

# ***Charter of Human Rights and Responsibilities***

## **Statement of Compatibility**

### **National Parks Amendment (Point Nepean) Bill 2009**

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the National Parks Amendment (Point Nepean) Bill 2009.

In my opinion, the National Parks Amendment (Point Nepean) Bill 2009, 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 bill:

- provides for the addition of land at the Quarantine Station and the abutting intertidal zone to Point Nepean National Park under the **National Parks Act 1975**;
- provides leasing powers (and associated licensing powers) to enable the Minister to lease land (including buildings) for a period up to 21 years (and up to 50 years in specified circumstances) for purpose(s) which the Minister considers are not detrimental to the protection of the park, including its historic, Indigenous, cultural, natural and landscape features;
- provides for the Minister to grant a licence or permit for up to seven years to occupy or use any land (including any buildings) in the Quarantine Station area of the park, consistent with the objects of the **National Parks Act 1975**.

#### **Human Rights Issues**

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

The bill engages two human rights protected by the Charter.

##### *Section 12 – Freedom of movement*

Section 12 of the Charter provides that every person lawfully within Victoria has the right to move freely within Victoria. It includes the freedom from physical barriers and procedural impediments.

This right is relevant to clause 5 of the bill which inserts section 30AAA in the **National Parks Act 1975** to enable the Minister to lease land in the Quarantine Station area of the national park for certain purposes. The new section will provide the power to grant a lease and, to that extent, engages the right to freedom of movement. The granting of a lease conveys a right to occupy an area or premises to the exclusion of others.

##### *Section 19 – Cultural rights*

Section 19 provides the right for Aboriginal persons to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

This right is also relevant to clause 5 of the bill relating to the granting of leases, as described above. A lease conveys a right to occupy an area or premises to the exclusion of others. The new section 30AAA will provide the power to grant a lease and, to that extent engages cultural rights under section 19. The granting of a lease may limit cultural rights under section 19 because it affects the ability of Aboriginal persons to conduct cultural ceremonies or activities within areas over which a lease is granted.

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

### **Freedom of movement**

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

The right to freedom of movement is a fundamental human right which protects against restrictions on people's ability to move freely within the State.

In this instance, the limitation relates to public access to areas in the Quarantine Station addition to Point Nepean National Park over which a lease is held.

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

There are some 65 heritage listed buildings in the Quarantine Station area. To realise the site's potential as a unique tourist attraction will require investment in the adaptive re-use of the heritage buildings and, potentially, appropriate new developments. Those willing to invest in ventures such as education and training facilities, and accommodation and other tourism-related ventures, require exclusive occupancy in the form of a lease.

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

Where a lease is granted, the lessee is entitled to exclusive occupation and use of the property in accordance with the lease terms. The right to occupy and use the property endures throughout the term of the lease and is to the exclusion of all others.

A lease may therefore limit the freedom of movement within areas over which a lease is granted.

The bill provides for the Minister to lease land in the Quarantine Station area of the national park for a period of up to 21 years or, in specified circumstances, up to 50 years.

The proposed section 30AAA provides the power to grant a lease. In the actual granting of a lease, the Minister acts as a public authority and is subject to section 38 of the Charter. Section 38 requires a public authority to give due consideration to Charter rights when making a decision. As such, there is an obligation to consider Charter rights on a case-by-case basis when leases are granted. When deciding whether the particular circumstances warrant granting a lease, the Minister will need to give relevant consideration to the right to freedom of movement under section 12 of the Charter.

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

Any limitation on the public's ability to enter and move freely within leased property is a direct consequence of granting a lease under the **National Parks Act 1975**.

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

There are no less restrictive means to achieve the purpose identified in (b) above, nor to ensure lessees are granted exclusive occupation of the leased property.

#### *(f) any other relevant factors*

There are no other relevant factors.

## **Cultural rights**

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

Section 19(2) of the Charter provides that Aboriginal people have distinct cultural rights and must not be denied the ability to enjoy their identity and culture, or to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

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

There are some 65 heritage listed buildings in the Quarantine Station area being added to Point Nepean National Park. To realise the Quarantine Station's potential as a unique tourist attraction will require investment in the adaptive re-use of the heritage buildings and, potentially, appropriate new developments. Those willing to invest in ventures such as education and training facilities, and accommodation and other tourism-related ventures, require exclusive occupancy in the form of a lease.

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

Where a lease is granted, the lessee is entitled to exclusive occupation and use of the property in accordance with the lease terms. The right to occupy and use the property endures throughout the term of the lease and is to the exclusion of all others.

The bill provides for the Minister to lease land in the Quarantine Station area of the national park for a period of up to 21 years or, in specified circumstances, up to 50 years.

A lease may therefore limit the ability of Aboriginal persons to conduct cultural ceremonies or activities within areas over which a lease is granted.

The proposed section 30AAA provides the power to grant a lease. In the actual granting of a lease, the Minister acts as a public authority and is subject to section 38 of the Charter. Section 38 requires a public authority to give due consideration to Charter rights when making a decision. As such there is an obligation to consider Charter rights on a case-by-case basis when granting leases. When deciding whether the particular circumstances warrant granting a lease, the Minister will need to give relevant consideration to the cultural rights of Aboriginal people under section 19 of the Charter.

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

Any limitation on the cultural rights of Aboriginal persons is a direct consequence of granting a lease under the **National Parks Act 1975**.

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

There are no less restrictive means to achieve the purpose identified in (b) above, nor to ensure lessees are granted exclusive occupation of the leased property.

### *(f) any other relevant factors*

There are no other relevant factors.

## **Conclusion**

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because, although a lease will limit the right to freedom of movement under section 12 and cultural rights under section 19, the limitations are reasonable.

**PETER BATCHELOR MP**  
**Minister for Community Development**