



Fall asleep at the wheel and you could wake up in prison

A Bill currently before the Victorian parliament aims to strengthen laws against dangerous driving to include driving while fatigued.

If passed, it will make driving while drowsy not only a dangerous thing to do, but also potentially a criminal act.

According to the Transport Accident Commission, 20% of road accidents are caused by fatigue. VicRoads road accident data indicate that, in rural areas, about 30% of accidents involve driver fatigue.

A study by the Adelaide Centre for Sleep Research showed that a person who has been awake for 17 hours can be likened to a person who has a BAC reading of 0.05 g/100ml in terms of risk of an accident. For a person who has been awake for 24 hours, that increases to 0.1 g/100ml.

However the issue has been raised that the term 'fatigue' might require further clarification. Scientific material, summarised in a paper by the Brain Sciences Institute and included in a submission to the Government by the LIV on the proposed legislation, distinguishes between 'fatigue' and 'sleepiness'.

The concern expressed by the LIV was that the underlying assumption of the Bill was that fatigue causes sleepiness – when the scientific material indicates that the two are not always related.

Since the focus of the Bill is on sleepiness, or drivers who are drowsy behind the wheel due to sleepiness, this is a key point of definition.

The *Crimes (Dangerous Driving) Bill* proposes:

- A new offence of dangerous driving causing death or serious injury, punishable by up to five years imprisonment and licence disqualification for a minimum of 18 months
- Changing the *Crimes Act* to ensure that driving while fatigued can constitute culpable driving causing death
- Judges be allowed to specify when a period of licence disqualification begins – for example, the day of an offender's release from prison.

The proposed new offence of dangerous driving causing death or serious injury aims to fill the gap between culpable driving and dangerous driving.

More information

- *Culpable and Dangerous Driving Laws*, a Department of Justice discussion paper, released in January 2004. The new legislation stems from proposals contained in this paper.
- "Motor manslaughter and the gross negligence question", *Law Institute Journal*, July edition 2004, p.45.

From the Bookshop

- R. and S. Petrovich. *On the Road Traffic Offences and Motor Vehicle Theft*. \$25.

Useful web links

- www.liv.asn.au/public/rights/rights-Driving.html
- www.tacsafety.com.au (go to campaigns)
- www.vicroads.vic.gov.au (go to Statistics and research section of the About roads, traffic and road safety area)

Bodies of the future

Victoria's body corporate laws affect 750,000 people each day. But how much do you know about your body corporate? The 65,000 bodies corporate operating in Victoria provide a legal framework to allow for the enjoyment of common property. However most Victorians do not know how their body corporate operates.

When you buy a unit you buy a share of common property. If the common property is controlled by a body corporate you automatically become a member of that body corporate. As a body corporate member, matters such as maintenance, repairs and insurance of the common property are your responsibility. Not just on your property but for the property you share with others.

The current workings of Bodies Corporate may be affected depending on the outcomes of a review being conducted into the effectiveness and efficiency of the *Subdivision Act* 1988 as it relates to the creation and operation of bodies corporate.

The Future Directions Paper released by Consumer Affairs Victoria contains proposals and options to improve the

effectiveness and efficiency of the general operations of bodies corporate and is part of an ongoing consultation and review process.

The issues addressed in the Paper include:

- information provision
- dispute resolution
- protection of body corporate funds
- maintenance of common property
- management and governance.

An information brochure for people buying properties involving bodies corporate is also available from Consumer Affairs Victoria

The brochure and the paper are available by calling the Consumer Affairs Helpline on 1300 55 81 81 or by visiting the Consumer Affairs website.

More power to Consumer Affairs

Significant additions to the enforcement "tool kit" of the Director of Consumer Affairs gives increased powers to pursue recalcitrant traders who breach the *Fair Trading Act*.

Three new enforcement tools have been provided to the Director of Consumer Affairs under amendments to the Act:

- the Director can now apply to the Supreme Court for a "cease trading" injunction
- the Director has the power to issue a "show cause" notice for suppliers believed to be contravening the Act to justify why they should continue trading
- the Director has the power to require businesses to substantiate claims about products.

The changes and their effects can be complex, with subtle differences existing between other sections of the Act.

Cease trading injunctions (s151A)

This power was recommended to help deal with "rogue traders" and people with a history of contraventions or complaints against them.

Show cause notices (s106B)

The Director can issue this notice if there are reasonable grounds to believe that a business or supplier has contravened the Act or regulations, is likely to continue doing so, and if there is a danger that their activities could result in harm, loss or damage to someone else.

Substantiation of claim notice (s106A)

If this notice is issued, a business or supplier must provide "proof of any claim of representation made" in published promotion or promotional material they are responsible for producing. What is a reasonable claim or representation about a product or service is determined by what "ordinary" people would understand from the material. This power focuses on the need to substantiate a claim (the offence is committed by not substantiating the claim), and differs from provisions in the Act about "misleading and deceptive" or "false or misleading" representation.

Mentally ill offenders

County Court Judge Joe Gullaci has raised the issue of the limited options available to judges faced with offenders who are unfit to plead by reason of mental illness.

His Honour found that under the provisions in the federal *Crimes Act 1914* which deal with this kind of offender, Judges had two options – to detain the defendant in prison or to release them into the community – both of which create problems.

The Law Institute of Victoria has called for a review of the relevant provisions and for wider powers to be given to courts when dealing with defendants found unfit to plead to federal offences.

More information

- The submission is available at www.liv.asn.au/news/pro/issues/livsubs.

From the Bookshop

- J Ogloff and T Dalton, *Mental Impairment and Fitness to Plead. Legal update (12/06/04)*, LIV Seminar paper. \$35.

Discrimination – breast cancer / travel insurance

A recent Federal Court decision has sent a warning signal to insurers issuing travel policies that all "pre-existing medical conditions" are not the same.

The Court ruled in April that QBE had unfairly denied an Adelaide woman travel insurance in 2002 because she had been diagnosed with breast cancer.

Denise Bassanelli had applied for travel insurance to cover potential losses (such as theft, lost luggage and other accidental injury) for a holiday she had won to Japan. Central to Bassanelli's case was that the cover she sought (and later got from another insurer) did not relate to her pre-existing condition.

Bassanelli's application for travel insurance was rejected by QBE, with the insurer stating that no policy whatsoever could be issued to her because of the breast cancer. Bassanelli was awarded damages totalling \$5000 plus interest by the court.

The court's decision noted that the insurer had presented anecdotal evidence of difficulties experienced with travel policies it had issued to people with pre-existing conditions, but it was

not clear that these difficulties could be applied to travellers with breast cancer.

Justice Mansfield said that QBE "applied a decision making process which was too formulaic or which tended to stereotype the respondent by reference to her disability" and, as a result, contravened the *Commonwealth Disability Discrimination Act* 1992.

Victorian law

While the Bassanelli case involved federal law, there are also laws in state/territory jurisdictions that apply. In Victoria, the *Equal Opportunity Act* 1995 operates to outlaw similar discrimination.

Complaints can be lodged under federal laws or state laws, but not both.

Complaints under federal law must now be lodged with the Human Rights and Equal Opportunity Commission (HREOC), Level 8, Picadilly Tower, 133 Castlereagh St, Sydney, NSW 2000, tel: 1300 656 419. To lodge a complaint under Victorian laws contact the Equal Opportunity Commission Victoria, level 3/380 Lonsdale St, Melbourne 3000. Advice line Tel: 9281 7100, Toll free country calls 1800 134 142, TTY 9281 7110. Free interpreters and Aboriginal staff are available on request.

Useful web links

- Equal Opportunity Commission:
www.eoc.vic.gov.au
- Human Rights and Equal Opportunity Commission:
www.hreoc.gov.au

An Act for the children

For more than 30 years the employment of children under the age of 15 was regulated under the *Community Services*

Act 1970, but that changed on 12 June when the *Child Employment Act* 2003 became effective.

Key aspects of the new legislation have attracted a great deal of mainstream media coverage – in particular the permit requirements for children working on farms, which were criticised by the State Opposition and the Victorian Farmers' Federation.

Parents are exempt from the permit requirement for their children to work on the family farm (they were not exempt under previous legislation). However, grandparents, neighbours and anyone else who wishes to have children working on farms will need a permit. The same applies to family businesses.

Mandatory police checks of the criminal records of all people supervising children in a work environment are a new requirement of the permit process, although grandparents, aunts, uncles and siblings are exempt from the police check requirement.

If the person supervising a child changes (for example, within a business), that person must also undergo a police check.

The results of the police check are completely confidential and remain valid for 12 months, however, the introduction of this aspect of the process is likely to mean that the process for permit applications may take longer than in the past.

The Act details a number of general conditions concerning the employment of children, including:

Minimum age

A minimum age of 13 applies for general employment, although the minimum age of 11 applies for children employed to deliver newspapers and/or advertising material, or making deliveries for a registered pharmacist.

No minimum applies for children in a family business or the entertainment industry.

Light work only

All children are permitted only to perform light duties, defined as work not likely to be harmful to their health, safety, moral or material welfare or development. Any work commitment must not compromise a child's education.

Hours of work

A maximum of three hours per day and 12 hours per week applies during the school term, extending to six hours per day and 30 hours per week during school holidays. Employment can only be between the hours of 6am and 9pm, or 6pm for street trading activities.

Employment during school hours is prohibited and children must receive a 30-minute rest break for every three hours worked, with at least 12 hours break between shifts.

Prohibited employment

Children cannot be employed in construction, deep-sea fishing or door-to-door sales, and the Governor-in-Council may prohibit other types of employment.

Entertainment

The Act requires that a Code of Practice be developed by June next year to regulate children employed in the entertainment industry.

Penalties

Penalties range from \$1000 to \$10,000 and the Act specifies a range of offences and the penalties that apply.

For more information visit the Industrial Relations Victoria website www.irv.vic.gov.au for a summary of the Act and links to a complete copy of the Act on line.