

## **MAJOR EVENTS (AERIAL ADVERTISING) BILL**

### **Statement of compatibility**

Mr MERLINO (Minister for Sport, Recreation and Youth Affairs) 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 Act, I make this statement of compatibility with respect to the Major Events (Aerial Advertising) Bill 2007.

In my opinion, the Major Events (Aerial Advertising) 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 purpose of the Major Events (Aerial Advertising) Bill 2007 is to prohibit aerial ambush marketing at major events in Victoria.

The bill requires commercial aerial advertising at specified events to be authorised, and makes it an offence to undertake unauthorised commercial aerial advertising in airspace within sight of the venues for those events.

The events which have been specified in the legislation are: the Boxing Day Test, the Australian Open Tennis Championships, the Australian Formula One Grand Prix, the Australian Motorcycle Grand Prix, the AFL Grand Final and specified race days during the Spring Racing Carnival. The bill provides that additional major events may be made subject to the legislation by Governor in Council order.

Further, the bill provides civil remedies in relation to aerial ambush marketing, namely the ability for the state or event organisers to seek injunctions and for a person to take action for damages.

The objective of these criminal and civil measures is to ensure that Victoria can provide an attractive commercial environment for the sponsors and promoters of its major events, and can retain its competitive advantage in the major events industry.

The major events sector is a vital segment of the Victorian economy. Major events are estimated to generate an economic benefit to the state of over \$1 billion per year. They are also an important component of the government's strategy to promote Victoria as a place to live, work and do business.

The investment of sponsors is crucial to the viability of events.

Sponsors invest significant sums of money in exchange for valuable marketing opportunities and high levels of exposure at events, in some cases including television coverage to millions of viewers around the world.

Aerial ambush marketing is an unfair practice that enables rival companies, which have not paid for sponsorship rights, effectively to take a 'free ride' and exploit these opportunities.

This undermines the value of the advertising rights bought by official event sponsors. As a result, there is a risk that sponsors could withdraw their support for future events, which would impact on event revenue streams, or that international rights holders could withdraw events from Victoria altogether.

Ultimately this would damage Victoria's reputation as Australia's leading host of major events.

The controls being imposed by the bill are designed to provide a strong deterrent to aerial ambush marketing at specified major events in Victoria. The controls only relate to aerial advertising of a commercial nature. Aerial advertising of a non-commercial nature -- for example, an individual making a personal statement that is not designed to sell or publicise goods or services -- is not subject to the bill.

Human rights issues

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

The Major Events (Aerial Advertising) Bill 2007 makes it an offence to display commercial aerial advertising without authorisation.

The principal relevant right under the Charter of Human Rights and Responsibilities upon which the bill would have an impact is identified as:  
s. 15: Freedom of expression.

- (1) Every person has the right to hold an opinion without interference.
- (2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria and whether --
  - (a) orally; or
  - (b) in writing; or
  - (c) in print; or
  - (d) by way of art; or
  - (e) in another medium chosen by him or her.
- (3) Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary --
  - (a) to respect the rights and reputation of other persons; or

(b) for the protection of national security, public order, public health or public morality.

An additional relevant right under the charter which was raised by the bill was identified as:

s. 20: Property rights

A person must not be deprived of his or her property other than in accordance with law.

The bill is relevant to this human right to the extent that it enables authorised officers to apply to a magistrate for a search warrant to enter specified premises and to search for and seize items that are reasonably believed to be connected with an offence under the bill.

These powers are part of a comprehensive enforcement scheme set out in the bill. Their inclusion in the bill is necessary to ensure that authorised officers have the powers required to investigate and gather evidence relevant to suspected offences under the bill.

In any application for a warrant, an authorised officer must demonstrate the need to exercise these powers in specific circumstances and must exercise the powers in accordance with the directions of the Magistrates Court.

The requirement for powers of entry, search and seizure to be exercised with a warrant is intended to ensure that these powers are exercised with due process and restraint, and that deprivation of property in these circumstances is not arbitrary and is undertaken in accordance with law.

It is therefore considered that the human right relating to property as expressed in section 20 of the charter, while relevant to the bill and requiring consideration, is not limited, restricted or interfered with by the bill.

## 2. Consideration of reasonable limitations -- section 7(2)

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

The right to freedom of expression is often described as essential to the operation of a democracy. In particular, the right to freedom of expression enables people to participate in political debate, to share information and ideas which inform that debate and to expose errors in governance and the administration of justice. It is an important right in international law.

It is considered that the right to freedom of expression includes commercial advertising in the nature sought to be restricted by the bill. It is significant for the discussion in this statement, however, that the courts have historically afforded

less protection to freedom of commercial expression than either political or artistic expression.

(b) The importance of the purpose of the limitation

The purpose of the limitation in the bill is to protect the commercial interests of legitimate sponsors from the unauthorised ambush advertising of their competitors. This is to ensure that Victoria's major events provide an attractive commercial environment for sponsors and promoters. This is considered to be an appropriately important purpose and objective to be protected by legislation in a modern, commercially competitive environment.

(c) The nature and extent of the limitation

The bill limits the ability of individuals to impart, seek and receive advertising information in airspace within sight of the venues of specified major events. However, the bill only prohibits deliberate aerial ambush advertising of a commercial nature and does not seek to limit the rights of individuals making statements of a non-commercial nature.

The restrictions apply only to advertising within sight of specified major events on each day of the event. Further, they only apply within prescribed times, which are intended to minimise the duration of the restraint and yet provide reasonable and appropriate advertising opportunities for authorised advertisers and sponsors.

Under the bill it would be open to an individual wishing to engage in aerial advertising to purchase legitimate advertising opportunities within sight of the venue of the major event. That is, the bill only limits unauthorised aerial advertising and does not prevent an individual from pursuing other advertising opportunities.

(d) The relationship between the limitation and its purpose

It is considered that there is a rational and proportionate relationship between the limitations imposed by the bill and the purpose of the limitation.

This is because ambush advertising is generally undertaken by corporations and not individuals. In practical terms, this means that the limit on an individual's rights in the bill is largely a limit on their right to seek and receive alternative advertising information.

Balanced against the important purpose of securing sponsorship at major events, these limits are rational and proportionate, particularly as individuals attending major events can readily access these alternative advertising messages in other forums.

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

As previously stated, the nature and scope of the limits in this bill are designed to ensure that only commercial aerial advertising is restricted, and that the restriction only applies to advertising within sight of the venues of major events. Further, the limits only apply for a defined period of time which is designed to minimise the restrictions while still meeting the purpose of the legislation.

The bill makes unauthorised aerial advertising an indictable offence subject to significant penalties. The penalties are 400 penalty units for an individual and 2400 penalty units for a body corporate (\$42 972 and \$257 832 respectively for the financial year commencing 1 July 2006).

It is considered that the penalties need to be substantial in order to provide a sufficient deterrent, and that they are proportionate when set against the potential damage to an event's commercial agreements, image and reputation.

Further, the penalty for an individual (as for a body corporate) is a maximum penalty and it would be open to the court to impose a lesser penalty depending on the circumstances of the case.

In order to encourage and protect commercial sponsorship at major events in Victoria, a legislative response is considered to be a practical and reasonable response to ambush aerial advertising.

(f) Any other relevant factors

Ambush aerial advertising has the potential to undermine legitimate commercial sponsorship of major events and there are currently no other legal avenues available to prevent it in Victoria.

A similar legislative response has been adopted twice previously in Victoria: for the Melbourne 2006 Commonwealth Games and the 12th FINA World Championships in 2007.

Conclusion

I consider that the Major Events (Aerial Advertising) Bill 2007 is compatible with the Charter of Human Rights and Responsibilities because it does limit, restrict or interfere with a human right, being the right to freedom of expression under section 15 of the Charter, but that limitation is reasonable and proportionate. This is in view of the important objective of the legislation, which is to encourage and protect commercial sponsorship at major events in Victoria, and the measures in the bill to minimise the nature and scope of the restrictions, as detailed in this statement.

JAMES MERLINO, MP

Minister for Sport, Recreation and Youth Affairs

