be a limitation of the rights protected under section 20.

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

To the extent that the right to freedom of movement will be limited, I consider that the limitation will be reasonable, in accordance with section 7(2) of the charter. I provide the following reasons for this view.

##### (a) *the nature of the right being limited*

The right to freedom of movement is a fundamental human right which protects against restrictions on people's ability to move freely within the State. The right is not an absolute right at international law, and under the charter may be subject to such reasonable limitations as are demonstrably justified in a free and democratic society.

##### (b) *the importance of the purpose of the limitation*

The aspect of the bill which will limit freedom of movement is the revocation of the public purposes reservations for Lake Condah. On 30 March 2007 the Federal Court made a consent determination for Gunditjmarra native title. The purpose of this aspect of the bill is to enable the completion of a native title settlement package under which the State government has agreed to transfer freehold title of the Lake Condah Reserve to the Gunditji Mirring Traditional Owners Aboriginal Corporation.

The proposed native title settlement furthers section 19 (2) of the charter which provides that Aboriginal persons and their community must not be denied their right to enjoy their identity and culture, maintain their distinctive spiritual and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs

It is of high importance that the negotiated settlement proceeds to further Reconciliation between the indigenous and non-indigenous community.

##### (c) *the nature and extent of the limitation*

The limitation resulting from this bill will only affect people insofar as their current restricted ability to move freely through the bed and banks of Lake Condah may be limited as a result of the native title settlement. From investigations for the mediation in the native title claim, historically limited public access occurred, due to restricted access points and seasonal inundation. People will still be able to move freely elsewhere, including around the perimeters of this area. All other aspects of the right to freedom of movement — including Victorians' rights to freely enter and leave the state, to choose where to live, and to move around the state — will remain unaffected. Having regard to the overall breadth and nature of the right to freedom of movement, the extent of the limitation is considered to be relatively negligible.

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

The revocation of the public purposes reservations for Lake Condah is necessary for the native title settlement. This is a proportionate legislative response to the objective of completing that settlement. Accordingly, the resulting limitation on the right to freedom of movement is also a proportionate outcome.

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

There are no less restrictive means available to achieve the purpose of facilitating the native title settlement.

#### Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it will not limit the property rights protected by section 20, and, although it will limit the right to freedom of movement, the limitation is reasonable.

PETER BATCHELOR MP  
Minister for Energy and Resources

#### *Second reading*

**Mr BATCHELOR** (Minister for Community Development) — I move:

That the bill be now read a second time.

The purpose of this bill is to change the status of four Crown land reserves located at Lake Condah in south-west Victoria, South Melbourne, Daylesford and Beechworth. These changes are required to meet government commitments to the Gunditjmara native title settlement, facilitate refurbishment the former St Vincent's Boys Home at South Melbourne and disposal of surplus facilities at the other locations.

#### 12:52 **Public purposes reserve Lake Condah**

On 30 March 2007 the Gunditjmara native title claim was settled by agreement between the Gunditjmara people, the state and all the other 170 respondent parties to the claim. Part of the approved settlement package included agreement to transfer the Lake Condah Reserve and two additional parcels of Crown land adjoining Lake Condah to the Gunditjmara People.

The bed and banks of Lake Condah were permanently reserved for public purposes by order in council dated 23 May 1881. This bill will revoke part of that reservation which is necessary to allow the granting of the land to the Gunditjmara people.

The state is legally committed by the settlement to deliver up the land to the Gunditjmara people.

#### **237 Cecil Street, South Melbourne**

This land is permanently reserved and subject to a restricted Crown grant for Roman Catholic orphan asylum purposes. The bill revokes the reservation and related Crown grant; it also removes the Roman Catholic Trusts Corporation as trustee of the land.

On 31 October 2006 the Premier entered into a memorandum of understanding with the Roman Catholic Trusts Corporation and MacKillop Family Services Ltd committing all parties to remove reservations and trusts to which 237 Cecil Street, South Melbourne, is subject. The rationalisation of the legal status of the site provides the Roman Catholic Trusts Corporation and MacKillop Family Services with the certainty it requires to invest in the refurbishment of existing buildings. It also allows the Minister for Finance to sell or transfer the remainder of the site for the development of a key piece of social infrastructure, such as age care and/or child care.

#### **Permanent reserve for asylum purposes at Daylesford**

The Daylesford Ladies Benevolent Society approached the Minister for Finance concerning the purchase of the site it manages as committee of management at 26 East Street, Daylesford. A historic building at the site straddles the boundary of the permanent reserve for asylum purposes and freehold owned by the society.

The building is longer used by the society. Once the reservation is removed the society hopes to purchase the Crown land and consolidate it with their freehold land. They will then sell the consolidated parcel as part of the rationalisation of its activities in Daylesford.

The bill will revoke the permanent reservation over the land and will facilitate the sale of the land to the Daylesford Ladies Benevolent Society, allowing it to proceed with the rationalisation of its activities.

#### **Permanent reserve for benevolent asylum purposes at Beechworth**

The bill also revokes the permanent reserve and related Crown grant for benevolent asylum purposes at Beechworth.

This land is part of the former Beechworth Hospital site, which occupies several parcels of land including freehold that is now surplus to the requirements of the Department of Human Services since the establishment of new facilities.