

common-sense considerations that aim to encompass the needs of both parties.

Other factors that could be relevant in a particular case might, for example, include when the arrangements are to commence, how long they are to continue for, what information has been provided by the worker in respect of their situation, the accrued entitlements of the worker, and whether there are any legal or other constraints that affect the feasibility of the employer accommodating the responsibilities.

If, for example, a partner working in a firm has asked the firm to work from home on certain days because child-care arrangements are not available on those days, the firm should then ask itself questions such as:

is the nature of the work such that the partner can work from home?

if the partner is allowed to work from home, will other partners or employees be affected?

will any of the partner's clients or customers be affected?

how much will it cost the firm to set the partner up to work from home?

can the firm afford this?

if it is not possible to let the partner work from home, what other alternatives might there be?

are there any other relevant considerations such as occupational health and safety issues?

The bill makes it clear that it will be discriminatory for an employer, principal or firm to contravene the requirement not to unreasonably refuse to accommodate parental or carer responsibilities, and a person will be able to make a complaint of discrimination to the Victorian Equal Opportunity and Human Rights Commission about this contravention. The person will not have to separately prove direct or indirect discrimination in making the complaint.

Further practical guidance about these requirements will be provided in guidelines that are to be developed by the Victorian Equal Opportunity and Human Rights Commission, in collaboration with Industrial Relations Victoria, and in consultation with key stakeholders. The guidelines will be available prior to commencement of the bill.

In summary, the bill, and its guidelines, will provide guidance to employers, principals and firms about how to accommodate parental and carer responsibilities. It is

well recognised that flexible working arrangements benefit employers, employees and their families and that improving work and family balance is directly related to retaining skilled staff, especially women with family and carer responsibilities. This saves employers recruitment and training costs and ultimately boosts productivity.

The Victorian government has done the maths. Research shows that the real cost of recruiting and training a worker is just over \$17 000, which is an extraordinary 38 per cent of an annual salary of \$45 000. This is a message that most employers understand: if you operate an organisation with a high turnover in staff, it directly impacts on your budget.

While many employers no doubt endeavour to adopt a flexible approach to working arrangements, there are some employers who are unlikely to accommodate family responsibilities even where it is practicable to do so. It is therefore necessary to take this positive legislative step to ensure that workers with family responsibilities are not disadvantaged in their participation in the workforce.

I commend the bill to the house.

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

**Debate adjourned until Thursday, 25 October.**

## VICTORIAN WORKERS' WAGES PROTECTION 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 Victorian Workers' Wages Protection Bill 2007.

In my opinion, the Victorian Workers' Wages Protection 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 key purposes of the bill are to —

ensure that employers pay wages in money and to set out the methods for that payment;

regulate the ability of an employer to make deductions from an employee's wages; and

provide for enforcement mechanisms and remedies if an employer fails to pay an employee's wages in money, unlawfully deducts an amount from an employee's wages, or terminates, or threatens to terminate or prejudicially alter an employee's position because the employee is entitled to or seeks to exercise a right under the bill.

### Human rights issues

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

##### *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 the law. The bill is compatible with section 20 of the charter as it enhances individuals' rights at common law or under an industrial instrument to be paid their full entitlement to wages in money, without unauthorised deductions by an employer.

##### *Protection of families and children*

Clause 9(1)(b) of the bill provides that a written authorisation to make deductions is of no effect if the employee is under the age of 18 years and the authorisation has not been consented to in writing by the employee's parent or guardian.

Clause 9(1)(b) engages section 17 of the charter which provides that:

- (1) Families are the fundamental group unit of society and are entitled to be protected by society and the state and
- (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.

The bill is compatible with section 17 of the charter in relation to the protection of families and children, as it strengthens protections for young workers who are more susceptible to exploitation in the workplace by creating an additional safeguard before an employer can make deductions from their wages. This protection is in the best interests of young people and is needed by them.

##### *Right to privacy*

Section 13 of the charter provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with. Clause 9(1)(b) engages the right to privacy of persons under the age of 18 years who will be required to obtain the consent of their parent or guardian to authorise a deduction. The right to privacy in section 13(a) is only limited if an interference with privacy, family, home or correspondence is 'unlawful' or 'arbitrary'.

'Unlawful' means that no interference with privacy can take place except if the law permits it. The United Nations Human Rights Committee has said that a law which authorises any interference with privacy must be precise and circumscribed. In order to avoid being characterised as an 'arbitrary interference', the interference must be in accordance with the provisions, aims and objectives of the charter and should be reasonable and justifiable in the particular circumstances. Protecting the community from harm is a key principle

underpinning the charter. Clause 9(1)(b) does not limit the right to privacy because the requirement that a worker's parent or guardian must scrutinise and agree to their work arrangements in respect of deductions from wages, where the worker is under the age of 18 years, does not unlawfully or arbitrarily interfere with the right to privacy as the level of parental intervention is limited to a very specific set of circumstances and is justifiable, similar protections exist in other employment legislation, and the objective of protecting vulnerable workers from unreasonable deductions from wages is consistent with the charter.

##### *Recognition and equality before the law*

Section 8(3) of the charter provides that every person is equal before the law and is entitled to equal protection of the law without discrimination. Discrimination, in relation to a person, means discrimination within the meaning of the Equal Opportunity Act 1995 on the basis of an attribute set out in section 6 of that act.

Section 9(1)(b) engages the right to recognition and equality before the law because it provides for less favourable treatment of persons in the same or similar circumstances based on their age. However, the limitation is reasonable and justifiable, as discussed in section 2 of this statement.

Furthermore, insofar as the bill seeks to protect vulnerable workers from exploitation, it promotes the human rights concern of recognition and equality before the law as it takes steps to diminish or eliminate conditions that have resulted in groups within society (young workers, workers from other countries on subclass 457 visas and workers from non-English-speaking backgrounds etc.) being disadvantaged.

##### *The right to be presumed innocent*

The bill also raises the issue of the right to be presumed innocent provided for in section 25 of the charter. Clause 23 of the bill provides that there is a reversal of the evidentiary burden in proceedings for breach of the act where an employer has not paid an employee their full entitlement to wages in money or where an unauthorised deduction has been made, in circumstances where the employee is dead. This will mean that if a proceeding is brought against an employer under section 23, the employer will be required to point to evidence that the deceased employee was paid in money and that any deductions from their wages were authorised.

It is considered that section 25 is not engaged by clause 23 of the bill because the proceedings against an employer are civil, not criminal. The bill seeks to establish a civil penalty regime that confers enforcement powers on the Minister for Industrial Relations (or his or her delegate) and empowers a court to impose a civil penalty, which is a form of state sanction in response to unlawful conduct. However, even if the right to be presumed innocent is engaged by clause 23, any limitation on the right is reasonable and justifiable, as discussed below.

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

To the extent that the rights to recognition and equality before the law and the right to be presumed innocent may be limited, I consider that the limitations will be reasonable, in accordance with section 7(2) of the charter. I provide the following reasons for this view.

##### *Recognition and equality before the law*

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

The prohibition of discrimination is one of the cornerstones of human rights instruments and this is reflected in the preamble to the charter. However, the right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

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

The limitation on the right to equal treatment before the law serves a significant public interest purpose; namely, enhancing and protecting young people's entitlements. This is achieved through requiring that a worker's parent or guardian scrutinise and agree to their work arrangements in respect of deductions from wages, where the worker is under the age of 18 years.

Young workers as a class are recognised as having less experience of and familiarity with their rights at law and lesser bargaining strength in negotiating employment arrangements. Young workers are more likely to work in lower paid jobs and on a part-time or casual basis, and can be more vulnerable than adult workers to unfair work practices such as the making of unauthorised deductions from wages. For example, some cases have been reported of young employees working in the hospitality or retail sectors being held responsible for accidental breakages or for shortfalls in the till. The proposed requirement will confer an additional and important protection on young employees. This additional protection is therefore considered critical.

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

The bill proposes to limit the right by restricting the power of young workers to authorise deductions from their wages unless their parent or legal guardian has also done so.

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

There is a direct relationship between the limitation and the objective of protecting vulnerable workers from exploitation in the workplace.

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

There are no less restrictive means available to achieve the purpose of protecting young workers from exploitation.

(f) *any other relevant factors*

Similar protections exist in other employment legislation, at both state and federal level.

*Right to be presumed innocent*

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

The presumption of innocence is a well-recognised civil and political right and a fundamental principle of the common law. However, the right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

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

Clause 23 places an evidential burden on the employer in relation to establishing certain matters. Such matters are in the sole knowledge of the employer. If the employer were not required to point to evidence that a deceased employee was paid in money or that any deductions were authorised, it would be difficult, if not impossible, for representatives of the employee to pursue a claim of unlawful deduction and for an employer to be held liable for their conduct. The limitation is therefore important in ensuring that employers are penalised for contraventions of the act in circumstances where the employee has died.

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

The limitation has a very confined operation. The employer need only meet an evidential burden in relation to certain matters in circumstances where an employee has died. In addition, clause 14 of the bill requires that a written letter of demand to be served on an employer before proceedings may be brought (where practicable) which will provide an employer with the opportunity to avoid proceedings being taken at all by producing evidence that the deceased employee was paid in money or that any deduction from their wages was authorised.

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

The purpose of the reversal is to facilitate the bringing of proceedings in such circumstances, where the employer is in a unique position to adduce evidence before the court. The limitation has a direct relationship with its purpose, and is considered to be a proportionate legislative response to this objective.

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

There are no less restrictive means available to achieve the purpose of facilitating proceedings being brought where an unlawful deduction or reduction in wages is alleged, and the employee is deceased.

(f) *any other relevant factors*

Nil.

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because although the bill raises the right to privacy, protection of families and children and property, it does not limit these rights, and insofar as the bill limits the right to equal treatment before the law and the right to be presumed innocent, these limitations are reasonable, justifiable and in the public interest.

ROB HULLS MP  
Minister for Industrial Relations

*Second reading*

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

That this bill be now read a second time.

This bill will provide an improved safety net for all employees in Victoria by affording stronger protections

