

These budget reforms are measured and sensible. They build on past reform and will benefit business and ordinary Victorians.

I commend the bill to the house.

Debate adjourned on motion of Mr WELLS (Scoresby).

Debate adjourned until Wednesday, 16 May.

WATER ACTS AMENDMENT (ENFORCEMENT AND OTHER MATTERS) BILL

Statement of compatibility

Mr THWAITES (Minister for Water, Environment and Climate Change) 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 Water Acts Amendment (Enforcement and Other Matters) Bill 2007.

In my opinion, the Water Acts Amendment (Enforcement and Other Matters) Bill 2007, 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 purpose of the bill is —

- (a) to amend the Water Act 1989 and the Water Industry Act 1994 to make further provision for enforcement in relation to drought response plans, emergency management plans, permanent water saving plans and water restrictions set out in by-laws; and
- (b) to amend the Infringements Act 2006 to extend the operation of that act with respect to infringement notices under by-laws; and
- (c) to amend the Water Act 1989 to enable the minister to make further provision for licences to take water.

The bill is necessary —

- (a) to improve compliance with, and enforcement of, drought response plans, emergency management plans, permanent water saving plans and water restrictions set out in by-laws; and
- (b) to prevent non-consumptive licences from being converted to water shares; and
- (c) to enable new licences to be issued to take water for non-consumptive purposes.

Human rights issues

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

The following human rights protected by the charter are relevant to the bill.

Section 13(a): privacy

Clauses 12 (new section 185D) and 19 (new section 291D) of the bill will prima facie intrude upon an individual's right to privacy regarding information about them by requiring the compulsory disclosure of a person's name and address. Specifically, these clauses will allow an authorised water officer to require a person to state his or her name and address if that officer has reasonable grounds for believing that that person has contravened, or is contravening, a restriction or prohibition on the use of water contained in a drought response plan, an emergency management plan, a permanent water saving plan or water restrictions set out in a by-law.

Section 25(2)(a): minimum guarantees in criminal proceedings

Clauses 7, 10 and 22 of the bill substitute and augment existing provisions in the Water Industry Act 1994 and the Water Act 1989 that provide for the issuing of infringement notices for contraventions of the restrictions and prohibitions on the use of water contained in a drought response plan, an emergency management plan or a permanent water saving plan. Clause 25 of the bill extends the operation of the Infringements Act 2006 to infringement notices served for contraventions of the restrictions or prohibitions on the use of water contained in a by-law.

While the issuing of infringement notices is not captured by the charter, it is desirable that infringement notices satisfy the requirements of subsection 25(2)(a) of the charter. That is, an infringement notice should always be sufficiently clear and detailed so as to inform the person of the nature and reasons for it being issued, and persons issued with such notices should always be informed of their option to defend proceedings in court. Infringement notices issued under the Water Act 1989 and the Water Industry Act 1994 will be issued in accordance with the Infringements Act 2006, which requires an infringement notice to include prescribed details and state that the person is entitled to elect to have the matter heard and determined in the Magistrates Court, consistent with the requirements of the charter. There is therefore no limitation on the right in section 25(2)(a) and no need to proceed to consider whether limitations are reasonable in relation to clauses 7, 10, 22 and 25 of the bill.

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

Section 13(a): privacy

(a) What is that nature of the right being limited?

The right to privacy encompasses the idea that individuals should have an area of autonomous development, interaction and liberty — a 'private sphere' free from government intervention and from excessive unsolicited intervention by other individuals.

The right to privacy under the charter is not absolute. It may be subject to reasonable limitations under s. 7 of the charter.

(b) What is the importance of the purpose of the limitation?

The purpose of the limitation is to improve compliance with, and the effective enforcement of, water restrictions and prohibitions on the use of water by improving the ability of authorised water officers to compel persons to provide information in the course of investigating non-compliance with water restrictions. The purpose of the limitation is essential to achieving the objectives of these acts, which includes the promotion of the orderly, equitable and efficient use of water resources. Without the power to require a person to state his or her name and address, additional time and expense will be required to obtain this information, with the risk that where the information cannot be discovered an infringement notice will not be able to be issued or criminal proceedings brought.

(c) *What is the nature and extent of the limitation?*

Clauses 12 (new section 185D) and 19 (new section 291D) of the bill will allow an authorised water officer to require a person to state his or her name and address if that officer has reasonable grounds for believing that that person has contravened, or is contravening, a restriction or prohibition on the use of water contained in a drought response plan, an emergency management plan, a permanent water saving plan or water restrictions set out in a by-law. These clauses of the bill will prima facie intrude upon an individual's right to privacy regarding information about themselves by requiring the compulsory disclosure of a person's name and address. The intrusion on an individual's right to privacy will only allow an authorised water officer to require a person to state his or her name and address and no further personal information. The power will be exercised on a case-by-case basis and only in circumstances where the authorised water officer has reasonable grounds for believing that the person has contravened, or is contravening, a restriction or prohibition on the use of water.

(d) *What is the relationship between the limitation and its purpose?*

These clauses establish a reasonable and proportionate means of achieving the objectives of the Water Act 1989 and the Water Industry Act 1994. The clauses authorise an interference with privacy in precise and circumscribed circumstances, where an authorised water officer has reasonable grounds for believing that a person has contravened or is contravening, a restriction or prohibition on the use of water. A decision to interfere with an individual's privacy will be made on a case-by-case basis in accordance with the law and the merits of each case. The power is not arbitrary as each interference with privacy will take place in accordance with the provisions, aims and objectives of the charter. The limitation is designed to achieve the purpose of improving the ability of authorised water officers to investigate non-compliance with water restrictions, and there is a proportionality between the purpose of the limitation and the means employed to achieve that purpose.

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

No other means are considered reasonably available to achieve the purpose of the restrictions placed on a person's right to privacy.

(f) *Are there any other relevant factors?*

No other factors are considered relevant.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it does limit, restrict or interfere with a human right, but that limitation is reasonable and proportionate.

JOHN THWAITES MP
Minister for Water, Environment and Climate Change

Second reading

Mr THWAITES (Minister for Water, Environment and Climate Change) — I move:

That this bill be now read a second time.

The main purpose of this bill is to improve compliance with drought response plans, water restriction by-laws, permanent water-saving plans and emergency management plans.

The continuing low rainfall and inflows into Victoria's reservoirs over the past decade are threatening the security of the state's water supply. The government has introduced a number of measures, including permanent water saving plans, to reduce the consumption of drinking water in this state.

This led to Melbourne and regional cities and towns saving great volumes of drinking water. In Melbourne alone, there has been an average per capita reduction in drinking water of 22 per cent compared to 1990s levels.

Water restrictions are important instruments for further reducing water consumption across Victoria in times of severe water shortage, such as the current drought. As at 10 April 2007, 93 towns were on stage 1 restrictions, 35 towns were on stage 2, 17 towns plus Melbourne were on stage 3a, and 254 towns were on stage 4.

From here on, I will collectively refer to drought response plans, water restriction by-laws, permanent water-saving plans and emergency management plans as water restrictions.

Most Victorians are doing the right thing and are complying with water restrictions. There are, however, some people who are letting down the vast majority by not complying with these measures. The community rightly expects there should be in place an enforcement framework that effectively deters people from doing the wrong thing.

Last year the government introduced legislation to enable the water businesses to authorise persons to serve infringement notices as an alternative to bringing court proceedings. In addition, the water businesses have the power to restrict the supply of water to a