

AUSTRALIAN SENATE
LEGAL & CONSTITUTIONAL LEGISLATION COMMITTEE

Inquiry into the Civil Aviation Amendment (Relationship with Anti-Discrimination Legislation) Bill 2004

SUBMISSION OF THE VICTORIAN BAR

1. Thank you for the opportunity to comment on the above Bill.
2. The provisions of Schedule 1 Part 2 Item 3 are contrary to the principle that legislation should not extinguish rights retrospectively.
3. Item 3(3) provides that the retrospective operation is not to affect the rights and liabilities between parties to a proceeding already heard and determined by a court before the commencement of the Schedule. However, this does not preserve rights and liabilities where proceedings have not been commenced, or even where proceedings *have* been commenced, and even heard, but there has not been a final determination by the court at the date of commencement of the Schedule.
4. The Explanatory Memorandum and Second Reading Speech speak of “some uncertainty in relation to the validity of some actions carried out in accordance with existing safety regulations”, but do not say whether there are any proceedings that have been finally

determined, or that have been heard but not finally determined, or that have been commenced but not yet heard, or that are in contemplation but not yet issued.

5. The Second Reading Speech asserts that “The Bill itself will have no discriminatory effect” It could have in relation to the retrospective application of Schedule 1 Part 2 Item 3, discriminating between parties on the basis of the happenstance in timing of the issue, hearing and determination of proceedings.
6. Regardless of whether there are any practical consequences to the retrospectivity and discriminatory retrospectivity of Item 3 in Part 2 of Schedule 1, it is objectionable in principle and should, in our submission, be deleted from the Bill.

20 May 2004