

otherwise directs. The department provides the essential basic administrative system for arranging panels, but also incurs costs specific to particular panels. Clause 15 provides a head of power to enable these amounts to be charged to planning authorities. The result will be a cost-recovery mechanism similar to that applying to advisory committees established under part 7 of the act, and to inquiries under the Environmental Effects Act 1978.

Clause 16 updates and clarifies regulation-making powers under the Planning and Environment Act 1987.

Clause 17 inserts a transitional provision to clarify that an authorisation to a municipal council to prepare an amendment to a planning scheme, given under the existing act provisions, will apply under the new provisions as inserted by clause 4.

Clauses 18 and 19 facilitate operation of another part of the land administration system. It amends the Transfer of Land Act 1958 to authorise electronic provision of the forms for registering land transactions. Forms will now be available electronically via the internet.

Clauses 20, 21 and 22 provide for minor changes to the Subdivision Act 1988 — to clarify that rights of review of plans include review of an engineering plan associated with land development, and to update appeal and review terminology in the act.

Clause 23 provides that the amending act is repealed on 1 September 2009. As suggested by the Scrutiny of Acts and Regulations Committee, all amending acts now contain an automatic repeal provision, which will save the time and expense of having to repeal amending acts in statute law revision bills. This repeal will not affect in any way the operation of the amendments made by this bill.

The changes proposed in this bill are technical in nature. However these changes form part of an ongoing improvement program, and as such are important to the efficient operation of the planning system.

I commend the bill to the house.

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

Debate adjourned until Thursday, 5 July.

SUMMARY OFFENCES AMENDMENT (UPSKIRTING) 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 Act 2006, I make this statement of compatibility with respect to the Summary Offences Amendment (Upskirting) Bill 2007.

In my opinion, the Summary Offences Amendment (Upskirting) 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

Clause 3 of the bill inserts a new division 4A in part 1 of the Summary Offences Act 1966. In summary, the bill:

makes it an offence to use an aid or device (such as a mirror or drilling a hole in a wall) to deliberately observe another person's genital or anal region (intimate body parts) in circumstances where it is reasonable for the other person to expect such observation could not otherwise be undertaken;

makes it an offence to visually capture (such as photograph or film) another person's intimate body parts in circumstances where it is reasonable for the other person to expect such a visual image could not be made;

makes it an offence to distribute (for example by sending, supplying or transmitting) a visual image made of another person's intimate body parts, without their consent to any distribution;

provides that where the subject of the visual image is incapable of giving consent, or is a child, that visual image can only be distributed in circumstances in which a reasonable person would regard the distribution as acceptable. However, the bill does not purport to interfere or replace current child pornography laws. A note is contained in the bill that the Crimes Act 1958 sets out current child pornography laws;

confers power to issue a search warrant in respect of an alleged visual capture or distribution offence.

Human rights issues

There are four human rights protected by the charter that are relevant to the bill. Each of the four rights together with the relevant new section(s) are outlined below.

1. Section 13(a) Right to privacy

Section 13(a) of the charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

There are four new sections that arguably engage this charter right. Two of these new sections actually enhance, and do not

limit the right. The third and fourth new sections engage the right to privacy and the right to correspond. However, the rights are not unlawfully or arbitrarily interfered with, and the sections do not limit these rights. These are explained below.

New sections 41B and 41C

New sections 41B and 41C prohibit the observation or visual capturing of another person's intimate body parts, in circumstances in which there is a reasonable expectation this region could not be observed and where there is no express or implied consent to do so. These provisions arguably enhance (and do not limit) the right of an individual not to have their privacy interfered with.

New section 41D

This new section prohibits the distribution of any visual images made of another person's intimate body parts, where the subject of the visual image has not consented to any distribution. This provision arguably engages and limits a person's right to correspond.

This aspect of the charter right provides a person has the right not to have correspondence arbitrarily or unlawfully interfered with.

Unlawful interference

The bill defines distribution to include communicating, sending or supplying. The bill prohibits the distribution of visual images of another person's intimate body parts. There are certain listed exceptions, such as with consent of the person being visually captured. Any 'interference' with correspondence is therefore permitted by the Bill and the interference with correspondence is precise and circumscribed and in accordance with law.

Arbitrary interference

In providing clear parameters around the prohibition on distribution of visual images, with suitable safeguards in the form of exceptions to the offence where there is implied or express consent by the subject to any form of distribution, the bill ensures that any interference with correspondence will be reasonable in the particular circumstances. Any 'interference' with correspondence under this bill is therefore not arbitrary.

New section 41E

This new section confers power for the issuing of a search warrant in respect of a visual image or distribution of an image. This provision arguably engages the right to privacy because it allows for power of entry into a person's home. However, to comply with the protection afforded by section 13(a), the charter requires that a person's privacy or correspondence must not be unlawfully or arbitrarily interfered with.

Unlawful interference

The power of entry can only be exercised if a warrant has been issued by the court. Importantly, this warrant will only be issued in accordance with the rules relating to search warrants under the Magistrates' Court Act 1989. As such, any interference is precise and circumscribed and in accordance with law.

Arbitrary interference

The lawful grant of a power of entry is only available pursuant to rules in the Magistrates' Court Act 1989, namely a discrete and defined circumstance, where there are reasonable grounds for the granting of the power. As such, any interference is reasonable and not arbitrary.

2. Section 15 — Freedom of expression

Section 15 of the charter provides that:

- (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 necessary —
 - (a) to respect the rights and reputations of other persons; or
 - (b) for the protection of national security, public order, public health or public morality.

New section 41D

This new section prohibits the distribution of any visual images made of another person's intimate body parts, where the subject of the image has not consented to any distribution. This provision arguably engages a person's (namely the distributor's) right to seek, receive or impart information and ideas of all kinds. However, section 15 of the charter specifies that the right to freedom of expression may be subject to lawful restrictions to respect the rights of other persons, and for the protection of public morality.

Lawful restriction

The purpose of the whole bill, and particularly the new section 41D, is to protect the rights of individuals' privacy in relation to their intimate body parts, including when they are in a public place. It is arguable that this new section is reasonably necessary to respect the rights of others, in accordance with section 15(3)(b) of the charter.

Similarly, the bill is designed to prohibit the unauthorised distribution of visual images that are of intimate body parts. It is arguable that this section of the bill is also reasonably necessary for the protection of public morality. Accordingly, any restrictions on freedom of expression under this bill are therefore lawful, pursuant to section 15(3)(a) of the charter.

3. Section 17 — Protection of families and children

Section 17 of the charter provides that:

- (1) Families are the fundamental group unit of society and are entitled to be protected by society and the state.
- (2) Every child has the right, without discrimination, to such protection as is in his or her best interests as is needed by him or her by reason of being a child.

New section 41D

This new section provides that visual images of a child's intimate body parts can only be distributed in circumstances that reasonable persons would regard as acceptable. It is arguable that this section enhances (but does not limit) the right of a child to such protection as is in their best interests, and the standard is as determined by a reasonable person.

4. Section 20 — Property rights

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

New sections 41E and 41F

These new sections arguably engage this right, because they provide for seizure of things pursuant to a warrant, or in addition to the warrant in limited circumstances. The charter right, however, is not absolute and does not apply to property seized in accordance with law.

The new sections clearly set out the circumstances in which a warrant can be granted by a court (enabling seizure pursuant to it), and circumstances in which things not listed in a warrant can be seized, namely if there are reasonable grounds for believing the items could have been included in a warrant, will afford evidence relevant to one of the offences or it is necessary to seize the thing in order to prevent its loss or use in commission of an offence. The seizure of property is in accordance with this right, which is not limited.

Consideration of reasonable limitations — section 7(2)

The bill does not limit any human rights, and therefore it is not necessary to consider section 7(2) of the charter.

Conclusion

The Summary Offences Amendment (Upskirting) Bill 2007 is compatible with the Charter of Human Rights and Responsibilities on the basis that it raises four human rights issues, but does not limit and indeed enhances some of these human rights.

ROB HULLS, MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

Victoria recently experienced a spate of incidents where police arrested men who were caught secretly filming up the skirts of women on public transport and at public events, such as the Australian tennis open. The unfortunate prevalence of this behaviour, and the increasingly sophisticated means of carrying out such

activities, warrants the introduction of new and specific offences.

This bill will make it clear that taking unauthorised photos of a person's intimate body parts will be prohibited. Such behaviour is unacceptable to the community and will not be tolerated.

The bill creates specific and unique offences that ban 'upskirting' and related behaviour. Although this behaviour may already be prohibited by existing offences, such as indecent behaviour and stalking, this bill creates offences directly targeting such behaviour.

The bill also recognises the need to keep pace with technological changes. The small size of many cameras, and the advent of mobile phone cameras, means it is easier than ever before to take photos or make or transmit visual images without the subject's knowledge. Technological advances also facilitate the relatively easy transmission and distribution of visual images by mobile phones or the internet, in some cases without an actual recording being made, such as 'live streaming'.

Not only will it be an offence to take unauthorised photographs or film a person's intimate body parts when they are in public, it will be a separate offence to distribute such images. The invasion of privacy experienced by victims who have been surreptitiously recorded is compounded if the images are made public, such as sent via email or mobile phone to others.

This issue has been considered by the Standing Committee of Attorneys-General. There is widespread national support for ensuring this behaviour is prohibited. Each jurisdiction either has an offence against this behaviour or is considering introducing such an offence.

There is currently no prohibition on making visual recordings of other people in public places in a broader sense, and the bill does not purport to create such a prohibition. The bill is not aimed at unnecessarily restricting the taking or distributing of visual images. Rather, the bill is designed to strike a balance between the rights of individuals to privacy and protecting social, artistic or journalistic freedoms to take photos or other visual images in public places.

Specific restrictions are legitimate where the visual image in question is of another person's intimate body parts. The bill is necessary to protect individuals, especially women, when they are in the public arena.

In summary, the bill:

