

GOVERNMENT RESPONSE TO THE REPORT OF THE LAW REFORM COMMITTEE ON THE REVIEW OF THE THEATRES ACT 1958

Background

On 22 February 2000, the Governor in Council referred the following matters to the Law Reform Committee –

To inquire and report to Parliament on the relevance of the Theatres Act 1958 to Victoria's society and in particular –

- a. the need to retain a licensing regime for live entertainment which is performed for reward;*
- b. the appropriateness of requiring that 'licensed' entertainers obtain special permission if they wish to perform on particular public holidays, namely Good Friday, Anzac Day and Christmas Day;*
- c. the appropriateness of retaining a permit scheme for cinemas (which are not licensed) if they wish to operate on Christmas Day or Good Friday; and*
- d. the impact of repealing the Theatres Act 1958.*

The *Theatres Act* ("the Act") sets up two regulatory regimes:

- Licensing for live entertainment; and
- A permit scheme for cinemas that wish to show films on Good Friday or Christmas Day.

The only part of the Act that is currently administered relates to the issuing of permits for cinemas to operate on Good Friday and on Christmas Day. Cinema operators who wish to show films on either of these two days apply to the Attorney-General for a permit. The Attorney-General or usually his or her delegate, will either approve or reject the application in accordance with the guidelines. The guidelines state that permits will not be issued for Christmas Day. Permits have regularly been issued for cinemas to operate on Good Friday.

The need to review the Act to determine its continuing relevance has been apparent for a number of years. It is for this reason that the Government decided to request that the Law Reform Committee review the Act. The Committee's recommendations and the Government's response is discussed below.

Recommendation 1

That the provisions in sections 3 to 5 of the Theatres Act, which impose a general licensing regime for theatres, be repealed.

The Government supports this recommendation. It is understood that licenses under this provision have not been issued since at least 1958.

Recommendation 2

That the provisions in section 7 to 10 of the Theatres Act which require a theatre production or cinema to obtain a permit to operate on Good Friday or Christmas Day, be repealed.

The Government supports this recommendation. In supporting this recommendation and allowing cinemas and theatres to operate on Good Friday and Christmas Day, the Government recognises that Christmas Day and Good Friday continue to be important days of religious and historical significance in our community. However, the Government also recognises that in a modern and multicultural society such as Victoria, the restrictions imposed by the *Theatres Act* may no longer be appropriate.

Recommendation 3

That the Anzac Day Act be amended so as to prohibit the performance of live entertainment before 1.00 pm on Anzac Day.

The Government supports this recommendation in principle, subject to further consultation with stakeholders.

Anzac Day is an opportunity to remember the sacrifices of many Australians in times of war. As a result, there are already restrictions on many public activities during the morning of Anzac Day which is traditionally reserved as a time for the Anzac Day parade and attendance at the dawn service. There are restrictions on shop trading hours, sport and racing activities, gaming, the operation of Crown Casino, the sale of liquor and the operation of cinemas. Under current industry practice, the performance of live entertainment before 1 pm on Anzac Day is also restricted.

Recommendation 4

That providers of live entertainment consider adopting a self regulatory 'consumer advice' scheme whereby a rating system similar to that used by the Office of Film and Literature Classification is used to advise patrons of entertainment content.

The Government has advised the Australian Entertainment Industry Association ("the AEIA"), which represents employers in the entertainment industry, including cinema and theatre operators, of this particular recommendation and sought its views on the feasibility of adopting and administering a 'consumer advice' scheme.

The AEIA has responded in the following terms:

"We are unsure as to exactly what type of structure the Committee is advocating; on the surface it would appear a major undertaking if it were to be similar to cinema, and would obviously require wide national consultation. Already there is self-regulation in this regard, and the AEIA and its members will continue to advise patrons attending live entertainments of the contents of the performance, should the contents contain material which may be offensive to patrons. It should be noted that minimal problems or complaints have arisen with regard to classification of live entertainments, as evident in the actual review."

The AEIA has further advised that the industry is self-regulated and already follows a number of restrictions. In relation to language and sexual references, the AEIA has advised as follows:

"... if language is considered offensive and requires a warning, messages will be contained in subscription brochures, leaflets, advertisements, posters, telephone bookings, over the counter sales, enquiries, etc."

"....Often, a matter such as nudity may not be known until AFTER the show is in rehearsal and/or production, in which case signs are erected in foyers, flyers etc. If known in advance, obviously the same procedure as for language applies."

The AEIA further comments:

"The industry believes that there have been relatively few problems in the professional 'live' sector, and that all care is taken to avoid unintended offence. The industry is self-regulating without the necessity for a formalised code, legislation, or regulation."

A rating system of the kind proposed by the Committee would involve significant resource and practical implications. The AEIA has indicated that its members provide appropriate warnings and that there are very few problems of the kind contemplated in the Committee's report.

The Government is satisfied with the AEIA's response.

Recommendation 5

That no additional legislative provisions be enacted to substitute for s 6 (of the Theatres Act), if s 6 (of the Theatres Act) is repealed.

The Government supports this recommendation.

Section 6 provides the Minister with a censorial discretion with regard to stage plays being performed in a licensed theatre.

While the licensing scheme on which this provision is based, is not administered, the penalties in the *Theatres Act* for contraventions are so low as to be ineffective. Further these provisions have never been invoked. The Committee also recognised that section 6 vests a very large degree of discretion in an elected official without relevant expertise.

The Committee notes that offensive, sexually explicit material which section 6 is directed toward, are dealt with by a range of other legislation, including the *Summary Offences Act 1966*, the *Prostitution Control Act 1994* and the *Planning and Environment Act 1987*. Alternatively, there are legislative schemes which deal with other kinds of offensive material which is discriminatory or a breach of the peace.

Recommendation 6

That the Theatres Act 1958 (Vic) be repealed.

As support for recommendations 1, 2 and 5 would see all substantive provisions of the Act repealed, the Government supports this recommendation.