DRUGS, POISONS AND CONTROLLED SUBSTANCES (VOLATILE SUBSTANCES) (REPEAL) BILL

Second reading

Debate resumed from 27 May; motion of Ms NEVILLE (Minister for Mental Health).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

APPROPRIATION (2008/2009) BILL

Second reading

Debate resumed from earlier this day; motion of Mr BRUMBY (Premier).

Mr HAERMeyer (Kororoit)—As I was saying before I was rudely interrupted, this budget has delivered not only to the people of Victoria, but it has delivered big time to the people of the western suburbs. I was previously going through a number of initiatives. I have to say that the Labor Party is the only party that has actually delivered to the western suburbs. As far as the Liberal Party is concerned, the western suburbs is a place where you just put toxic waste dumps and that is all you ever do there. The Liberal Party has never delivered a thing.

Then we have the Greens, the people who do not want us to have an alternative to the West Gate Bridge, the people who talk about extending rail lines without doing the basic infrastructure work downstream that Eddington has recommended and which would make that possible. These inner city latte sippers might want to come out of the latte shops of Lygon Street some time and come and visit the western suburbs. They might do it via the West Gate Bridge at peak hour, and then they might realise what the real needs of the western suburbs are. This government has a commitment to the western suburbs, the Greens do not; and their bedmates, the Liberals, have demonstrated a total contempt for the western suburbs in history.

Coming back to where I started, if you want to be an alternative government, you have got to present alternative policies. You have got to present alternative ideas. The only alternatives the Liberals are focused on is whether it is the member for Polwarth, whether it is the member for Hawthorn or whether it is the member for Malvern. They are the three alternatives they are focused on. They are not thinking about a single alternative other than that. Until they do, until they start putting alternatives to the people of Victoria, they are not going to be ready to govern.

Whilst they come into this house with stupid notions like spend more, tax less and have lower debt — what is that about? — the opposition is not going to be ready to govern in anybody’s language — people are going to continue to treat them with contempt, the Leader of the Opposition is going to continue to have a lower approval rating than Troy Buswell and bikikas will remain unsafe.

Debate adjourned on motion of Mr INGRAM (Gippsland East).

Debate adjourned until next day.

COURTS LEGISLATION AMENDMENT (JURIES AND OTHER MATTERS) 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 Courts Legislation Amendment (Juries and Other Matters) Bill 2008.

In my opinion, the Courts Legislation Amendment (Juries and Other Matters) Bill 2008, 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 amendment to the Constitution Act 1975 will preserve the entitlement to a pension at age 60 and after 10 years service for County Court judges appointed to the Supreme Court after the commencement of section 18 of the Judicial Remuneration Tribunal Act 1995 but who before that commencement had service as a County Court judge.

The amendments to the Juries Act 2000 will place beyond doubt the power of the juries commissioner to exercise a power to excuse or not excuse a pool member from being part of a pool from which a panel would ultimately be chosen, to provide for the juries commissioner to be able to receive complaints from current or former jurors about jury
irregularities, to prohibit panel member and juror investigations, and to repeal section 51 of the Juries Act 2000 and replace it with an amended section to enable the relevant minister to set the rates for payment of jury remuneration and allowances and vary such remuneration and allowances and notify such rates in the Government Gazette.

The amendment to the Magistrates’ Court Act 1989 will provide that only persons prescribed by the rules of court can witness a statement to be tendered at committal proceedings.

Human rights issues

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

Section 11: freedom from forced work

Section 11 of the charter provides that a person must not be held in slavery or servitude and must not be made to perform forced or compulsory labour.

Clause 5 of the bill provides for remuneration and allowances for jury service. Section 11(2) of the charter is engaged. However, section 21(3)(c) provides that forced or compulsory labour does not include work or service that forms part of normal civil obligations. Jury service is part of normal civil obligations and therefore the right is not limited.

Section 12: freedom of movement

Section 12 of the charter provides that every person lawfully in Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where they live.

The right is limited by clause 7 of the bill which inserts a new section 78A in the Juries Act 2000. Section 78A limits the right to the extent that it prohibits a person who is on a panel for a trial or a juror in a trial from “viewing or inspecting a place or object that is relevant to the trial”, which may restrict a person from travelling to particular locations.

However, the limit upon the right is clearly reasonable and justifiable in a free and democratic society for the purposes of s 7(2) of the charter having regard to the following factors:

(a) The nature of the right being limited

The right to move freely within Victoria encompasses a right not to be forced to move to, or from, a particular location and includes freedom from physical barriers and procedural impediments.

(b) The importance of the purpose of the limitation

The purpose of the limitation is to ensure the ability of parties to obtain a fair trial and the effective administration of the criminal justice system. The right of a person charged with a criminal offence or a party to a civil proceeding to have the charge or proceeding decided by a competent, independent and impartial court after a fair and public hearing is enshrined in section 24 of the charter and is a fundamental right in the legal system. The purpose of the limitation on the right to freedom of movement is therefore very important.

(c) The nature and extent of the limitation

The right is limited only to the extent that a person is prevented from travelling to locations to view a place or object which is relevant to the trial.

(d) The relationship between the limitation and its purpose

The limitation on the free movement of a person is directly and rationally connected to the purpose of ensuring the effective administration of the justice system and the right to a fair hearing.

(e) Less restrictive means reasonably available to achieve the purpose

There are no less restrictive means of achieving this purpose.

(f) Other relevant factors

Nil

(g) Conclusion

The limits upon the right are reasonable and justifiable.

Section 13: privacy and reputation

Section 13 establishes a right for an individual not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have his or her reputation unlawfully attacked.

Clause 6 of the bill inserts a new section 78(4A) into the Juries Act 2000 which provides that if a complaint about the deliberations of a jury or the disclosure of information about those deliberations is made to the Juries Commission during the course of a trial, the Juries Commission must refer the complaint to the trial judge. This may interfere with a person’s information privacy where the complaint contains personal information, and also a person’s communication privacy including privacy of mail.

The right to privacy concerns a person’s ‘private sphere’, which should be free from government intervention or excessive unsolicited intervention by other individuals. An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. An interference will not be arbitrary provided that the restrictions on privacy are reasonable in the particular circumstances and are in accordance with the provisions, aims and objectives of the charter. The purpose of the interference is to ensure a fair trial which is reasonable and consistent with the charter right to a fair hearing. The extent of the interference is circumscribed and clear. Accordingly, clause 6 does not provide for the unlawful or arbitrary interference with privacy and there is therefore no limitation on the right to privacy.

Section 15: freedom of expression

Section 15(2) of the charter provides that every person has the right to freedom of expression — this includes the right to seek, receive and impart information and not to express.

Clause 7 of the bill engages the right in two ways:

The new section 78A engages the right to the extent that it prohibits a person who is on a panel for a trial or a
Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

The bill contains three distinct sets of amendments regarding the operation of the Victorian justice system. These amendments rectify an anomaly concerning the pension entitlements of some judicial officers, streamline the operation of the Victorian jury system and promote efficiency in ensuring rules of court are used effectively.

I will address each set of amendments in turn.

Constitution Act amendment

The first amendment rectifies an anomaly concerning the pension entitlements of former judges of the County Court of Victoria who have been subsequently appointed to the Supreme Court of Victoria.

In 1995, section 18 of the Judicial Remuneration Tribunal Act 1995 amended the County Court Act 1958 and the Constitution Act 1975, to raise the minimum age of entitlement to a pension to age 65 for subsequent appointees to the Supreme and County courts. Existing judges retained their entitlement to a pension at age 60, with 10 years or more of service.

In 2003, the Courts Legislation (Amendment) Act 2003 amended the Constitution Act 1975 to recognise the prior service of judges from courts other than Victorian courts.

The amendment in 2003 to the Constitution Act 1975 inadvertently disadvantaged judges appointed to the Supreme Court of Victoria from the County Court of Victoria by not recognising previously existing pension entitlements.

The amendment will give former County Court judges the same rights as have been given to judges from other jurisdictions.

Juries amendments

I turn now to the amendments in this bill which are designed to streamline and improve the efficiency of Victoria’s jury system.

Jury service is the cornerstone of our legal system and these amendments are designed to ensure those who perform this important function have an enhanced and fulfilling experience as a juror.