

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

In my opinion, the Parliamentary Salaries and Superannuation Amendment 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 object of the Parliamentary Salaries and Superannuation Amendment Bill 2007 is to limit the increase in the salary payable to members of the Victorian Parliament to 3.25 per cent.

Human rights issues

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

The bill does not engage any of the rights under the charter.

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

As the bill does not engage any of the rights under the charter, it is not necessary to consider section 7(2) of the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it does not raise a human rights issue.

HON. STEVE BRACKS, MP

Premier of Victoria

Second reading

Mr BRACKS (Premier) — I move:

That this bill be now read a second time.

The purpose of this bill is to amend the Parliamentary Salaries and Superannuation Act 1968 to limit the increase to the basic salary payable to members of this Parliament to 3.25 per cent for the 2007–2008 financial year.

As members are aware, under the Parliamentary Salaries and Superannuation Act 1968, Victorian parliamentary salaries are set by reference to the federal parliamentary salaries. In May and June of this year, the federal Remuneration Tribunal announced that federal parliamentary salaries will increase by 2.5 per cent and then a further 4.2 per cent, effective from 1 July 2007.

In response to the tribunal's decision, and in line with this government's public sector wages policy, this bill limits the pay rise for members of this Parliament to 3.25 per cent. It achieves this by amending the definition of 'basic salary' in the Parliamentary Salaries

and Superannuation Act 1968 to increase the difference between federal and Victorian members' basic salary from \$1442 to \$5733, backdated to 1 July 2007. The same approach was adopted in 2004.

These amendments demonstrate the government's willingness to apply to itself the same standards that apply to Victoria's public sector workforce.

The government has a comprehensive agenda to deliver good government on behalf of all Victorians. This agenda includes significant spending commitments in building and maintaining infrastructure and improving services in health, education, water supply and community safety.

The government's wages policy for Victoria's public sector workers provides a guideline wage increase of 3.25 per cent, which provides a real wage increase given that the consumer price index increased by only 0.1 per cent in the last quarter, or 2.2 per cent for the year. Higher wage increases are possible if funded through productivity improvements.

The policy is designed to ensure fair wage outcomes for our highly valued public sector workforce and to generate improved productivity, while ensuring the government's policy agenda is implemented in a fiscally responsible manner.

I also draw the attention of the house to section 4 of the bill. This clause will only be proclaimed as a safety measure to protect members' existing salary in the unlikely event that the federal Remuneration Tribunal determinations are disallowed by the commonwealth Parliament. I do not expect that it will need to be used.

I commend the bill to the house.

Debate adjourned on motion of Mr WELLS (Scoresby).

Debate adjourned until Thursday, 2 August.

16:10

LEGAL PROFESSION AMENDMENT (EDUCATION) BILL

Statement of compatibility

Mr HULLS (Attorney-General) 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 Legal Profession Amendment (Education) Bill 2007.

In my opinion the Legal Profession Amendment (Education) 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 the bill

The Legal Profession Amendment (Education) Bill 2007 amends the Legal Profession Act 2004 to modernise the statutory bodies that oversee admission to the legal profession in Victoria. The bill also amends the powers and procedures used by these bodies in assessing applications and deciding on whether a person is a fit and proper person for admission to the legal profession. In addition it makes some amendments to the regulatory powers of the Legal Services Board and the Legal Services Commissioner.

Human rights issues

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

Section 13 — privacy and reputation

The Board of Examiners is the statutory authority that assesses individual applications for admission to the legal profession before making a recommendation to the Supreme Court as to whether or not that person may be admitted to the legal profession. The bill provides for the Board of Examiners to require from an applicant for admission, or to obtain from third parties, a range of personal information about that applicant. These powers raise the right to privacy and reputation as set out in section 13 of the charter:

A person has the right:

- (a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
- (b) not to have his or her reputation unlawfully attacked.

The following provisions in the bill are considered to raise the right to privacy:

Clause 4, which allows the Board of Examiners to consider whether a person has been the subject of disciplinary action arising out of the person's conduct in attaining their qualifications for admission to the legal profession. The section further allows the Board of Examiners to request documents from the educational institutions that person attended.

Clause 5, which allows the admission rules to require applicants to submit a criminal record check with their application for admission.

Clauses 6 and 7, which allow the Board of Examiners to require a health assessment of an applicant for admission if they become aware of a 'mental impairment' that may result in a person not being a fit and proper person for admission to the legal profession. The definition of mental impairment includes alcoholism and drug dependency.

Although the right to privacy is raised by these clauses, it is not considered that these clauses unlawfully or arbitrarily interfere with the right.

The right to privacy and reputation is not an absolute right.

Suitability for admission to the legal profession

Section 1.2.6 of the principal act requires the Board of Examiners to consider a range of 'suitability matters' which may affect whether a person is a fit and proper person for admission to the legal profession. The amendments to the act contained in this bill set out how the Board of Examiners may gather sufficient evidence to make an informed decision about these suitability matters.

Conduct while studying law

Consideration of whether a person has been the subject of disciplinary action arising out of the person's conduct while attaining their qualifications for admission to the legal profession is considered not to be an unlawful or arbitrary interference with the right to privacy and reputation. The interference serves a significant public interest purpose as it allows for scrutiny of the conduct of applicants for admission to the legal profession in the years preceding their qualification for admission. Evidence of disciplinary action taken against an applicant for admission, for example of plagiarism or sexual harassment, may be evidence that the applicant is not a fit and proper person to be admitted to the legal profession. It may also provide evidence that, despite such action taken in the past, a person is now a fit and proper person to be admitted. The interference is restricted to scrutinising disciplinary action in the course of pursuing the academic and practical legal training qualifications that precede admission to the legal profession. The interference supports the need for the Board of Examiners to have a range of information about applicants for admission to inform their decision making.

Criminal record checks

Similarly consideration of whether an applicant has a criminal record is considered not to be an unlawful or arbitrary interference with the right to privacy and reputation. The interference serves a significant public interest purpose as it allows for scrutiny of the behaviour of applicants for admission to the legal profession. Evidence of criminal convictions may inform the Board of Examiners as to whether an applicant is a fit and proper person to be admitted. The interference is restricted to scrutinising criminal convictions. The interference supports the need for the Board of Examiners to have a range of information about applicants for admission to inform their decision making.

Health assessments where mental impairment evidenced

Providing for a health assessment to be requested where the Board of Examiners or the Legal Services Board has reasonable grounds to believe that a person has a mental impairment that may result in that person not being a fit and proper person to be a member of the legal profession is also considered not to be an unlawful or arbitrary interference with the right to privacy and reputation. It should be noted that the power of the Legal Services Board to require a health assessment already exists under the current act. The amendment is only to give the Board of Examiners similar powers. As explained above, section 1.2.6 of the principal act requires the Board of Examiners to consider a range of 'suitability matters' which may affect whether a person is a fit and proper person for admission to the legal profession. The provision to allow the Board of Examiners to require a health assessment where there are reasonable grounds to believe that the applicant has a mental impairment that would affect their

suitability for admission supports the Board of Examiners' need to gather sufficient evidence to make an informed decision about these suitability matters.

It should also be noted that clause 8 of the bill protects privacy as it provides that health assessment reports are confidential to the Board of Examiners. Clause 23 will make the requirement to provide health assessments only apply to applications for admission made on or after 1 July 2008.

Section 8 — recognition and equal treatment before the law

The amendments regarding the use of health assessments also raises the right to equal treatment before the law. That right is expressed in the charter to be:

- (1) Every person has the right to recognition as a person before the law.
- (2) Every person has the right to enjoy his or her human rights without discrimination.
- (3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.
- (4) Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

The amendments require applicants for admission or for a practising certificate, or holders of a current practising certificate, to undertake a health assessment if the Board of Examiners (in the case of applicants for admission) or the Legal Services Board (in the case of those applying for or holding a practising certificate) have reasonable grounds to believe that a person may have a mental impairment that may result in that person not being fit to be admitted or engage in legal practice. It should be noted that the powers in relation to the Legal Services Board already exist under the principal act. This effectively treats people with mental health issues unequally to people who do not have mental health issues. The charter protects the rights of people with impairments, including mental impairments, from such unequal treatment unless such a limitation on the right to equal treatment and non-discrimination can be justified under s 7 of the charter.

2. Consideration of reasonable limitations

Limitations on the right to privacy and reputation

As discussed above, the clauses that engage the right to privacy and reputation are not considered to be an unlawful or arbitrary interference with those rights, so although the right is raised, the right is not limited. Therefore it is unnecessary to consider whether the interference is a reasonable limitation.

Limitations on the right to equal treatment before the law

The requirement to undergo a health assessment in circumstances where an applicant has a mental impairment that may result in that person not being fit to be admitted is considered to be a reasonable limitation on the right to equal treatment before the law, despite the potential discrimination against people with mental impairments. Whether an applicant has a 'material mental impairment' is a suitability matter under section 1.2.6 of the principal act which must be considered by the Board of Examiners in deciding whether a

person is fit and proper to be admitted. The Board of Examiners requires an appropriate procedure for making such an assessment. The bill provides that a medical practitioner is able to be engaged to provide a health assessment to the Board of Examiners to inform their decision making. Without such a procedure in place, the Board of Examiners may have a history of mental health issues disclosed to them by an applicant but have no way of properly assessing whether those mental health issues should be a barrier to the applicant being admitted to the legal profession. Prejudice or ignorance may lead to applicants being denied admission, when in fact a health assessment may inform the Board of Examiners to admit an applicant.

The limitation serves an important public purpose as it allows for an objective assessment by a qualified medical practitioner of an applicant's mental health in cases where the Board of Examiners has reasonable grounds to believe that the applicant's mental impairment may result in that person not being a fit and proper person to be admitted. The Legal Services Board is currently able to conduct health assessments on lawyers applying for a practising certificate or current holders of a practising certificate. Recognising that admission to the legal profession is the first step toward practising as a legal practitioner, these amendments extend that power to the Board of Examiners.

The limitation is restricted to allowing for health assessments only where the Board of Examiners has reasonable grounds to believe a mental impairment may result in a person not being a fit and proper person to be admitted to the legal profession. 'Reasonable grounds' may include circumstances where an applicant discloses a history of hospitalisation in relation to a mental health issue, or a criminal record that is related to mental health problems.

The requirement that the board must form a belief on reasonable grounds that an applicant's mental impairment would render them unfit for admission recognises that not all mental health problems warrant a health assessment. Only those more serious mental health problems that would result in a person being unfit to engage in legal practice may trigger a health assessment. A health assessment will not necessarily lead to the conclusion that a person not be admitted — in many circumstances the health assessment may support the applicant's case for admission, despite having a mental impairment.

The limitation supports the need for the Board of Examiners and the Legal Services Board to have a range of information about people seeking to be part of the legal profession to inform their decision making and regulate the legal profession for the benefit of the public.

As this is an amendment bill, the clauses need to be read in the wider context of other provisions in the principal act which protect the applicant's right to equal treatment. These provisions include a requirement that at least 28 days written notice of the health assessment is to be provided to the applicant, a right to apply to the Victorian Civil and Administrative Tribunal for review of a decision of the Board of Examiners to require them to undergo a health assessment, and that the health assessment can only be used for the application before the Board of Examiners and not in other unrelated proceedings.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because although the bill raises the right to privacy it does not limit that right. Although the bill limits the right to equal treatment before the law for people with mental impairments this limitation is reasonable, justifiable and in the public interest.

ROB HULLS MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

This bill amends the Legal Profession Act 2004, which commenced on 12 December 2005.

The main purpose of the act was to improve the regulation of the legal profession by implementing national model provisions developed through the Standing Committee of Attorneys-General (SCAG). Recently Parliament passed the second tranche of amendments to the national model in May this year.

However, the act was not intended to change the structures, rules and procedures of the previous act (the Legal Practice Act 1996) in relation to admission to the legal profession and continuing professional development until a comprehensive review could be undertaken.

In 2006 I commissioned an expert review by Ms Susan Campbell, formerly professorial fellow in legal practice at Monash University. She was assisted by an advisory board made up of recognised legal education experts — Professor the Honourable George Hampel, AM, QC, Professor the Honourable Michael Lavarch, Professor Ainslie Lamb, AM, Associate Professor George Beaton, and Mr John Cain. Ms Campbell conducted a range of consultation exercises with key stakeholders including the Council of Legal Education, the Board of Examiners, the Legal Services Board, the Law Institute of Victoria and the Victorian Bar. I would like to take this opportunity to thank all of the contributors to this review for their dedication to improving the education and training of the legal profession in Victoria.

The purpose of the review was to assess whether current legal education services in Victoria were providing legal practitioners at all stages in their careers with the appropriate level of knowledge and skills to support effective legal practice.

The review identified 47 reforms required to the education and training framework, many of which have been or are in the process of being implemented. In

particular the review recommended a new 12-month traineeship system for people seeking to become a legal practitioner to replace the articles of clerkship currently undertaken by most law graduates before being admitted to the legal profession. The traineeship is based on ensuring all applicants for admission attain core competencies in legal practice, particularly in ethics and professional responsibility and work management and business skills. This necessitates a number of changes to the Legal Practice (Admission) Rules 1999 (admission rules) which will shortly be subject to public consultation before their introduction in July 2008. The review has also brought about the introduction of uniform continuing professional development rules from 1 April 2007 which will ensure that all legal practitioners undertake core areas of ongoing training and learning in key areas of legal practice such as business skills, ethics and substantive law.

The amendments before the house are mainly to modernise the two bodies that oversee admission to the legal profession — the Council of Legal Education (the council) and the Board of Examiners. The council is responsible for setting the admission requirements. The Board of Examiners is responsible for assessing individual applications for admission.

The report identified a number of problems with the current statutory framework for these two bodies. In accordance with the recommendations for reform made by the review the bill:

changes the membership of the Council of Legal Education and the Board of Examiners to remove the large number of ex-officio members; and

makes associated changes to modernise the requirements in relation to the appointments process, quorums, delegation powers and staffing of these two bodies in line with cabinet-approved guidelines for such statutory appointments.

The report also reviewed the factors considered by the Board of Examiners when determining if an individual is eligible for admission to the legal profession. The report noted that the Board of Examiners needs to assess a wide range of information about individual applicants in order to ensure that only suitable people are admitted to the legal profession. Current arrangements do not allow the Board of Examiners to gather all of this information effectively. The report therefore recommended that the act be amended to give the Board of Examiners improved processes for informing themselves about the fitness of applicants for admission. This includes extending the range of issues