

ANZAC

PARLIAMENTARY REVIEW OF ANZAC DAY LAWS



Parliament of Victoria
Scrutiny of Acts and Regulations Committee
October 2002

Victoria.
Legislative Assembly.

**AUSTRALIAN IMPERIAL FORCES AT THE
WAR IN EUROPE.**

Sir Alexander Peacock moved, by leave, That this House desires to place on record its unbounded admiration of and pride in the magnificent fighting qualities displayed by the Australian Imperial Forces at the Dardanelles, and to congratulate them on their splendid achievements.

And the motion having been seconded by Mr. J. W. Billson—

Question—put and resolved in the affirmative.

Honorable Members then rose in their places, gave cheers for the Australian Imperial Forces, sang the National Anthem, and gave three cheers for the King.

J. E. Mackey,
Deputy-Speaker.

Extracted from the Journals of the House,

Tuesday, 18th May, 1915,

H. H. Newton,
Clerk of the Legislative Assembly.

On 18 May 1915 the Parliament of Victoria passed the above motion as a mark of respect to the Victorians who served during World War I



8th August, 1918
Will Longstaff
AWM ART03022

ANZAC

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Scrutiny of Acts and Regulations Committee
54th Parliament

Ordered to be printed

By Authority, Government Printer for the State of Victoria.

No. 189 Session 1999-2002

Front cover: medal images held at the Australian War Memorial, as follows:

Top – Lance Corporal Albert Jacka – awarded Victoria Cross, 1916

Bottom – Private B. S. Kingsbury – awarded Victoria Cross, 1942

Parliament of Victoria, Australia

**Scrutiny of Acts and Regulations
Committee**

**Parliamentary Review of ANZAC
Day Laws**

Bibliography

ISBN 0 7311 3055 3



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Functions of the Committee

The statutory functions of the Scrutiny of Acts and Regulations Committee as set out in section 4D of the *Parliamentary Committees Act 1968* are –

- (a) to consider any Bill introduced into a House of the Parliament and to report to the Parliament as to whether the Bill, by express words or otherwise –
 - (i) trespasses unduly upon rights or freedoms; or
 - (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers; or
 - (iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions; or
 - (iiia) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000*.
 - (iiib) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2000*.
 - (iv) inappropriately delegates legislative power; or
 - (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny; and
- (b) to consider any Bill introduced into a House of the Parliament and to report to the Parliament –
 - (i) as to whether the Bill by express words or otherwise repeals, alters or varies section 85 of the *Constitution Act 1975*, or raises an issue as to the jurisdiction of the Supreme Court;
 - (ii) where a Bill repeals, alters or varies section 85 of the *Constitution Act 1975*, whether this is in all the circumstances appropriate and desirable; or
 - (iii) where a Bill does not repeal, alter or vary section 85 of the *Constitution Act 1975*, but where an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue; and
- (c) such functions as are conferred on the Committee by the *Subordinate Legislation Act 1994*; and
- (ca) such functions as are conferred on the Committee by the *Environment Protection Act 1970*; and
- (d) to review any Act where required so to do by or under this Act, in accordance with terms of reference under which the Act is referred to the Committee.

Terms of Reference

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.

Chairs Foreword

In November 2001, the Victorian Parliament 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. The ANZAC Day Laws Review subcommittee conducted the review on behalf of the Committee.

A bi-partisan approach has been taken to this important review (with the Subcommittee co-chaired by members of both the A.L.P. and the Liberal Party). The review, therefore, provides an opportunity to make a significant contribution to a matter that is of considerable importance to our national identity.

The Report recognises a broad community acceptance that ANZAC Day is a solemn occasion of remembrance for the gallantry and sacrifices of Australians in wars and peace keeping efforts.

The Review found that 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 that impact upon ANZAC Day. The Report concludes that considerable improvement can be made to the legislative framework by, to the greatest extent practicable, consolidating laws affecting ANZAC Day into a single Act, and allocating ministerial responsibility for the Act to the Premier.

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.

The Report concludes that some of the laws are anomalous (eg. a fine of just \$500 is not an adequate penalty for commercial cinemas that illegally open on ANZAC Day), while other areas of the law seem too narrow (eg. the Anzac Day Act should not refer solely to World War 1) or even silent (gaming venues should be covered by the Act and not allowed to open on the morning of ANZAC Day).

The Report's recommendations are premised on the basis that the great significance which the State aspires to accord ANZAC Day is supported by the best set of laws.

Our Committee has pursued the development of proposals for protecting and, wherever possible, enhancing the significance of ANZAC Day. In pursuing this objective, we are grateful for the assistance of the RSL, at both a State and National level, and other relevant bodies.

As well as considering the most suitable legislative framework, there has also been an opportunity to consider administrative proposals, including education initiatives relating to the promotion of

ANZAC Day. Accordingly, the Report makes recommendations regarding the importance of the education sector.

We fulfilled a commitment to undertake a comprehensive process of public consultation in respect of this review. To this end, in June 2002 we circulated a Discussion Paper and conducted public hearings during July-September 2002. We are grateful to those organisations and individuals who made written submissions or appeared at the hearings. Their contributions are most appreciated

We are pleased to present this Report as an important contribution to the development of meaningful ANZAC Day legislation. The new legislation recommended by the Report will enable Victoria to demonstrate leadership to the Commonwealth and the other States on the most appropriate legislative framework for the nation's most important commemorative day.

The Report has made particular effort to develop recommendations appropriate to the evolving role, over the coming decades, of the Parliament and governments in assisting the holding of this national day and the promotion of the ANZAC spirit.

Mrs Liz Beattie MLA
Co-Chair
ANZAC Day Subcommittee

The Hon. Mark Birrell MLC
Co-Chair
ANZAC Day Subcommittee

Ms Mary Gillett MLA
Chair
Scrutiny of Acts and Regulations Committee

October 2002

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Recommendations

The recommendations of the Report are set out below.

Recommendation 1 [page 7]

The Committee, in recognition of the overwhelming support of ANZAC Day as a day of national commemoration, recommends that Parliaments and governments work to:

- (a) enhance commemoration of ANZAC Day;
- (b) cater for the deep and increasing public interest in the significance of ANZAC Day by stimulating education about ANZAC Day; and
- (c) provide greater resources and support for activities and projects that commemorate the ANZAC spirit.

Recommendation 2 [page 13]

The Committee recommends that, where practicable, all laws regulating or affecting ANZAC Day be consolidated into a single new Act, thus creating a clearer legislative framework for laws affecting ANZAC Day.

Recommendation 3 [page 13]

The Committee recommends that, having regard to the profound significance of ANZAC Day and to the whole of government nature of the legislative responsibilities involved, ministerial responsibility for the Act be assumed by the Premier.

Recommendation 4 [page 22]

The Committee recommends that, in view of the long-standing role of the ex-service community in the conduct of ANZAC Day ceremonies throughout Victoria, these matters should remain the province of the ex-service community, without legislative intervention.

Recommendation 5 [page 23]

The Committee recommends that references to "ANZAC" in legislation should be made in upper case encryption to reflect the origin of the word as a combination of the Australian and New Zealand forces that served at Gallipoli.

Recommendation 6 [page 24]

The Committee recommends that:

- (a) the observance of ANZAC Day commemorate the service of Australians in all conflicts; and
- (b) the existing reference to commemorating participation in the Great War should be complemented in the new ANZAC Day legislation by a reference to participation in subsequent conflicts, including peace keeping activities.

Recommendation 7 [page 24]

The Committee recommends that ANZAC Day should continue to be observed as a public holiday on 25 April each year, with the legislation making clear that ANZAC Day is a full day holiday.

Recommendation 8 [page 25]

The Committee recommends that, in light of the need to give enhanced priority to commemorating ANZAC Day and the ANZAC spirit, provision be included in the new ANZAC Day legislation to:

- (a) expand the functions of the Patriotic Funds Council to assist, facilitate and promote commemoration and education activities;
- (b) provide for the establishment of a committee, the ANZAC Day Education and Commemoration Committee, within the Patriotic Funds Council to perform the Council's functions with respect to commemoration and education activities; and
- (c) enable the distribution of funds from the ANZAC Day Proceeds Fund, as recommended by the ANZAC Day Education and Commemoration Committee, for the purposes of commemoration and education initiatives.

Recommendation 9 [page 27]

The Committee recommends the continuation of the ANZAC Day Proceeds Fund, administered by the Patriotic Funds Council.

Recommendation 10 [page 28]

The Committee recommends that the legislation authorise the funding of approved ANZAC Day commemoration ceremonies through the ANZAC Day Proceeds Fund.

Recommendation 11 [page 30]

The Committee recommends that:

- (a) the *Shrine of Remembrance Act 1978* be amended to enable the Trustees of the Shrine to develop, promote, facilitate and organise education initiatives relating to the service of Australians in defence of their country and in peacekeeping activities, including those relating to ANZAC Day; and
- (b) the Government provide sufficient funding for this new function.

Recommendation 12 [page 33]

The Committee recommends that the existing contribution by sporting bodies (eg, horse racing and football) to the ANZAC Day Proceeds Fund be, in future, regulated according to a specific formula, or formulas, prescribed by the Premier after consultation with the ANZAC Day Education and Commemoration Committee.

Recommendation 13 [page 34]

The Committee recommends that a contribution to the ANZAC Day Proceeds Fund should be made by the gaming industry in respect of gaming activities conducted on ANZAC Day, and the appropriate contribution be prescribed by the Premier after consultation with the ANZAC Day Education and Commemoration Committee.

Recommendation 14 [page 36]

The Committee recommends that, in light of the accepted view that the period from dawn until the conclusion of commemorative services on 25 April should be observed as a time of solemn reflection, there should be uniform trading hours throughout Victoria on ANZAC Day with business activity restricted between 5am and 1pm.

Recommendation 15 [page 37]

The Committee recommends that the essential commercial services exempt from the restriction on trading before 1pm on ANZAC Day should be identified according to the characteristics of the particular activity rather than the premises, or shops, from which the activity is retailed. For example, authorised trading activities would include the sale of:

- Bread
- Prescription drugs and other items of a medicinal nature with or without a doctor's prescription
- Daily newspapers
- Prepared meals, whether or not for take away or consumption within the premises of the business
- Flowers and plants
- Petrol
- Fruit and vegetables
- Food and groceries

Recommendation 16 [page 39]

The Committee recommends that there should be uniform liquor licensing laws throughout Victoria on ANZAC Day, so that licensed premises are closed between 5am and 12 noon, except where special circumstances exist, such as gunfire breakfasts on ANZAC Day.

Recommendation 17 [page 40]

The Committee recommends that the operation of gaming facilities be prohibited between 5am and 1pm on ANZAC Day.

Recommendation 18 [page 40]

The Committee recommends that trading by community markets be prohibited between 5am and 1pm on ANZAC Day.

Recommendation 19 [page 41]

The Committee recommends that the existing arrangements be maintained where factories are closed for the whole day on ANZAC Day, unless a factory is not required to close in accordance with the provisions of the *Labour and Industry Act 1958*.

Recommendation 20 [page 41]

The Committee recommends that the conduct of auctions for the sale of property be prohibited between 5am and 1pm on ANZAC Day.

Recommendation 21 [page 42]

The Committee recommends that the existing arrangements with respect to conduct of sporting events, horse racing and entertainment on ANZAC Day be maintained, so that such activities are not commenced before 1pm.

Recommendation 22 [page 42]

The Committee recommends that the operation of cinemas and live theatres be prohibited between 5am and 1pm on ANZAC Day, except where the nature of particular cinema or live theatre shows is consistent with the purposes of ANZAC Day, and, after consultation with the ANZAC Day Education and Commemoration Committee, the Premier grants approval.

Recommendation 23 [page 43]

The Committee recommends there be higher and consistent penalties for the breach of ANZAC Day laws, with the level of penalty to be up to 100 penalty units.

Recommendation 24 [page 50]

The Committee recommends that the Department of the Premier and Cabinet should further consult the ex-service community and other interested bodies with respect to issues relating to the implementation of the Committee's recommendations.

Executive Summary

This review is about the laws that govern the arrangements for the observance of ANZAC Day in Victoria.

Legislation affecting ANZAC Day in Victoria regulates activities on the day and a wide range of 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 current Victorian laws (like the similar group of laws in other States) have never been subject to a comprehensive update. Given the historic nature of the legislation, it is important to ensure a legal and policy framework is in place that is sufficiently robust to foster the significance of ANZAC Day for future generations. 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 many pieces of legislation.

The Committee approached this review as an opportunity to recommend improvements to the laws by addressing key issues relating to:

- (a) the observance of a commemorative public holiday;
- (b) the funding of ANZAC Day;
- (c) the extent of restriction on business, sport, gaming and entertainment activity;
- (d) the provision of statutory support to an array of commemoration and education initiatives;
- (e) the scope for commemoration and education initiatives;
- (f) consistency in the 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 Report 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

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 was at the core of the consideration of ANZAC Day laws. The Committee was therefore pleased that the challenge of developing an improved legislative framework attracted substantial interest for this review.

The Committee finds that significant consolidation and improvement of ANZAC Day laws can be achieved. The Committee recommends that a new Act, entitled the ANZAC Day Commemoration Act, should be enacted to legislate with respect to ANZAC Day and to consolidate, where practicable, all laws regulating or affecting ANZAC Day. The key provisions for the proposed ANZAC Day Commemoration Act include:

- provide for the commemoration of ANZAC Day as a day of national significance;
- commemorate participation in the Great War and participation in subsequent conflicts, including peace keeping activities;
- expand the functions of the Patriotic Funds Council;
- establish a committee, the ANZAC Day Education and Commemoration Committee, within the Patriotic Funds Council;
- declare that ANZAC Day is to be observed as a public holiday;
- provide for the ANZAC Day Proceeds Fund;
- provide for the distribution of funds from the ANZAC Day Proceeds Fund for commemoration and education purposes, as well as for welfare purposes;
- provide for increased reasonable contributions to the ANZAC Day Proceeds Fund by the sporting, gaming and entertainment sectors, in accordance with a specific formula prescribed by the Premier after consultation with the ANZAC Day Education and Commemoration Committee;
- provide for uniform trading hours throughout Victoria on ANZAC Day with business activity restricted between 5am and 1pm, except for essential commercial services exempt according to the characteristics of the particular activity;
- provide for uniform liquor licensing laws throughout Victoria, so that licensed premises are closed between 5am and 12 noon, except where there are special circumstances;
- provide for a prohibition on the operation of gaming facilities between 5am and 1pm on ANZAC Day;
- restrict the conduct of sport and entertainment before 1pm;
- provide for uniform and higher penalties for breach of the Act;
- provide for consequential and transitional provisions, including provision to amend the *Shrine of Remembrance Act 1978* to enable the Shrine to develop education initiatives;
- provide for the making of regulations.

The focus of this review is on laws that affect ANZAC Day. Apart from the *Patriotic Funds Act 1958* and the *Shrine of Remembrance Act 1978*, essentially the impact of these laws occurs on ANZAC Day itself. The Committee found that there was considerable scope to explore improvements to the legislative framework that will give statutory support to an array of ongoing commemoration and education initiatives.

In relation to education about ANZAC Day and the ANZAC spirit, the Committee concluded there is a need to ensure a legislative basis so that future generations are supported by new objectives and powers for an effective education program.



Fall in!, Norman Lindsay (1879-1969)
National Library of Australia (nla pic an 14145632)

Chapter 1 – 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. The review is about the laws that govern the arrangements for the observance of ANZAC Day in Victoria. The object of ANZAC Day laws should be 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.

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 come 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 consideration should also be given to administrative proposals, including education initiatives relating to the promotion of ANZAC Day.

The approach of this Report is to present at the outset an Executive Summary of the content of the Report. Following the Executive Summary, the Report sets out its Recommendations.

The body of the Report commences with the background to, and the context of, the review and the process followed by the review. The Report then examines the background to legislative intervention and the existing legislative framework. The Report considers the key policy objectives and principles which might govern legislation affecting ANZAC Day. This is followed by consideration of the key issues identified for the development of a new legislative framework. Issues relating to commemoration initiatives and education are examined separately.

A number of appendices are attached to the Report, including an outline of a proposed *ANZAC Day Commemoration Act*. In the preparation of this Report, valuable assistance in considering the

relevant issues was offered by a number of organisations and individuals listed in a further appendix to the Report. Another appendix lists reference material and websites found to be helpful to the review.

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 reports on substantive issues fundamental to an appropriate legislative framework for ANZAC Day. The review also reports on issues concerning the practical application of legislation currently affecting ANZAC Day. This includes drafting changes needed to remove anomalies or to improve the clarity of the current legislation. The public consultation process has greatly assisted the formulation of meaningful recommendations in relation to both the substantive and the practical issues.

Although the review is essentially a review of laws, it has been appropriate to consider 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 proceeded through three stages, namely:

- (i) Discussion Paper;
- (ii) Public submissions and consultation, including public hearings; and
- (iii) Report to the Parliament.

The starting point was the preparation of the Discussion Paper, which formed the basis of the first stage of consultation of the review. Accordingly, the intention of the Discussion Paper was to identify issues and place them on the agenda for public consultation. The Discussion Paper did not attempt to resolve these issues, nor did it intend to present them tendentiously. The Discussion Paper was released for public consultation in June 2002.

The purpose of the Discussion Paper was 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. To ensure that the primary issues were to the fore and to assist the focus of the review, the Discussion Paper posed a number of questions. These questions and a summary of responses and the Committee's observations are considered in the body of the Report.

The form of public consultation included invitations to make submissions and attend public hearings. A list of those who made submissions and a list of witnesses are set out in Appendix B.

Public hearings were conducted on 25 July 2002 and on 2 September 2002. In addition, on 13 September 2002, the Committee met with representatives of the RSL (Victorian Branch) and received a presentation from Mr. Arthur Burke, Honorary Secretary of the ANZAC Day Commemoration Committee (Queensland) Incorporated.

The Report records the outcome of the public consultation process and formulates recommendations for Government consideration. The Report is required to be tabled in the Parliament by 31 October 2002.

Chapter 2 – 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 evolution and significance of the “ANZAC spirit” is well outlined in notes made available to the Committee by Dr. Peter Stanley, Principal Historian, Australian War Memorial:

“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 20th 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.¹

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 spirit².

The ANZAC spirit has captured the attention of historians, writers, journalists and politicians. The notion of the ANZAC Spirit is an undisputed quality recognised by the community at large. It is a powerful concept as reflected in the following passage from a commemorative speech delivered by former Prime Minister Paul Keating:

"That is surely at the heart of the Anzac story, the Australian legend which emerged from the war. It is a legend not of sweeping military victories so much as triumphs against the odds, of courage and ingenuity in adversity. It is a legend of free and independent spirits whose discipline derived less from military formalities and customs than from the bonds of mateship and the demands of necessity."³

The concept was recently discussed by Prime Minister John Howard:

"Anzac Day has remained the story of an aspiring nation's courage. It has remained relevant not to glorify war or to paint some romantic picture of our history but to draw upon a great example of unity and common purpose. As well as providing a day of commemoration, Anzac Day is also a time for all of us to reflect with gratitude on those great values that unite us as Australians - values such as mateship, courage, initiative and determination. This is because the same Anzac spirit that has guided us through adversity and triumph seems to slumber periodically only to draw new breath when the national interest calls to bring Australians together in times of need".⁴

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

¹ C. E. W. Bean, *Anzac to Amiens*, Canberra, 1946, p. 181.

² In Victoria, the Shrine of Remembrance was initially constructed as a tangible testament of recognition of the 114,000 men and women of Victoria who served, and the 19,000 who died, in the Great War of 1914-1918, Submission of Trustees of the Shrine of Remembrance.

³ Funeral Service of the Unknown Australian Soldier: Speech by the Prime Minister, the Hon P. J. Keating, MP Canberra, 11 November 1993.

⁴ Prime Minister, the Hon John Howard, MP Canberra, 25 April 2002.

mateship, and good humour and the survival of a sense of self-worth and decency in the face of dreadful odds.”⁵

The importance of the ANZAC spirit was a common theme of submissions to the Committee. The RSL (Victorian Branch) observed that:

“ANZAC Day should be continued to be honoured as the principal National day of commemoration in relation to patriotic and like activities for the indefinite future.”⁶

The Committee found there is overwhelming support of ANZAC Day as a day of national commemoration. This support manifested itself in submissions made to the Committee, the high level of media coverage of ANZAC Day, the volume and success of literature about the ANZAC spirit and the growing popularity of “pilgrimages” to Gallipoli, particularly by young Australians. It is apparent that this response of support reflects the community’s recognition that there are worthwhile principles and values that derive from the ANZAC spirit. The RSL (National Headquarters) submission stressed the importance of ANZAC values as follows:

“ANZAC Day commemorates the contribution of all who served Australia, but the RSL also sees ANZAC Day as important in preserving ANZAC values and promoting them as shared values in the Australian community.

ANZAC values include such human qualities as courage, mateship, fairness, persistence, integrity, humour, initiative, endurance, determination, ingenuity, respect, and the “selfless spirit of ANZAC”.

The best way to help preserve ANZAC values is to involve young people in ANZAC Day ceremonies in a managed way that brings these values to them meaningfully.”⁷

The Committee concluded that the commemoration of ANZAC Day should be further enhanced by greater emphasis on education activities. The Committee considers that education in this sense includes not only educating our children, but also catering for the increasing interest of Victorians in the significance of ANZAC Day.

Recommendation 1

The Committee, in recognition of the overwhelming support of ANZAC Day as a day of national commemoration, recommends that Parliaments and governments work to:

- (a) enhance commemoration of ANZAC Day;**
- (b) cater for the deep and increasing public interest in the significance of ANZAC Day by stimulating education about ANZAC Day; and**
- (c) provide greater resources and support for activities and projects that commemorate the ANZAC spirit.**

⁵ The ANZAC Spirit Today, Sir William Deane, Governor-General of Australia, 1996-2001, ANZAC Hall, Australian War Memorial, Canberra.

⁶ Submission of RSL (Victorian Branch), 22 July 2002.

⁷ Submission of RSL (National Headquarters), 12 June 2002.

Anzac Day—Manner of Observance.

COMMONWEALTH GOVERNMENT'S MEMORANDUM.

At the Premier's Conference in 1921 it was agreed that, irrespective of the day on which it falls, Anzac Day should be observed on the 25th April of each year, and that the holiday should be a uniform one throughout the States.

The present arrangement is that the actual date of the anniversary (25th April) is observed in Commonwealth Departments, a Proclamation being issued accordingly each year.

In 1921, the day was not observed uniformly in all the States. Some prohibited races, sports &c., while others had no power to do so. In some States it was proclaimed a public holiday, in others only a sacred day.

In 1923, the States were invited to co-operate with the Commonwealth in fittingly observing the day, and an invitation was telegraphed to the various religious bodies suggesting that memorial services be held in the morning. All the States co-operated as requested, and the central religious bodies generally complied with the desires of the Commonwealth in this connexion.

As yet, however, nothing has been done to insure uniformity of observance in connexion with this great day. The Commonwealth Government is of the opinion that this should be done and proposes to suggest to the States the following arrangements:—

- (a) Anzac Day shall be observed throughout the Commonwealth as Australia's nation day.
- (b) The actual anniversary of Anzac Day, i.e., 25th April of each year, shall be the day of observance.
- (c) The States will take the necessary steps to provide for the fitting observance of the day.
- (d) The morning of the day to be observed by the holding of religious and memorial services. The afternoon to be devoted to the giving of suitable addresses, and instilling into the minds of the children of Australia the significance of Anzac Day.

STATES' PROPOSAL

Anzac Day to be commemorated on 25th April as a public holiday, provided that the uniform holidays (Subject No. 20) are agreed to.

Commonwealth Parliamentary Papers
Conference of Commonwealth and State Ministers
Melbourne, May-June 1923

Chapter 3 – The Legislative Framework

Background to ANZAC Legislation

The development of legislation for Anzac Day appears to have first emerged at a Premiers' Conference in 1921, where the following decision is recorded:

“DECISIONS ARRIVED AT BY THE PREMIERS' CONFERENCE 1921

ANZAC Day

That irrespective of the day upon which it falls, ANZAC Day be observed on the 25th April each year, and that the holiday should be a uniform one throughout the States.”⁸

Subsequently, the basis for legislation appears in the Premier's Conference held in Melbourne in May 1923. The following extracts from the relevant Parliamentary Papers disclose that a desire for uniformity of observance of ANZAC Day throughout the nation was paramount, even to the extent of characterising it as Australia's national day.

“ANZAC DAY – MANNER of OBSERVANCE COMMONWEALTH GOVERNMENT'S MEMORANDUM

At the Premier's Conference in 1921 it was agreed that, irrespective of the day on which it falls, ANZAC Day should be observed on the 25th April of each year, and that the holiday should be a uniform one throughout the States.

The present arrangement is that the actual date of the anniversary (25th April) is observed in Commonwealth Departments, a Proclamation being issued accordingly each year.

In 1921, the day was not observed uniformly in all the States. Some prohibited races, sports, etc, while others had no power to do so. In some States it was proclaimed a public holiday, in others only a sacred day.

In 1922, the States were invited to co-operate with the Commonwealth in fittingly observing the day, and an invitation was telegraphed to the various religious bodies suggesting that memorial services be held in the morning. All the States co-operated as requested and the central religious bodies generally complied with the desires of the Commonwealth in this connexion.

⁸ Commonwealth Parliamentary Papers 1920-1921, Vol. 4 No. 156, P2.

As yet, however, nothing has been done to insure (sic) uniformity of observance in connexion with this great day. The Commonwealth Government is of opinion that this should be done and proposes to suggest to the States the following arrangements –

- (a) ANZAC Day shall be observed throughout the Commonwealth as Australia's national Day.
- (b) The actual anniversary of ANZAC Day, i.e. 25th April of each year, shall be the day of observance.
- (c) The States will take the necessary steps to provide for the fitting observance of the day.
- (d) The morning of the day to be observed by the holding of religious and memorial services. The afternoon to be devoted to the giving of suitable addresses, and instilling into the minds of the children of Australia the significance of ANZAC Day.⁹

It is noteworthy that the Commonwealth Government's memorandum at the 1923 Premiers' Conference referred to *"this great day"* and to *"Australia's national day."* The subsequent evolution of ANZAC Day has not seen it replace Australia Day as the national day, but it has certainly assumed its prominence as its own great day.

The RSL (National Headquarters) submitted:

"ANZAC Day be officially designated as a day of commemoration of Australia's war dead, and be kept separate from any other type of national celebration or national day."¹⁰

Further, the Australian Veterans and Defence Services Council submitted that:

"ANZAC Day must remain a Day of Commemoration and never be allowed to become just another day of celebration."¹¹

The Committee concluded that the special significance of ANZAC Day is to be found in its characteristics of commemoration. Accordingly, the Committee is persuaded to the view expressed by the RSL (National Headquarters) that it is *"inappropriate for ANZAC Day to become our national day, Australia Day, with its emphasis on celebration rather than commemoration."*¹²

From the beginnings at the forums of the Premiers' Conference, ANZAC Day legislation developed in Victoria, with the first Act being passed in 1925. Today, the existing legislative framework features separate Acts that contain provisions affecting ANZAC Day. Additionally, the Act regulating the Shrine of Remembrance is relevant to a consideration of legislation for ANZAC Day. In all, there are 10 Acts that warrant consideration in this review¹³. A summary of existing legislation is contained in Appendix C. The particular Acts are listed below:

⁹ Commonwealth Parliamentary Papers, Conference of Commonwealth and State Ministers, Melbourne, May - June 1923, No. 493, p.139.

¹⁰ Submission of RSL (National Headquarters) op cit.

¹¹ Submission of the Australian Veterans and Defence Services Council, 18 July 2002.

¹² Ibid.

¹³ ANZAC Day is only referred to in one set of regulations, the *Liquor Control Reform Regulations 1999*, where the references made are in the context of the fees applicable for additional trading hours.

- *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*
- *Shrine of Remembrance Act 1978*

These Acts affecting ANZAC Day in Victoria regulate 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 funds¹⁴.

Although diverse and developed piecemeal, a common approach of the legislation appears to be to seek 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, and sport and entertainment are not conducted, 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. A brief summary of examples of legislation relating to Anzac Day in the Commonwealth and other Australian States and Territories is set out in Appendix F.

Single New Act for ANZAC Day

The Committee found strong support for legislation in respect of ANZAC Day¹⁵. For example, the Australian Legion of Ex-Servicemen and Women observed that:

“It seems logical that all laws affecting ANZAC Day ought to be consolidated into a single Act.”¹⁶

RSL (National Headquarters) contended that:

“Legislation is required to cater for the following:

- Establishment of ANZAC Day as Australia’s national day of commemoration;

¹⁴ See Appendix C for a summary of existing legislation.

¹⁵ See Appendix D for a discussion of the case for legislative intervention.

¹⁶ Submission of the Australian Legion of Ex-Servicemen and Women, Victorian State Branch, 11 July 2002.

- Organisation and control of ANZAC Day ceremonies;
- Commercial trading hours and exemptions; and
- Timing of commercial entertainment and organised sporting events.¹⁷

Whilst the Victorian Automobile Chamber of Commerce submitted:

“As a matter of principle, VACC supports legislative protection for ANZAC Day, as it is a nationally significant day of commemoration in remembrance of the sacrifices and bravery by Australians in war.”¹⁸

The Committee considers that it is highly desirable to create a clearer legislative framework for laws affecting ANZAC Day. Moreover, laws affecting ANZAC Day should be consolidated into a single Act. The Committee recognises it will not always be practicable to achieve this on all occasions, as some provisions affecting ANZAC Day in existing legislation appear in a broader contextual framework; it is not appropriate to separate them¹⁹. However, significant consolidation and clarification can be achieved.

The Committee considers that a new Act, entitled the ANZAC Day Commemoration Act, should be enacted to legislate with respect to ANZAC Day and to consolidate, where practicable, all laws regulating or affecting ANZAC Day. An outline of the scheme of legislation for the proposed ANZAC Day Commemoration Act is set out in Appendix A. The key provisions include:

- provide for the commemoration of ANZAC Day as a day of national significance;
- commemorate participation in the Great War and participation in subsequent conflicts, including peace keeping activities;
- expand the functions of the Patriotic Funds Council;
- establish a committee, the ANZAC Day Education and Commemoration Committee, within the Patriotic Funds Council;
- declare that ANZAC Day is to be observed as a public holiday;
- provide for the ANZAC Day Proceeds Fund;
- provide for the distribution of funds from the ANZAC Day Proceeds Fund for commemoration and education purposes, along with welfare purposes;
- provide for reasonable contributions to the ANZAC Day Proceeds Fund by the sporting, business, gaming and entertainment sectors, in accordance with a specific formula prescribed by the Premier after consultation with the ANZAC Day Education and Commemoration Committee;
- provide for uniform trading hours throughout Victoria on ANZAC Day with business activity restricted between 5am and 1pm, except for essential commercial services exempt according to the characteristics of the particular activity;

¹⁷ Submission of RSL (National Headquarters), op cit.

¹⁸ Submission of Victorian Automobile Chamber of Commerce, 26 July 2002.

¹⁹ For example, the *Patriotic Funds Act 1958* and the *Liquor Control Reform Act 1998*.

- provide for uniform liquor licensing laws throughout Victoria, so that licensed premises are closed between 5am and 12 noon, except where there are special circumstances;
- provide for a prohibition on the operation of gaming facilities between 5am and 1pm on ANZAC Day;
- restrict the conduct of sport and entertainment before 1pm except where approved by the Premier;
- provide for uniform and higher penalties for breach of the Act;
- provide for consequential and transitional provisions, including provision to amend the Shrine of *Remembrance Act 1978* to enable the Shrine to develop education initiatives;
- provide for the making of regulations.

A single Act, where most laws affecting ANZAC Day are consolidated, will contribute to the removal of existing anomalies and inconsistencies. Furthermore, a single Act will enable central ministerial responsibility to be assumed and bring administrative improvements.

At present, the existing Acts are not allocated to the responsibility of the same Minister, but are under the control of 8 different Ministers. There is considerable merit in consolidating, as far as practicable, the provisions of these Acts into a single ANZAC Day Act, and allocate control of the consolidated Act to one Minister. Indeed, having regard to the significance attached to ANZAC Day, its genesis in the forum of the Premiers' Conference and the whole of government nature of the consolidated provisions, it is recommended that ministerial responsibility for ANZAC Day legislation be assumed by the Premier.

Recommendation 2

The Committee recommends that, where practicable, all laws regulating or affecting ANZAC Day be consolidated into a single new Act, thus creating a clearer legislative framework for laws affecting ANZAC Day.

Recommendation 3

The Committee recommends that, having regard to the profound significance of ANZAC Day and to the whole of government nature of the legislative responsibilities involved, ministerial responsibility for the Act be assumed by the Premier.

Chapter 4 – Policy Considerations

Policy Questions and Responses

To assist deliberation about the policy considerations, the Discussion Paper posed a number of questions. These questions and brief comments on responses received in submissions are set out below:

(1) How should activities on Anzac Day be regulated?

The general consensus of submissions confirmed that a measure of regulation is required for ANZAC Day. If the regulation of ANZAC Day is to occur, this should be undertaken through an Act of Parliament. For example, the RSL (National Headquarters) submitted that:

“The ex-service community is ageing, and the once great strength of the RSL is diminishing. The RSL sees it as vital that the tradition of ANZAC Day as a day of remembrance continues to be carried on appropriately. To this end, legislation is essential to cement this day in our national calendar and preserve its commemorative character.”

(2) Are the current laws working?

The most common sentiment expressed in submissions was that the current laws are not working. Although a number of submissions merely stated the contention that the current laws were not working without any substantiation, those that did elaborate on the reasons for the opinion that the current laws were not working tended to point to inconsistencies, particularly with respect to restrictions on business activities.

(3) What policy considerations should determine the continuation of regulation of Anzac Day?

Submissions generally supported the regulation of ANZAC Day. The policy basis for this was generally seen in terms of the public good that is associated with the observance of a day of commemoration, particularly a day which reflects the ANZAC spirit. The case for legislative intervention is discussed in Appendix D.

(4) Should all laws affecting Anzac Day be consolidated into a single enactment ?

Again, the majority of submissions considered it desirable that the laws affecting ANZAC Day be consolidated into a single Act. The primary basis for this view is to overcome what is presently perceived as an uncoordinated, mosaic of laws. It is clear that there is considerable support for

the repeal of the present *Anzac Day Act 1958*, and its replacement by a fresh Act providing the optimum comprehensive coverage of laws which affect ANZAC Day.

Notwithstanding the general support for a single enactment, a number of submissions argued for the retention of matters such as the restriction of business activity to be retained in existing legislation relating to shop trading hours and such matters as liquor licensing.

(5) Should Anzac Day legislation be confined to commemoration related to World War One?

The overwhelming view of submissions was to the effect that the existing reference in the *Anzac Day Act 1958* to commemoration related to World War I required updating to recognise all conflicts in which Australian people have been engaged. Further, there was considerable support for the commemoration to be extended to include peacekeeping activities, as presently recognised in the *Patriotic Funds Act 1958*.

(6) Should the conduct of Anzac Day ceremonies be excluded from legislation?

A view strongly held by the National and State RSL and sub branches of the RSL is that there should not be legislative control over the conduct of ANZAC Day ceremonies. The submissions argued that the nature of the ceremonies, i.e. the Dawn Service and the march, are matters for the service community and not matters which require Government intervention.

(7) What business activities should be restricted by Anzac Day laws?

Submissions expressing diverse views were received in relation to the restriction of business activities on ANZAC Day. These may be considered in respect of four key areas, namely: –

- (a) shop trading;
- (b) liquor licensing;
- (c) entertainment; and
- (d) gaming.

Each of these is dealt with in detail later in the Report. By way of summary, in respect of shop trading, there were competing views about whether the existing arrangements are satisfactory.²⁰

In respect of liquor licensing laws, it appears generally accepted that there should be some restriction of the licensing of the sale of liquor on ANZAC Day morning. However, the primary issue relates to the particular hours for such restrictions.

In respect of entertainment, there appears to be a general consensus that sporting events, theatres and cinemas should be restricted from being undertaken during the ANZAC Day morning in recognition of the solemnity of the commemoration activities being conducted at that time.

In relation to gaming, there appears to be overwhelming support for the notion that particular laws be put in place to restrict gaming on ANZAC Day morning.

²⁰ Eg. submissions of the RSL, op cit and the Australian Retailers Association of Victoria, 9 August 2002.

(8) What are the most suitable times for restricting business activity and for commencing sports, races or other entertainment on Anzac Day?

There is general support for the principle that ANZAC Day morning is, in effect, sacrosanct and that the afternoon should be celebratory, particularly with respect to the conduct of sporting and entertainment events. Further, the restrictions on business activity should not apply in the afternoon, although the full day is a public holiday.

The submission of the RSL (National Headquarters) expressed the view as follows:

"Traditionally, there has been no commercial activity or sport permitted, nation-wide on or before a certain time, now generally 1pm. We believe this should be enshrined in legislation. Exceptions are the media, organisations providing public transport and other essential services."²¹

(9) Should the composition and functions of the Patriotic Funds Council be subject to more specific legislative oversight?

It is not the intention to extend this review to a broader examination of the Patriotic Funds Council. However, submissions recognise that the Patriotic Funds Council, whilst having year long responsibilities, has a significant role in respect of the distribution of the ANZAC Day Proceeds Fund. In relation to this particular responsibility, there are sound reasons for ensuring that the functions bestowed upon the Patriotic Funds Council under its constituting legislation are consistent with the objectives of the ANZAC Day legislation.

(10) How should major sporting organisations which conduct sporting events on Anzac Day contribute to the Anzac Day Proceeds Fund?

It is clear that there is significant dissatisfaction with the existing legislative scheme governing contributions by major sporting organisations to the ANZAC Day Proceeds Fund. This dissatisfaction is primarily founded on equity grounds. In this context, submissions pointed to a perceived inadequacy of the contribution presently made by the Australian Football League.

In respect of this issue the fundamental threshold principle (which has strong general support) is that those, whether sporting, gaming or entertainment organisations, who receive commercial benefit for their activities should make a reasonable contribution to the ANZAC Day Proceeds Fund that is commensurate with the commercial outcome of conducting the particular activity on ANZAC Day.

(11) Should the Gaming industry contribute to the Anzac Day Proceeds Fund in a way similar to racing and sports events?

Submissions generally proposed that the gaming industry should contribute to the ANZAC Day Proceeds Fund with the notable exception being the RSL. However, the RSL's position should be understood in the context of its scrupulous perception of conflict of interest.

In this regard, numerous branches of the RSL derive benefit from gaming on ANZAC Day. In light of this, the RSL appears to have been concerned that there would be an element of "double

²¹ RSL (National Headquarters), op cit.

dipping” if its constituency received benefits both from gaming revenue received on ANZAC Day in accordance with ordinary operations and from contributions made to the ANZAC Day Proceeds Fund. However, such an occasion for conflict of interest will not arise as the RSL branches conducting gaming operations on ANZAC Day would be required to make a contribution to the ANZAC Day Proceeds Fund in respect of those operations.

(12) Should gaming facilities be allowed to open on Anzac Day morning?

The weight of submissions was in favour of the closure of gaming facilities on ANZAC Day. For example, the RSL (Victorian Branch) contended that *“the operation of gaming should not occur between 5.00am and 1.00pm on ANZAC Day.”*²²

(13) What should be the penalties for businesses or citizens that break the Anzac Day laws?

A number of submissions drew attention to the existing anomalies in the penalties for breach of provisions relating to ANZAC Day. There is general support for consistency in levels of penalties and some concern about enforcement issues.

(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?

The Committee received overwhelming endorsement for the need to develop appropriate strategies to ensure that school children are educated about ANZAC Day and the ANZAC spirit. It is also apparent that the level of the community interest in ANZAC Day is sufficiently substantial as to justify education or information initiatives to cater for an increasing interest of Victorians in ANZAC Day.

²² RSL (Victorian Branch), op cit.

Chapter 5 – Policy Rationale for Regulation of ANZAC Day

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 submissions and evidence received by the Committee are invaluable to the consideration of the appropriate policy basis and legislative model.

An issue for consideration is whether the initial justification for legislation expressed terms of constituting ANZAC Day as a public and bank holiday remains current. In this regard, the Discussion Paper analysed the case for legislative intervention. This analysis is reproduced at Appendix D.

From time to time some Victorians have argued that ANZAC Day should not be commemorated in the traditional way. Moreover, some, to the extent of demonstrating formal protests, have opposed any commemoration. Successive governments of all 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 raised in submissions to the Committee. 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. That invitation has been accepted by the Committee, the outcome of which is contained in this Report's recommendations.



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Chapter 6 – Developing an Improved Legislative Framework

Objectives for ANZAC Legislation

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 the ANZAC Day Proceeds Fund 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. The Committee deliberated about improvements to the legislative framework against the following considerations:

- enacting a single and clear piece of legislation that consolidates the many laws affecting Anzac Day;
- commemorating ANZAC Day and educating the community about the ANZAC spirit;
- funding ANZAC Day, particularly commemorative and education activities;
- restrictions on business activity;
- resolving which business, sporting and entertainment activities should be prohibited on ANZAC Day, and, for how long;
- achieving clarity of legislation, particularly removal of anomalies.

ANZAC Day Commemoration Services

An important issue for consideration is the extent to which there should be legislative intervention into the conduct of ceremonies on ANZAC Day. The RSL (Victorian Branch) referred to two important aspects as overriding principles in relation to the celebration of ANZAC Day, namely:

- (a) “That ANZAC Day services are to be commemorative and not to have significant religious overtones. The Victorian Branch is of the view that the manner in which the Dawn Service at the Shrine is at present conducted is appropriate particularly with the strong feature of remembrance. This view is supported by the majority of the unit associations who have been consulted in relation to this matter. Those unit associations also support the present manner in which ANZAC Day celebrations are conducted.
- (b) That the commemorative aspect of ANZAC Day celebrations should not be regulated by Government, but rather should remain with the RSL, both at a State and local level.

The RSL should be responsible for the carrying out of such commemorative activities assisted by other ex-service organizations. It is accepted that the nature of the conduct of the commemorative aspects of ANZAC Day will change with the passage of time and it is submitted that the RSL, together with the other ex-services' community views on such matters and that those views should be paramount as to the manner in which the commemorations take place.²³

In this context the RSL (National Headquarters) also submitted:

"Australia's war service be remembered by appropriate ceremonies, usually a remembrance service at dawn, and a parade or march of veterans during the later morning, the parade ending with a commemorative service."

"To ensure preservation and continuation of traditional ceremonies, it is preferred that the organising body for all ANZAC Day ceremonies be at least authorised by government."

"Organising bodies should be non-commercial and non-political. The bodies should be composed of representatives of the ex-service community, local Government authorities, Defence Force and other interested community groups."²⁴

The Committee found that there does not appear to be any substantial grounds to suggest that ceremonies on ANZAC Day are conducted in a way which warrants direct Government intervention. The Committee is satisfied that the principles espoused by the RSL (Victorian Branch) are appropriate. It appears clear enough that the extent of legislative intervention should not extend to the conduct of ceremonies on ANZAC Day. The Committee considers that the long-standing role of the ex-service community in the conduct of marches and other commemorative ceremonies throughout Victoria on ANZAC Day should remain in place without legislative control.

The Committee notes, however, the view of the RSL (National Headquarters) that the organising body be at least authorised by government. Whilst not recommending a particular statutory role in respect of the conduct of ANZAC Day ceremonies, the Committee does recommend the establishment in the proposed *ANZAC Day Commemoration Act* of the ANZAC Day Education and Commemoration Committee within the Patriotic Funds Council.²⁵

Recommendation 4

The Committee recommends that, in view of the long-standing role of the ex-service community in the conduct of ANZAC Day ceremonies throughout Victoria, these matters should remain the province of the ex-service community, without legislative intervention.

²³ Ibid.

²⁴ RSL (National Headquarters), op cit.

²⁵ See Recommendation 8.

Encryption of “ANZAC”

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 preliminary consideration relates to the way in which the encryption of ANZAC is represented in legislation. Commonly, the form of encryption is “Anzac, rather than “ANZAC.” The origin of the word “ANZAC” is a combination of the identifying letters of the Australian and New Zealand Forces that served at Gallipoli²⁶. The Committee understands that there is no principle of legislative drafting that would prevent encryption of the word “ANZAC” and recommends that this occur.

Recommendation 5

The Committee recommends that references to “ANZAC” in legislation should be made in upper case encryption to reflect the origin of the word as a combination of the Australian and New Zealand forces that served at Gallipoli.

Commemoration of all Service

An anomaly in the existing legislation that was apparent to the Committee related to the reference in the *Anzac Day Act 1958* to commemoration related to World War I. The Committee found no basis for continuing this limited reference in future legislation. The Committee concluded that there is justification for updating the reference to recognise all conflicts in which Australian people have been engaged. Further, as there is considerable support for the commemoration to be extended to include peacekeeping activities, as presently recognised in the *Patriotic Funds Act 1958*, the Committee considers that this would be an improvement to the legislation.

This improvement could take the form suggested by the RSL (Victorian Branch) which expressed the view:

“It is submitted that the ANZAC Day legislation should not be confined to commemoration in relation to World War I. It is submitted that Section 3 of the ANZAC Day Act ought to be amended to read as follows:

“In commemoration of the part taken by Australian Defence Force personnel in the Great War and subsequent conflicts and in memory of those who gave their lives for Australia, that the twenty-fifth day of April in each year (being the anniversary of the first landing on Gallipoli of troops from the United Kingdom, Australia and New Zealand) shall be known as ANZAC Day”.

The use of the word “conflict” is consistent with the definitions and words expressed in the *Patriotic Funds Act*²⁷.

²⁶ RSL (Victorian Branch), op cit.

²⁷ Ibid.

Recommendation 6

The Committee recommends that:

- (a) the observance of ANZAC Day commemorate the service of Australians in all conflicts; and
- (b) the existing reference to commemorating participation in the Great War should be complemented in the new ANZAC Day legislation by a reference to participation in subsequent conflicts, including peace keeping activities.

April 25

In keeping with the general support for observing the significance of ANZAC Day, there is little contention about the continued observance of a public holiday on 25 April each year. The RSL (National Headquarters) submitted that:

“April 25 be officially designated as a public holiday, regardless of the day of the week on which it falls and the ANZAC Day commemoration be held only on that day.”²⁸

Some caution was expressed by the Shop Distributive and Allied Employees Association (SDA) and the Australian Retailers Association of Victoria (ARAV) with respect to employees entitlements where employees are required to work on ANZAC Day²⁹. The Committee is conscious of the importance of this issue and notes the views of the SDA and the ARAV of the need not to disturb existing legislative or industrial protections for employees working on public holidays.

Recommendation 7

The Committee recommends that ANZAC Day should continue to be observed as a public holiday on 25 April each year, with the legislation making clear that ANZAC Day is a full day holiday.

ANZAC Day Responsibilities

In the course of the review, it became clear that if enhanced priority is to be given to commemorating ANZAC Day and the ANZAC spirit, specific functions should be identified and responsibility allocated for their performance.

In this respect, Melbourne Legacy submitted that:

“The ANZAC Day Commemoration Council should be recognised in legislation as the consultative body of major ex-service organisations and interest groups and that its composition and charter be enunciated in the ANZAC Day Act. The Council should be responsible to advise the Minister and to make determinations on matters including approval

²⁸ RSL (National Headquarters).

²⁹ Submissions of SDA, 25 July 2002 and ARAV, *op cit*.

of sporting events and recreational activity, restrictions on business activity, commercial opening laws, and the like.³⁰

There is considerable merit in Melbourne Legacy's submission. The Committee considers that the paramount issue in this regard is to identify specific functions which need to be performed to enhance the State's commitment to ANZAC Day and the ANZAC spirit. The thrust of these functions should be to assist, facilitate and promote commemoration and education activities. The capacity to perform these functions will depend on appropriate funding. It is consistent with the Committee's broader proposals with respect to the ANZAC Day Proceeds Fund and contributions to the fund by the sport and gaming sectors for these functions to be complementary to those proposals³¹.

Having regard to its responsibility for the ANZAC Day Proceeds Fund, it is appropriate that the Patriotic Funds Council assume expanded functions to assist, facilitate and promote commemoration and education activities. The Committee considers the new Act should give statutory recognition to a body to perform these functions for the Patriotic Funds Council.

The Committee therefore proposes that the new Act provide for the establishment of an "ANZAC Day Education and Commemoration Committee," within the Patriotic Funds Council, for the purpose of performing the Patriotic Funds Council's expanded functions.

In addition, the Committee proposes that the Premier consult with the ANZAC Day Education and Commemoration Committee in respect of ANZAC Day matters, including the contributions to be made to the ANZAC Day Proceeds Fund by the sport, gaming and entertainment sectors.

The Committee considers that the ANZAC Day Education and Commemoration Committee should be constituted to reflect the importance of ANZAC Day to ex-service organisations and also to include recognition of the significance of ANZAC Day to all Victorians. Its membership would include representatives of ex-service organisations (in particular the RSL), and other representation (possibly including people from the business, sporting, entertainment and education sectors).

Performance of the expanded functions will require increased funding, which the Committee discusses later in this Report³². Accordingly, the new Act should enable the ANZAC Day Education and Commemoration Committee to recommend distribution of funds from the ANZAC Day Proceeds Fund to further commemoration and education about ANZAC Day and the ANZAC spirit.

Recommendation 8

The Committee recommends that, in light of the need to give enhanced priority to commemorating ANZAC Day and the ANZAC spirit, provision be included in the new ANZAC Day legislation to:

³⁰ Submission of the Legacy Club of Melbourne, 22 July 2002.

³¹ See discussion in respect of Recommendations 12 and 13.

³² Ibid.

- (a) expand the functions of the Patriotic Funds Council to assist, facilitate and promote commemoration and education activities;
- (b) provide for the establishment of a committee, the ANZAC Education and Commemoration Committee, within the Patriotic Funds Council to perform the Council's functions with respect to commemoration and education activities; and
- (c) enable the distribution of funds from the ANZAC Day Proceeds Fund, as recommended by the ANZAC Education and Commemoration Committee, for the purposes of commemoration and education initiatives.

ANZAC Day Proceeds Fund

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 Day³³. The ANZAC Day Proceeds Fund is distributed amongst ex service organisations including, the RSL, Legacy and Carry-On (Victoria).

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 to Treasury the distribution of payments from the ANZAC Day Proceeds Fund.

Recipients of funds from the ANZAC Day Proceeds Fund are required to submit to the Patriotic Funds Council a detailed request setting out how the funds, if granted, will be used. The Patriotic Funds Council submission explains that:

"PFC recommend to Treasury where the Fund is to be disbursed.

Although a number of Patriotic Funds are asset rich, these assets are generally buildings which are not "liquid". The funding from the ANZAC Day Proceeds Fund is invariably requested and approved for the welfare assistance that the Trustees of these Patriotic Funds request assistance for.

The emphasis here has been on ensuring that the funds are distributed to the widest possible number of recipients and therefore organisations that apply are evaluated on this criterion. Unfortunately, as indicated earlier, a number of the ex services community are asset rich in terms of their funds but are operating with a deficit. It is these funds that the PFC particularly wishes to address if extra funding is obtained."³⁴

The Patriotic Funds Council also noted that:

"In recent years the moneys that have been available for disbursement from the ANZAC Day Proceeds Fund has been diminishing. This has obviously left the PFC with less

³³ Particularly from the conduct of racing within 30 miles (50km) of the GPO in Melbourne and the AFL match held on ANZAC Day, but the major contribution is from totalisator wagering taxation.

³⁴ Submission of the Patriotic Funds Council of Victoria, 1 August 2002.

money to distribute to those ex-service organisations that are administering welfare to ex-service personnel and their dependants.”³⁵

The ANZAC Day Proceeds 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 fund³⁶. For example, the contribution under the Treasury policy (some \$335,000) constituted approximately 90% of the income of the fund in 2000. The balance of the fund is sourced from contributions of sporting and racing clubs. For example, the contribution of the Australian Football League (the “AFL”), which conducts the major sporting event on Anzac Day, was \$20,000.

In terms of the operation of the ANZAC Day Proceeds Fund, Melbourne Legacy submitted that there is:

“a clear distinction between “commemorative” activity and the “revenue” aspects of ANZAC Day. Clearly, the Patriotic Funds Council is the appropriate body (and should be the only body) whose function is to receive and apportion proceeds generated into the Fund to ex-service organisations.”³⁷

The Committee considers that the ANZAC Day Proceeds Fund is the appropriate mechanism for the funding of matters relating to ANZAC Day. However, there is clearly scope for the source of funds to be expanded.

There does not seem to be any policy reason or principle to justify confining contributions to the fund to the activities of sport and racing. The Committee considers 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. There are plausible grounds for the Treasury policy relating to totalisator wagering taxation to be similarly applied with respect to gaming taxation³⁸. Such an expansion of sources of income for the fund is likely to have a substantial corresponding impact on the quantum of the fund.

In considering this issue, the Committee has identified a fundamental principle that those, whether sporting, gaming or entertainment organisations, which receive commercial benefit for their activities should make a reasonable contribution to the ANZAC Day Proceeds Fund that is commensurate with the commercial outcome of conducting the particular activity on ANZAC Day. This matter is discussed further in relation to Recommendations 12 and 13 below.

Recommendation 9

The Committee recommends the continuation of the ANZAC Day Proceeds Fund, administered by the Patriotic Funds Council.

³⁵ Ibid.

³⁶ The existing provisions establishing the ANZAC Day Proceeds Fund are unclear as to the authority for the Fund to receive the Treasurer’s “donation.” However, this appears not to have been a cause for concern.

³⁷ The Legacy Club of Melbourne, op cit.

³⁸ However, this has some implications for the Community Support Fund: see the discussion in relation to Recommendation 13.

Funding ANZAC Day

An important consideration in respect of the conduct of ANZAC Day ceremonies is that of how they should be funded. Apparently, the ceremonies are, in effect, funded by the RSL and through the goodwill of other organisations. In this context, the Committee received evidence that in respect of the ceremonies held in Melbourne, the City of Melbourne sends the RSL an invoice for all services which it provides on the day³⁹.

The Committee considers that having regard to the significance of ANZAC Day, its important ceremonies should not be vulnerable because of financial or resource deficiencies. While the goodwill that supports the existing conduct of the ceremonies reflects the significance of the day, it is nevertheless not the most satisfactory arrangement. The Committee considers that the ceremonies are of such substantial importance that their continued success should be guaranteed at least in respect of financial and resource terms. Accordingly, the Committee considers that a portion of the ANZAC Day Proceeds Fund should be made available to meet the costs of the conduct of ANZAC Day ceremonies. To this extent only, the ANZAC Day ceremonies should be the subject of legislation.

Recommendation 10

The Committee recommends that the legislation authorise the funding of approved ANZAC Day commemoration ceremonies through the ANZAC Day Proceeds Fund.

Shrine of Remembrance

The review prompted consideration of the role of the Shrine of Remembrance with respect to ANZAC Day. The Shrine is managed by the Shrine of Remembrance Trustees under the *Shrine of Remembrance Act 1978*.

The *Shrine of Remembrance Act 1978* makes provision for the care, management and maintenance of the Shrine of Remembrance and other Memorials for other purposes. The *Shrine of Remembrance Act* does not refer to ANZAC Day, nor does the *Anzac Day Act 1958* make reference to the Shrine of Remembrance.

The Trustees of the Shrine submitted that the Shrine of Remembrance should have a formal role *"in helping raise awareness and educate current and future generations about the ANZAC spirit."*⁴⁰

The Trustees of the Shrine submitted that the review provides an opportunity to extend the scope of the functions of the Patriotic Funds Council so that it also provides financial support to commemorative bodies such as the Shrine of Remembrance. The proposed financial support would be provided by distributing funds to the Shrine, and other commemorative bodies, from the ANZAC Day Proceeds Fund. These funds could then be utilised by the Shrine, or commemorative

³⁹ Evidence of Brigadier Keith Rossi, RSL Historian.

⁴⁰ Submission of Trustees of the Shrine of Remembrance, 11 September 2002.

bodies, for purposes consistent with their objectives, and in recognition of the pivotal role that can be played in the education and promotion of remembrance⁴¹.

The Trustees of the Shrine also suggested that there should be an ability for:

“The trustees of patriotic funds to assign or bequest their assets to the Shrine (or other appropriate commemorative bodies) to further the promotion of remembrance by the development of the Shrine “Galleries of Remembrance” and the provision of educational resources relevant to developing a greater understanding of the ANZAC spirit.”⁴²

Accordingly, the Trustees of the Shrine of Remembrance submitted that the Committee, in its deliberations consider:

- “the future role of the Shrine in the ongoing facilitation of remembrance and the ANZAC spirit throughout Victoria.
- the legislative environment in which this role could exist.
- the capacity of the Shrine to deliver quality educational programs to school children in Victoria.
- the infrastructure and resources required to enable the Shrine to have a future role in educating and promoting greater awareness and appreciation of values including leadership, service, commitment, loyalty, peace and goodwill as exemplified by previous generations and by the commitment of current generations to peacekeeping.
- the capacity of the Patriotic Funds Council of Victoria to allocate funds to the Shrine of Remembrance to use in accordance with its objects and purpose including for its future development (in particular the Galleries of Remembrance); its maintenance and for the development of education programs that maintain and foster appreciation of the ANZAC spirit.”⁴³

The Committee accepts the force of the proposals of the Trustees of the Shrine of Remembrance and, in particular, welcomes the current redevelopment of the Shrine precincts to allow for the greater provision of information and other educative resources to school students and other visitors. However, the Committee is keen to emphasise that the central role in the conduct of ceremonies on ANZAC Day should remain with the ex-service organisations⁴⁴. Similarly, the central role in the performance of legislative functions should reside with the proposed ANZAC Day Education and Commemoration Committee⁴⁵.

The Shrine of Remembrance offers scope for a powerful medium for the education and commemoration of ANZAC Day and, more broadly, the service of Australians in wars and peacekeeping efforts. If Victoria is to be serious about according appropriate significance to this task, enhancing the functions of the Shrine is an opportunity we can ill-afford to ignore. Therefore,

⁴¹ Ibid.

⁴² Ibid. The Trustees note that amendment of the Patriotic Funds Act 1958 would be required, perhaps similar to the existing provisions concerning distribution to patriotic funds and registered charitable organisations.

⁴³ Ibid.

⁴⁴ See Recommendation 4.

⁴⁵ See Recommendation 8.

the Committee considers that the Trustees of the Shrine should have legislative support for greater involvement in education activities. The scope of these activities is discussed later in this report.⁴⁶

The proposed expanded role of the Shrine of Remembrance is a very worthy one. However, its worth will not be achieved if appropriate funding is not made available to enable it to perform the functions of its role. The importance of the contribution that the Shrine of Remembrance can make in respect of ANZAC Day is sufficiently considerable as to justify substantial priority in the allocation of funding.

Recommendation 11

The Committee recommends that:

- (a) the *Shrine of Remembrance Act 1978* be amended to enable the Trustees of the Shrine to develop, promote, facilitate and organise education initiatives relating to the service of Australians in defence of their country and in peacekeeping activities, including those relating to ANZAC Day; and**
- (b) the Government provide sufficient funding for this new function.**

Sport

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

It is clear that there is significant dissatisfaction with the existing legislative scheme governing contributions by major sporting organisations to the ANZAC Day Proceeds Fund. This dissatisfaction is primarily founded on equity grounds. In this context, submissions pointed to a perceived inadequacy of the contribution presently made by the Australian Football League (the "AFL"). For example, the RSL (Victorian Branch) submitted that:

"The arrangements with the racing industry ought to continue and that there should be contributions sought from other paid sporting events, including the AFL, and the conduct of rugby and sporting events. It is submitted that the arrangements in relation to racing are appropriate, but there is a need for further improved financial arrangements with the AFL and with other organizations providing sport in relation to which section 4(7) of the Act applies. It is appropriate that such funds that are collected from sporting organizations ought to be placed in the ANZAC Day Proceeds Fund and that fund ought to be distributed

⁴⁶ See Chapter 8.

not only for the purposes for which it is distributed by the Patriotic Funds Council, but also to assist in the educative activities proposed in the Discussion Paper.⁴⁷

Further, Melbourne Legacy submitted that:

"It is understood that the present level of contribution from the AFL is miniscule (compared in relative terms to that of the Racing industry). It is suggested that a set levy be imposed on every ticket sold to patrons at AFL/VFL games to obviate a currently perceived inequity in the level of AFL contribution to the Fund."⁴⁸

The Patriotic Funds Council submitted that:

"There should be no geographic distinction between sporting events that are held in Victoria on ANZAC Day and that all events contribute to the ANZAC Day Proceeds Fund."⁴⁹

The Patriotic Funds Council specifically queried if it would be possible for the AFL to make a greater contribution to the ANZAC Day Proceeds Fund and proposed a scheme for contributions to the ANZAC Day Proceeds Fund as follows:

"The AFL donate a figure equivalent to 6.25% of the adult daily admission price per head of crowd, for future ANZAC Day AFL fixtures (Donation = Official attendance x Adult admission price x 6.25%).

The ANZAC Day Proceeds Fund gain access to 0.275% of the yearly funding made available to the Community Benefit Levy for assistance in the funding of essential programs for the ex service community.

The ANZAC Day Proceeds Fund gain access to 0.275% of the yearly funding made available to the Community Support Fund levy for assistance in the funding of essential programs for the ex service community.

That any sporting or entertainment event conducted on ANZAC Day for which an admission charge is made, an appropriate contribution is made to the ANZAC Day Proceeds Fund."⁵⁰

The RSL (Victorian Branch) put forward the following proposal with respect to the conduct of sport on ANZAC Day:

"The Branch desires to make a further submission dealing with Section 4(3) of the Act in relation to the conduct of paid sport. It is noted at present that the consent of the President of the Victorian Branch is required for the conduct of paid sport more than 30 miles from the GPO. It is submitted the restriction of 30 miles from the GPO ought to be removed and that the consent for conduct of all paid sport in the State of Victoria ought to be subject to the consent of the President of the RSL. It is noted that the definition of sport, as set out in

⁴⁷ RSL (Victorian Branch) op cit.

⁴⁸ The Legacy Club of Melbourne, op cit.

⁴⁹ Patriotic Fund Council of Victoria, op cit.

⁵⁰ Ibid.

Section 4(7) and the relevant criteria is as follows "which persons are admitted on payment of an admission fee, or charge or after any donation has been sought from them" would restrict the number of consents that would be required. There no longer appears to be any reason for a differentiation between matters that take place in Greater Melbourne as against matters that take place in the balance of Victoria."⁵¹

The AFL match on Anzac Day is renowned as a sustained outstanding success⁵². In such circumstances, it is not unreasonable to expect that the AFL should make a more substantial contribution to the fund. The AFL submitted that:

"The AFL works very closely with the RSL in the staging of the game and devotes the pre-match ceremony to recognise those men and women who paid the ultimate sacrifice in various theatres of war. We also make a direct financial contribution to the RSL.

We believe it is very appropriate for Australia's only indigenous game to partner the RSL in this way to acknowledge the Anzac spirit and preserve its history and tradition for current and future generations."⁵³

Racing Victoria Limited proposed that consideration be given to:

"Amending Section 22A(4)(b) of the Act to require that racing clubs make a donation to the ANZAC Day Proceeds Fund or local RSL branch as agreed rather than having to pay the whole of the net profits from race meetings."⁵⁴

The question of contribution to the ANZAC Day Proceeds Fund is clearly important. The issue is not so much about a requirement to contribute, but rather about equity of contribution. In respect of this issue, the Committee concluded that the fundamental threshold principle (which has strong general support) is that those, whether sporting, gaming or entertainment organisations, who receive commercial benefit for their activities should make a reasonable contribution to the ANZAC Day Proceeds Fund that is commensurate with the commercial outcome of conducting the particular activity on ANZAC Day.

Acceptance of this fundamental principle provides the basis for an equitable scheme of contributions. The Committee considers that an appropriate equitable scheme can be enacted by investing in the Premier a power to prescribe a formula for contributions by major sporting organisations to the ANZAC Day Proceeds Fund. In this way, there will be fair regulation of the contribution to be made by the racing industry and by the Australian Football League, or other sporting organisations conducting a major event on ANZAC Day.

⁵¹ RSL (Victorian Branch) op cit.

⁵² The submission of the Australian Football League advises that the ANZAC Day game attracts 85,000 people or more and is also telecast live throughout Australia.

⁵³ Submission of the Australian Football League, 16 July 2002.

⁵⁴ Submission of Racing Victoria Limited, 26 July 2002.

Recommendation 12

The Committee recommends that the existing contribution by sporting bodies, (eg, horse racing and football), to the ANZAC Day Proceeds Fund be, in future, regulated according to a specific formula, or formulas, prescribed by the Premier after consultation with the ANZAC Day Education and Commemoration Committee.

Gaming

Unlike sport, the conduct of gaming activities on ANZAC Day is not subject to approval by the Minister for Sport and Recreation under the *Anzac Day Act 1958*. This is, no doubt, due to the fact that legalised gaming came in to being after the original ANZAC Day legislation was passed.

However, similar to the sentiments expressed about sport on ANZAC Day, it is clear that there is a significant issue concerning the conduct of gaming activities on ANZAC Day and the question of contributions by the gaming industry to the ANZAC Day Proceeds Fund. As with sport, this issue is primarily about equity considerations. For example Melbourne Legacy submitted that:

"Gaming has in recent years become a major recreational pastime (and revenue source) and is presently not captured as income contribution to the ANZAC Day Proceeds Fund. Melbourne Legacy contends that gaming should be captured with an appropriate percentage of profit made by all operators on ANZAC Day directed to the Fund."⁵⁵

The Victoria Racing Club contended that the Gaming Industry should contribute to the ANZAC Day Proceeds Fund and proposed that:

"The proceeds normally contributed to the Community Support Fund (for ANZAC Day) be channeled into the ANZAC Day Proceeds Fund."⁵⁶

Similar views were expressed by the Australian Veterans and Defence Services Council that:

"All sporting, gambling and entertainment activities conducted on ANZAC Day should have the appropriate approval and should be required to contribute to the ANZAC Day Appeal."⁵⁷

The Committee considers there is no reason in principle why the gaming industry should not be required to contribute to the ANZAC Day Proceeds Fund in respect of its activities on ANZAC Day. Whilst the RSL was not directly supportive of this measure⁵⁸, this was, in part, due to its scrupulous perception of conflict of interest. In this regard, numerous branches of the RSL derive benefit from gaming on ANZAC Day. In light of this, the RSL appears to have been concerned that there would be an element of double dipping if its constituency received benefits both from gaming revenue received on ANZAC Day in accordance with ordinary operations and from contributions made to the ANZAC Day Proceeds Fund. However, the Committee considers that an occasion for conflict

⁵⁵ The Legacy Club of Melbourne, op cit.

⁵⁶ Submission of the Victoria Racing Club, 15 July 2002.

⁵⁷ The Australian Veterans and Defence Services Council, op cit.

⁵⁸ RSL (Victorian Branch) op cit.

of interest will not arise as the RSL branches conducting gaming operations on ANZAC Day will be required to make a contribution to the ANZAC Day Proceeds Fund in respect of those operations.

A further consideration in relation to gaming is the impact that a requirement to make a contribution to the ANZAC Day Proceeds Fund may have on existing obligations to contribute to the Community Support Fund. The Committee recognises that a legislative requirement for the gaming industry to contribute to the ANZAC Day Proceeds Fund may have wider policy implications for the Community Support Fund. However, these policy issues are not irresolvable. The welfare objectives, and proposed educative focus, of the ANZAC Day Proceeds Fund are not inconsistent with the comparable objectives of the Community Support Fund. In any event, as a matter of policy it may be considered reasonable for the gaming industry's contribution to the ANZAC Day Proceeds Fund to be additional to, rather than in substitution for, its contribution to the Community Support Fund in respect of its ANZAC Day activities.

Moreover, even if the requirement on the gaming industry to contribute to the ANZAC Day Proceeds Fund is implemented on a substitution basis, a plausible policy position can be sustained if the implications are perceived, not as the Community Support Fund foregoing revenue, but rather as a diversion to the ANZAC Day Proceeds Fund of contributions to be utilised consistently with the objectives of the Community Support Fund.

As discussed in relation to sport, the Committee concluded that there is a fundamental threshold principle that those, whether sporting, gaming or entertainment organisations, who receive commercial benefit for their activities should make a reasonable contribution to the ANZAC Day Proceeds Fund that is commensurate with the commercial outcome of conducting the particular activity on ANZAC Day.

In accordance with this principle, the Committee considers that ANZAC Day legislation should provide a power for the Premier to prescribe a formula for the contribution by the gaming industry to the ANZAC Day Proceeds Fund in respect of the industry's activities on ANZAC Day.

Recommendation 13

The Committee recommends that a contribution to the ANZAC Day Proceeds Fund should be made by the gaming industry in respect of gaming activities conducted on ANZAC Day, and the appropriate contribution be prescribed by the Premier after consultation with the ANZAC Day Education and Commemoration Committee.

Business

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 Appendix G;

- Factories, except the those exceptions listed in Appendix H;
- Cinemas and other, in effect, live entertainment, except those given a permit by the Minister.

The primary issue in this context relates to restricted trading hours. The RSL (National Headquarters) submitted:

“Commercial trading, and the conduct of commercial entertainment and organised sporting events before 1pm on 25 April be prohibited by law, with appropriate exemptions only for essential services.”⁵⁹

The Australian Veterans and Defence Services Council contended that:

“ANZAC Day is a Day of Commemoration and no extension to the existing trading arrangements should ever be considered.”⁶⁰

The Committee concluded that the accepted view is that expressed by the RSL (Victorian Branch) that:

“The morning of ANZAC Day ought to be reserved for commemorative activities and that sporting, commercial and cultural activities ought to take place in the afternoon. This is after 1.00pm and, further, that ANZAC Day should be deemed to commence for legislative control purposes at 5.00am and that all such control should be on a State wide basis.”⁶¹

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. The commencement of restrictions at 5am is considered reasonable having regard to the traditional dawn service ceremony. It is considered that the existing general arrangements are reasonable ie, where subject to exceptions, shops, factories and cinemas are closed until 1.00pm, whilst licensed premises are closed, generally from 5am, until 12 noon and sport, races and other entertainment cannot commence before 1.00pm.

Notwithstanding the reasonableness of the existing general arrangements, the Committee found that anomalies and inconsistencies appear in laws affecting business activity on ANZAC Day. For example, the Liquor Stores Association of Victoria pointed to inconsistencies within the *Liquor Control Reform Act 1998* and between that Act and the *Shop Trading Reform Act 1996* with the consequence that on ANZAC Day:

- vigneroners can trade after 10am;
- holders of packaged liquor licences can trade after 12 noon;
- the Director of Liquor Licensing Victoria has discretion to allow trading after 10am, including for holders of limited licences; and
- shop traders can trade after 1pm⁶².

⁵⁹ RSL (National Headquarters), op cit.

⁶⁰ The Australian Veterans and Defence Services Council, op cit.

⁶¹ RSL (Victorian Branch), op cit.

⁶² Submission of the Liquor Stores Association of Victoria Inc, 3 July 2002.

Accordingly, the Liquor Stores Association of Victoria contended that the existing laws create unfair advantages amongst businesses and submitted that:

“The restrictions for retail sale of liquor and general shop trading are inconsistent and should be standardised to either 12 noon or 1pm across the business sector.”⁶³

The Committee notes that a primary issue with respect to the efficacy of existing laws appears to be related to enforcement of the laws. For example, the RSL (Victorian Branch) observed:

“It is submitted that the current laws are working adequately in theory, but that there is an issue in relation to their proper enforcement.”⁶⁴

The Committee recognises the potential for ineffective laws where they are not supported by appropriate enforcement mechanisms. Although the arrangements for enforcement are not a matter for the Committee’s present considerations, it is to be hoped that governments will commit resources to enforcement of ANZAC Day laws commensurate with the significance of the day.

Recommendation 14

The Committee recommends that, in light of the accepted view that the period from dawn until the conclusion of commemorative services on April 25 should be observed as a time of solemn reflection, there should be uniform trading hours throughout Victoria on ANZAC Day with business activity restricted between 5am and 1pm.

Shop Trading

In respect of shop trading, there were competing views about whether the existing arrangements are satisfactory⁶⁵. 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.

The Committee came to the conclusion that the existing list of shops exempt from the requirement to close on the morning of ANZAC Day was outmoded and minimally required updating. In this regard, it is difficult to understand why shops such as saddlery shops and shops for the sale of swimming pools should be enabled to remain open on ANZAC Day morning in the same way as shops providing essential services, such as chemists and bakeries.

However, a more fundamental consideration is whether the restriction on business activities is properly addressed by means of a list of exempt shops. It is characteristic of retail activity in

⁶³ Ibid.

⁶⁴ RSL (Victorian Branch), op cit.

⁶⁵ E.g., submissions of the RSL and the Australian Retailers Association of Victoria.

contemporary times for convenience stores, chemists and newsagents to retail a range of goods. For example, in the case of chemists and newsagents, they commonly offer goods that have little connection to their traditional core business. In this regard, both these businesses may also operate as Tattersalls agencies, and in the case of chemists, frequently offer photographic services⁶⁶. Neither of these services could be considered to be essential commercial services that warrant being provided in the public interest on ANZAC Day morning.

In the circumstances, the Committee considers that, rather than listing exempt shops, the restrictions on business activity should be expressed in respect of the particular activity. The business activities which the Committee considers should not be restricted from trade on ANZAC Day morning are, for example:

The sale of: –

- Bread
- Prescription drugs and other items of a medicinal nature, with or without a doctor's prescription
- Daily newspapers
- Prepared meals, whether or not for take away or consumption within the premises of the business
- Flowers and plants
- Petrol
- Fruit and vegetables
- Food and groceries

Recommendation 15

The Committee recommends that the essential commercial services exempt from the restriction on trading before 1pm on ANZAC Day should be identified according to the characteristics of the particular activity rather than the premises, or shops, from which the activity is retailed. For example, authorised trading activities would include the sale of:

- **Bread**
- **Prescription drugs and other items of a medicinal nature with or without a doctor's prescription**
- **Daily newspapers**
- **Prepared meals, whether or not for take away or consumption within the premises of the business**
- **Flowers and plants**
- **Petrol**

⁶⁶ Submission of Noel Turner, 30 July 2002 which advocates that the current ANZAC Day trading hours' laws are very unfair on Tattersalls business and Tattersalls agents should be exempted or newsagencies be prohibited from selling lottery tickets until 1pm.

Recommendation 15 (continued)

- **Fruit and vegetables**
- **Food and groceries**

Liquor Licensing

In respect of liquor licensing laws, it appears generally accepted that there should be some restriction of the licensing of the sale of liquor on ANZAC Day morning. However, the primary issue relates to the particular hours for such restrictions.

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. The Director of Liquor Licensing Victoria advised that in exercising discretion to enable ANZAC morning trading it is important to be wary of opportunistic applications seeking, in effect, to “trade off” the occasion of ANZAC Day⁶⁷.

Against that background, the following businesses are licensed to trade 24 hours a day 365 days a year, therefore being licensed to trade throughout the whole of each ANZAC Day:

Gaming venues	5
Nightclubs/bars	1
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.

The existing liquor licensing regime for ANZAC Day is, in effect, one that observes the sanctity of ANZAC Day morning, but provides for discretionary exceptions. The Committee received evidence that there are special circumstances where morning liquor trading is reasonable. In particular, there are instances where liquor trading is complementary to the conduct of an ANZAC morning ceremony. A particular instance of this is the holding of a gunfire breakfast.

Another special circumstance that appears reasonable relates to the AFL match held at the Melbourne Cricket Ground on ANZAC Day. In this context, the Melbourne Cricket Club submitted that:

⁶⁷ Evidence of Brian Kearney, Director of Liquor Licensing Victoria.

“While the match would certainly continue to commence well after 1.00 p.m., our venue needs to be opened before this time to allow safe entry for 80,000 – 90,000 patrons. As with any venue, there are retail outlets and licensed premises within and adjacent that provide appropriate facilities and services for our patrons. In the review of legislation, we would seek clarification that the facilities at the venue can be in operation from 11.00 a.m. at which time the gates would open to allow entry.

It would be inappropriate to open the gates and not operate these services, nor would it be sensible to delay the gate opening time to 1.00p.m.”⁶⁸

The Committee is conscious that the ANZAC Day AFL match has done much to heighten public awareness of the significance of ANZAC Day. The Committee recognises the practical implications of facilitating the timely entry of patrons to the MCG. The Committee considers that this constitutes special circumstances where an exception to the restrictions on trading is justified. The Committee acknowledges that similar considerations apply with respect to the Victoria Racing Club.⁶⁹

In endorsing a need to recognise special circumstances for liquor licensing on ANZAC morning, the Committee considers that the legislation should specifically codify the special circumstances where ANZAC morning trading can occur. The current Director of Liquor Licensing has applied good judgement in dealing with these issues but the Committee believes, for the long term, the existing system of discretionary decisions being made by the Director of Liquor Licensing should be codified. In this regard, the Committee is mindful of the evidence of the Director of Liquor Licensing concerning the need to be wary of opportunistic applications to trade on ANZAC morning.

Recommendation 16

The Committee recommends that there should be uniform liquor licensing laws throughout Victoria on ANZAC Day, so that licensed premises are closed between 5am and 12 noon, except where special circumstances exist, such as gunfire breakfasts on ANZAC Day.

Gaming Hours

In relation to gaming, the notion that particular laws be put in place to restrict gaming on ANZAC Day morning appears to be generally accepted. The RSL (Victorian Branch) considered that no licensed premises should be open between 5.00am and 10.00am.⁷⁰

The Victoria Racing Club put the view that:

“Gaming venues be allowed to continue to open according to Liquor License. However, we propose that Gaming machines not be permitted to operate until 12 noon.”⁷¹

⁶⁸ Submission of the Melbourne Cricket Club, 17 July 2002.

⁶⁹ Submission of Victoria Racing Club advised that in 2002 the Flemington Racecourse Tabaret opened at 10.00am. Food and beverage outlets and machines operated from this time.

⁷⁰ RSL (Victorian Branch), op cit.

⁷¹ Victoria Racing Club, op cit.

The Committee understands that Crown Casino voluntarily limits the operation of gaming facilities on ANZAC morning. Whilst the Committee acknowledges the approach taken by Crown Casino, the Committee nevertheless considers it is reasonable for the operation of gaming facilities to cease on ANZAC morning at Crown Casino for the same hours as at other gaming outlets.

The Committee received no compelling evidence to suggest that the operation of gaming facilities should be treated differently to other commercial, sporting or entertainment activities. Accordingly, the Committee considers that a prohibition for such activities should be in place between 5am and 1pm on ANZAC Day.

Recommendation 17

The Committee recommends that the operation of gaming facilities be prohibited between 5am and 1pm on ANZAC Day.

Community Markets

The Committee was made aware of an issue with respect to trading on ANZAC morning by community markets⁷². Community markets are those temporary trading operations that occur weekly or monthly, typically on a Sunday, in suburban and country locations. Because of the nature of the community markets, they are not covered by existing legislation, such as the *Shop Trading Reform Act 1996*.

The issue arises when, in a particular year, ANZAC Day happens to coincide with a day on which a community market is operating. In rural towns, particularly, there may be considerable interference with ANZAC Day ceremonies, especially the march, if community markets are being prepared for operation, or are operating.

The Committee received no compelling evidence to suggest that the operation of community markets should be treated differently to other commercial activities. Accordingly, the Committee considers that a prohibition for trading by community markets should be in place between 5am and 1pm on ANZAC Day.

Recommendation 18

The Committee recommends that trading by community markets be prohibited between 5am and 1pm on ANZAC Day.

Factories

The Committee also considered the issue of factories opening on ANZAC Day. Under existing arrangements, the closing of factories on ANZAC Day is dealt with in the *Labour and Industry Act 1958*. Section 139 of this Act provides that “every factory warehouse shall be closed and kept closed on ANZAC Day” and employees in such factories are entitled to a whole day holiday. There

⁷² Evidence of Brigadier Keith Rossi, RSL Historian.

is an exception for certain factories that, in effect, are engaged in the production of essential goods or services such as, gas supply or milk supply, and, for those whose operations involve continuous production. The list of factories not required to close on ANZAC Day under the *Labour and Industry Act 1958* is set out in Appendix H.

The Committee resolved that the existing arrangements are satisfactory and should be maintained.

Recommendation 19

The Committee recommends that the existing arrangements be maintained where factories are closed for the whole day on ANZAC Day, unless a factory is not required to close in accordance with the provisions of the *Labour and Industry Act 1958*.

Auctions for the Sale of Property

The Committee also was made aware of the potential for auctions for the sale of property to occur on ANZAC morning. The conduct of auctions for the sale of property is not consistent with the principle of commemoration that underpins ANZAC Day. Such commercial activity may be perceived as being offensive to the solemn observance of ANZAC Day.

The Committee received no compelling evidence to suggest that the conduct of auctions for the sale of property should be treated differently to other commercial activities. Accordingly, the Committee considers that a prohibition on auctions for the sale of property should be in place between 5am and 1pm on ANZAC Day.

Recommendation 20

The Committee recommends that the conduct of auctions for the sale of property be prohibited between 5am and 1pm on ANZAC Day.

Sport and Entertainment Hours

The existing legislation prohibits sport and entertainment events before 1pm on ANZAC Day. In respect of sport and entertainment, there is a general consensus that these events should be restricted from being undertaken during the ANZAC Day morning in recognition of the solemnity of the commemoration activities being conducted at that time. However, there is some divergence of views as to the extent of the time for which the restriction should apply.

The Victoria Racing Club submitted a proposal for “the Raceday to commence at 12.10pm and conclude at 4.50pm.”⁷³

Racing Victoria Limited proposed:

“Amending Section 22A(3) of the *Racing Act 1958* (“Act”) so that a race meeting on ANZAC Day may commence not before 12pm (rather than 1pm as is presently the case)”⁷⁴

⁷³ Victoria Racing Club, *op cit*.

The Committee considers that the existing arrangements for sport and entertainment events have worked satisfactorily and recommends that they be maintained⁷⁵.

Recommendation 21

The Committee recommends that the existing arrangements with respect to conduct of sporting events, horse racing and entertainment on ANZAC Day be maintained, so that such activities are not commenced before 1pm.

Cinemas and Live Theatre

The current law allows the conditional opening of cinemas and theatres before 1.00pm on ANZAC Day, subject to government approval.

Whilst cinemas and live theatre should be expected to conform to the same restrictions placed on other commercial, sporting and entertainment activities, the Committee considers that special circumstances may arise as to justify a departure from the general restriction.

In this regard, the Committee does not perceive a conflict with the principle of solemn observance on ANZAC morning if the nature of a particular cinema or live theatre show is consistent with ANZAC Day. In this context, such a show may serve to enhance the commemoration of, or contribute to education about, ANZAC Day and the ANZAC spirit.

To recognise special circumstances the Committee proposes that the new Act make provision so that the Premier, after consultation with the ANZAC Day Education and Commemoration Committee, may grant approval for a cinema or live theatre show before 1pm on ANZAC Day where the nature of the particular show is consistent with the purposes of ANZAC Day.

Recommendation 22

The Committee recommends that the operation of cinemas and live theatres be prohibited between 5am and 1pm on ANZAC Day, except where the nature of particular cinema or live theatre shows is consistent with the purposes of ANZAC Day, and, after consultation with the ANZAC Day Education and Commemoration Committee, the Premier grants approval.

Penalties

A number of submissions drew attention to the existing anomalies in the penalties for breach of provisions relating to ANZAC Day. 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). There is general support for consistency in levels of penalties.

⁷⁴ Submission of Racing Victoria Limited, op cit.

⁷⁵ However, see special arrangements for cinemas and live theatre below.

The Committee has addressed this issue in the context both of uniformity penalties as well as levels of penalty that meet community expectations. The Committee considers that these anomalies should be removed by instituting a scheme of penalties providing for breaches of the proposed ANZAC Day legislation by individuals to attract a penalty up to 100 penalty units (currently the equivalent of \$10,000).

The Committee notes that enforcement of laws is perceived to require attention⁷⁶. The Committee hopes that governments will commit resources to enforcement of ANZAC Day laws commensurate with the significance of the day.

Recommendation 23

The Committee recommends there be higher and consistent penalties for the breach of ANZAC Day laws, with the level of penalty to be up to 100 penalty units.

⁷⁶ For example, see the discussion with respect to business and Recommendation 14.

Chapter 7 – 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, the Committee considers there is scope for other related activities to be pursued, not necessarily solely on ANZAC Day. In this regard, the Committee notes that throughout Victoria numerous additional commemorative initiatives and projects are undertaken. The extent of these is often limited by budget constraints.

The Committee considers that commemoration initiatives should be eligible for funding from the ANZAC Day Proceeds Fund⁷⁷. Further, the Committee considers that the ANZAC Day Education and Commemoration Committee should have, in effect, a function to oversight the commemorative activities and to facilitate advancement of projects⁷⁸ relating to:

- New memorials;
- School memorials;
- Repairs to memorials;
- Locked glass cabinets;
- New honour boards;
- Headstones of graves;
- Grave and crematorium niche plaques;
- Avenues of honour.

In considering the scope that is available for commemoration initiatives the Committee had the benefit of a presentation demonstrating the approach taken in Queensland⁷⁹. The Committee considers that it will be a worthwhile function of the proposed ANZAC Day Education and Commemoration Committee to consider commemoration initiatives.

⁷⁷ See Recommendations 8 and 10 in this regard.

⁷⁸ The projects listed include those undertaken by the Queensland Anzac Day Commemoration Committee (see the Committee's website at www.anzacday.org.au).

⁷⁹ The presentation was made by Mr. Arthur Burke, the Honorary Secretary, ANZAC Day Commemoration Committee (Queensland) Incorporated.



Troopship leaving Port Phillip Bay
(AWM 000304/01)

Chapter 8 – Education

The Committee received overwhelming endorsement for the need to develop appropriate strategies to ensure that school children are educated about ANZAC Day and the ANZAC spirit. It is also apparent that the level of the community interest in ANZAC Day is sufficiently substantial as to justify education or information initiatives to cater for an increasing interest of Victorians in ANZAC Day.

The general community interest in ANZAC Day is reflected in the submission of the RSL (National Headquarters) which remarked:

“While not matters for legislation, we would encourage Governments to promote the involvement of all Australians, especially young people in ANZAC Day ceremonies.”⁸⁰

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 years⁸¹.

Outstanding 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. The Committee considers that 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 select trips to Gallipoli or the Somme.

The Shrine of Remembrance appears to have particular scope for the advancement of education about ANZAC Day. In this regard, while the Shrine is not the only war memorial in Victoria, it is undoubtedly the most recognised and the most visited. The Trustees of the Shrine assert that there is a pivotal role for the Shrine of Remembrance *“in sustaining the ANZAC spirit in current generations and engendering it in future generations.”*⁸²

An overview of visits to the Shrine, including visits by school students, is demonstrated in the following table⁸³:

⁸⁰ RSL (National Headquarters), op cit.

⁸¹ For example see the material at the website of the Victorian Branch of the RSL, www.rslvic.com.au.

⁸² Submission of Shrine of Remembrance Trustees, op cit.

⁸³ *ibid.* The table was prepared by the Shrine of Remembrance Trustees.

No. of visitors during 2001/2001:	259,354
No. of people who attended the ANZAC Day Dawn Service at the Shrine in 2002:	16,000
No. of students who visited the Shrine as part of a school visit during 2001/2002:	12,799
No. of ceremonies to be held at the Shrine during 2002:	124
No. of people who visited the Remembrance Stone on ANZAC Day 2002	12,000
Month in which the most visits were recorded:	April (31,484)
Months in which the most visits from school children were recorded.	May (2,290) November (2,000) June (1,425)
Months with the most ceremonies:	November (20) April (16) October (15)

The Trustees of the Shrine consider that the Shrine, given its place in Victoria's history and the values it reflects, is capable of providing ongoing and valuable educational and information resources to the community. The Shrine submitted that:

"Nearly 13,000 school children visit the Shrine each year as part of a school excursion. At present, the Shrine has a limited capacity to link with the current curriculum and to provide access to information for children beyond the metropolitan area.

The significant task is ensuring that the Shrine retains its relevance with the community and the contribution the Shrine can make to maintaining and building the ANZAC spirit. The current and future role identified for the Shrine has significant funding and resource implications for the Shrine and the Trustees."⁸⁴

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).

The Committee commends the efforts of the education sector, the ex-service community and the Shrine of Remembrance to facilitate the important facet of education about ANZAC Day and the ANZAC spirit.

⁸⁴ Ibid.

The Committee strongly endorses the development of, and investment in, education initiatives. To this end a number of the recommendations of this Report are steeped in the objective of developing and resourcing education initiatives⁸⁵.

Compulsory Curriculum

The Discussion Paper drew attention to the possibility of a compulsory curriculum obligation to educate school children about ANZAC Day and the ANZAC spirit. This was prompted by an approach taken by the State of Washington in the United States of America, where “Veterans Day” is observed on November 11. Veterans Day is the day observed in the USA most equivalent to Anzac Day. In the 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. The particular law requires that 60 minutes of the week before Veterans Day must be set aside for the education of children about the issues of Veterans Day.

The notion of a compulsory curriculum attracted some interest. For example, the Victorian Branch of the Vietnam Veterans Association of Australia submitted that it:

“wholeheartedly supports the view expressed in the Discussion Paper relating to compulsory school curriculum inclusion of ANZAC Day commemoration. There is also strong support for the enhancement of this educative process through visitations by school groups to the Shrine of Remembrance, local cenotaphs, and the like.”⁸⁶

Further, the RSL (Victorian Branch) submitted that:

“The need to educate children as to matters relating to ANZAC Day is an important matter. The RSL is in favour of an arrangement of a compulsory curriculum that should be of at least a 60-minute duration during the week prior to ANZAC Day. Some of the costs for providing the material for the compulsory criteria component could be paid from the ANZAC Day Proceeds Fund together with a further contribution from the Community Support Fund collected pursuant to the provisions of the Gaming Machine Control Act.”⁸⁷

Currently no compulsory curriculum legislative requirement exists in Victoria. Clearly, the issue is one worthy of consideration. However, the notion of a compulsory curriculum in respect of any field is never undertaken lightly, and, at this time the concept in respect of ANZAC Day has not been fully developed.

Accordingly, at this time, the Committee does not consider that it should recommend legislation in respect of a compulsory curriculum for education on ANZAC Day. However, the Committee expects that the proposed ANZAC Day Education and Commemoration Committee will closely monitor the education processes in respect of ANZAC Day and the ANZAC spirit, and may at an

⁸⁵ In particular, see Recommendations 1, 8 and 11.

⁸⁶ Submission of Vietnam Veterans Association of Australia, Victorian Branch, 12 September 2002.

⁸⁷ RSL (Victorian Branch), op cit.

appropriate time, assess and recommend in relation to an improved compulsory curriculum requirement.

Implementation

In accordance with its terms of reference, the Committee has made a number of recommendations in this report in the interests of enhancing the significance of ANZAC Day as a national day of commemoration.

The recommendations are not necessarily stand alone in terms of implementation. For example, an implementation measure not specific to the precise terms of a particular recommendation may be to ensure that all Local Councils are advised well ahead of each ANZAC Day what the precise trading arrangements are. This advice may vary from year to year depending on whether ANZAC Day falls on a weekday or weekend. Councils would be expected to advise their local business groups well in advance of the day, thus reducing the incidence of any confusion.

The recommendations of this Report have been made after a comprehensive review process including the public release of a Discussion Paper, the receipt of submissions and the taking of evidence. The recommendations reflect the Committee's apprehension of the principles and values that underpin ANZAC Day and the ANZAC spirit. They also reflect the Committee's conceptual appreciation of the legislative scheme that should support those principles and values.

To a considerable extent those principles and values have been nurtured and fostered by the ex-service community, and supported by other interested bodies. Accordingly, it is not only prudent, but also right, that the ex-service community and other interested bodies should be further consulted with respect to issues relating to the implementation of the recommendations of this Report. In light of the Committee's recommendation that ministerial responsibility for ANZAC Day legislation should be assumed by the Premier, it is appropriate that such consultation be undertaken by the Department of the Premier and Cabinet.

Recommendation 24

The Committee recommends that the Department of the Premier and Cabinet should further consult the ex-service community and other interested bodies with respect to issues relating to the implementation of the Committee's recommendations.

Appendix A

An outline of the proposed ANZAC Day Commemoration Act

ANZAC DAY COMMEMORATION ACT

Scheme of the proposed Legislation

Part 1: Preliminary

Purpose

The purpose of the Act is to provide for the commemoration of ANZAC Day as a day of national significance.

Commencement

The Act will commence on the date of Royal Assent.

Definitions

Definitions may be required for the following—

- "ANZAC Day Education and Commemoration Committee"
- "ANZAC Day Proceeds Fund"
- "Business activity"
- "Conflicts"
- "Gaming activity"
- "Entertainment"
- "Liquor licence"
- "Patriotic Funds"
- "Sporting event"
- "Trading hours"

Commemoration of ANZAC Day

It is intended that the Act refer to commemoration participation in the Great War and to participation in subsequent conflicts, including peace keeping activities. By way of example the RSL (Victorian Branch) proposed a provision along the lines of:

“In commemoration of the part taken by Australian Defence Force personnel in the Great War and subsequent conflicts and in memory of those who gave their lives for Australia, that the twenty-fifth day of April in each year (being the anniversary of the first landing on Gallipoli of troops from the United Kingdom, Australia and New Zealand) shall be known as ANZAC Day”.

Such a provision might be complemented by a definition of “conflicts,” adopting an approach similar to that in the *Patriotic Funds Act 1958* where “service or duty” is defined to include peace keeping activities.

Part 2: Administration

The scheme of the legislation contemplates new functions for the Patriotic Funds Council and the establishment of the ANZAC Day Education and Commemoration Committee so that there are provisions which:

- expand the functions of the Patriotic Funds Council to assist, facilitate and promote commemoration and education activities;
- provide for the establishment of a committee, the ANZAC Day Education and Commemoration Committee, within the Patriotic Funds Council to perform the Council’s functions with respect to commemoration and education activities; and
- enable the distribution of funds from the ANZAC Day Proceeds Fund, as recommended by the ANZAC Day Education and Commemoration Committee, for the purposes of commemoration and education initiatives and welfare purposes.

Accordingly, there will be complementary provisions relating to:

- The establishment of the Committee, which may include representatives from ex-service organisations, the Patriotic Funds Council, the Shrine of Remembrance, business, sporting organisations, the entertainment industry, the gaming industry and the education sector.
- The functions of the Committee, in particular to be consulted by the Premier in respect of matters relating to ANZAC Day, including contributions to be made to the ANZAC Day Proceeds Fund, to consult with the Patriotic Funds Council with respect to the distribution of the ANZAC Day Proceeds Fund and to consult with the education sector with respect to education initiatives.

Part 3: Public Holiday

Notwithstanding the existing provisions in the *Public Holidays Act 1993*, there will be provision to declare that ANZAC Day is to be observed as a public holiday, with the legislation making clear

that ANZAC Day is a full day holiday and that, where appropriate, employees required to work on ANZAC Day are to be accorded any entitlements due to them. .

Part 4: ANZAC Day Proceeds Fund

As the Act will repeal the *Anzac Day Act 1958*, provision will be necessary to establish the ANZAC Day Proceeds Fund.

The ANZAC Day Proceeds Fund will be administered by the Patriotic Funds Council, and distributed as recommended by the ANZAC Day Education and Commemoration Committee.

The objects of the ANZAC Day Proceeds Fund will be those of:

- (a) welfare;
- (b) commemoration; and
- (c) education.

Accordingly, there will be provisions similar to those in the *Anzac Day Act 1958* with respect to the distribution of funds for the welfare purposes of the ex-service community.

There will be provision to authorise the funding of ANZAC Day commemoration ceremonies through the ANZAC Day Proceeds Fund.

There will also be provision to enable the distribution of funds from the ANZAC Day Proceeds Fund for education purposes related to ensuring that the youth of Victoria learn about the significance of ANZAC Day. The distribution of funds for education purposes will also include distribution to the Shrine of Remembrance.

There will be provisions requiring those, whether sporting, gaming or entertainment organisations, who receive commercial benefit for their activities on ANZAC Day, to make a reasonable contribution to the ANZAC Day Proceeds Fund that is commensurate with the commercial outcome of conducting the particular activity on ANZAC Day.

The measure of contribution by sporting, gaming and entertainment organisations to the ANZAC Day Proceeds Fund will be regulated according to a specific formula, or formulas, prescribed by the Premier after consultation with the ANZAC Day Education and Commemoration Committee.

Part 5: Business Activity

It is intended that there should be uniform trading hours throughout Victoria on ANZAC Day with business activity restricted between 5am and 1pm, except for essential commercial services.

There will be provision so that the essential commercial services exempt from trading on ANZAC Day are identified according to the characteristics of the particular activity rather than the premises, or shops, from which the activity is retailed. Accordingly, the business activities which will not be restricted from trade on ANZAC Day morning are, for example:

The sale of:-

- Bread
- Prescription drugs and other items of a medicinal nature, with or without a doctor's prescription
- Daily newspapers
- Prepared meals, whether or not for take away or consumption within the premises of the business
- Flowers and plants
- Petrol
- Fruit and vegetables
- Food and groceries

It is also intended that there should be uniform liquor licensing laws throughout Victoria, so that licensed premises are closed between 5am and 12 noon, except where there are special circumstances, such as gunfire breakfasts, relating to the conduct of ANZAC Day ceremonies. In considering the test of special circumstances, there should be provision requiring the Director of Liquor Licensing to consider whether there is a genuine connection with an ANZAC Day ceremony, and not a device for opportunistic liquor trading. This will require amendment of the *Liquor Control Reform Act 1996*.

There will be provision prohibiting the operation of gaming facilities between 5am and 1pm on ANZAC Day.

There will be provision prohibiting trading by community markets between 5am and 1pm on ANZAC Day.

There will be provision prohibiting the conduct of auctions for the sale of property between 5am and 1pm on ANZAC Day.

Part 6: Sport and Entertainment

It is intended that the restrictions in the *Anzac Day Act 1958* with respect to the conduct of sport, eg AFL football and horse racing, and, entertainment, eg cinemas and live theatre, will be maintained, so that such activities are not commenced before 1pm.

However, the Premier will be empowered to permit an earlier commencement of these activities where he or she considers it is in the public interest to do so. In the case of cinemas and live theatre shows, the public interest consideration may be that the nature of the particular cinema or live theatre show is consistent with the principles and values of ANZAC Day and the ANZAC spirit.

Part 7: Penalties

It is intended that there will be provisions imposing penalties for breach of the Act.

A breach of the Act will attract a penalty up to 100 penalty units (currently \$10,000).

Part 8: Miscellaneous

There will be a need for consequential and transitional provisions, including provision to:

- repeal the *Anzac Day Act 1958* (and consequentially the *Theatres (Repeal) Act 2002*);
- amend the *Shrine of Remembrance Act 1978* to enable the Shrine to develop, promote, facilitate and organise education and commemoration initiatives relating to ANZAC Day and the ANZAC spirit;
- amend the *Patriotic Funds Act 1958* to expand the functions of the Patriotic Funds Council to assist, facilitate and promote commemoration and education activities;
- amend the *Patriotic Funds Council Act 1958* to enable the distribution of funds from the ANZAC Day Proceeds Fund, as recommended by the ANZAC Day Education and Commemoration Committee, for the purposes of education initiatives and for the advancement of commemorative projects;
- amend the *Shop Trading Reform Act 1996* to delete reference to ANZAC Day as a consequence of those matters being dealt with in this Act (and, possibly, as a matter of separate policy, amend the schedule of exempt shops to maintain consistency with the list of business activities exempt from closing on ANZAC Day morning under this Act);
- amend the *Liquor Control Reform Act 1998* to make clear that liquor licensing arrangements with respect to ANZAC Day are clearly specified in the Act, rather than a discretionary decision of the Director, Liquor Licensing Victoria; and
- amend the *Racing Act 1958* to delete reference to ANZAC Day.

There will be provision to enable the making of regulations, particularly with respect to the prescription by the Premier of a formula for contributions by sporting, gaming and entertainment organisations to the ANZAC Day Proceeds Fund.

Appendix B

Lists of Submissions and witnesses

Submissions

- Simon Barrile, Racing Victoria Limited
- T L Bawden, Returned and Services League Hamilton sub-branch
- Mark Brown, Returned and Services League Wodonga sub-branch
- John Deighton, Returned and Services League – Victoria Branch
- Brian Donegan, Australian Retailers Association Victoria
- Trevor Dohnt, Melbourne Cricket Club
- J G Eames
- Lex Gray, Returned and Services League Dandenong Ranges sub-branch
- Maureen Griggs, War Widows and Widowed Mothers' Association – Ringwood Branch
- Fiona Grinwald, Gaming Policy Unit, Department of Treasury and Finance
- John Haines, Returned and Services League Eltham sub-branch
- Peter Hansen, Agent-General for Victoria
- F. J. Holdsworth, Australian Legion of Ex-Servicemen and Women
- Peter Judkins, Lottery Agent's Association of Victoria
- Ross Kennedy, Office of Sport, Recreation and Racing, Department of Tourism, Sport and the Commonwealth Games
- Mary Lambert, Shop Distributive and Allied Employees' Association – Victorian Branch
- J Lee
- Peter Liefman, Vietnam Veterans Association of Australia – Victoria Branch
- Brendan Lynch, The Australian Veterans and Defence Services Council
- Dale Monteith, Victoria Racing Club
- Tony Peek, Australian Football League
- Major General (Retd) Peter Phillips, Returned and Services League of Australia Limited (National)

- P Rathmell, Returned and Services League Bayswater sub-branch
- David Russell, Victorian Automobile Chamber of Commerce
- Alan Snibson
- John Spencer, Returned and Services League – South Australian Branch
- Gordon Smith, Returned and Services League Doncaster sub-branch
- John Stanborough, Returned and Services League City of Albury sub-branch
- Kevin Stocks
- John Taylor, Shrine of Remembrance Trustees
- Nicholas Thieberger
- Peter Thomas, Returned and Services League Torquay sub-branch
- Noel Turner
- Terry Walsh, The Legacy Club of Melbourne Inc
- Ray Ward, Patriotic Funds Council of Victoria
- Captain A.C. Watson, Returned and Services League Merchant Navy sub-branch
- John Wells, Returned and Services League Dandenong sub-branch
- Peter Wilkinson, Liquor Stores Association of Victoria Inc.
- Kevyn Williams, Hume Veterans Information Centre – Wodonga
- Steve Williams

Briefings

Canberra, 8-9 April 2002

- Dr Neil Johnston, Secretary and other officers
Department of Veterans' Affairs
- Major General Steve Gower AO, Director and
Helen Withell, Assistant Director
Australian War Memorial
- His Excellency Mr Simon Murdoch
High Commissioner for New Zealand
- Lieutenant General Peter Cosgrove AC, MC
Chief of the Army
- His Excellency Mr M Tansu Okandan
Ambassador for the Republic of Turkey

Melbourne, 29 April 2002

- Mr Brian Kearney, Director
Liquor Licensing Victoria

Melbourne, 13 September 2002

- Mr Arthur Burke, Honorary Secretary
ANZAC Commemoration Committee (Qld) Inc.

Witnesses

Public Hearing – 25 July 2002

- Mr D. Drew; and
Mr A. Curtain,
Shop, Distributive and Allied Employees Association
- Mr J. Taylor, Chairman; and
Mr D. Baguley, Project Manager,
Shrine of Remembrance Trustees
- Brigadier K. Rossi
Returned and Services League of Australia Limited (National)

Public Hearing – 2 September 2002

- Ms D. Guest, Deputy General Manager, Learning and Teaching Innovation Division,
Office of Schools;
Mr J. Firth, Assistant General Manager, Curriculum and Assessment Authority;
Mr J. Livi, Principal Legal Officer, Special Projects Unit,
Learning and Innovations Division; and
Mr J. Andrews,
Department of Education and Training
- Ms V. Paul and
Ms S. Miller,
Australian Retailers Association
- Mr R. Ward;
Mr S. Ryan; and,
Mr W. New,
Patriotic Funds Council of Victoria

Appendix C

Summary of Existing Legislation

A summary of existing Acts follows below.

1. Anzac Day Act 1958

The Act decrees that the 25th 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.

NOTE: ANZAC Day is only referred to in one set of regulations, the **Liquor Control Reform Regulations 1999**, where the references made are in the context of the fees applicable for additional trading hours.

Appendix D

The Case for Legislative Intervention⁸⁸

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 25th 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

⁸⁸ Appendix D repeats the material contained in the SARC, Discussion Paper.

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 one's own conscience. Through the principle means that the Government uses to ensure that ANZAC Day is commemorated by 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).⁸⁹

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.

⁸⁹ Competition Principles Agreement, Clause 5, 1995. See: www.ncc.gov.au.

Appendix E

Reference Material and Websites

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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Appendix F

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.

Appendix G

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.

Appendix H

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.

“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.”

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www.parliament.vic.gov.au/sarc

