

# ANZAC

PARLIAMENTARY REVIEW OF ANZAC DAY LAWS

## DISCUSSION PAPER



PARLIAMENT OF VICTORIA  
SCRUTINY OF ACTS AND REGULATIONS COMMITTEE  
JUNE 2002

# **Anzac Day Laws Subcommittee**



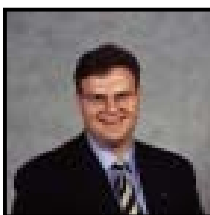
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# Scrutiny of Acts and Regulations Committee

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## Foreword by the Co-Chairs

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The Victorian Parliament has initiated a review by the Scrutiny of Acts and Regulations Committee into the laws that protect Anzac Day, with the aim of further strengthening Anzac Day as a national day of commemoration.

A bi-partisan approach is being taken to this important review (with the review co-chaired by members of both the A.L.P. and the Liberal Party) and public input is very welcome. The Committee hopes its review can help make a significant contribution to a matter that is of considerable importance to our national identity.

Our starting point is to recognise Anzac Day as a solemn occasion of remembrance for the gallantry and sacrifices of Australians in wars.

Victoria's commitment to Anzac Day is underpinned by a legislative framework that has been developed in a piecemeal fashion over many decades. No fewer than 9 separate pieces of legislation, under the control of 8 Ministers, regulate activities on Anzac Day.

The existing laws provide for a public holiday, seek to regulate a range of activities on Anzac Day, such as retail trading hours, liquor controls, entertainment and sporting events, and govern the raising, collection and distribution of patriotic funds.

Some of the laws seem anomalous (eg. is a fine of just \$500 an adequate penalty for commercial cinemas that illegally open on Anzac Day), while other areas of the law seem too narrow (eg. should the *Anzac Day Act* only refer to World War 1) or even silent (eg. should gaming venues be allowed to open on the morning of Anzac Day).

It is therefore timely to review Victoria's *Anzac Day Act 1958* and the other related laws, to ensure that the great significance which the State aspires to accord Anzac Day is supported by the best set of laws.

Our Parliamentary Committee will pursue the development of proposals for protecting and, wherever possible, enhancing the significance of Anzac Day. We are working in close co-operation with the R.S.L, at both a State and National level, and other relevant bodies.

As well as considering the most suitable legislative framework, there will be an opportunity to consider administrative proposals, including education initiatives relating to the promotion of Anzac Day.

We are committed to undertake a comprehensive process of public consultation in respect of this review. We are pleased to present this Discussion Paper as an important component of the public consultation process.

The review committee invites responses to the Discussion Paper, particularly comments and views on how, over the coming decades, Parliament and governments can assist in the holding of this national day and the promotion of the Anzac spirit.

**The Hon. Mark Birrell MLC**

**Mrs Liz Beattie MLA**

## Terms of Reference

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On 21 November 2001 the Hon. C.A. Furletti MLC moved a resolution in the Legislative Council in the following terms –

That pursuant to the *Parliamentary Committees Act 1968*, the undermentioned Committee be required to inquire into, consider and report by 31 October 2002 on the following –

### **Scrutiny of Acts and Regulations Committee**

The Anzac Day Act 1958, and any other relevant laws, on ways to further enhance the significance of Anzac Day as a national day of commemoration.

## CALL FOR SUBMISSIONS

The Scrutiny of Acts and Regulations Committee of the Victorian Parliament invites individuals and organisations to make a submission in response to the Discussion Paper.

Submissions are invited to be lodged with the Committee by **Wednesday, 24 July 2002**. Late submissions will be accepted in accordance with arrangements made with the Committee.

### Content of Submissions

The Discussion Paper is intended only to bring the primary issues to the fore. In doing so, fourteen questions have been posed to assist the focus of the review. This should not be understood as excluding other questions about these primary issues or the identification of other issues of relevance.

Accordingly, submissions may directly respond to the questions posed and/ or may address issues considered of importance to the review. Where possible submissions should provide supporting evidence such as relevant data and documentation.

### Confidentiality

Submissions will be treated as public documents and may be cited by the Committee in its report and publications. However, submissions that are clearly marked confidential and contain genuinely confidential material will be treated accordingly.

### Further Information

Any queries about the review should be directed in the first instance to:

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Further details are also available on the SARC web-site at:

[www.parliament.vic.gov.au/sarc](http://www.parliament.vic.gov.au/sarc)

### Submissions to:

The Review of Anzac Day Laws  
Scrutiny of Acts and Regulations Committee  
Level 8, 35 Spring Street  
MELBOURNE VIC 3000

# INQUIRY INTO ANZAC DAY LAWS

## DISCUSSION PAPER

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### Overview

**This review is about the laws that govern the arrangements for the observance of Anzac Day in Victoria. The review invites comment from individuals and organisations on whether the existing laws are adequate or whether they can be improved.**

Legislation affecting Anzac Day in Victoria regulates activities on the Day (and related matters). The laws provide for a public holiday, regulate a range of activities on Anzac Day, such as retail trading hours, liquor controls, entertainment and sporting events, and govern raising, collection and distribution of patriotic funds.

The legislation seeks to achieve a fair balance in the observance of Anzac Day as a special day of commemoration and the recognition of personal and commercial liberties. Accordingly, subject to some exceptions, businesses are required to close during the morning of Anzac Day.

A corresponding right is vested to conduct commemorative ceremonies with due solemnity and free of the distractions of trade, commerce, sports and entertainment activities.

The current Victorian laws are reasonably comparable to those in other States. However, as there has never been a comprehensive update of these historic pieces of legislation, it is important to ensure a legislative framework is in place that is sufficiently robust to foster the significance of Anzac Day for the future generation. There is also a need to repair anomalies identified in the operation of the current laws. To a considerable extent these anomalies are a consequence of the ad hoc and diffuse development of the legislation. This review provides an opportunity to recommend improvements to the laws by addressing key issues relating to the extent of restriction on business activity, the nature of the Anzac Day Proceeds Fund and Patriotic Funds and clarity of legislation.

Those who question Anzac Day laws may claim that the Parliament should not make laws that interfere with private commercial activities. On the other hand, there are those who say that the Parliament has a responsibility to ensure that a day of such special significance as Anzac Day is appropriately commemorated.

**The argument in favour of legislative protection for Anzac Day is very strong and has grown in proportion to rising support for Anzac Day. In particular, there appears to have developed a community acceptance that Anzac Day should be observed as a day of the utmost significance.**

Given the overwhelming community view in favour of having legislation, its adequacy requires consideration. This Paper therefore sets out some general matters relating to legislation which affects

Anzac Day. In particular, the policy objectives and principles that might shape the legislation. In short, these can be stated as follows:

- (i) the observance of a public holiday;
- (ii) the equitable balance of essential services and business closure; and
- (iii) the performance of the legislation.

Within the framework of legislation relating to Anzac Day, there are a number of matters which are regulated which warrant consideration. These matters have centred on the following:

- (a) whether existing laws are appropriate and adequate restrictions apply on business activity on Anzac Day;
- (b) the need for clarity of legislation, particularly to remove anomalies; and
- (c) the legislative oversight of patriotic funds.

The notion of the Anzac Spirit is an undisputed quality recognised by the Victorian community at large. To some extent the Anzac Spirit is elusive of description, but is perhaps best encapsulated in the words of the eminent war historian, Charles Bean that:

**“Anzac stood, and still stands, for reckless valour in a good cause, for enterprise, resourcefulness, fidelity, comradeship, and endurance that will never own defeat.”**

The initial laws about Anzac Day were, to a considerable extent, focussed on providing a public holiday out of respect for the gallantry and sacrifice of Gallipoli. These were laws not of business regulation or funding schemes, but essentially laws of emotion. It is the nature of emotion that circumstances change. Accordingly, the laws that were appropriate for Anzac Day after World War One may no longer be sufficiently comprehensive. As the numbers of veterans diminishes, so the challenge of respecting the significance of Anzac Day increases. Whether or not the current laws reflect current standards of observance is at the core of the consideration of Anzac Day laws. In turn, the issue of developing an improved legislative framework attracts substantial interest for this review.

The focus of this review is on laws that affect Anzac Day. Apart from the *Patriotic Funds Act 1958*, essentially the impact of these laws occurs on Anzac Day itself. There appears to be scope to explore improvements to the legislative framework that will give statutory support to an array of commemoration initiatives.

Another key consideration relates to education initiatives. It would seem that any attempt to legislate in respect of Anzac Day for future generations must be supported by new objectives and powers for an effective education program.

Considerations also arise in respect of issues about clarity of the legislation. Some of these relate to accepted policy positions, but their practical operation would benefit from more refined drafting. Others concern anomalies in the legislative framework, which may prompt more profound policy debate. Accordingly, although not the subject of specific questions in this overview, these matters are an important part of the review process, including the next phase of public consultation.

The Overview is intended only to bring the primary issues to the fore. In doing so, the questions set out below have been posed to assist the focus of the review. This should not be understood as excluding other questions about these primary issues. Nor does it preclude consideration of other issues.

- (1) How should activities on Anzac Day be regulated?
- (2) Are the current laws working?
- (3) What policy considerations should determine the continuation of regulation of Anzac Day?
- (4) Should all laws affecting Anzac Day be consolidated into a single enactment ?
- (5) Should Anzac Day legislation be confined to commemoration related to World War One?
- (6) Should the conduct of Anzac Day ceremonies be excluded from legislation?
- (7) What business activities should be restricted by Anzac Day laws?
- (8) What are the most suitable times for restricting business activity and for commencing sports, races or other entertainment on Anzac Day?
- (9) Should the composition and functions of the Patriotic Funds Council be subject to more specific legislative oversight?
- (10) How should major sporting organisations which conduct sporting events on Anzac Day contribute to the Anzac Day Proceeds Fund?
- (11) Should the Gaming industry contribute to the Anzac Day Proceeds Fund in a way similar to racing and sports events?
- (12) Should gaming facilities be allowed to open on Anzac Day morning?
- (13) What should be the penalties for businesses or citizens that break the Anzac Day laws?
- (14) How can Anzac Day legislation refer to the need to educate school children, and if it can do so, to what extent should legislation require education about Anzac Day in schools?

## Introduction

On 21 November 2001, the Legislative Council of the Victorian Parliament gave the Scrutiny of Acts and Regulations Committee a reference relating to the laws that protect or impact upon Anzac Day.

The Terms of Reference require the Committee, pursuant to the *Parliamentary Committees Act 1968*, to:

inquire into, consider and report by 31 October 2002 on the Anzac Day Act 1958, and any other relevant laws, on ways to further enhance the significance of Anzac Day as a national day of commemoration.

The aim of the review is to further enhance the significance of Anzac Day as a national day of commemoration.

Victoria's commitment to the observance of Anzac Day is underpinned by nine separate laws that were developed in a piecemeal fashion. The laws provide for a public holiday, regulate a range of activities on Anzac Day, such as retail trading hours, liquor controls, entertainment and sporting events, and govern raising, collection and distribution of patriotic funds.

In light of the way in which Anzac Day has become to be commemorated, it is timely to review Victoria's existing legislation with the objective of ensuring that the significance which the State aspires to accord Anzac Day is supported by the best legislative framework. As well as considering the most suitable legislation, it is apparent that there will be opportunity to consider administrative proposals, including education initiatives relating to the promotion of Anzac Day.

The Committee looks forward to positive responses to its undertaking this reference and an outcome that will place Victoria at the forefront of commemoration of Anzac Day.

The purpose of this Discussion Paper is to identify matters of concern about the legislative framework, whether arising from the fundamental question of whether or not the Government should intervene legislatively at all, or from improving the legislation controls in light of the development of Anzac Day as a day of special significance.

The approach of this Discussion Paper is to present at the outset an Overview of the content of the paper. The Overview poses questions underpinning the issues.

Following the Overview, the Discussion Paper sets out the context of the review and the process to be followed by the review. The Discussion Paper then seeks to identify the key policy objectives and principles which might govern legislation affecting Anzac Day, including a brief analysis of the case for regulation. This is followed by consideration of the key issues identified.

These issues are considered by reference to the policy objective of further enhancing the significance of Anzac Day. Issues relating to commemoration initiatives and education are given separate treatment. A brief summary of examples of Anzac Day legislation in other jurisdictions is appended to the Discussion Paper.

In the preparation of this Discussion Paper, valuable assistance in identifying relevant issues was offered by a number of organisations and individuals listed in the Appendix to the Paper.

## Context of the Inquiry

The Terms of Reference for the review require a review of the *Anzac Day Act 1958* and any other relevant laws with the view to further enhancing the significance of Anzac Day as a national day of commemoration.

In essence, the review is about the adequacy of existing laws and, more importantly, what the laws should be. Accordingly, the review will report on substantive issues fundamental to an appropriate legislative framework for Anzac Day. The review will also report on issues concerning the practical application of legislation currently affecting Anzac Day. This will include drafting changes needed to remove anomalies or to improve the clarity of the current legislation. The public consultation process should greatly assist the formulation of meaningful recommendations in relation to both the substantive and the practical issues.

Although the review is essentially a review of laws, there is nevertheless scope for consideration of non-legislative measures which contribute to the achievement of the objective of further enhancing the significance of Anzac Day. These measures include commemoration activities undertaken within communities and education initiatives.

## The Review Process

The review process will, in effect, proceed through three stages, namely:

1. Discussion Paper;
2. Public submissions and consultation, including public hearings; and
3. Report to the Parliament.

The starting point is the preparation of this Discussion Paper, which will form the basis of the first stage of consultation of the review. Accordingly, the intention of the Discussion Paper is to identify issues and place them on the agenda for public consultation. The Discussion Paper does not attempt to resolve these issues, nor does it intend to present them tendentiously. It is expected that the Discussion Paper will be released for public consultation in June 2002. The form of public consultation will include invitations to make submissions and attend public hearings.

Following the period of public consultation which is expected to extend into September 2002, a Report will be prepared. The Report will record the outcome of the public consultation process and formulate recommendations for Government consideration. The Report is required to be tabled in the Parliament by 31 October 2002.

## The Anzac Spirit

The Anzac spirit is a concept that is elusive of description. With a recent surge of interest in the Anzac story, especially on the part of younger people, references to the Anzac spirit seem to occur more frequently. The Australian War Memorial has devoted an exhibition in ANZAC Hall to the concept of the Anzac spirit today. The following quotation features prominently in the exhibition.

“Though born from the doomed campaign at Gallipoli, the spirit of ANZAC is not really about loss at all. It is about courage and endurance, and duty, and love of country, and mateship, and good humour and the survival of a sense of self-worth and decency in the face of dreadful odds.” (The

ANZAC Spirit Today, Sir William Deane, Governor-General of Australia, 1996-2001, ANZAC Hall, Australian War Memorial, Canberra).

Dr. Peter Stanley, Principal Historian, Australian War Memorial has made available the following notes on the "Anzac spirit".

"Anzac" has been part of Australian thought, language and life since 25 April 1915. Devised by a signaller in Egypt as a useful acronym for Australian and New Zealand Army Corps, it quickly became a word with many uses and meanings. From 1915 the word was applied to military formations (there were ANZAC corps in both world wars), to places (notably "Anzac area" on Gallipoli and "Anzac Cove" itself), to people ("Anzac" at first meant a man who had served on Gallipoli and later acquired broader applications.....It generated many slang terms in the first Australian Imperial Force and has become a part of the Australian language. The popularisation of the term was largely the work of the official correspondent and historian, Charles Bean. His *The Anzac Book* edited on Gallipoli, sold tens of thousands of copies from 1916. The title of the first two volumes of his official history, *The Story of Anzac*, confirmed the word's place. Despite its bi-lateral origin, and its use in New Zealand, Australia has largely appropriated the word, a fact regarded with some resentment in New Zealand. The use of the word Anzac in Australia has been governed by federal legislation since 1920.

Historians examining the importance of Anzac to Australia devised the term "Anzac legend" (or more critically, "Anzac myth"). It refers to the representation of Australians in war, the way in which they think, speak and write of their war experience (which is not always the same thing as how they experienced it). Though aspects of the legend have been criticised, there is general consensus over what the essence of what is regarded as the Anzac spirit. Anzac came to signify the qualities which Australians have seen their forces exhibit in war. These attributes cluster around several ideas: endurance, courage, ingenuity, good humour, and, of course, mateship. These qualities collectively constitute what is described as the Anzac spirit. Perhaps the best-and most widely misquoted-reflection of the meaning of Anzac is found in Charles Bean's one-volume short history of Australia in the Great War, *Anzac to Amiens*. In describing the evacuation of Anzac area Bean wrote:

'By dawn on December 20<sup>th</sup> Anzac had faded into a dim blue line lost amid other hills on the horizon as the ships took their human freight to Imbros, Lemnos and Egypt. But Anzac stood, and still stands, for reckless valour in a good cause, for enterprise, resourcefulness, fidelity, comradeship, and endurance that will never own defeat.'

This Parliamentary review of Anzac Day laws affords an opportunity to make a significant contribution to a matter of considerable importance to Victoria, and to the nation generally. Initially, the importance of Anzac Day was to provide a solemn occasion of remembrance and a sense of mourning for the gallantry and sacrifices at Gallipoli. The Anzac inspiration was clearly evident in Australia's later participation in wars, campaigns and peacekeeping operations. Accordingly, Anzac Day now has a broader significance and, to a considerable extent, has developed into a day primarily commemorating gallantry and sacrifice, but also recognising the importance to our nation of the ideals and values which our servicemen and women fought to preserve, that is, the importance of the Anzac spirit.

## The Legislative Framework

The *Anzac Day Act 1958* does not sit in regulatory isolation. A number of pieces of legislation affect the way in which Anzac Day is observed in Victoria. Currently the following Victorian statutes relate to Anzac Day:

- *Anzac Day Act 1958*
- *Patriotic Funds Act 1958*
- *Public Holidays Act 1993*
- *Shop Trading Reform Act 1996*
- *Theatres (Repeal) Act 2002*
- *Liquor Control Reform Act 1998*
- *Racing Act 1958*
- *Labour and Industry Act 1958*
- *Lotteries Gaming and Betting Act 1966.*

A summary of these Acts follows below.

### **1. Anzac Day Act 1958**

The Act decrees that the 25<sup>th</sup> of April each year is to be known as “Anzac Day”.

- this is done in commemoration of the part taken by Victorian troops in the Great War and in memory of those who gave their lives for the Empire.

No sports are allowed to be held without the approval of the Minister.

- The term “sports” includes bicycle races, foot races, cricket matches, football matches or any other game or contest that is held at a venue which charges an admission fee, but does not include horse races, trotting races or dog races (these are regulated by the *Racing Act 1958* – see below).

If approval is given by the Minister, the following conditions apply:

- The event shall not commence before 1.00pm.
- The Minister decides what portion of the net profit made from the event shall be paid into the Anzac Day Proceeds Fund.
- If the event is held outside the metropolitan area, the Minister, after consulting the RSL may authorise the funds raised to be paid to a local organization.
- The body holding the sports event is required to supply a report of the event, and its financial success, to the Minister within two months of holding the event.
- Where there is a contravention of the requirements relating to sports events, the maximum penalty is \$1000, but it is a defence if the contravention was not wilful or was committed unknowingly.

The Act establishes the Anzac Day Proceeds Fund

- The Fund is distributed annually, upon the recommendation of the Patriotic Funds Council, to organisations whose principal object is to ameliorate the condition of persons who were members (or dependants of such members) of Australia’s armed forces during *any war hostilities or assignment*.
- The Act also regulates cinemas and other, in effect, live entertainment in accordance with the recent enactment of the *Theatres (Repeal) Act 2002* (see below).

## **2. *Patriotic Funds Act 1958***

The Act establishes a fund similar to that of the Anzac Day Proceeds Fund, except that this fund can take money from events or people at any time of the year, not just Anzac Day.

In a similar way to that of the Anzac Day Proceeds Fund, its objective is to take care of those people who served in the Australian armed forces, or who were dependant on people in the Australian armed forces.

The Patriotic Funds do not override the Anzac Day Proceeds Fund, but exist to gather monies from events not related to Anzac Day, but which are commemorative of people who served in the armed forces.

## **3. *Public Holidays Act 1993***

The Act provides for Anzac Day to be a public holiday.

The Act regulates the entitlements of employees on public holidays, including Anzac Day.

- When Anzac Day falls on a week day, any person covered by the Act may have a holiday without loss of pay.
- If Anzac Day falls on a Saturday or Sunday then there is no payment to be made to employees.
- If employees normally work on a Saturday or Sunday then there are grounds for those persons to take a holiday, with pay, if Anzac Day falls on their particular day of work.

## **4. *Shop Trading Reform Act 1996***

The Act requires that all shops, except exempt shops, must remain closed on Anzac Day between 12.01am and 1.00pm.

- A list of exempt shops is contained in a Schedule to the Act (the list is set out in the Appendix to this Paper).
- A shop is not an exempt shop if it employs over 20 employees.

## **5. *Theatres (Repeal) Act 2002***

The Act came into effect on 22 May 2002.

- It repeals the *Theatres Act 1958*, which formerly regulated activities of licensed theatres and cinemas on Anzac Day.
- It amends the *Anzac Day Act 1958* to restrict the use of cinemas and other entertainment before 1.00pm on Anzac Day.

## **6. *Liquor Control Reform Act 1998***

The Act controls the supply of alcohol through licensed premises.

There are restrictions placed upon the different forms of licensed premises in relation to Anzac Day and when they can serve alcohol:

- Places with a general licence, on-premises licence, club licence or packaged liquor licence can not serve alcohol on Anzac Day until 12 midday unless they have been granted a permanent extension to their licences (see below).
- Places with a vigneron's licence cannot serve alcohol until 10.00am on Anzac Day.

## **7. Racing Act 1958**

The Act bans horse racing on Anzac Day except for one meeting that is to be held at Flemington Racecourse.

- However, the Minister can permit other race meetings.

There are also only one harness meeting and one greyhound meeting allowed in the Melbourne metropolitan area on Anzac Day.

Any race at these meetings must not start before 1.00pm on Anzac Day.

The whole net profit from these race meetings must be paid into the Anzac Day Proceeds Fund, unless the Minister, having consulted the RSL, allows the profit to be given to a local organization.

## **8. Labour and Industry Act 1958**

The Act declares that all factories will be closed on Anzac Day and the employees of those factories will be given a holiday.

- A list of exceptions is contained in a Schedule to the Act (the list is set out in the Appendix to this Paper).

## **9. Lotteries Gaming and Betting Act 1966**

The Act sets out a list of games that are unlawful.

The Act provides that the game of two-up can be played on Anzac Day, provided that:

- It is at premises being used by the RSL, or recommended by the RSL.
- If not at RSL premises, it is at a function commemorating Anzac Day held not more than 7 days before Anzac Day, and is organised by the RSL.
- It is at licensed premises that have been approved by the Minister and the Director of Liquor Licensing Victoria.
- Although not containing provisions specifically referring to Anzac Day, the *Casino Control Act 1991* and the *Shrine of Remembrance Act 1978* are of interest in a review of laws relating to Anzac Day.

## **10. Casino Control Act 1991**

In terms of regulating the operation of the Melbourne casino on Anzac Day, the Act provides no specific regulation of the day.

The Victorian Gaming and Casino Authority controls the business hours of the casino.

- The Authority is established under the *Gaming and Betting Act 1994*, which gives no guidelines as to whether the Authority should allow the casino to open or close on Anzac Day.

Unlike the *Racing Act*, there is no legislative provision for the casino to donate a part or all of its net profit on Anzac Day to the Anzac Day Proceeds Fund.

### **11. Shrine of Remembrance Act 1978**

The Act establishes a body corporate known as the “Shrine of Remembrance Trustees”.

- The trustees are responsible for the care, management, maintenance and preservation of the Shrine of Remembrance, and the land it occupies.
- The trustees have power to collect monies for the Shrine, and a responsibility to put such monies back into the Shrine.

The Act makes no direct reference to Anzac Day, notwithstanding the central role played by the shrine in Anzac Day commemorations.

### **Other jurisdictions**

A brief summary of examples of legislation relating to Anzac Day in the Commonwealth and other Australian States and Territories is set out in the Appendix.

## **Policy Rationale for Regulation of Anzac Day**

### **Need for Legislation**

The significance of Anzac Day makes it vitally important to get the policy settings for regulation right and to ensure the legislation is free from anomalies. The measure of the legislation then is through ensuring that the regulatory machinery is able to provide for appropriate commemoration, and recognition, of Anzac Day whilst recognising broader community interests.

The development of legislation for Anzac Day appears to have been founded from a Premier’s Conference held in Melbourne in May 1923, where it was recommended that:

- “(a) Anzac Day was to be Australia’s National Day;
- (b) It was to be celebrated on 25 April;
- (c) The states were to take the necessary steps to implement its observance;
- (d) The morning was to be devoted to memorial and religious services - the afternoon to addresses and instilling the Anzac story into children.” (Georgina Fitzpatrick, *Anzac Day: Past and Present*, Canberra, 1992, at p.10).

Victoria’s first Anzac Day Act was passed in 1925 and was directed to constituting Anzac Day as a public and bank holiday.

An issue for consideration is whether the initial justification for legislation expressed in terms of constituting Anzac Day as a public and bank holiday remains current.

From time to time some Victorians have argued that Anzac Day should not be commemorated in the traditional way. Successive governments of both political persuasions have maintained a commitment to legislation relating to Anzac Day. On that basis alone, it is arguable that the debate about withdrawal of regulation of Anzac Day is closed. What appears more an issue is the scope for improving the regulatory framework. The need for improvement of the legislation is apparent from consideration of the issues dealt with below. None of those issues could be characterised as having proved fatal to the concept of Anzac Day legislation. Rather, they are issues which invite improvements to the legislative scheme.

## The case for legislative intervention

Those who would contend that the role of the Legislature does not admit sentiments of emotion, pride or passion would also contend that it is difficult to assert in any dispassionate way why the Parliament has a role in ensuring that the anniversary of the 25<sup>th</sup> of April 1915 should be commemorated. However, it is also difficult to take such a purist view of legislating in the circumstances relating to Anzac Day. The battle of Australian and New Zealand troops at what is now known as ANZAC Cove, recalls an occasion of such enormous valour and human significance that the story immediately affects those who hear it.

That it took place at a time when Australia was a new nation, less than fourteen years after federation, and represents the first time that Australians came together to form an army in a theatre of war far from home further cements the historical and social significance of the occasion.

Notwithstanding the natural emotional response to the human cost of the battle at *Gallipoli*, the purist legislator would abide by the principles of good regulation which require that an analytical approach be taken to considering the case for legislative intervention. So how does Anzac Day stand up to such an analytical approach?

While there are many instances where it may appear desirable for the Legislature to intervene in social or economic relationships, care is taken to avoid regulatory failure. Actions of a legislative nature generally incur some degree of costs. Regulatory failure occurs where the costs of legislative intervention exceed the expected benefits and is therefore to be avoided. Freely functioning markets provide for the most efficient allocation of resources. In a properly functioning market the economic needs of the community will be fulfilled in the most efficient means possible (at the least cost) thereby delivering the greatest social benefit. However, markets cannot be relied upon to function correctly in all cases. There are many instances of market failure that warrant legislative intervention. These may include information asymmetries, the production of negative externalities, or the **requirement for a public good**.

It is this last instance of market failure that may usefully be cited in understanding the Parliament's role in regulating for the commemoration of Anzac Day. Examples of public goods are the provision of lighthouses and street lighting which benefit the wider community. In the same way providing for the defence of the nation is a role that most efficiently falls to Government. Apart from reasonable considerations such as the enormous resources required to fulfil the task, Government is best placed to deliver the nation's defence requirements because defence is a public good. This means that it is unlikely to be provided for by a market because although citizens value the security which is a benefit of a properly functioning national defence force, the provider of a defence force cannot ensure that the beneficiaries will pay for the services that they receive. The government can of course fund this through taxation revenue.

The provision of an adequate defence force relies upon the willingness of the citizenry to participate in the protection of the freedom of the nation. It requires that the citizenry appreciate that even in times of peace, there may arise circumstances in which an armed response is necessary. The role of citizens in such case may extend from personally participating through membership of the regular defence forces or the reserve, to tacit support in the face of the unfortunate consequences of armed conflict.

The commemoration of Anzac Day plays an important role in keeping alive the awareness of the sacrifices that have been made by citizens in the defence of the nation. It reminds society of the price that has been paid by previous generations to secure the freedom that is enjoyed today, not just at the battle of Gallipoli, but also at the many battles in which Australian defence forces have participated.

The public commemoration of Anzac Day demonstrates to the community that the sacrifices that were made by individuals were made not for their own gain, but for the greater good. By recognising these past efforts, it promotes a better preparedness on behalf of the community to respond to any threat to the security of the nation that may arise in the future.

Although it is approaching a century since the battle of *Gallipoli*, Australians still retain a strong historical connection to the efforts of its citizens at that time, and an appreciation of the sacrifices that were made. Arguably, this has survived through the preservation of traditions commemorating the anniversary of Anzac Day. With the recent passing of the last Anzac it is reasonable to consider how this important connection to a previous time will be maintained in the future. As with the role in ensuring the defence of the nation, this is an important issue that must be addressed by the Government through ensuring that the traditions are preserved and continue to remain relevant.

Whether any individual could or would undertake the same degree of sacrifice as was borne at *Gallipoli* if the circumstances demanded is a personal matter that must be made with reference to ones own conscience. Through the principle means that the Government uses to ensure that Anzac Day is commemorated of declaring a public holiday, the traditions of the day are allowed to be observed and time is permitted for reflection without the distractions of commerce or sport.

The forced closure of business premises for the morning of Anzac Day imposes an economic cost on the community through loss of productive output. However, if the continued observance of the traditions of Anzac Day are effective in continuing to ensure that the community is prepared to take those actions that may be necessary to protect Australia as a nation, then the benefits may be found to well exceed the costs incurred.

However, it should be noted that the principle of liberty implies that individuals should be allowed to exercise freedom in the conduct of their social relationships, and exercise choice according to their own discretion, where their behaviour does not cause detriment to others. The principle of individual liberty is a pillar upon which our society is based, and Parliament must take care not to erode those liberties through unwarranted intervention in social relationships.

In this context it should be understood that while regulation may impose penalties to promote compliance with laws, such as the shop trading laws, on the Anzac Day public holiday, the penalties should be proportionate to public expectations of the significance of the contravention; that is to say not so lenient that they will be ignored or to trivialise contraventions of the regulations, but not so harsh that the community would consider them draconian. It is necessary to find an appropriate balance between the public and private interest.

## National Competition Policy

The National Competition Policy Agreements set out specific requirements with regard to all new legislation adopted by jurisdictions that are party to the agreements. Clause 5(1) of the Competition Principles Agreement sets out the basic principle that must be applied to both existing legislation, under the legislative review process, and to proposed legislation:

The guiding principle is that legislation (including Acts, enactments, Ordinances or Regulations) should not restrict competition unless it can be demonstrated that:

- (a) The benefits of the restriction to the community as a whole outweigh the costs; and
- (b) The objectives of the regulation can only be achieved by restricting competition.

Clause 5(5) provides a specific obligation on parties to the agreement with regard to newly proposed legislation:

Each party will require proposals for new legislation that restricts competition to be accompanied by evidence that the restriction is consistent with the principle set out in sub-clause (1).<sup>1</sup>

The obligation to demonstrate this is on the proponent of the regulation. Accordingly, any proposed regulatory response must ensure that it is consistent with these National Competition Policy obligations.

## Developing an Improved Legislative Framework

### A new, more relevant Anzac Day Act

An issue for consideration is whether to provide for a single and clear piece of legislation that consolidates the many laws affecting Anzac Day.

A major thrust of this review is to achieve an improved legislative framework for Anzac Day. This objective attracts for consideration substantive issues relating to the operation of Patriotic Funds and restrictions on business activity. It also attracts consideration of more technical issues such as the clarity of legislation, particularly where improvements can be made in drafting legislation and by removal of anomalies.

**Funding Anzac Day:** The *Anzac Day Act 1958* establishes the Anzac Day Proceeds Fund. The Act provides for the income of the fund to be derived from the net profits of sporting and racing clubs conducting events on Anzac Day. However, the fund is overwhelmingly sustained under a long standing policy for the Treasurer to donate all totalisator wagering taxation generated by Anzac Day operations to the fund. For example, the contribution under the Treasury policy (some \$335,000) constituted approximately 90% of the income of the fund in 2000. By contrast, the contribution of the Australian Football League (the “AFL”), which conducts the major sporting event on Anzac Day, was \$20,000. The AFL match on Anzac Day is renowned as a sustained outstanding success. In the circumstances, perhaps, it is not unreasonable to expect that the AFL should make a more substantial contribution to the fund.

Under existing arrangements, the approach has been to source the Anzac Day Proceeds Fund’s income from sporting and racing activities undertaken on Anzac Day. There does not seem to be any policy reason or principle to justify confining contributions to the fund to those activities. Consideration should be given to whether or not other activities undertaken on Anzac Day should be a source of contribution to the fund. In this context, theatres, cinemas and entertainment associated with hotels and licensed clubs appear to be appropriate sources of contributions. In particular, it does not seem unreasonable to expect contributions to be sourced from relevant gaming activities. Perhaps, the Treasury policy relating to totalisator wagering taxation should be similarly applied with respect to gaming taxation. Such an expansion of sources of income for the fund is likely to have a substantial corresponding impact on the quantum of the fund.

The conduct of sport on Anzac Day is subject to approval by the Minister for Sport and Recreation under the *Anzac Day Act 1958*. The Minister has power to direct any individual sporting body to pay a portion of the event’s net profit to the fund. In the case of clubs holding events outside the metropolitan area, the

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<sup>1</sup> Competition Principles Agreement, Clause 5. 1995. See: [www.ncc.gov.au](http://www.ncc.gov.au)

Minister may authorise the payment of such profits to other patriotic funds (after consulting with the President of the RSL to ensure the bona fides of such funds).

The *Anzac Day Act* also required non-licensed theatres and cinemas to obtain permits in order to operate on Anzac Day. There was no requirement for such theatres and cinemas to make payments to the fund. A Bill, amending the *Anzac Day Act* to restrict the use of cinemas and other entertainment before 1.00pm on Anzac Day has recently been passed by the Victorian Parliament and came into effect as the *Theatres (Repeal) Act 2002* on 22 May 2002.

The framework for sporting clubs effectively mirrors that for racing clubs where the Minister for Racing has comparable responsibilities under the *Racing Act 1958*.

The *Patriotic Funds Act 1958* establishes the Patriotic Funds Council of Victoria to, in effect, assume responsibility for overseeing the operation of all Victorian patriotic funds. The Patriotic Funds Council of Victoria is also invested with responsibility for recommending the distribution of payments from the Anzac Day Proceeds Fund.

**Restrictions on Business Activity:** The *Liquor Control Reform Act 1998*, the *Shop Trading Reform Act 1996*, the *Labour and Industry Act 1958* and the provisions relating to cinemas and entertainment in the *Anzac Day Act 1958* all impose restrictions on business activity on Anzac Day. In particular, the following businesses are subject to statutory restrictions on Anzac Day:

- Licensed premises, except those referred to below with permanent extensions permitting trade;
- Shops, except the exempt shops listed in the Appendix;
- Factories, except the those exceptions listed in the Appendix;
- Cinemas and other, in effect, live entertainment, except those given a permit by the Minister.

As referred to above under the *Liquor Control Reform Act*, licensed premises are generally prohibited from trading before 12 noon on Anzac Day, with the exception of holders of a vigneron licence who are entitled to trade from 10.00am on Anzac Day. Pursuant to the Act, a number of businesses are permanently licensed to trade prior to 12 noon on Anzac Day. When initially applying for the permanent extension of trading hours to provide for Anzac morning trading, all the licensees would have been required to specify details of the proposed Anzac morning trading in accordance with public display and advertisement requirements related to the application. The overwhelming majority of the permanent extensions were granted by the Liquor Licensing Commission prior to February 1999 pursuant to the then *Liquor Control Act 1987*, with the Commission satisfying itself that the extended trading would not impinge on Anzac Day proceedings.

Against that background, the following businesses are licensed to trade 24 hours a day 365 days a year, therefore being licensed to trade on Anzac Day:

Gaming venues:	75
Nightclubs/bars:	51
Airport related:	18
Casino related:	15

Additionally, there are 10 gaming venues and 31 nightclubs licensed to trade to 5am, 6am or 7am on Anzac Day morning.

There are plausible arguments each way on restricting business activity on Anzac Day. The prime issues in this regard relate to which business activities should be prohibited on Anzac Day, and, for how long. The proponents of commercial liberty would tend to advocate minimum disturbance to business, and where restrictions are imposed they be counter-balanced by an accessible and liberal system of exceptions. On the other hand, arguments steeped in the objective of preserving the sanctity of Anzac Day would tend to advocate optimum restrictions on business, and where exceptions are necessary, they be available only in the public interest of ensuring provision of services that are essential. A central question here is which businesses should be exempt from the closure requirement – is the existing list of “exempt shops” (see the Appendix to this report) too broad?

The issue of how long restrictions on business should apply on Anzac Day appears less vexed than the issue of which businesses should be subject to restriction. In this regard, it is arguable that the existing general arrangements are satisfactory, ie, where subject to exceptions, shops, factories and cinemas are closed until 1.00pm, whilst licensed premises are closed until 12 noon and sport, races and other entertainment cannot commence before 1.00pm.

**Clarity of Legislation:** Under the current scheme of regulation of Anzac Day, reference has to be made to at least nine separate pieces of legislation to gain a comprehensive appreciation of the extent of regulation. A survey of the legislation will disclose anomalies between Acts and internal anomalies within Acts. An example of the latter is found in the *Anzac Day Act 1958*, where section 3 provides that the legislation for Anzac Day is in commemoration of the part taken by Victorian troops in “the Great War and in memory of those who gave their lives for the Empire”. By contrast, section 4A provides for the distribution of Anzac Day Proceeds Fund monies for the benefit of members of the armed forces “during any war hostilities.” The Parliamentary Review therefore seeks input on what campaigns and operations should be covered in a new Act.

More stark are the anomalies between Acts. In this context, it is curious that breaches of the *Shop Trading Reform Act 1996* on Anzac Day can attract penalties of 100 penalty units (\$10,000), whilst breaches of the recently enacted cinemas and entertainment provisions of the *Anzac Day Act 1958* attract penalties of only 5 penalty units (\$500). As part of this review, consideration will be given to uniform penalties as well as penalty levels that meet community expectations.

## Commemoration Initiatives

The most renowned commemorative activities on Anzac Day are the dawn services and the marches. These are time honoured tributes to the Anzac spirit, and are certainly the most powerful expressions of commemoration held on Anzac Day. However, there is scope for other related activities to be pursued, not necessarily solely on Anzac Day.

Some examples of the extent of commemoration activities that might be undertaken is provided by the activities initiated by the Queensland Anzac Day Commemoration Committee (see the Committee’s website at [www.anzacday.org.au](http://www.anzacday.org.au)). This includes a memorial grants and subsidies program administered to advance projects relating to:

- New memorials;
- School memorials;
- Repairs to memorials;
- Locked glass cabinets;
- New honour boards;

- Headstones of graves;
- Bronze memorial badges for certain grave and crematorium niche marking; and
- Grave and crematorium niche plaques.

The activities undertaken in Queensland are instructive of the range of commemoration initiatives that may be considered.

## Education

If Anzac Day is to be accorded the significance it deserves, the contribution of the Education sector will be highly important. Already, there is a considerable contribution made to ensuring that our children are appropriately versed in the Anzac spirit. The Victorian Department of Education and Training has developed a range of teaching and learning activities relating to Anzac Day, covering students at early years and middle years (for example see the material at the website of the Victorian Branch of the RSL, [www.rslvic.com.au](http://www.rslvic.com.au)).

Considerable educative material, including teaching kits have also been developed by the Australian War Memorial and the Commonwealth Department of Veterans' Affairs. Further, the delivery of some education programs is undertaken in partnership with the RSL and with current servicemen and servicewomen. Perhaps these programs can be enhanced by more extensive education activities, such as excursions to the Australian War Memorial, to the Shrine of Remembrance and even to Gallipoli.

As the numbers of veterans diminishes, the way in which Anzac Day retains its significance for future generations relies substantially on the education sector. Being observed on 25 April each year means that Anzac Day generally falls within school terms (by contrast a difficulty experienced in gaining recognition for the importance of Australia Day is the fact that each year it falls during the summer school holidays and schools do not have the opportunity to develop meaningful programs in advance of the actual day).

### Compulsory curriculum?

In the United States of America, "Veterans Day" is observed on November 11. Veterans Day is the day observed in the USA most equivalent to Anzac Day. In the USA State of Washington, the Revised Code of Washington (RCW) provides the laws of the State. [RCW 28A.230.160](#) is a law that requires activities in schools in the week before Veterans Day, in order to educate the children. 60 minutes of the week must be set aside for the education of children about the issues of Veterans Day.

No such similar legislative requirement exists in Victoria. Whilst this may be a matter that is dealt with more felicitously through administrative guidelines or the like, the notion that Anzac Day has such significance as to warrant compulsory curriculum attention is one to which educators may usefully turn their minds.

## Examples of Legislation relating to Anzac Day in the Commonwealth and in other Australian States and Territories

### 1. Commonwealth

#### *Anzac Day Act 1995*

- Declares Anzac Day as a day of national commemoration.
- That day is set at 25 April each year.

There are references to Anzac Day in the Australian War Memorial Regulations and the Airports (Control of On-Airport Activities) Regulations 1998.

### 2. New South Wales

#### *Anzac Memorial (Building) Act 1923*

- Similar to Victoria's Shrine of Remembrance Act.

#### *Gaming (Two-Up) Act 1998*

- Allows the game of two-up on Anzac Day.
- Has to be at a licensed venue.
- Any money taken on the day, from the game, has to be given to charity.

#### *Liquor Act 1982*

- Does not include Anzac Day in its list of restricted trading days.

### 3. Queensland

#### *Anzac Day Act 1995*

- Establishes Anzac Day as a holiday throughout Queensland.
- Re-establishes the Anzac Day Trust Fund.
- Requires the State to pay an annual grant to the Anzac Day Trust Fund.

#### *Trading (Allowable Hours) Act 1990*

- Requires closure of factories and most shops, prohibits the selling of real estate, and generally requires places of public amusement not to open before 1.30pm on Anzac Day.

*Racing and Betting Act 1980*

- A race meeting is not permitted to start before midday on Anzac Day.
- Does not require a contribution from racing to the Anzac Day Trust Fund.

*Liquor Act 1992*

- All licensed premises cannot serve alcohol before 1.00pm Anzac Day, unless served with a meal.
- Cabaret premises can remain open until 3.00am on Anzac Day, but cannot re-open until 1.00pm.

*Keno Regulation 1997*

- Provides that Keno is not allowed to operate between 3.00am and 1.00pm on Anzac Day.

*Casino Control Act 1982*

- A casino is not allowed to operate between 3.00am and 1.00pm on Anzac Day.

**4. Australian Capital Territory**

*Unlawful Games Act 1984*

- Two-up can be played on Anzac Day, with a requirement for any profits to be given to charity.

*Holidays Act 1958*

- Declares Anzac Day to be a public holiday.
- If it falls on a Sunday, then the following Monday is taken as a public holiday.

**5. Northern Territory**

*Traffic Ordinance Act 1981*

- Provides for offences that could be committed during an Anzac Day march or parade or service, and sets out penalties for disturbing such march, etc.

*Gaming Control Act*

- Provides that two-up can only be played on April 25 if it is conducted by or on behalf of a RSL club and the profits (if any) are payable to that club.

**6. South Australia**

*Lottery and Gaming Act 1936*

- Two-up is allowed on Anzac Day in a RSL branch or premise, or on a Defence Force premise.

*Holidays Act 1910*

- Declares Anzac Day to be on 25 April and a public holiday.
- If it falls on a Sunday then the following Monday will be the public holiday.

## **7. Western Australia**

### *Anzac Day Act 1960*

- Establishes an Anzac Day Trust Fund.
- No race meeting can commence before 1.00pm on Anzac Day.
- If Anzac Day falls on a Sunday, no race meeting is allowed.
- If a race meeting is held within the metropolitan area, all of the net profit is paid into the Trust, but if held outside of the metropolitan area, 60% of the net profit is paid into the Anzac Day Trust Fund.
- No race, match, game, exercise, pastime, contest or other event of sport shall commence before 1.00pm on Anzac Day.
- Each sporting event is required to pay 60% of their net profit made into the Anzac Day Trust Fund.
- Monies paid for special licences to serve liquor on Anzac Day must also be paid into the Fund.

### *Liquor Licensing Act 1988*

- Provides various regulation of liquor trading hours on Anzac Day, but generally the major licences are allowed to serve alcohol between midday and midnight, but with variations if Anzac Day falls on a Sunday.

### *Betting Control Act 1954*

- Prohibits betting on races before 1.00pm on Anzac Day.

## **8. Tasmania**

### *Anzac Day Observance Act 1929*

- No race meetings, theatres or sports are allowed to commence before 12.15pm on Anzac Day.
- An Anzac Trust Fund is established with monies collected on Anzac Day.

### **List of Persons and Organisations Consulted to date in preparing the Discussion Paper**

The Victorian Branch and the National President of the Returned and Services League (the "RSL")

The Australian War Memorial

The Chief of the Army

The Department of Defence

The Department of Veterans Affairs

The Turkish Ambassador

The New Zealand High Commissioner

Victorian State Government officials, including the Director of Liquor Licensing Victoria

### **List of Shops currently allowed to trade on Anzac Day (exempt under the *Shop Trading Reform Act 1996*).**

Booksellers' and newsagents' shops.

Bread shops.

Chemists' shops.

Confectionery and pastry shops.

Dressmakers' shops.

Dry cleaners' shops.

Eating-houses and restaurants.

Fish and oyster shops.

Flower shops and retail plant nurseries.

Fruit and vegetable shops.

Hairdressers' shops.

Hardware shops.

Paint shops.

Petrol shops.

Pet shops, including shops for the sale of aviary and cage birds or aquarium fish.

Photographers' shops.

Saddlery shops.

Shoe repairers' shops.

Shops for the sale of boats, caravans or other trailers or spare parts or accessories.

Shops for the sale of foodstuffs and groceries.

Shops for the sale of motor car spare parts or accessories.

Shops for the sale of old goods, being furniture, plate, china, statuettes and other curiosities and odds and ends of an artistic or antiquarian interest.

Shops for the sale of records, cassettes, tapes or video cassettes.

Shops for the sale of swimming pools, swimming pool equipment or supplies for swimming pools.

Shops for the sale of works of art or handicraft.

Souvenir shops.

Sporting goods shops located at sporting venues for the sale of goods appropriate for use at those venues. Stamp and coin shops.

Tailors' shops.

Undertakers' establishments.

### **List of Factories Not Required to Close on Anzac Day (under the *Labour and Industry Act 1958*)**

1. Every factory or warehouse of any of the following classes or in which any of the following trades is usually carried on:
  - (a) Printing, publishing or distributing newspapers;
  - (b) The manufacture, distribution or supply of gas or electric light or power;
  - (c) Any necessarily continuous process of manufacture;
  - (d) Milk supply.
2. Any factory in which the trade of a pastry cook is carried on.
3. Every bread factory while dough only is being prepared in the factory.
4. Every bread factory after 8 p.m. when Anzac Day falls on Friday.
5. Every factory or warehouse of any class or kind added by proclamation of the Governor in Council to this Schedule.

### Reading References

The following sources have been prepared by Dr. Peter Stanley, Principal Historian, Australian War Memorial. The Committee is grateful for the assistance provided by Dr. Stanley in compiling these references. They provide useful insights into how its meanings have been expressed in the 87 years since the evacuation of Gallipoli. Note that the Australian War Memorial does not necessarily endorse the views expressed in these sources. They reflect a range of opinions and views.

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<sup>\*\*\*</sup> Volume 16 of the *Journal of the Australian War Memorial* was devoted to a discussion of the Anzac legend