PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 31 July 2008

(Extract from book 10)

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By authority of the Victorian Government Printer

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Professor DAVID de KRETSER, AC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

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Minister for Mental Health, Minister for Community Services and Minister for Senior Victorians	The Hon. L. M. Neville, MP
Minister for Roads and Ports	The Hon. T. H. Pallas, MP
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Minister for Gaming, Minister for Consumer Affairs and Minister Assisting the Premier on Veterans' Affairs	The Hon. A. G. Robinson, MP
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Legislative Assembly committees

Privileges Committee — Mr Carli, Mr Clark, Mr Delahunty, Mr Lupton, Mrs Maddigan, Dr Napthine, Mr Nardella, Mr Stensholt and Mr Thompson.

Standing Orders Committee — The Speaker, Ms Barker, Mr Kotsiras, Mr Langdon, Mr McIntosh, Mr Nardella and Mrs Powell.

Joint committees

Dispute Resolution Committee — (*Assembly*): Mr Batchelor, Mr Cameron, Mr Clark, Mr Holding, Mr McIntosh, Mr Robinson and Mr Walsh. (*Council*): Mr P. Davis, Mr Hall, Mr Jennings, Mr Lenders and Ms Pennicuik.

Drugs and Crime Prevention Committee — (*Assembly)*: Ms Beattie, Mr Delahunty, Mrs Maddigan and Mr Morris. (*Council*): Mrs Coote, Mr Leane and Ms Mikakos.

Economic Development and Infrastructure Committee — (*Assembly*): Ms Campbell, Mr Crisp and Ms Thomson. (*Council*): Mr Atkinson, Mr D. Davis, Mr Tee and Mr Thornley.

Education and Training Committee — (*Assembly*): Mr Dixon, Dr Harkness, Mr Herbert, Mr Howard and Mr Kotsiras. (*Council*): Mr Elasmar and Mr Hall.

Electoral Matters Committee — (*Assembly*): Ms Campbell, Mr O'Brien, Mr Scott and Mr Thompson. (*Council*): Ms Broad, Mr P. Davis and Mr Somyurek.

Environment and Natural Resources Committee — (*Assembly*): Ms Duncan, Mrs Fyffe, Mr Ingram, Ms Lobato, Mr Pandazopoulos and Mr Walsh. (*Council*): Mrs Petrovich and Mr Viney.

Family and Community Development Committee — (*Assembly*): Mr Noonan, Mr Perera, Mrs Powell and Ms Wooldridge. (*Council*): Mr Finn, Mr Scheffer and Mr Somyurek.

House Committee — (*Assembly*): The Speaker (*ex officio*), Ms Beattie, Mr Delahunty, Mr Howard, Mr Kotsiras, Mr Scott and Mr K. Smith. (*Council*): The President (*ex officio*), Mr Atkinson, Ms Darveniza, Mr Drum, Mr Eideh and Ms Hartland.

Law Reform Committee — (*Assembly*): Mr Brooks, Mr Clark, Mr Donnellan and Mr Foley. (*Council*): Mrs Kronberg, Mr O'Donohue and Mr Scheffer.

Outer Suburban/Interface Services and Development Committee — (*Assembly*): Ms Green, Mr Hodgett, Mr Nardella, Mr Seitz and Mr K. Smith. (*Council*): Mr Elasmar, Mr Guy and Ms Hartland.

Public Accounts and Estimates Committee — (*Assembly*): Ms Munt, Mr Noonan, Mr Scott, Mr Stensholt, Dr Sykes and Mr Wells. (*Council*): Mr Barber, Mr Dalla-Riva, Mr Pakula and Mr Rich-Phillips.

Road Safety Committee — (*Assembly*): Mr Eren, Mr Langdon, Mr Mulder, Mr Trezise and Mr Weller. (*Council*): Mr Koch and Mr Leane.

Rural and Regional Committee — (*Assembly*): Ms Marshall and Mr Northe. (*Council*): Ms Darveniza, Mr Drum, Ms Lovell, Ms Tierney and Mr Vogels.

Scrutiny of Acts and Regulations Committee — (*Assembly*): Mr Brooks, Mr Carli, Mr Jasper, Mr Languiller and Mr R. Smith. (*Council*): Mr Eideh, Mr O'Donohue, Mrs Peulich and Ms Pulford.

Heads of parliamentary departments

Assembly — Clerk of the Parliaments and Clerk of the Legislative Assembly: Mr R. W. Purdey

Council — Clerk of the Legislative Council: Mr W. R. Tunnecliffe

Parliamentary Services — Secretary: Dr S. O'Kane

MEMBERS OF THE LEGISLATIVE ASSEMBLY

FIFTY-SIXTH PARLIAMENT — FIRST SESSION

Speaker: The Hon. JENNY LINDELL

Deputy Speaker: Ms A. P. BARKER

Acting Speakers: Ms Beattie, Ms Campbell, Mr Eren, Mrs Fyffe, Ms Green, Dr Harkness, Mr Howard, Mr Ingram, Mr Jasper, Mr Kotsiras, Mr Languiller, Ms Munt, Mr Nardella, Mr Seitz, Mr K. Smith, Dr Sykes, Mr Stensholt and Mr Thompson

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The Hon. S. P. BRACKS (to 30 July 2007)

Deputy Leader of the Parliamentary Labor Party and Deputy Premier:
The Hon. R. J. HULLS (from 30 July 2007)
The Hon. J. W. THWAITES (to 30 July 2007)

Leader of the Parliamentary Liberal Party and Leader of the Opposition:
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Deputy Leader of the Parliamentary Liberal Party and Deputy Leader of the Opposition:
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Leader of The Nationals:
Mr P. J. RYAN

Deputy Leader of The Nationals:
Mr P. L. WALSH

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Burgess, Mr Neale Ronald	Hastings	LP	Napthine, Dr Denis Vincent	South-West Coast	LP
Cameron, Mr Robert Graham	Bendigo West	ALP	Nardella, Mr Donato Antonio	Melton	ALP
Campbell, Ms Christine Mary	Pascoe Vale	ALP	Neville, Ms Lisa Mary	Bellarine	ALP
Carli, Mr Carlo Domenico	Brunswick	ALP	Noonan, Wade Mathew [5]	Williamstown	ALP
Clark, Mr Robert William	Box Hill	LP	Northe, Mr Russell John	Morwell	Nats
Crisp, Mr Peter Laurence	Mildura	Nats	O'Brien, Mr Michael Anthony	Malvern	LP
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Eren, Mr John Hamdi	Lara	ALP	Richardson, Ms Fiona Catherine Alison	Northcote	ALP
Foley, Martin Peter [2]	Albert Park	ALP	Robinson, Mr Anthony Gerard	Mitcham	ALP
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Graley, Ms Judith Ann	Narre Warren South	ALP	Scott, Mr Robin David	Preston	ALP
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Haermeyer, Mr André [3]	Kororoit	ALP	Shardey, Mrs Helen Jean	Caulfield	LP
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Helper, Mr Jochen	Ripon	ALP	Stensholt, Mr Robert Einar	Burwood	ALP
Herbert, Mr Steven Ralph	Eltham	ALP	Sykes, Dr William Everett	Benalla	Nats
Hodgett, Mr David John	Kilsyth	LP	Thompson, Mr Murray Hamilton Ross	Sandringham	LP
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Howard, Mr Geoffrey Kemp	Ballarat East	ALP	Thwaites, Mr Johnstone William [6]	Albert Park	ALP
Hudson, Mr Robert John	Bentleigh	ALP	Tilley, Mr William John	Benambra	LP
Hulls, Mr Rob Justin	Niddrie	ALP	Trezise, Mr Ian Douglas	Geelong	ALP
Ingram, Mr Craig	Gippsland East	Ind	Victoria, Mrs Heidi	Bayswater	LP
Jasper, Mr Kenneth Stephen	Murray Valley	Nats	Wakeling, Mr Nicholas	Ferntree Gully	LP
Kairouz, Ms Marlene [4]	Kororoit	ALP	Walsh, Mr Peter Lindsay	Swan Hill	Nats
Kosky, Ms Lynne Janice	Altona	ALP	Weller, Mr Paul	Rodney	Nats
Kotsiras, Mr Nicholas	Bulleen	LP	Wells, Mr Kimberley Arthur	Scoresby	LP
Langdon, Mr Craig Anthony Cuffe	Ivanhoe	ALP	Wooldridge, Ms Mary Louise Newling	Doncaster	LP
Languiller, Mr Telmo Ramon	Derrimut	ALP	Wynne, Mr Richard William	Richmond	ALP
Lim, Mr Muy Hong	Clayton	ALP			

[1] Resigned 6 August 2007
[2] Elected 15 September 2007
[3] Resigned 2 June 2008
[4] Elected 28 June 2008
[5] Elected 15 September 2007
[6] Resigned 6 August 2007

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THURSDAY, 31 JULY 2008

Thursday, 31 July 2008

The SPEAKER (Hon. Jenny Lindell) took the chair at 9.35 a.m. and read the prayer.

BUSINESS OF THE HOUSE

Notices of motion: removal

The SPEAKER — Order! I advise the house that under standing order 144 notices of motion 75, 76 and 179 to 196 will be removed from the notice paper on the next sitting day. A member who requires the notice standing in his or her name to be continued must advise the Clerk in writing before 2.00 p.m. today.

NOTICES OF MOTION

Notices of motion given.

Ms WOOLDRIDGE having given notice of motion:

The SPEAKER — Order! I suggest to the member for Doncaster that her notice of motion would have been more appropriate given as a members statement.

Further notices of motion given.

PETITIONS

Following petitions presented to house:

Narcissus Avenue–Tormore Road–Boronia Road, Boronia: safety

To the Legislative Assembly of Victoria:

The petition of residents in Victoria draws to the attention of the house the intersection of Tormore Road and Boronia Road, Boronia. Residents' frustration with using this intersection has grown significantly due to the danger posed when using it. Residents that have signed this petition want traffic signals installed at this intersection as soon as possible.

The petition therefore requests that the Legislative Assembly of Victoria instruct VicRoads to install traffic signals at the Tormore Road and Boronia Road intersection in Boronia and remove the existing pedestrian signal 40 metres from the intersection.

By Mrs VICTORIA (Bayswater) (710 signatures)
Mr WAKELING (Ferntree Gully) (554 signatures)

Doncaster East: liquor outlet

To the Legislative Assembly of Victoria:

The petition of the residents of the city of Manningham and other concerned Victorian residents draws to the attention of the house Woolworths' plan to shut our Jackson Court, Doncaster East supermarket and replace it with a Dan Murphy grog supermarket selling $50 million of alcohol each year in our community must be stopped. The government's own confusion or conflicting planning laws and liquor licensing laws are risking harm to our community and allowing abuse by uncaring businesses such as Woolworths.

The petitioners therefore request that the Legislative Assembly of Victoria

1. Disallow the licence application by Woolworths at Jackson Court.

2. Make government departments act for our community with objection rights which require the commissioner of liquor licensing to consider government planning and policy documents like the Melbourne 2030 plan in any decision it makes.

3. Make VCAT and government judicators assist and help community when faced by unlimited resources of large corporations such as Woolworths.

By Ms WOOLDRIDGE (Doncaster) (2373 signatures)

EastLink: Donvale drainage

To the Legislative Assembly of Victoria:

The petition of the residents of Savaris Court, Donvale, whose backyards face the freeway noise walls, have a serious problem with drainage which overflows into their backyards during heavy rainfalls, draws to the attention of the house all residents agree that the drain proposed by Thiess John Holland is totally inadequate because the problem has been exacerbated by landscape works which have built up a steep sloping mound of soil behind the freeway noise walls. This slope runs directly down towards the residents' backyards and although it is the intention to plant ground covers et cetera it will be a few years before the ground covers stabilise the soil and therefore in the meantime the soil will run down into the drain which in effect is only a trench with no stability whatsoever and with future heavy rainfalls the existing problem will worsen.

The petitioners therefore request that the Legislative Assembly of Victoria attend to this matter urgently and suggest that a spoon drain be implemented to resolve this ongoing problem.

By Ms WOOLDRIDGE (Doncaster) (25 signatures)

Ferntree Gully Road–Dairy Lane, Ferntree Gully: safety

To the Legislative Assembly of Victoria:

The petition of residents of the Ferntree Gully electorate draws to the attention of the house that traffic stopped at the

intersection of Scoresby and Ferntree Gully roads can block the intersection of Ferntree Gully Road and Dairy Lane, preventing traffic from exiting Dairy Lane and turning right onto Ferntree Gully Road.

The petitioners therefore request that the Legislative Assembly of Victoria instruct VicRoads to paint 'keep clear' markings on Ferntree Gully Road at the intersection of Dairy Lane, to remind motorists using Ferntree Gully Road to keep this intersection clear and allow motorists exiting Dairy Lane to do so safely.

By Mr WAKELING (Ferntree Gully) (534 signatures)

Napoleon Road–Lakesfield Drive, Lysterfield: safety

To the Legislative Assembly of Victoria:

The petition of residents of the Ferntree Gully electorate draws to the attention of the house that traffic stopped on the southbound lane of Napoleon Road can block the intersection of Napoleon Road and Lakesfield Drive in Lysterfield. Consequently, this prevents traffic from exiting Lakesfield Drive and turning right onto Napoleon Road.

The petitioners therefore request that the Legislative Assembly of Victoria instruct VicRoads to paint 'keep clear' markings on Napoleon Road at the intersection of Lakesfield Drive to remind motorists using Napoleon Road to keep this intersection clear and allow motorists exiting Lakesfield Drive to do so safety.

By Mr WAKELING (Ferntree Gully) (83 signatures)

Port Phillip Bay: channel deepening

To the Legislative Assembly of Victoria:

The petition of the citizens of Victoria points out to the house that:

> We oppose the proposed dumping in Port Phillip Bay of over 3 million cubic metres of dredged toxic waste from Port Melbourne channel, Yarra River and Williamstown channels into the proposed toxic dump site in the bay. The proposal to dump contaminated materials in our bay is very irresponsible and provides no certainty that leakage of toxins into our waters will not occur. Such a proposal is unacceptable.
>
> The petitioners request that the Legislative Assembly of Victoria oppose disposal of contaminated materials at the proposed dredge material ground site or any other area in our bay.

The petitioners request that the Legislative Assembly of Victoria oppose the proposed dump site project in our bay.

By Mr DIXON (Nepean) (140 signatures)

Water: north–south pipeline

To the Legislative Assembly of Victoria:

We call on the Legislative Assembly to stop Mr Brumby building the north–south pipeline which will steal water from country Victorian farmers and communities and pipe this water to Melbourne, because there are better alternatives to increase Melbourne's water supply such as recycled water and stormwater capture for industry, parks and gardens.

By Mr WALSH (Swan Hill) (122 signatures)

Water: north–south pipeline

To the Legislative Assembly of Victoria:

This petition of residents of Victoria draws to the attention of the house the proposal to develop a pipeline which would take water from the Goulburn Valley and pump it to Melbourne.

The petitioners register their opposition to the project on the basis that it will effectively transfer the region's wealth to Melbourne, have a negative impact on the local environment, and lead to further water being taken from the region in the future. The petitioners commit to the principle that water savings which are made in the Murray–Darling Basin should remain in the MDB. The petitioners therefore request that the Legislative Assembly of Victoria rejects the proposal and calls on the state government to address Melbourne's water supply needs by investing in desalination, recycling and capturing stormwater.

By Mr WALSH (Swan Hill) (90 signatures)

Water: north–south pipeline

To the Legislative Assembly of Victoria:

This petition of residents of Victoria draws to the attention of the house the proposal to construct a pipeline to take water from the Goulburn Valley to Melbourne.

The petitioners register their opposition to the project on the basis that any water savings achieved by irrigation modernisation in the Goulburn-Murray irrigation system should be retained in that system for use by communities and for environmental flows and not piped over the Great Dividing Range to Melbourne.

The petitioners therefore request that the Legislative Assembly of Victoria reject the proposal to build the pipe and call on the state government to invest in other measures to increase Melbourne's water supply, such as recycled water and stormwater capture for industry, parks and gardens.

By Mr WALSH (Swan Hill) (53 signatures)

Tabled.

Ordered that petitions presented by honourable member for Swan Hill be considered next day on motion of Mr WALSH (Swan Hill).

Ordered that petition presented by honourable member for Nepean be considered next day on motion of Mr DIXON (Nepean).

Ordered that petition presented by honourable member for Bayswater be considered next day on motion of Mrs VICTORIA (Bayswater).

Ordered that petitions presented by honourable member for Doncaster be considered next day on motion of Ms WOOLDRIDGE (Doncaster).

Ordered that petitions presented by honourable member for Ferntree Gully be considered next day on motion of Mr WAKELING (Ferntree Gully).

CHILDREN'S COURT OF VICTORIA

Report 2006–07

Mr HULLS (Attorney-General) presented report by command of the Governor.

Tabled.

Ordered to be printed.

DOCUMENTS

Tabled by Clerk:

Forensic Leave Panel — Report 2007

Freedom of Information Act 1982 — Statement of reasons for seeking leave to appeal under s 65AB

Interpretation of Legislation Act 1984:

Notice under s 32(3)(a)(iii) in relation to State Environment Protection Policy (Air Quality Management) (*Gazette G8, 21 February 2008)*

Police Integrity, Office of — Improving Victorian policing services through effective complaint handling — Ordered to be printed

Subordinate Legislation Act 1994 — Minister's exception certificate in relation to Statutory Rule 90.

BUSINESS OF THE HOUSE

Adjournment

Mr CAMERON (Minister for Police and Emergency Services) — I move:

That the house, at its rising, adjourn until Tuesday, 19 August.

Motion agreed to.

MEMBERS STATEMENTS

Clearways: small business

Ms ASHER (Brighton) — I call on the Minister for Small Business to intervene to solve a problem of the government's own creation, that problem being the huge concern about the impact on businesses of the government's proposed changes to clearway times.

The minister would be aware that a petition containing 60 000 signatures has been presented this week. I draw the minister's attention to two documents, the first being the *Code of Conduct for Clearways on Declared Arterial Roads*, which states that the code 'recognises the need for a consistent, transparent and consultative approach to the implementation of clearways on arterial roads'. This has not occurred under this government.

I also draw the minister's attention to the Victorian government's response — his own government's response — to the Victorian Competition and Efficiency Commission's final report *Making the Right Choices — Options for Managing Transport Congestion.* The government response reads:

> … the more strategic use of clearways will need to be examined with a view to unclogging congested arterial roads, without placing unwanted stress on local businesses.

The government's own documents indicate that this policy has not been formed by the correct process. Previously the government was seeking not to place stress on local businesses; it is placing stress on local businesses. As we heard in this house yesterday, these are very tough economic times, and the Minister for Small Business should be protecting small traders, not imposing further hardship on them. I call on him to intervene immediately.

Gwendoline 'Pat' Meddings

Ms NEVILLE (Minister for Mental Health) — I rise to pay tribute to Gwendoline May Meddings, always known as Pat, who was a wonderful contributor to the life of the community in Clifton Springs and Drysdale. Sadly, Pat died on 19 June, and at her funeral service the church overflowed, with many standing outside in the rain, which reflects how much she meant to so many people.

As a coordinator of the SpringDale neighbourhood centre I had the pleasure of working with Pat, and I remember her enthusiasm and her commitment to the local community. Pat and her husband, Arthur, moved

to Clifton Springs in 1994 and built a house close to their daughter Lisa and her family. Pat and Lisa went along to a morning tea for new residents at the SpringDale neighbourhood centre because they wanted to meet the locals and join in community activities, and they certainly did join in. Pat and Lisa very quickly became involved as volunteers at SpringDale. They set up and ran a weight loss program they called Trimliners, which was a great success with both men and women.

Pat and Lisa were also part of a small group who established the Friends of SpringDale. This was a very important development at the neighbourhood house. The friends ran quarterly morning teas for new residents. Pat always took on the significant task of managing the raffles and seemed to win one of the prizes at each raffle, a fact that caused great amusement. With her daughter Lisa and granddaughter Simone, Pat organised bootscooting dance sessions on Saturdays, and Pat was also a valued committee member at SpringDale and proofread the *SpringDale Messenger* for many years. She was also a member of the local ladies Probus club. Her energy, enthusiasm, sense of humour and love of life made her a great many friends.

Water: waterways charge

Mr WALSH (Swan Hill) — The greedy tax take of the Brumby government knows no bounds. Under the Our Water Our Future action plan an additional 5000 square kilometres will be included in Melbourne Water boundaries, and people will have to pay a waterways service fee for the first time. From August this year 2500 Central Highlands Water customers will receive a bill from Western Water for $38.38. As one Mount Wallace resident said to me, 'We are on tank water. We have never had a water bill from Western Water. We have not got town water. Why should we have to pay? There are no rivers or streams near us. There is no rain, but they are going to slug us $38.38. It is just another way of getting money out of us, of sucking us dry. They are just bloodsucking parasites out to suck everyone dry'.

This new tax on Moorabool residents is a continuation of the Brumby government using water services to tax Victorians. It is in addition to the $2.5 billion in public sector dividend taxes that the Brumby government has demanded from water authorities since it was elected. It is in addition to the $60 million a year secret environmental tax the government charges water authorities in Victoria, where it charges 5 per cent on every dollar that the water authorities receive from their customers. The Brumby government is failing Victorians when it comes to water policy.

Tarneit community centre: opening

Mr PALLAS (Minister for Roads and Ports) — Together with the Minister for Children and Early Childhood Development I recently had the privilege of opening the Tarneit community centre. The centre offers maternal health services, occasional care, playgroup, kindergarten, parenting and early childhood intervention services. The centre is located in one of Wyndham's growth areas situated near Baden Powell P–9 College, and the planning for the second stage will ensure that the centre continues to grow with the needs of the community.

Wyndham is currently in a baby boom, where the suburb of Tarneit alone will see a fourfold increase in its population of children aged zero to four years by 2016, and Wyndham currently sees 49 births per week. To put that into context, with a population growth of 6.2 per cent per annum, on births alone that constitutes one new primary school of entrants arriving every 10 weeks.

The Tarneit community centre is vital to providing for the future demands of this rapidly increasing area to ensure that members of the next generation of Victorians are given everything they need. The Brumby government is committed to the growing population through its $1.5 million to establish the Tarneit community centre, working with Wyndham City Council, which itself has contributed $2 million. The Brumby government has continued its support of early childhood development by committing $38.5 million over four years to build more than 40 additional children's centres across Victoria.

Point Nepean: management

Mr DIXON (Nepean) — A lot has been happening at the former defence land at Point Nepean. Many buildings have been renovated and a diverse range of community groups are now using the various unique venues. A $10 million infrastructure renewal plan is also about to commence, with a completely new trench to be installed around the property that is unique because the trench will contain all the services. Federal minister Peter Garrett's promise that Point Nepean would be in the state's hands in September this year will not be kept, though.

Finally, Department of Sustainability and Environment, and Parks Victoria representatives are now on the community trust and trying to come up to speed with

progress and a vision for the area. But, as the government likes to say, there is more to be done. Where is the legislation to enable the handover to take place? Where is the legislation to provide certainty for the presence of Melbourne University and the respite centre? What is the state government's vision for Point Nepean? What will be the management structure of this unique area? When will the state government come up with its promised $10 million? And where will recurrent funding to operate and maintain the facility come from? These questions, and many more, need to be answered and acted upon.

Peter Garrett's September promise is totally unworkable. I urge the state government and the federal government to set their sights on the original June 2009 handover date so that the future of Point Nepean is not compromised by rushed and unfunded plans. This wonderful and unique natural heritage site must be taken seriously by its soon-to-be new custodian, the state of Victoria.

Monash Freeway: noise barriers

Mr STENSHOLT (Burwood) — A number of Glen Iris and Ashburton residents have approached me with their concerns over freeway noise in association with the widening of the Monash Freeway.

I have been in regular contact with the Minister for Roads and Ports and VicRoads on noise abatement issues right from when the project was announced many months ago. It was made clear from the beginning of the project that the noise wall standard was 68 decibels, as applies to existing freeways. This is a long-term policy of VicRoads that was in place under the previous government. I have made representations to the government on behalf of residents for a lower noise abatement standard.

With regard to the Monash Alliance project, VicRoads advises me that the impact of noise needs to be assessed on a site-specific basis. Senior Alliance management told me last week that where current noise walls are being rebuilt as part of the Monash Freeway widening, the new noise abatement walls will be based on the anticipated 2031 noise figures, and the walls will not just simply be replaced. Where local residents have done site-specific noise monitoring — for example, in Haynes Crescent — I was advised that such records would become the baseline figures for revised modelling out to 2031 and that replacement walls would be in line with those calculations.

I should add that many months ago I urged, and VicRoads agreed, that baseline noise studies be conducted along the freeway. These have been done, and VicRoads also advised that it would then do modelling to see what the noise impact would be out to 2031. This has also been done and forms the basis for replacement wall planning. I will continue to represent forcefully the views of my community on this and other matters.

Ambulance services: south-eastern suburbs

Mrs SHARDEY (Caulfield) — I raise an issue referred to in an open letter to all doctors in Frankston and the surrounding areas by the mobile intensive care ambulance (MICA) team based at Frankston in regard to changes to Victorian ambulance services recently announced by the Brumby government.

Currently the MICA unit based at Frankston operates as a two-person, stretcher-carrying ambulance and covers the area from Chelsea to Mount Martha to Cranbourne, attending cases on the southern Mornington Peninsula and as far away as Lang Lang. This is crewed by two MICA paramedics who work together to look after the most critically ill and injured patients that require ambulance services. Working as a team they undertake many high-level interventions, such as the use of sedation and paralysis to achieve intubation, resuscitation of all age groups, assessment and stabilisation of critically ill medical patients, including inotropic support, and management of the most significantly injured and often heavily trapped trauma patients. They regularly transport critically ill or injured patients long distances to specialist facilities and average around 390 responses a month.

The paramedics say the government has announced that a new 24-hour paramedic team, a MICA peak period single responder unit, will be established in Frankston, but it has neglected to inform the public that the current two-crew unit will be disbanded and split into two single responders, one based in Frankston the other in Chelsea. Also, many of the extra normal paramedic units proposed are in fact already in operation.

Frank Le Page

Ms MUNT (Mordialloc) — I rise today to pay tribute to the life of public service of Frank Le Page. Frank Le Page was mayor of the former City of Moorabbin from 1972 to 1973, 1980 to 1981 and 1984 to 1985, and a councillor of Moorabbin for a very long time. He was awarded the Medal of the Order of Australia for his services to the community in 1986. The Le Page family has had a lifelong connection with the Moorabbin-Cheltenham area. Frank's father, Everest Le Page, was also a long-serving councillor and

mayor of Moorabbin. A large retirement village, park and street bear the Le Page family name. Frank's hard work for the community and his friendship will always be remembered by those who knew him and the Le Page family. My condolences to his family.

Border anomalies: government meetings

Mr JASPER (Murray Valley) — The elimination of border anomalies continues to be a major issue for those of us living along the border between Victoria and New South Wales. The Border Anomalies Committee was established in 1979 to investigate the huge range of anomalies and seek their elimination through reciprocal rights, mutual recognition and uniform legislation. In the 1980s, through the Premiers department of each state, work was undertaken in identifying the anomalies and how rectification could be implemented, with reports being provided each year. Unfortunately during the 1990s little action was taken on these crucial issues, hampering in particular border residents.

Through my representations to the former Premier, Steve Bracks, who had initially abandoned the Border Anomalies Committee, a new organisation was established. The first meeting was held at Echuca in June 2006 and the second meeting was held at Albury in August 2007 between senior bureaucrats, with border MPs in attendance for part of those meetings. I applaud the fact that there is renewed action in border anomalies with some positive signs of progress. Recent correspondence with the Premier has confirmed that the next meeting will be held in September with key stakeholders providing information on major border issues.

Continued positive action must be taken to eliminate border anomalies, recognising that over 1500 anomalies have been identified in transport, health, industry, the legal profession and education, to name just a few. Often when mutual recognition and reciprocal rights — —

The ACTING SPEAKER (Mr Ingram) — Order! The member's time has expired.

Geelong Trades Hall Council Women's Union Network

Mr TREZISE (Geelong) — On Thursday, 24 July, I had the pleasure of attending the Geelong Trades Hall Council Women's Union Network dinner, which consisted of a lovely three-course meal, guest speaker Michelle O'Neill, and music from both the Geelong Trades Hall Council choir and professional performer Kelly Auty. Around 100 people attended the dinner, and I can assure the house that they all enjoyed a wonderful night.

The Geelong Trades Hall Council Women's Union Network was established by a number of committed female unionists over recent years. In that time the network has provided, amongst other initiatives, discussion forums, training, networking, support and camaraderie. The network has around 200 members from various trades and professions, both blue and white collar. Over a calendar year the network includes, amongst its activities, an International Women's Day breakfast, a Cancer Council Victoria fundraiser, a training weekend and, as I said, its annual dinner. I take this opportunity to congratulate the co-conveners of the network, Christine Couzens, Anne Morrison and Jeanette Johanson, together with members Lisa Darnamin, Nada Iska, Colleen Gibbs, Marie Kavanagh and Gail Cook, who provide vital support throughout the year.

Planning: Melbourne 2030

Mr O'BRIEN (Malvern) — The Brumby government's Melbourne 2030 planning policy is promoting high-density overdevelopment, which is damaging the amenity and character of our established suburbs, including those in my electorate. This bandaid is designed to cover up Labor's failure to properly plan for Melbourne's population growth and provide the necessary infrastructure, particularly in growth corridors.

Moreover, Australian Conservation Foundation figures reported in the *Herald Sun* of 2 June 2008 demonstrate that high-density living is in fact the least energy-efficient form of living and creates a larger eco-footprint. The government should not underestimate the concern and anguish this policy is causing. To be a resident of a quiet suburban area that is deemed to fall within the boundaries of a major activity centre under Melbourne 2030 is to have your neighbourhood, your home and your very quality of life placed at risk.

Typical of those affected are residents of Darling Road, Malvern East. They live in a quiet residential area north of Dandenong Road in the city of Stonnington but fall within the 400-metre radius of the Carnegie major activity centre south of Dandenong Road in the city of Glen Eira. Consequently they are now facing a proposal to turn what are currently two family homes into 17 units, with severe consequences for the character of the area and the amenity of neighbouring families. The Brumby government's Melbourne 2030 planning policy is damaging to both neighbourhoods and the

environment. It is also leading to proposals for the creation of a multistorey 24-hour McDonald's restaurant in a residential area. Melbourne 2030 is a failure and should be scrapped.

Colleen Marion

Ms THOMSON (Footscray) — On Saturday, 19 July, I joined local community leaders and members of our indigenous communities in the west to celebrate NAIDOC Week with the holding of the annual NAIDOC ball. This ball has been organised by the Gathering Place and, most importantly, Colleen Marion for a number of years now. For those in the west Colleen Marion is a real icon. She has done more to support the indigenous communities in the west than any other single person, and she certainly brought them together at the Gathering Place to provide a lot of services, including access to GP services, Pap screens, diabetes education, which is very important for the indigenous community, dieticians, podiatrists, physiotherapy, family counselling, drug and alcohol counselling and financial and problem gambling counselling. It is a very innovative service, and it has produced a DVD for the indigenous community in relation to problem gambling.

The Gathering Place is unique and is well known for the special work that it does. Warren Mundine came down to help celebrate the event at Sheldon Receptions in Sunshine. It was attended by hundreds of people, which was a large turnout that included many members of the indigenous community right across Melbourne and beyond. I commend Colleen Marion and the work of the Gathering Place.

Buses: Ferntree Gully

Mr WAKELING (Ferntree Gully) — The 693 bus route in Ferntree Gully provides easy access to Ferntree Gully railway station and Mountain Gate shopping centre for my constituents living close to Ferntree Gully Road and the Burwood Highway. This bus route is important and appears on the principal public transport network map produced by VicRoads. Despite the importance of this bus route, the Minister for Public Transport is treating bus passengers as second-class citizens with less frequent services than rail passengers enjoy. Trains on the Belgrave line operate half-hourly outside peak hours, but passengers on the 693 bus route have to wait for up to an hour in the middle of a weekday. It is imperative that the Brumby government take action to overcome this inconsistency.

Ferntree Gully electorate: volunteers

Mr WAKELING — On 1 July 1851 Victoria separated from New South Wales. This year, in honour of our state's birthday, I had the pleasure of recognising the efforts of 38 volunteers involved with 36 different community groups throughout the Ferntree Gully electorate. Without the tireless efforts of volunteers, our community would be vastly different. I am pleased to recognise these individuals and the role they perform in improving the lives of Ferntree Gully residents.

Carly and Lynn Brewster

Mr WAKELING — I take the opportunity to congratulate the work of Ferntree Gully residents Carly and Lynn Brewster for organising their Girls Night In event. The Ferntree Gully girl guides hall was packed and the couple helped to raise in excess of $2000 for cancer prevention. I and the Ferntree Gully community congratulate them on their work.

Eumemmerring Secondary College: disaggregation

Mr DONNELLAN (Narre Warren North) — I congratulate the Eumemmerring Secondary College and the various principals of the four campuses who have recently put together a proposal to disaggregate the schools. The schools were put together during the dark days of the Kennett government when schools were being closed down. But for most of the principals and the students the plan has not worked, so they are now disaggregating. A couple of the schools are looking at specialising, but what I am congratulating them about is that the various principals have worked together to set up a new pathways program and new subjects, with some of the colleges focusing on the select entry accelerated learning program, known as SEAL, and some focusing on technical training.

I specifically want to talk about the technical training component taking place at the Hallam campus and about a teacher, Keith Timblett, who has done a marvellous job of putting together the relationships which are required. He has recently signed up to another with the plumbers union, plumbing employers and the Plumbing Industry Commission to set up Hallam as the gateway for all technical training in the south-east. They have established many relationships with local businesses so that the students attend a couple of days a week while they are at school and when they finish year 12 can go straight into an apprenticeship. The colleges and the principals of all the campuses have done a marvellous job of

disaggregating and working together to get a good outcome.

Drivers: green P-plates

Mr MORRIS (Mornington) — The matter I raise this morning is the implementation of the new green P-plate system which became operational on 1 July this year. On 5 June the Minister for Roads and Ports, via a press release, trumpeted the distribution of 250 000 green P-plates free to Victoria's probationary drivers. Unfortunately it appears that the plates supplied do not allow drivers of some cars to meet the necessary visibility requirements. The instructions enclosed by VicRoads suggest that the soft plates should be applied to the interior of the rear window. In cases where the rear window is sloping or tinted or both it is difficult not only to discern the new plates but also to make sure they remain attached.

I have been contacted by a constituent who has firsthand experience of this problem. Being someone who understands his responsibilities on the road and takes them seriously, and expecting difficulty with the government-supplied plates, he tried to take alternative action. He wrote:

> Prior to the introduction of the green plates, I had a hard plastic red plate attached by screw to a bracket on the rear numberplate. I have tried to purchase one of these in green, but auto accessory stores Bursons and Repco as well as VicRoads have all said this style of P-plate is unavailable in the green …

The consequence for my constituent was that, through no fault of his, the government-supplied plates failed and on 21 July he was fined. He rightly makes the point that, while he understands his obligation to display the plate, it is hard to do so when suitable plates are not readily available. The government has blundered by introducing this scheme with inadequate preparation. Young people should not be pushed into a situation where they are unable to comply with the laws of this state.

Former Premier: comments

Ms LOBATO (Gembrook) — I wish to condemn Jeff Kennett for his latest idiotic, ill-informed, illogical, discriminatory and defamatory comments. Even if he believes his own stupidity, he really should learn that he does not anymore have a role where he should commentate on every societal matter, and therefore he should keep his bigotry to himself. Of course I refer to his recent outburst when he compared a gay man to a paedophile. It has been a long time since I and the community have heard such naive and backward comments, and much longer since we have heard them from a so-called leader in our community.

The former Premier stated that the Bonnie Doon Football Club, which also stands condemned, was right to sack Ken Campagnolo as it ran a risk by 'having a man close to and massaging young men'. This suggests that Kennett believes all gay people are paedophiles. Does he suggest that gay women teachers should not teach young female students or gay male doctors not treat young males?

This outrageous outburst reaffirms my motivation to enter political life. I entered politics to right the wrongs of the former Premier and to contribute to the reinstatement of human rights for the people of Victoria. What will now happen among our force of sporting volunteers who contribute so greatly for the benefit of our communities? Will volunteers who happen to be gay resign, fearing the same discrimination by someone wishing to grab a headline? Or will they seek counselling at beyondblue to assist them with their recovery from their experience of being discriminated against? Not only has Jeff Kennett once again detrimentally impacted upon Victorian residents — —

The ACTING SPEAKER (Mr Ingram) — Order! The honourable member's time has expired.

Rail: north-eastern Victoria

Dr SYKES (Benalla) — I, like many people in north-eastern Victoria, welcome the proposed standardisation of the railway line between Seymour and Wodonga and the purchase of new rolling stock. That said, constituents have raised with me three issues which they, and I, believe need to be addressed in order to maximise the benefits of the upgrade works.

The first is the reopening of the Glenrowan railway station. Things have changed since it was closed in the 1980s. The population of Glenrowan and the surrounding area has increased, as has the need for public transport as the population ages and the cost of fuel rises. Glenrowan is a hub of regional tourism with Ned Kelly as the focus and with other attractions such as the Warby Ranges National Park and wineries and restaurants in both the Warby Ranges and the King Valley. Local, state and federal governments have invested millions of dollars in infrastructure improvements in Glenrowan, and there are plans to spend more, particularly in relation to water and sewerage upgrades. The state government plans to spend $20 million on the rehabilitation of the nearby Mokoan wetlands, with the expectation of attracting

300 000 people per year. A functional railway station at Glenrowan is obviously a key part of the future of the area.

The other issues are the need to standardise the Oaklands–Benalla railway line and the need for involvement of local people in the reconfiguration of the Benalla railway station. I look forward to working with the Minister for Public Transport and Department of Transport staff to achieve the best possible outcomes on these issues.

Turkish Islamic calligraphy exhibition

Mr SCOTT (Preston) — I rise today to draw the attention of the house and the broader community to the exhibition of classical Turkish Islamic calligraphy that is currently taking place in Queen's Hall in the Parliament. I know a number of members present, including the member for Bulleen, attended a function celebrating the exhibition last night. This is a fantastic exhibition of high-quality local art that celebrates a great artistic tradition.

The exhibition has been put together mainly by the Australian Turkish Institute and the Australian Denizli Association. I note the role played in the organisation of the event by Remzi Unal, a member of the Australian Denizli Association who approached me to sponsor the event. The Victorian Multicultural Commission is also supporting the event, and it is good to see both the Parliament and government supporting a truly community event for art that helps brings understanding between the Muslim and broader Australian communities. Islamic art is often not well understood. Calligraphy has a particular role in Islamic art because of the religious prohibition on representing human and animal forms in art due to the prohibition on idolatry.

This is a fantastic art exhibition that will hopefully bridge the gap by drawing upon the common bond of humanity and the desire for artistic expression that is shared by all cultures, and particularly by drawing the Turkish Islamic part of that tradition to the attention of the broader community. I urge all members to attend the exhibition and view the fantastic artworks, if they have not already done so.

Frankston bypass: funding

Mr BURGESS (Hastings) — The Frankston bypass is a crucial project for Frankston and Mornington Peninsula communities. During 2006 the Victorian Liberal Party committed to provide $250 million to build a toll-free Frankston bypass. An additional commitment to provide $150 million was subsequently announced by the federal coalition. Labor has refused to commit to this vital piece of road infrastructure beyond allocating $5 million for an environment effects statement (EES).

The EastLink tollway has now opened and has begun pumping around 30 000 extra cars a day through the already chaotic Cranbourne-Frankston Road and Moorooduc Highway intersection. Thanks to a planning masterstroke by the state government, this infamous bottleneck is also acquiring a 43 000 square metre bulky goods precinct to join the existing Bunnings, Monash University, Frankston Hospital turnoff and railway crossing, all of which are within 100 metres of the intersection! The people of Frankston and those passing through this area do not deserve this Brumby government nightmare. The state government boasts that motorists using EastLink will save 15 minutes on a trip from the city to Frankston, and I do not doubt that. EastLink is excellent. However, any time saved pales into insignificance against the 40 minutes or more it can take to get through Frankston.

A state government could not have designed a bigger mess for a community if it had tried, yet the Brumby government continues to sit on its hands. It should be noted that, despite his community's desperate plight, in his six years in Parliament the member for Frankston has not once called on his government to build the Frankston bypass. The member has only said the word 'bypass' twice in Parliament, and they were passing references to EES funding. It is one thing for the member to fail his own community — it will sit in judgement of him at the next election; it is another thing entirely when the consequences of his failures extend beyond the boundary of his electorate. The lack of a bypass creates great difficulty for all Peninsula commuters — —

The ACTING SPEAKER (Mr Ingram) — Order! The member's time has expired.

Strathmore Secondary College: concert

Mrs MADDIGAN (Essendon) — Strathmore Secondary College has a great music tradition, and that was again shown very clearly in its mid-year concert that was held at the Clocktower Centre, Moonee Ponds, on Tuesday night and last night. During the concert over 250 students from the school played a musical instrument. That is a fair indication of the great strength of the music tradition at the school. Just to show how diverse it is, some of the groups that played included the school's concert band, the symphony orchestra, the string orchestra, the brass ensemble, the Soundhouse big band, the percussion ensemble, the college choir,

the classical guitar orchestra, the flute ensemble, the chamber choir, the clarinet ensemble, the saxophone ensemble, the jazz improvisation band, the double reed ensemble and the harp ensemble. That just about covers the whole musical field! Students also performed as conductors, some were involved as backstage staff and some acted as masters of ceremonies for the event.

The great music concerts the school gives every year and the great talent it manages to foster are a great credit to the staff and students of Strathmore Secondary College and to the principal, Ken Harbottle. I would like to congratulate all the people who were involved. I know the audience at both concerts enjoyed the experience very much.

Innovation: Commercial Ready program

Mr KOTSIRAS (Bulleen) — Earlier this year the federal government axed the Commercial Ready program, which was a competitive, merit-based and supported innovation and commercialisation program. The program provided $200 million a year to small and medium enterprises, yet the Victorian government did not say a word. It remained mute. The Premier was silent, but he was happy to go to Los Angeles to get his photograph taken with Arnie. The Minister for Innovation was also silent, but he too was happy to fly business class to Los Angeles for more photo opportunities. However, the sector was disappointed, frustrated and angry at the axing of this program.

AusBiotech said this about the program:

> The ramifications of the withdrawal of a program to assist commercialisation of R and D are:
>
> (1) Products will not be commercialised
>
> …
>
> (2) Intellectual property (IP) will be lost overseas
>
> …
>
> (3) Reduction in capital flowing to early stage sector
>
> …
>
> (4) Lost leverage
>
> …
>
> (5) Australia's reputation as a 'clever country' diminished — —

The ACTING SPEAKER (Mr Ingram) — Order! The time for making members statements has expired.

ECONOMIC DEVELOPMENT AND INFRASTRUCTURE COMMITTEE

Financial services sector

Mr CAMERON (Minister for Police and Emergency Services) — I move:

> That so much of the resolution agreed to by this house on 1 March 2007, and amended on 20 November 2007, as provided for the referral to the Economic Development and Infrastructure Committee for inquiry, consideration and report on the key competitive advantages in Victoria's financial services sector be recscinded.

Motion agreed to.

LABOUR AND INDUSTRY (REPEAL) BILL

Statement of compatibility

Mr CAMERON (Minister for Police and Emergency Services) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

> In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Labour and Industry (Repeal) Bill 2008.
>
> In my opinion, the Labour and Industry (Repeal) Bill 2008 (the bill), as introduced to the Legislative Assembly, is compatible with human rights protected by the charter. I base my opinion on the reasons outlined in this statement.
>
> **1.1 Overview of the bill**
>
> The bill has two objectives:
>
> 1. to repeal the Labour and Industry Act 1958 (the LI act), which has been identified as redundant legislation; and
>
> 2. to make consequential amendments to other acts, to ensure their continued effective operation.
>
> **1.2 Human rights issues**
>
> Part 3 of the bill amends the ANZAC Day Act 1958 to include provisions relating to the closure of factories and warehouses on Anzac Day which are currently in the LI act, which the bill proposes to repeal.
>
> Clause 5C(1) requires an occupier of a factory or warehouse to ensure that the factory or warehouse remains closed on Anzac Day.
>
> Clause 5C(5) provides that where a body corporate is guilty of an offence, any person who is concerned or takes part in the management of the body corporate is also guilty of the offence. A defence is provided for in clause 5C(6) if the person charged proves that the offence was committed by the body corporate without that person's consent or knowledge and the person exercised due diligence to prevent the

commission of the offence. The defence would be required to be proved by a defendant on the balance of probabilities.

By placing a burden of proof on the defendant, clause 5C(6) limits the right to be presumed innocent in section 25(1) of the charter.

However, I consider that the limit upon the right is reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter having regard to the following factors:

(a) The nature of the right being limited

The right to be presumed innocent is an important right that has long been recognised well before the enactment of the charter. However, the courts have held that it may be subject to limits particularly where, as here:

the offence is of a regulatory nature; and,

a defence is enacted for the benefit of an accused to escape liability where they have taken reasonable steps to ensure compliance, in respect of what could otherwise be an absolute or strict liability offence.

(b) The importance of the purpose of the limitation

The closure of factories and warehouses is an extension of the public interest and commemorative purpose of the Anzac Day Act 1958. By extending liability to those concerned with the management of a body corporate, the bill recognises that it is those persons who have the responsibility and power to take steps to prevent breaches of laws by bodies corporate.

The purpose of the imposition of a burden of proof on an accused person concerned with the management of the body corporate, is to provide such a person with an opportunity to escape liability in circumstances where the offence was committed without his or her knowledge or consent and where the defendant took appropriate measures to ensure compliance with clause 5C(1), without undermining the ability to enforce the provision.

(c) The nature and extent of the limitation

The burden of proof is only on the defendant where he or she seeks to raise the defence and requires the defendant to prove, on the balance of probabilities, that he or she did not know or consent to opening the factory or warehouse on Anzac Day, and that he or she took reasonable steps to prevent this from happening.

(d) The relationship between the limitation and its purpose

The imposition of a burden of proof on the defendant is directly related to its purpose.

Before the defence could apply, the prosecution would have to establish that the body corporate is guilty of the offence and the accused is concerned or takes part in the management of that body corporate. It is reasonable to impose an obligation and corresponding liability on those who have the responsibility and power to take steps to prevent breaches of laws by bodies corporate.

(e) Less restrictive means reasonably available to achieve the purpose

Removing the defence altogether would not infringe the right to be presumed innocent. However this would not achieve the purpose of enabling the defendant to escape liability in appropriate circumstances.

Although an evidential onus would be less restrictive upon the right to be presumed innocent, it would not be as effective in achieving the purpose of the provision.

The defence relates to matters that are principally within the knowledge and/or control of the accused. Even with a notice provision, it would be difficult and onerous for the state to investigate and prove absence of knowledge and due diligence on the part of those involved in the management of a body corporate.

The inclusion of a defence with a burden on the defendant to prove the matters on the balance of probabilities achieves an appropriate balance of all interests.

(f) Other relevant factors

Whilst the prescribed penalty can involve fines of up to 100 penalty units ($10 000), it does not involve imprisonment.

Accordingly, the provision is compatible with section 25(1) of the charter.

1.3 Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because to the extent that the bill limits rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

ROB HULLS, MP
Minister for Industrial Relations

Second reading

Mr CAMERON (Minister for Police and Emergency Services) — I move:

That this bill be now read a second time.

The Labour and Industry (Repeal) Bill 2008 is a straightforward piece of legislation that will repeal the Labour and Industry Act 1958, and make some minor consequential amendments to three other acts.

As members are aware, the Brumby government is committed to reducing the regulatory burden on business. In 2006 we launched our Reducing the Regulatory Burden initiative, which included a commitment to review the state's laws. We promised that any act or regulation identified as redundant, or which overlapped other legislative requirements, would be repealed as soon as practicable.

Old and redundant legislation has the potential to impose unnecessary costs on business and the community at large. Even where an old act is no longer enforced, there is a recognised cost to business of

having to be familiar with the provisions of the act, and any obligations that may be imposed.

In 2007 the Victorian Competition and Efficiency Commission was directed to review the Labour and Industry Act. VCEC consulted widely and heard submissions from industry and community groups.

It is fair to say that the Labour and Industry Act was once one of the best known acts on the Victorian statute book. The act originally served as the primary source of workplace regulation, containing broad provisions concerning registration of shops and factories, general workplace conditions, safety requirements and the control of certain trades.

Over the years numerous other acts have replaced operative elements of this legislation. In 1979, for example, the Industrial Relations Act, which has in turn been superseded, became the primary instrument for regulating workplace relations in this state. In 1981 the Industrial Safety, Health and Welfare Act was enacted and in 1985 the Occupational Health and Safety Act separately regulated workplace health and safety. Long service leave, once regulated by the Labour and Industry Act, now has its own act, as do public holidays and shop trading hours.

Now only 35 of the original 207 sections from the 1958 act remain. Of those sections, only 14 actually relate to rights and responsibilities or have some material impact on business. There are no regulations. The remaining provisions cover a minimal number of matters, such as the provision of toilets, restrictions on the delivery of bread, and the appointment of inspectors, of whom none have been appointed since 1992.

There are other anachronistic provisions remaining in the Labour and Industry Act. For example, the act at section 56 requires a factory to have a prescribed amount of space and ventilation. Section 57 requires the provision of fire fighting arrangements, including full water buckets. Both these sections have been superseded by the Building Code of Australia as well as regulations made under the Building Act 1993.

Bread industry

The act originally regulated seven distinct trades, including billposting and stamping furniture. All provisions relating to trades have long since been repealed, except one relating to the bread industry.

The act makes it an offence to deliver bread at certain times on a Saturday or Sunday. There are also restrictions on the sale of bread beyond 48.3 kilometres from where it was baked. Victoria is the only state or territory imposing such restrictions.

The structure of the bread industry has also changed significantly over time, making such a provision less relevant. Evidence presented to the VCEC review suggested that the section was originally intended to protect local bakers in rural areas from competition from larger, more capital-intensive bakers. As VCEC noted in its report, there has been a growth in the proportion of bread supplied by manufacturing chains or franchises which bake locally but enjoy the economies of being part of a large organisation.

The provisions in the act relating to the bread industry are, of course, no longer enforced, but if they were to be enforced, these provisions are more likely to harm innovative specialist local bakers who would be prevented from reaching a wider market. The bread industry provisions as they stand are also inconsistent with the Victorian government's COAG commitments to implement broader competition policies.

The house will also be aware that the Bread Industry Act 1959 itself will soon be repealed. This act is included along with a number of other redundant bills, in the Legislation Reform (Repeals No. 3) Bill 2008.

Benefits of repeal

The VCEC review considered the question of whether repealing the Labour and Industry Act would place an undue burden on any section of the community or prevent the achievement of the Victorian government's policy objectives.

VCEC found that all substantive provisions of the act are redundant. The provisions are either no longer enforced and/or are replicated by other legislation. As such, the act imposes little, if any, compliance or administrative costs on business or the community. If the provisions of the act were to be enforced, then there would be substantial costs on business.

Even in the absence of any enforcement regime, there is still a cost involved in being aware of the act's existence and purpose. For example, to obtain registration by the Builders Practitioners Board to be an erector or supervisor of temporary structures (such as tents or stadium seating), the applicant must demonstrate knowledge of the Labour and Industry Act.

The benefits to business of repealing the act must be weighed against the cost to the community at large. Whilst there are not huge savings to be made through the repeal of the act, there are no identifiable benefits to

be had through its retention. On balance, repeal is warranted.

Amendments to other acts

VCEC was also asked to consider alternative means of dealing with any non-redundant provisions of the act. This led to the conclusion that should the act be repealed, consequential amendments would be required for three other acts. The bill before the house therefore amends the ANZAC Day Act 1958, the Education Training Reform Act 2006 and the Pipelines Act 2005.

The Labour and Industry Act contains a provision regulating the closure of factories on Anzac Day. The government has decided to maintain arrangements for regulating factories on Anzac Day, and to facilitate this through an amendment to the ANZAC Day Act. The bill will amend the ANZAC Day Act to generally provide that factories and warehouses, with certain exemptions, are to remain closed on Anzac Day. We believe, given the significance of Anzac Day, and the expectation that normal activities be curtailed on such an important day, that the current arrangements should be maintained. Members will probably be aware that the current ANZAC Day Act already imposes restrictions on entertainment and sporting events, and it is appropriate that the act also regulate the operation of factories.

In transferring the relevant provisions of the LI act to the ANZAC Day Act, it has not been possible to replicate the provisions in their original form due to drafting differences between the two acts. The proposed amendments have, however, been drafted to best reflect the actual provisions of the LI act and to ensure consistency with the ANZAC Day Act. In particular, the existing provisions in the LI act do not explicitly provide that an offence is committed or impose a penalty should a factory or warehouse be open on Anzac Day. The penalty associated with non-compliance of the factory closure provision under the general offence provisions of the Labour and Industry Act is $300. Further, in relation to the penalties, new section 5C in the ANZAC Day Act specifies that factories and warehouses (as defined in section 5B) must remain closed on Anzac Day. Responsibility for this will lie with the occupier. The LI act at section 139 did not specify who had to comply with this provision. The provision to be included in the ANZAC Day Act makes it clear that the responsibility lies with the occupier. This is preferable to the onus being on the factory owner, as the owner may have limited or no control over the factory's operations.

It is proposed to increase the penalty for non-compliance to 100 penalty units, which is consistent with existing penalties under the ANZAC Day Act and the 2002 recommendation of the Scrutiny of Acts and Regulations Committee. The higher penalty now creates a significant deterrent in comparison to the previous penalty. It should also be noted that the existing penalty in the Labour and Industry Act has not increased for many years. The original penalty, dating from the 1953 Labour and Industry Act, was £20. Twenty pounds, roughly $40, certainly went a lot further back then.

Factories that are currently required to be closed on Anzac Day under the LI act will still be required to be closed following amendments to the ANZAC Day Act. Similarly, exemptions that currently apply will still stand.

The government will continue to monitor Victoria's legislative framework to ensure Anzac Day commemorative events are adequately protected.

The Education Training Reform Act requires amendment as it seeks to rely on the definition of factory in the Labour and Industry Act. It is proposed to amend the Education Training Reform Act, so that the definition of factory will be the same definition as in the ANZAC Day Act.

The Pipelines Act also relies on the definition of factory in the Labour and Industry Act. Due to the construction and application of this act, it has been determined that the current reference to the definition of factory in the Labour and Industry Act should be repealed, rather than amended.

There are two other minor drafting changes I wish to bring to the house's attention. The definition of laundry currently in the Labour and Industry Act, which will be replicated in the ANZAC Day Act, refers to inmates of a 'juvenile school'. I have been advised that inmates of youth justice centres and youth centres, the modern equivalent of a juvenile school, do not undertake any laundry work. It is therefore proposed to remove the term 'juvenile school' from the legislation.

Secondly, it is proposed to include a provision in the same terms as section 5(4) of the ANZAC Day Act in the section dealing with factories and warehouses to be closed on Anzac Day (clause 5C of the bill). This provides generally that if a body corporate is guilty of an offence, any person concerned with management of that body corporate is also guilty of the offence. Defences to the charges brought pursuant to subsections (1) and (2) of section 5C will also be

included to mirror the equivalent defence currently available in the ANZAC Day Act.

Conclusion

In conclusion, there is no argument that, with the exception of the provisions relating to Anzac Day, the Labour and Industry Act fails all necessary tests of relevancy. Despite its lack of relevancy, its continued existence imposes at the very least an inconvenience on business. Repeal of the act will have no detrimental affect on business, employees, or the general community. In repealing the act, we have ensured that arrangements for factory closures on Anzac Day, including any exemptions, have not changed.

I commend the bill to the house.

Debate adjourned on motion of Mr O'BRIEN (Malvern).

Debate adjourned until Thursday, 14 August.

WHISTLEBLOWERS PROTECTION AMENDMENT BILL

Statement of compatibility

Mr CAMERON (Minister for Police and Emergency Services) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Whistleblowers Protection Amendment Bill 2008.

In my opinion, the Whistleblowers Protection Amendment Bill 2008, as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The bill permits the Ombudsman to table a report under section 103 of the Whistleblowers Protection Act 2001 (the act) that is likely to identify a person against whom a protected disclosure is made when the Ombudsman is of the opinion that disclosure of the identifying information is in the public interest.

Human rights issues

The proposed bill engages the rights contained in section 13 of the charter. Section 13 provides that a person has the right:

> not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
>
> not to have his or her reputation unlawfully attacked.

The right to privacy concerns a person's 'private sphere', which should be free from government intervention or excessive unsolicited intervention by other individuals. An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. An interference will not be arbitrary provided that the restrictions on privacy are reasonable in the particular circumstances.

The interference with privacy and reputation is neither arbitrary or unlawful as the Ombudsman's power to table a report is circumscribed and certain, and is reasonable given the important public interest in the Ombudsman reporting to Parliament on an investigation into a protected disclosure. In particular, the bill sets out a non-exhaustive list of criteria to guide the Ombudsman in determining whether or not it is in the public interest to disclose the identity of a person against whom a protected disclosure is made including:

> the nature of the particulars to be disclosed;
>
> the public interest to be served by the disclosure;
>
> the reasons why confidentiality is not appropriate; and
>
> whether or not the public interest could be met in a manner that is unlikely to lead to the identification of the person.

The bill also provides that the Ombudsman is required in the report to detail the reasons why it is considered that the public interest requires that the report should identify the person subject to investigation.

Section 61(1) of the act provides that the Ombudsman must not, in any report under part 5 or part 8 of the act, make a comment adverse to any person unless that person has been given an opportunity of being heard in the matter and their defence is fairly set out in the report. The requirements set out in section 61(1) do not currently apply to a report tabled under section 103 which is in part 9 of the act.

The right to privacy involves procedural aspects requiring some involvement of the person to be identified in decision making which will interfere with his or her privacy. Consequently, the bill extends the safeguards in section 61(1) of the act to a report tabled under section 103. In addition, the bill provides that the Ombudsman must provide to the person who is subject to adverse comment:

> details of the adverse comment; and
>
> either:
>
> > a copy of the parts of the report that relate to the adverse comment; or
> >
> > information about the adverse comment
>
> that would adequately enable the person to put forward any defence they may want to be set out in the report.

Therefore, any interference with the right to privacy or reputation is neither arbitrary or unlawful, and there is no limitation on the rights in section 13 of the charter.

Consideration of reasonable limitations — section 7(2)

The bill does not limit any human rights and therefore it is not necessary to consider section 7(2) of the charter.

Conclusion

The Whistleblowers Protection Amendment Bill 2008 engages section 13 of the Charter of Human Rights and Responsibilities. The fact that the proposed amendments apply to investigations that have already commenced or been conducted does not, of itself, make the legislation arbitrary. In addition, the transitional arrangements also provide that the amendments do not apply where the Ombudsman has made a previous report under section 63 of the Act or tabled a report under section 103 of the Act prior to the commencement of the amending Act. Sufficient safeguards have been included in the bill to ensure the amendments do not result in an unlawful or arbitrary interference with privacy or reputation.

ROB HULLS, MP
Attorney-General

Second reading

Mr CAMERON (Minister for Police and Emergency Services) — I move:

That this bill be now read a second time.

The Whistleblowers Protection Act 2001 (the act) was introduced to implement a key commitment of the Labor government to legislate to protect people who disclose information about serious misconduct in the Victorian public sector. The legislation was part of a raft of reforms introduced by this government to ensure government is open, honest and accountable.

The Ombudsman is due to finalise an investigation initiated under the act. The matter has been the subject of considerable comment in the media and the Ombudsman believes that it is in the public interest to report to Parliament on the outcomes of the investigation.

Section 103 of the act allows the Ombudsman to, at any time, report to Parliament on any matter arising in relation to a public interest disclosure under the act. However, section 22(3) provides that the Ombudsman must not, in such a report, disclose particulars likely to lead to the identification of a person against whom a disclosure is made.

The Ombudsman is concerned that, given the high-profile nature of the matter, he will not be able to make a report to Parliament without including details that would identify the individual or individuals being investigated. The Ombudsman has therefore requested that section 22(3) be amended to allow him to make the report.

In summary, the bill removes the impediment that currently prevents the Ombudsman from tabling a report in Parliament under section 103 of the act that contains particulars identifying a person against whom a protected disclosure is made. The amendments also include certain safeguards to ensure that identifying a person against whom a protected disclosure is made is not an unlawful or arbitrary interference with that person's right to privacy or reputation.

It is intended that the amendments contained in the bill apply to any report tabled by the Ombudsman pursuant to section 103 regardless of when a disclosure under the act is, or was, made or an investigation under the act is, or was, commenced. That is, upon commencement of the amendments, the Ombudsman will be able to table a report identifying a person against whom a protected disclosure has been made, where that disclosure was made and the investigation begun before the commencement of the act. However, the transitional arrangements also provide that the amendments do not apply where the Ombudsman has already made a report under section 63 of the act or tabled a report under section 103 of the act prior to the commencement of the amending act.

I commend the bill to the house.

Debate adjourned on motion of Mr O'BRIEN (Malvern).

Debate adjourned until Thursday, 14 August.

ROAD SAFETY AMENDMENT (FATIGUE MANAGEMENT) BILL

Statement of compatibility

Mr PALLAS (Minister for Roads and Ports) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Road Safety Amendment (Fatigue Management) Bill 2008.

In my opinion, the Road Safety Amendment (Fatigue Management) Bill 2008, as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Part 1 — Overview of bill

The bill amends various provisions inserted into the Road Safety Act 1986 ('the act') by the Road Legislation Further Amendment Act 2007 ('the amending act') to introduce heavy vehicle driver fatigue management reforms developed by the National Transport Commission and approved by the Australian Transport Council.

The fatigue management provisions inserted into the act were based on model legislation but, since the implementation of

the amending act, a number of nationally approved amendments to the fatigue management reforms have been developed. These amendments need to be incorporated into the regime as introduced by the amending act. The bill achieves this purpose.

The bill also includes some minor technical and drafting amendments to the act.

Part 2 — Human rights protected by the charter that are engaged by the bill

Section 25(1) — the right to be presumed innocent until proved guilty

Section 25(1) of the charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Several offence provisions in the bill, which require the defendant to prove a defence in order to escape liability, will engage this right.

Clause 4(7) of the bill amends section 191A of the act to expand the definition of 'unloader' to include a person who supervises, manages or controls the loading or unloading. This will slightly broaden the scope of the definition of 'party in the chain of responsibility', a term which is defined so as to include the 'unloader of goods from the vehicle'.

This has the effect of slightly expanding the scope of sections 191E, 191L, 191M, 191N, 191O, 191P and 191Q of the act, which impose various duties on parties in the chain of responsibility to take reasonable steps to ensure that the driver of a fatigue regulated heavy vehicle does not contravene a maximum work requirement, a minimum rest requirement or a work diary requirement. Parties in the chain of responsibility who fail to do so may be liable for offences which are offences of absolute liability, subject in most cases to defences.

A party in the chain of responsibility (other than an operator) who was in a position to influence the conduct of the driver is able to invoke the reasonable steps defence set out in section 191ZZP of the act, which provides that such a person has a defence if the person establishes that the person did not know and could not reasonably be expected to have known of the contravention, and either the person took all reasonable steps to prevent the contravention or there were no steps the person could reasonably have taken.

Thus, under the provisions of the act, a number of parties in the chain of responsibility may be deemed to have committed an offence unless they can prove the existence of the reasonable steps defence.

The amendment to section 191A expands the class of persons who are parties in the chain of responsibility so as to include persons who supervise, manage or control loading or unloading.

Two further amendments made by the bill potentially engage the presumption of innocence because they add new offences which require the defendant to prove the existence of a defence.

Clause 15 of the bill amends section 191V of the act. Section 191V of the act makes it an offence to fail to report a filled up, destroyed, lost or stolen written work diary or a malfunctioning electronic work diary or to apply for a replacement work diary, subject to various defences. The proposed amendment, to subsection 191V(7), specifies that a person charged with an offence under the section does not have the benefit of the 'mistake of fact', rendering the offence one of absolute liability. A person charged with an offence still has a defence if they can prove certain things (including that the work diary was filled up, lost or stolen, and the driver complied with certain other requirements), but the effect of the amendment is to increase the driver's reliance on a reverse onus provision in order to avoid liability.

Clause 28 of the bill inserts new section 191ZXA into the act. This new section requires a driver using an electronic work diary to use it in accordance with the manufacturer's specifications and any conditions imposed by VicRoads. The record keeper must ensure that it is so used. It is a defence (and the onus is on the defendant) to prove that, in a failure to comply with a specification, the specification was not integral to effective operation, or the failure to comply was in accordance with industry practice.

These amendments also involve reversal of the onus of proof and accordingly also engage the right to be presumed innocent until proven guilty under section 25(1) of the charter.

The question of whether this limitation is reasonable, in that it can be demonstrably justified for the purpose of section 7(2) of the charter, is examined in part 3.

Section 13 — privacy and reputation

Section 13 of the charter provides that a person has the right —

> "(a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
>
> (b) not to have his or her reputation unlawfully attacked."

New sections 191ZN(3) and 191ZX(3) of the act, inserted by clauses 21 and 27 (respectively) of the bill impose a requirement on an operator, operating under one of the two fatigue management accreditation schemes established by the act, to provide to VicRoads, in a form and within a time specified by VicRoads, a copy of the list of drivers required to be maintained by the operator and details of any changes to that list. The collection of personal information engages the right to privacy.

The reason for these amendments is to ensure that VicRoads is able to properly monitor operators' compliance with scheme requirements by enabling it to identify particular drivers engaged by an accredited operator at particular times. By being able to ascertain the identity of drivers, VicRoads is able to determine whether drivers are engaged by more than one operator, and to investigate whether other scheme requirements are being complied with.

While these provisions engage the right to privacy they do not limit that right. Collection of this information will be in accordance with law. VicRoads is subject to the collection requirements under the Information Privacy Act 2000 (in particular, to collect information by lawful and fair means and to ensure that the individual is made aware that the information is being collected). The amendments made by the bill would not authorise non-compliance with those

obligations. Nor do the provisions create an arbitrary interference with privacy. The information that VicRoads can obtain under the power is limited to the identity of the driver and the fact that he or she is engaged with a particular accredited operator. No other personal information is required to be provided.

Part 3 — Consideration of reasonable limitations under section 7(2) of the charter

Section 25(1) — presumption of innocence

The limitations presented by the bill on the right to be presumed innocent, as identified in part 2 above, can be demonstrably justified as reasonable, having regard to the following considerations.

(a) The nature of the right being limited

The right to the presumption of innocence is aimed to ensure that the burden is generally on the prosecution to prove, beyond reasonable doubt, that a defendant committed the relevant elements of the offence. The presumption of innocence is not an absolute right, which means that it may be limited to a certain degree if justified by the circumstances. Ultimately, what the courts are concerned about is the risk that a person may be convicted of an offence even where there is a reasonable doubt that they are innocent of the conduct at which the offence is aimed.

(b) The importance of the purpose of the limitation

These amendments, and the offence provisions they affect, are intended to improve road safety, including by decreasing road fatalities, by better regulating fatigue in the drivers of heavy vehicles. This is a significant and important objective.

There is a well-established correlation between driver fatigue and road safety. From consultations conducted by the National Transport Commission it appears that there is a widely held view that a range of persons involved in road transport other than drivers can and do influence driver behaviour, in particular by encouraging or providing incentives for drivers to contravene regulatory requirements designed to combat driver fatigue, or by failing to prevent or discourage such conduct when they are in a position to do so.

The persons considered able to influence driver behaviour in this respect include people who supervise and control loading and unloading. It is accordingly considered appropriate to extend liability to such persons. The purpose of the chain of responsibility approach to compliance is to ensure that those who are in a position to influence or prevent conduct by the driver (such as a person who manages the loading or unloading of a heavy vehicle) are held responsible where that conduct could give rise to a breach. This encourages an overall culture of compliance within which it is more conducive for the driver to act responsibly.

(c) The nature and extent of the limitation

A person who is seeking to establish a defence to the general duties has the burden of proving, on the balance of probabilities, either that they were not in a position to influence the driver or that they took reasonable steps to prevent the contravention. If they seek to prove that they took reasonable steps, they will in most cases have to lead evidence to address at least some of the matters specified in section 191ZZP of the act.

(d) The relationship between the limitation and its purpose

It is considered that these amendments constitute an appropriate and proportionate means of addressing the purpose sought to be achieved by the fatigue management provisions. Imposing the onus on the defendant in these circumstances serves the legitimate purpose of providing a proper balance between:

> the objectives of the chain of responsibility approach to compliance (that is, to ensure that persons who are in a position to influence or prevent conduct of the driver are held responsible where that conduct gives rise to a breach); and
>
> the need to ensure that influencing persons are not found liable where they could not be said to bear any real culpability for the conduct of the driver.

Overseas courts have generally accepted that reverse onus provisions in the context of regulatory offences are more likely to be justifiable. The rationale for this justification includes the lesser degree of moral culpability attaching to such offences, the need for regulatory offences to be simple to prosecute, and that those who choose to participate in a heavily regulated or licensed regime, such as driving, have knowingly accepted the higher standards of behaviour required of them.

While the offences carry potentially high maximum fines, they are not punishable by imprisonment. In addition, the amount of fine that may be imposed is a matter of judicial discretion which will take into account the degree of culpability.

It should also be noted that it is expected that proper exercise of prosecutorial discretion will ensure that persons who fall within the definition of persons in the chain of responsibility, but who in no sense could have influenced or prevented the offence, are not prosecuted.

(e) Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the purpose of the amendment.

Many of the matters that might need to be put to the court by the defendant are matters for which evidence would not readily be available to the prosecution, meaning that a mens rea offence is not appropriate. For example, in the absence of detailed admissions from the influencing person, the prosecution would not ordinarily be able to establish that an influencing person did not know of the contravention, nor that it took all reasonable steps to prevent the contravention. Moreover, the prosecution would not readily be able to prove that a person in the chain of responsibility was in a position to influence the conduct of a driver, or to produce evidence as to the measures taken by the influencing person to supervise others or to prevent or eliminate a contravention. Other matters that might need to be put to the court by the defendant are matters for which evidence would be no less readily available to the defendant than to the prosecution.

It is considered necessary to impose a legal as opposed to an evidential burden on the defendant in respect of these matters because placing an evidential burden on the defendant would require the prosecution to disprove matters raised by the defendant which the prosecution would not reasonably be

able to disprove (for example, in the case of the section 191V offence that the driver's diary had not been filled up or lost and that the driver had not been completing supplementary records, and in the case of the 191ZXA offence, that the driver's failure to maintain the electronic diary in accordance with the manufacturer's specifications was in accordance with industry practice).

Part 4 — Concluding statement

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities.

The bill engages the rights protected by sections 13 and 25(1) of the charter. However, it does not limit the right protected by section 13 (the right to privacy), and any limitations imposed on the right protected by section 25 (the presumption of innocence) are reasonable and demonstrably justifiable having regard to the matters set out in section 7(2) of the charter.

Tim Pallas, MP
Minister for Roads and Ports

Second reading

Mr PALLAS (Minister for Roads and Ports) — I move:

That this bill be now read a second time.

This bill makes some amendments to the heavy vehicle driver fatigue management reforms which were implemented by the Road Legislation Further Amendment Act 2007.

The National Transport Commission has undertaken a comprehensive review of the regulatory approach to managing fatigue in drivers of heavy vehicles. This review culminated in the development of national model legislation which was approved by the Australian Transport Council in February 2007. The national model legislation was implemented in Victoria through the Road Legislation Further Amendment Act 2007.

Key elements of these fatigue management reforms are:

new work hours limits and rest time requirements;

flexible driving hours, using a three-tiered approach;

a risk-based categorisation of offences;

a general duty to avoid driver fatigue;

enhanced enforcement powers;

a chain of responsibility, in which a duty is imposed on persons who share, with drivers, the responsibility for fatigue management;

strengthened record-keeping requirements, with a work diary replacing the driver's log book.

The reforms provide for a more flexible, performance-based approach to driving hours that includes standard hours, basic fatigue management and advanced fatigue management options. The latter two options require accreditation with VicRoads, which will be subject to conditions relating to compliance with the relevant fatigue management standards and business rules.

Since passage of the Road Legislation Further Amendment Act 2007, the National Transport Commission has developed three packages of amendments to the fatigue management reforms. These amendment packages have been approved by the Australian Transport Council. The bill before the house implements the three agreed amendment packages.

The packages contain a number of minor technical and drafting amendments. They also strengthen the fatigue management reforms by:

enhancing work diary and record-keeping requirements;

enhancing accreditation requirements;

clarifying the definition of short rest breaks so that the rest may be taken in the vehicle;

reforming the role of the fatigue authorities panel, to assign responsibility for appropriate functions to that panel.

I commend the bill to the house.

Debate adjourned on motion of Mr O'BRIEN (Malvern).

Debate adjourned until Thursday, 14 August.

HERITAGE AMENDMENT BILL

Second reading

Debate resumed from 30 July; motion of Mr BATCHELOR (Minister for Community Development).

Mr NORTHE (Morwell) — It gives me great pleasure to speak on the Heritage Amendment Bill 2008. The purpose of this bill is to amend the Heritage Act 1995 in relation to the process of registration of a place or object; to create a new offence of failing to comply with a permit or a condition of a permit; to

clarify that a security may be required as a condition of a permit; to ensure that the certificate provisions refer to world heritage environs areas; and to abolish a Historic Shipwrecks Advisory Committee.

The main provisions of this bill stem from recommendations that came from the Heritage Council to the government with a focus on ensuring that we hasten the current processes in regard to heritage approvals and enhance the protection of properties already deemed to be heritage sites. Following passage of this bill we will hopefully see the longest time taken for heritage approval dropping from 21 months to around 7 months. This will be achieved by way of reducing a two-panel hearing process to just one panel. No doubt this will create a greater amount of certainty for owners of properties that have been recommended for heritage listing.

The current situation is that when the executive director makes a recommendation that differs from the Heritage Council's recommendation we have a process whereby two hearings are held, and this bill will provide for a single hearing to determine such matters. We should not forget the historical significance of assets within our local communities, and that could possibly apply to events, too. In the event that the Omeo under-16 football team defeats the Traralgon under-16s, we could possibly apply for heritage listing of that match because it would happen only once in a lifetime!

Within the Morwell electorate there are a number of historical societies that operate — in Morwell, Traralgon, Boolarra, Yallourn North and surrounds — and they do a fantastic job in ensuring that we acknowledge the heritage of our local communities. It is amazing to see how far we have come over the years when you look at some of the photographs and hear about the history upon visiting some of these societies. The Traralgon and District Historical Society also covers many of the surrounding areas such as Glengarry, Toongabbie and Tyers.

I spoke to some groups about this particular bill and about some of the concerns they may have had with it or some aspects of the bill that they agreed with. There is no doubt that the need to hasten the process of applications and approvals was very strong in their minds. Some of the comments that came back were around the need to tighten up the administration. There were also some complaints about how long the current process takes to arrive at a decision. I appreciate the feedback that I gained from those particular groups.

It is important that we strike the correct balance in our local communities between protecting our heritage and not prohibiting development at the same time. I can provide a couple of examples of recent disputes that have occurred within the Morwell electorate. There was the situation in Traralgon within the central business district area where a local developer had purchased some land with the aim of building a significant residential and office development on the corner of the Princes Highway and Post Office Place. Once he had purchased that parcel of land it came to light that there was a rare tree growing on it — an azarole hawthorn tree. In some areas it is deemed to be a noxious weed, and there was some dispute over the future of this particular tree. It ended up being heritage listed, and it caused great consternation and debate within the local community. On the one hand this tree was prohibiting development, but on the other hand we needed to protect a rare species in our township.

There was much procrastination and much media coverage. Both sides came out publicly, and they spoke about the need to protect a unique asset and also the need to progress development. Among the comments made during that particular debate, Cr David Wilson hit out at the decision of the Heritage Council and basically made the claim that this tree was a noxious weed. That was reported in the *Traralgon Journal* of 1 April 2008 — April Fools' Day. There you go. This tree had been around for a long time, and it was deemed to be the only tree of its kind in existence in Victoria, so you can understand the Heritage Council wanting to claim that.

Later on the local media were asking: why did the heritage tree cross the road? In this circumstance the developers, the Heritage Council and the local council had decided that the tree could be moved to a more appropriate place, so a motion was put forward to relocate the tree across the road to Victory Park and a more appropriate setting at a cost of something like $100 000 to the developer. I make the point that it is important that we strike a balance to protect our heritage and unique assets such as this tree, but at the same time we do not want to prohibit development. The relocation of the tree will cost about $100 000, and I believe a permit has been granted for that to proceed. Ultimately we have a gain, but not only has the process been costly in a monetary sense but also the time lines have been unproductive for all concerned.

Our local community also has the Traralgon post office and courthouse complex, which is heritage listed. The complex has been the cause of much debate in recent times. The future of the post office was a significant issue in the lead-up to the recent federal by-election, which Darren Chester won so well. The post office was a key issue for the local community, which wanted not

only to retain the postal services in that vicinity but also to protect the heritage of that building. It is a very important asset which the locals feel very strongly about, and members of the Traralgon and District Historical Society have no doubt made their feelings heard about the fact that it should be a community building.

Toongabbie Mechanics Institute is also in my electorate, and I had the pleasure of visiting it recently. It is a magnificent tribute to the local community, including Roger Ries and others who showed us through the institute. The heritage buildings out at Toongabbie are amazing, and the people of that small community have done a fantastic job. The builders of the mechanics institute were the Hollingsworth family, who are still prominent builders in the Latrobe Valley.

The administration building at the Yallourn power station is also heritage listed. Anne Lovison and her team have a marvellous historical collection about the coal industry since it began. They have some amazing photographs of the open-cut mine and the power station going right back to their infancy. They have done a wonderful job of ensuring that we have appropriate records. It is amazing to see the processes of what has been done over a period of time. The collection is a great attraction for that community and for people to visit. It is about ensuring that we retain the records of our local communities.

I had a look on the Heritage Victoria website and saw an application for the Traralgon bypass back in 2000. It refers to a brick-pit channel where the bypass was originally going to be installed. It is quite interesting to read about the historical significance of the channel. It is a brick-pit channel out in the middle of the paddocks and it was put on the heritage list so that people could gain an understanding of the historical significance of some of the farming practices back in the 19th and 20th centuries. Not only are there some great heritage assets in the Latrobe Valley and the Morwell electorate, they can be found all over Victoria, and we should protect them. The bill will hasten the process, which will be welcomed by all who have some involvement with heritage listings, so The Nationals are happy to not oppose the bill.

Mrs MADDIGAN (Essendon) — I also rise to support the Heritage Amendment Bill 2008. This bill contains a number of provisions which will support the Heritage Act 1995.

I was a little concerned about some of the comments made by the member for Morwell, particularly those that related to the Heritage Council. I would like to state that I have the highest regard for the Heritage Council. As the president of the Essendon Historical Society for many years, I worked very closely with the HCV in getting some buildings listed. I was not a member of Parliament at the time. I worked to have put on the heritage register such buildings as the old courthouse and Queens Park cottage. As Speaker in the last Parliament I asked Heritage Victoria for assistance in relation to this heritage building. At all times I found the HCV very helpful and of great assistance. The council is only too willing to assist people in ensuring that buildings of significance and importance are maintained for future Victorians.

There has been some suggestion that, if protecting heritage buildings costs money, then that should be open to doubt. Unfortunately the reality of life is that, if you want to protect old buildings, old trees or other assets of Victoria that are important to the community, it is expensive to do so, but to suggest that such works should not be done because significant amounts of money may be involved would cause me great concern, because some things are important parts of our heritage and are significant in the development of Victoria and local municipal areas. It is essential that we, as the current government — and local government as well — understand that we have responsibility not only to the current generation but to future generations to ensure that those assets are protected. There has to be an understanding that that does not necessarily come cheap and that we have to be prepared to meet those costs.

The amendments in this bill support the principal act and fill up some gaps in that legislation. It will make it much easier for people who are seeking to have items put on the register heritage, and it contains some stronger provisions to enforce heritage listings and other restrictions put on buildings that are significant. These gaps have caused trouble. I am sure other members in this place will know concerned residents who have approached them and feel that the process has let them down, particularly in relation to conditions on a permit not being completely met. Sometimes there have been great difficulties in overcoming that problem. The provisions of this bill will significantly improve the process.

The first amendment speeds up the process for deciding whether a building or some other asset should be on the heritage register. I think this amendment will be warmly welcomed by community groups, who in the past have had to go through lengthy and sometimes costly processes — sometimes two processes — to get to the end of the story. The processes have been extremely costly and, as other members have said, sometimes very lengthy, so it is essential not only that

people have the opportunity to represent themselves and have a say but also that the matter can be determined in a reasonable period of time. The changes in this legislation will have a significant impact on that, and I think people will be very pleased to see them.

Since 2000, 12 cases have required double hearings. Whilst that does not sound like a huge number, in terms of cost and the involvement of not only government officials but more particularly resident groups and people in the community the process has been expensive and difficult. The process brought in by this legislation should be much better, and I think people will be pleased that they will have much quicker access to it. I think this measure will be warmly supported by all members of the community

The next amendment refers to the abolition of the Historic Shipwrecks Advisory Committee. The provisions of the Historic Shipwrecks Act 1981 were transferred to the Heritage Act in 1995, but in 2008 the format of that committee does not meet the format of the other committees in the HCV's area. It is not same as other advisory committees, its structure is old fashioned and it needs to be brought into line with the other advisory committees of the Heritage Council, so the bill provides for that to occur.

I had some problems with another amendment, as have some other people in my electorate. It refers to the offence of failing to comply with a condition on a heritage permit. At the moment the Heritage Act is not the same as the Planning and Environment Act, but this will bring it into line. This legislation already provides for the offence.

Some of the heritage permit conditions, with which I am sure other members will be familiar, are things like the protection of parts of the place, including sensitive fabric, trees and landscape features during construction, and undertaking conservation works and/or a range of repairs and maintenance works, and of course these ensure a good conservation outcome for the place. Failure to comply with these provisions can in fact have a significant detrimental effect on the heritage value of the area. Currently, while it is an offence to carry out development without a heritage permit, it is not actually an offence not to comply with the condition of that heritage permit. That has made it very difficult for community groups, or even councils and other people, to have the building or the asset protected in the way it was envisaged it should be when there has been no opportunity to enforce the conditions of a permit.

I very much welcome this provision in the bill, and I am glad to see the bill contains some significant penalties; the maximum for an individual is $12 000 and for a company it is $61 000.I think that will send a very clear message to people who are working in that area that they have to comply with all those conditions. That is not for all people of course, but the situation will not exist, as has been the case in the past, where people tend to go before it is finished, and then it is exceptionally difficult to get them back again. I think the community at large will very much welcome that condition. As I said, it does bring it into line with the Planning and Environment Act, which is good as well.

The other provision is to enable financial security to be used to ensure compliance with a condition of permit. That actually relates to the last provision, and I think that will be warmly received by people. Of course you do get your money back at the end if you have complied with the heritage conditions, and in fact this process has been used in some areas already, like the Melbourne post office.

The final provision, which I nearly forgot about, is the certificate provision to include reference to world heritage environs areas. At the moment a person buying a property in an area would not have its status revealed through a certificate titles search. In fact this ensures that people know exactly the status of any property they might be interested in, and it is only fair that that should occur as well.

These are significant provisions that do support our Heritage Act. My electorate has a significant amount of housing stock from Edwardian and Victorian times, as well as a number of other buildings; in fact some members of this house may even live in housing stock of that nature. It certainly does make the suburb a very attractive place for people to live and certainly the maintenance and upkeep of those buildings is strongly supported by members of the local community. I know they will very much welcome these changes, which do strengthen that protection, and allow Essendon to remain the wonderful heritage suburb that it is.

Mr CRISP (Mildura) — I rise to speak on the Heritage Amendment Bill 2008. The Nationals in coalition are not opposing this bill. Its main provisions are to amend the Heritage Act 1995 in relation to the process of registration of a place or object; to create a new offence of failing to comply with a permit or a condition of a permit; to clarify that a security may be required as a condition of a permit; to ensure that the certificate provisions refer to the world heritage environs areas; and to abolish the Historic Shipwrecks Advisory Committee.

As the member for Morwell has previously spoken on many of the details in the bill, I will principally focus on the Historic Shipwrecks Advisory Committee. This bill abolishes that committee and replaces it with a maritime heritage council. We understand the intention is to enable a wider range of heritage matters to be dealt with by the new body.

I will talk about freshwater shipwrecks, which present very complex issues. They are located in our inland rivers and waterways, and most of them are on the Murray. These wrecks present complex cross-border and federal issues and also concern rivers in New South Wales. The wrecks are sometimes covered by some federal legislation, but it appears most of these wrecks are now owned by Victorians, and most of the wrecks that have been raised in recent times have been restored to be a part of Victorian tourism. The riverboats that have been restored are an extremely valuable part of the tourist assets of Echuca, Swan Hill and Mildura. These are enjoyed by many, many people, and again predominantly Victorians.

We have a challenge with those cross-border issues. Some of those issues faced by owners, particularly when it becomes an historic wreck, become even more complicated as the restoration projects are attempted. Unlike many of our shipwrecks which are well out of the way and well beyond restoration or recovery, many of these river wrecks are in fact objects of recovery and restoration, to be enjoyed by the wider community. They are also becoming exposed due the lower river levels. As a result of this terrible drought we are in, some of these wrecks are being exposed, and that too has had tourist value.

During the recent removal of the Mildura weir, which saw the river drop around 4 metres, considerable wrecks were exposed around Mildura and became quite a tourist attraction themselves. However, it does raise safety issues, and although many of those are matters for another authority in another state, the ownership of the wrecks is often traced to Victorians, so Victorians are found to be responsible and have to deal with an interstate authority.

I look forward to these changes being positive for our river wreck situation. Also, in this period of new cooperative federalism between all state and federal Labor governments, I hope this issue can be resolved soon. It is important that it be resolved.

The other area I would like to mention is that in Mildura we have the historic Carnegie Centre, which is celebrating its centenary. I had the pleasure of attending the celebration, and I wish to commend the Mildura historical committee for the work it did in transforming that building when it was retired from being a great gift to the people of Mildura by both residents and the Carnegies to form a library and form a basis for education. It now forms part of the genealogical society and the local historical society. It was indeed a very pleasurable evening spent with Glenn Miller and the other members of those committees. With that, and particularly with that focus on the river wrecks, which are not to be forgotten, I inform the house that The Nationals are not opposing this bill.

Mr INGRAM (Gippsland East) — It is a pleasure to rise to speak on the Heritage Amendment Bill 2008. The bill before the house amends the Heritage Act 1995 and does a number of things in relation to the registration of places or objects. It creates new offences for failing to comply with the conditions of a permit. It also clarifies a number of issues around financial securities that may be applied to ensure that compliance. It makes a number of other changes in relation to shipwrecks and it abolishes the Historic Shipwrecks Advisory Committee. It brings the management of shipwrecks back into the normal process for our committees, because there ha thee been some differences in the way these places have been established.

I would like to specifically talk about some of the processes that occur. I will pick up some comments made by the honourable member for Morwell when he was talking about the Traralgon post office. That is an important building, like many of our old public buildings in our communities. They have a great place within the history of the towns they are in. I think the most disappointing thing is when actions are taken to remove those buildings. Legislation like this which strengthens those processes to ensure the retention of those heritage buildings is important.

One of the most disappointing acts of what I would call vandalism relating to our heritage buildings in Victoria occurred in Bairnsdale. We have a number of very, very important historical buildings. One of them was the Bairnsdale post office. This is still one of those issues which is talked about regularly among members of the East Gippsland community. They still ask why the community allowed that building to be pulled down. If you look at the old photos you see a very spectacular building, and what we have now is a sort of modern equivalent on the same site. It really is a tragedy that we did not protect that very important heritage building.

In Australia, because we are a fairly new, young country, there have been times in our history when we

have not necessarily valued our older buildings as other countries have done theirs. We have only to look overseas to see the importance other countries place on retaining heritage buildings and preserving the character they bring to towns.

There are some challenges with this, though. Right next to the old post office site is our court building, which is a very important and spectacular brick building that was built when Victoria was fairly wealthy. Our region, like Bendigo and Ballarat, was the site of a large amount of goldmining, and a lot of money was put into public buildings and public assets in towns with that sort of history. The courthouse is of a similar vintage to the old post office and is a very important historical building in our town. The challenge is that because it was built in a different era it no longer totally meets current functional requirements. The dilemma is deciding how to maintain this building and still have it function as a courthouse. Or do we create a new courthouse somewhere else and use the heritage building for a different purpose, such as a museum? It is important that we protect the buildings we have. As I said, one of the most disappointing aspects of the history of East Gippsland is the loss of buildings like the Bairnsdale post office.

I will make some comments on shipwrecks. I have had the pleasure of diving on a large number of shipwrecks in the seas off the East Gippsland coast, where there are a large number of important shipwrecks. Some of the wrecks are from the Second World War. Most people do not realise that the coastline was the site of significant activity by both Japanese submarines and German U-boats. A number of vessels were sunk. Many were sunk out in deeper water and not that close to the coast, and this was often hidden from the public during that period. We had a large amount of war-related activity along that section of coastline. Mallacoota has war bunkers and the air force was stationed there during the war. Community groups are providing museums with war memorabilia found in dwellings, but we seem not to recognise the importance of some of those activities.

As someone who has dived on many of the shipwrecks which litter our coastline I know that you would never know they are there until you put your head under a cave and realise you are looking at rusted metal. Most of them are able to be recognised and are well marked, but as someone who has dived there for other purposes it is not until you actually see something that looks abnormal and not like rock that you realise you are diving on a shipwreck. It is important that we protect those assets as well and recognise that they are there. Many of our wrecks are in an exposed section of coastline and do not stay in one piece. They are still important because of the remaining artefacts. Many people lost their lives when those ships went down. Shipwrecks are actually graves, and it is important to recognise that and protect those sites.

Like other members, I support the legislation before the house and put on the record how important it is that we value our history, our heritage and the important links back to earlier periods, particularly public buildings within our communities that historically probably have not been valued as they need to be. We need to make sure that is very clear when someone purchases such a building. One of the issues that has come up in respect of dwellings and businesses is that people must understand what they are buying and the limitations that may be imposed on developments on their site.

We see in many areas that community groups or those opposing particular developments attempt to get structures or other things listed just so they can block something and use the listing as a weapon against having something done. We need to be very careful that listings are not used in that way. The listings are to be used by the community to protect genuinely important heritage assets and not as a weapon against a project which someone does not necessarily agree with. With those words, I commend the bill to the house.

Ms THOMSON (Footscray) — It is a pleasure to stand and support the Heritage Amendment Bill 2008. The intent is to amend the Heritage Council's heritage registration processes and procedures to ensure that only a single hearing is required prior to determining whether a place should or should not be included in the heritage register; to remove reference to the Historic Shipwrecks Advisory Committee; to create a new offence of failure to comply with a permit and any conditions on a heritage permit — this would be a summary offence and also a prescribed offence for the purposes of serving a penalty infringement notice; to enable financial securities provided to the executive director under the conditions of a heritage permit to be used to ensure compliance with a condition on a permit; and to insert references to world heritage environ areas in the heritage certificate provision of the act.

I am going to follow on from the member for Gippsland East for a moment on the question of balance. There are those of us who remember when Melbourne's central business district was under threat of having all its beautiful buildings torn down. Probably apart from Parliament House and a couple of churches in the area, all the so-called beautiful buildings were put up in the 1960s and 1970s. People remember that Federation Square, now a monument to art, sports and a

centre of attraction for communities, was once the ground where the Gas and Fuel Corporation and State Electricity Commission ugly buildings used to stand. There was a fight, mainly progressed by the trade union movement, to protect the beautiful buildings that we now look down at along Bourke and Collins streets. Are we not all grateful that demolition bans were put on those buildings and that the developments that occurred on those properties were done in a sensitive way to protect those buildings and that heritage?

It is suggested that one of our great tourism attractions is that Melbourne is a kind of European city of Australia — the place to come to get that European feel, to add to the notion of the cafe society, the intellectual society, the cultural society and the place you come to follow the arts, along with our sporting heritage. It is a wonderful place to attract visitors to. I am yet to hear a visitor leaving Melbourne say that it was an ugly place. Everyone talks about the beauty of Melbourne because we have put in place the means of protecting our heritage and securing it. We have extended that into our suburbs and to places where there are residences or buildings of significance to ensure we are adequately protecting them, but we are doing it in a balanced way. This bill goes some way to ensuring that we have that balance by administratively dealing with the issue of cost to people who wish to lodge objections or deal with heritage listings through one hearing rather than having long dragged-out hearings that can take months or years, and on average over a 12-month period.

These good amendments have been brought in to streamline the process. We are looking in our heritage listings at many different things. It can be trees, plants or gardens; it can be industrial buildings or sites. Not quite in my electorate, but just outside it in the electorate of Williamstown is the old Bradmill site which contains buildings that should be kept and recognised as part of our industrial history. That site will be used for other purposes but we should recognise the historic buildings that are there.

In my own electorate in Maribyrnong is the defence land site. It is a huge block of land that backs on to the Maribyrnong River and is really quite beautiful. The government would hope, and most Victorians would hope, there is a great opportunity to develop it for affordable as well as other forms of housing for community use. In inner Melbourne, 8 kilometres from the central business district, there is an opportunity for people to live in an environment that is enriched with the history that I know the defence force would like to see maintained. I had the good fortune to go with the federal member for Maribyrnong, Bill Shorten, on a tour of the defence land at Maribyrnong and see some of the art-deco buildings that exist on that site. The officer's mess hall is an extraordinary example of art-deco buildings. You would not want that to be torn down, no matter what development occurred on the site. You would want to retain that building. Having a legislative process in place to do that is very important. I commend the government on streamlining the process while ensuring that we are protecting our heritage for the longer term.

I will not spend any time speaking about the Historic Shipwrecks Advisory Committee because two members before me spent a lot of time on those matters, but I do want to talk about the provisions to protect heritage-listed buildings, ensuring that people are meeting their responsibilities under the Heritage Act and dealing with the offences for non-compliance. All of us have seen or read stories in our local papers about heritage-listed properties not being maintained properly, works not being undertaken, historic trees being cut down in the middle of the night or the odd building that has had a fire through it. The notion that people will now have to demonstrate a commitment to the works they undertake on those buildings is highly commendable.

I also appreciate the increase in the level of penalties. I understand the penalties for an individual will be $12 360 and for a company up to $61 800. It will mean that people will need to seriously think about their obligations prior to purchasing a heritage-listed property so they can comply with them. In the past you have been able to get away with buying a property and doing what you like with it afterwards, while not quite doing the renovations as they should be done. It is important that we are providing some balance in relation to that and protecting our heritage even more than in the past.

The other component of the act that ensures this is the ability of the executive director of the Heritage Council to obtain security to ensure works are undertaken. There is a good example of that in the beautiful renovation of the former GPO building in the city. I am sure members have taken the opportunity to see what has been done with the former GPO building. What a wonderful fresh face it has been given, It has been turned into a retail precinct that people feel comfortable with and value. The developer lodged $1 million as surety, which was released as each stage of the works was completed.

This is a very balanced piece of legislation that will ensure we get the balance right in relation to heritage, that we have the right checks and balances and that we

streamline the process so that we are not adding to the expense of heritage listing for people who wish to object or to support heritage listing. I commend the bill to the house.

Mr CAMERON (Minister for Police and Emergency Services) — The government thanks the honourable members for Box Hill, Mill Park, Morwell, Essendon, Mildura, Gippsland East and Footscray for their contributions to the bill. What we have seen during the debate is a great appreciation of heritage, which is something that has not always been there in our history and even during our own lives. Over the years we have seen a greater respect for heritage, and that has clearly come through in the debate. What also came through was that if we can bring about certainty around listings earlier then that will obviously be of benefit to anybody who is concerned to determine whether or not something is to be heritage listed, and that is certainly one of the objectives of this bill.

It should also be noted — and I will stress it again in case there are any issues about it — that while the Historic Shipwrecks Advisory Committee is being abolished by the legislation there will continue to be an advisory committee with another structure.

Shipwrecks form part of the history of our state. We are probably fortunate that in our history we have not had shipwrecks as a consequence of war, even though the colony of Victoria had two ships in its fleet — the HMVS *Cerberus* and the HMVS *Nelson*. However, we unfortunately have had many shipwrecks as a consequence of the terrible conditions that we sometimes have off our coast. There are a great many people who have an interest in shipwrecks and a great many people who go diving around shipwrecks, and the government wants to emphasise that it thanks all those people who take part — and all those who will take part in the future — for the work they do around the acknowledgement and recognition of shipwrecks. With those few words, the government wishes the bill a speedy passage.

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time

SUMMARY OFFENCES AMENDMENT (TATTOOING AND BODY PIERCING) BILL

Second reading

Debate resumed from 30 July; motion of Mr HULLS (Attorney-General).

Mrs SHARDEY (Caulfield) — I rise, amongst others, to support the Summary Offences Amendment (Tattooing and Body Piercing) Bill. The purpose of the bill is to further regulate tattooing and, importantly, body piercing and like processes carried out on persons under the age of 18 years. I note that the real instigators of this legislation were people such as the member for Shepparton and Damian Drum, a member for Northern Victoria Region in the other place. Yesterday the government was going to extraordinary lengths to claim responsibility for this legislation, but I think after the member for Shepparton gave her contribution it became obvious that the government was to a great degree dragged kicking and screaming to bring this bill forward and only did so after The Nationals had more or less given up on the government and put forward a private members bill. In fact the government asked The Nationals to withdraw their bill, suggesting that additional provisions were required. Despite all that we now have a piece of legislation that is supported by both sides of the house; certainly the coalition supports this legislation in an effort to protect young people from the dangers of tattooing and body piercing.

I think we all recognise that in recent years body piercing has become far more prevalent and has included the piercing of very different body parts, some of which are very sensitive and much more prone to infection and damage than others. I took a quick look at the young adult health website. It says:

> Getting a piercing can be a statement about who you are, a form of body art that is less permanent than tattooing, yet still daring. Ears, necks, lips, nose, eyebrows, cheeks, tongues (ouch!), nipples, in between fingers and toes, navels and genitals are amongst the areas of the body that people have had had pierced.

I will outline the main provisions of this bill. It increases the maximum penalty for the existing offence of tattooing or performing a like process on a person under the age of 18 years from 5 to 60 penalty units. It defines 'like process' to include scarification, tongue splitting, branding and beading. It defines 'body piercer' as a person aged 16 years or over who carries on or is employed by a body piercing business or who does body piercing for remuneration. It prohibits a body piercer from performing body piercing on the genitalia,

anal region, perineum or nipples of a person under the age of 18 years with or without consent — and I think that is a very important element of this legislation.

The bill prohibits a body piercer from performing any body piercing on a person under the age of 16 unless written consent has been given in person to the body piercer by the parent or guardian of the person to be pierced and by the person themselves if they are aged 10 years or over and have the capacity to consent. It provides a defence of having seen an evidence-of-age document that showed the person was of or over the relevant age and prohibits a body piercer from employing, directing or allowing a person under the age of 16 years to do body piercing which the piercer is prohibited from doing.

The bill exempts body piercing performed in the course of a regulated health service or in the course of clinical training. This is set out in proposed section 43A, which is inserted by clause 4 of the bill. I suggest that the government may at some time wish to reconsider the issue of body piercing done by a doctor or a doctor-in-training. I understand that there is concern that doctors pierce skin while suturing, performing operations and so forth, but I would have thought it would be possible nonetheless to use some clever definitions to provide protection in relation to the piercing of genitalia and other sensitive parts.

There are areas of concern in relation to this bill. It does not apply to body piercing done outside a body piercing business and it leaves to be regulated by other means matters such as infection control, a poor standard of equipment and/or inserted objects and properly informed consent.

I note that the Department of Human Services guidelines carefully list all the risks et cetera. It discusses the jewellery suitable for use and the procedure of body piercing, and in particular ear piercing, including the cleaning, disinfection and disposal of equipment. However, the guidelines are not law and there is no regulation of general health and safety standards or the quality of body piercing materials.

I put together some notes in relation to the dangers of body piercing, including infection, scarring, allergic reactions, injury and disease. I would like to go through this for the benefit of the house and for any young person who happens to read this legislation and the debate about it, because I think it is very important. It is estimated that one in five piercings will lead to infection. The government's statement of compatibility for this bill states:

> Between July 2007 and April 2008 approximately 40 people were admitted to Victorian hospitals suffering injuries or illnesses caused by body piercing.

This was not mentioned in the second-reading speech but the statement of compatibility goes on to state:

> Research conducted in 2003 found that between July 2000 and July 2002, at least 100 mostly young people presented to Victorian hospital emergency departments with complaints associated with body piercing.

This is a very serious situation. We should be doing all we can to protect young people. There is concern that some piercers may provide their services in unsafe environments — that is, no gloves or masks, no sterilisation of equipment and unsanitary surroundings. Maybe we should be looking at more monitoring of those situations.

Each body part presents its own specific danger, such as bleeding, nerve damage or infection. Oral piercings — that is, of the tongue — require an alcohol-free antimicrobial mouth rinse. Topical antibiotic creams should not be used for skin piercings because they prevent oxygen from reaching the wound to help it heal. A serious infection in the upper part of the ear can cause cartilage to die, leaving permanent disfigurement of the ear. Common piercing problems include ripped skin from jewellery either catching on clothing or being ripped. We should particularly look at young children being pierced for those sorts of things. Bellybutton piercing, nipple piercing and tongue piercing are the most likely form of body piercing to get infected. As we know, these regions are highly sensitive, and can cause severe pain, particularly if the piercing does not heal.

Infection is the main risk associated with body piercing. It can occur in two ways. The first is through transmittable diseases. If hygiene standards are not adequate, you are at risk of blood-borne diseases such as hepatitis B and C and HIV, which can be transmitted from dirty needles. Hepatitis is particularly known for its resilience — some strains can live for up to 8 hours on dirty instruments. The other way is through bacterial infection. This can result in cysts which can develop into septicaemia — that is, blood poisoning — or toxic shock syndrome if left untreated. We know that can be very serious and even fatal. Body piercing also presents a risk of scarring and keloid formation — that is, raised scarring.

Specific piercings each present their own risks. I have mentioned some of the dangers of oral piercing, but it can also cause speech impediments and chipped teeth if the jewellery wears away tooth enamel. Areas of the body that have a lot of blood vessels, such as the

tongue, can suffer from prolonged bleeding and serious blood loss when pierced. Dentists oppose oral piercing to the point of calling it a public health hazard; the Australian Dental Association wrote a letter to that effect. Swelling is also common, and in rare cases can be enough to block the airway or cause permanent nerve damage. Tongue piercing carries a higher than average risk of bacterial infection because of the high number of bacteria already present inside the mouth.

Genital piercing can impede the functions of the genitals, making sexual intercourse and urination difficult and painful. It can also cause long-term complications. Genital piercing increases the risk of people contracting sexually transmitted diseases because the jewellery can cause a condom to break and because the piercing can be a point for infection to enter the body. Nipple piercing in women can create scar tissue. This may cause difficulty in breastfeeding in later life. In some cases it takes months for a body piercing to heal. A piercing in the cheek can take four to five months to heal. We support very strongly this legislation, and I wish it a speedy passage.

Ms THOMSON (Footscray) — I do not consider myself to be queasy — blood, guts, all that sort of stuff is okay by me — but I have to say that this piece of legislation brought about a kind of cringe factor for me as I read up on what people have decided to do to their bodies. I am not a strong believer in tattooing. I understand that some people like it. However, as a person who very rarely gets to watch commercial television, one advertisement hit me. It is a frypan ad featuring a woman of senior years who has a tattoo around her arm. The advertisement says, 'Some of the decisions we make when we are young we regret', and then goes on to talk about the frypan. The first time I saw that advertisement, and I cannot confess that I have seen it very often, I cringed.

Many people make the decision when they are young to get a tattoo or a piercing. I had a look around the chamber to see how many people here had piercings. I noticed that almost every woman in this room has her ears pierced, so there is a factor we all take into account in piercing our ears. I am one too, even though I do not have earrings on, so I confess I must count myself in that. However, there are things you regret. My brother-in-law at a young age decided to have tattoos on his body. He has spent years and experienced constant pain having them removed. It is something he regretted doing. We have allowed those over the age of 16 to be tattooed, and hopefully when they do it they are aware of the fact that the removal of tattoos is not a painless activity. It can really hurt and it can take a long time, depending on the level of tattooing that has been done to the body.

Piercing is another issue. We have all seen it. I have children whose friends have piercings in places that I would not even dream of thinking of piercing. There are certain practices in place now for young people where we would hope that these decisions were being made with some level of understanding of what they are doing to their bodies. Very few of us who have had our ears pierced would not have got an infection as a result of that. Even with the proper antiseptics and processes being put in place to try to maintain the hygiene of that piercing and ensure that we did not get an infection, we still might have got one.

I have to say that listening to the member for Caulfield I wondered if I should stay in the chamber or get out. It was a very queasy experience. I thank the member very much for that level of detail that I am going to stay well away from. However, it is true to say that areas of the body that are moist tend to be more prone to infection than others. The member for Caulfield referred to tongue piercings and the level of infection that may occur in relation to the tongue, cheek and parts of the mouth, and they are really prone to infection because of the moistness. And once you get an infection in that area, it is a very hard thing to fix and control. There are many presentations at doctors surgeries and hospital emergency departments to deal with those infections. This is not to mention the infections in intimate parts of the body, the piercing of which is another practice that is currently being undertaken.

Some piercings may look quite beautiful. I admit that the diamond in the nose piercing can look really attractive. However, I wonder what happens when you have got a really bad cold. It does not appeal to me then; it does not seem quite so attractive. I do not consider myself to be a prude. I like the fact that young people go out and do their own thing. However, I would like to think that we are putting some limits in place in relation to that. The notion that you now have to be over 18 to have any intimate part of your body pierced is most appropriate. It is also appropriate that parental consent is required for those under the age of 16 to have any other piercings they might undertake.

Whilst I am not opposed to people showing their individuality, I would hope we are ensuring that proper processes are put in place and that young people are made to think about what they do to their bodies before they undertake piercing procedures. As I said before about the issue of tattooing and scarring and the various processes that are now in place, these are things that are

there for life, and it is quite painful if you decide to reverse them.

I commend the member for Mordialloc, because this is an issue she has raised for a very long time, and it should be recognised. She is a feisty character; you do not mess lightly with the member for Mordialloc. She was very committed to seeing this through. She has raised the issue a number of times, and she has maintained that commitment to doing something in relation to this based on matters that were brought before her as the member for Mordialloc.

The bill also increases the penalties for tattooing a person under the age of 18 to around $6600. That better reflects the gravity of tattooing a person unlawfully. I will refer to the bill, even though there is a cringe factor involved, and say that scarification, tongue splitting, branding and beading are now going to be included as part of what is prohibited for people under the age of 18. That is absolutely appropriate. As I said, nothing about this appeals to me personally. I cannot for the life of me think why anyone would want to do this to their body, but I am pleased to see that we are legislating to ensure that those who would consider doing this to their bodies must be adults who can think responsibly about their bodies. It is important that people who undergo any of these processes, such as tattooing and piercing, do it in a way which recognises that you can be prone to infection and that you need to ensure you are in a proper sterile environment and that needles are changed — that cleanliness is vitally important.

I commend the government for bringing this piece of legislation to the house. I know it is supported around the chamber. I commend the bill to the house.

Mr KOTSIRAS (Bulleen) — I say from the outset that I have no part of my body pierced, nor do I have any tattoos.

The ACTING SPEAKER (Ms Beattie) — Order! The Chair does not need that information!

Mr KOTSIRAS — I say from the outset that I support this legislation. It has taken a while for it to come into the chamber, and I support it very strongly. Like many others in this chamber, I have children. One of my biggest fears when the children were growing up was that one of them would get a part of their body pierced. I tried to teach them about the safety concerns I had and the health reasons for not doing it. Now two of my children are over 21 — thank God! — but I still need to talk to the younger one, who is 17.

Mr Robinson interjected.

Mr KOTSIRAS — For the minister's information, my daughter is 26. I still have some concerns for my third child, my young son, who is 17. I continue to speak to him to make sure he does not take part in tattooing or body piercing activities. I also congratulate the member for Shepparton and Damian Drum, a member for Northern Victoria Region in another place, for in one sense forcing this government to introduce this type of legislation.

It is also interesting to put on the record that during the 2006 state election campaign the shadow minister for youth at the time spoke of the need to educate our children about the dangers of body piercing. Page 4 of that policy details a number of issues that young people should be educated about, like responsible driving, schoolies week and body piercing. It also states that this type of education has to be supported by an extensive advertising campaign at the movies, on television and radio and in newspapers and magazines. If we are going to have legislation, it is important to also have education, because the two go hand in hand. Sometimes it is very hard to get through to young Victorians unless you show them the impact and effects of tattooing or intimate body piercing.

It is also interesting to note the response of the Youth Affairs Council of Victoria (YACVic) to the government's exposure draft. It made a few recommendations to the government. One of the recommendations is:

> YACVic recognises the need for the legislation to reflect community standards and thereby accepts the need for a provision restricting young people's access to an 'intimate' piercing procedure with the introduction of an aged-based restriction. YACVic recommends however, that the definition of 'intimate' body piercing only include genital piercings.

I disagree. I am more comfortable with the definition in the bill. YACVic also went on to say that while it supports the concept, it has some concerns about the introduction of this sort of legislation. It spoke to a number of young people, and in its response it said:

> YACVic is concerned that in restricting young people's access to professional body piercing services, this legislation may encourage young people to engage in unsafe piercing practices, thereby exposing young people to health risks.

It quoted a number of young people. One of the young people said:

> You would go to some weirdo in the back alley. I know some people who have done that. I used to go to high school with a guy who wanted his eyebrow done, his parents wouldn't let him, he was 15, so he got his cousin's friend to do it. It got really, really infected and he had to take it out. His whole eyebrow has never been the same. If he had gotten it done professionally, he probably would still have it and wouldn't

> have that problem. I think it kind of limits access to competence.

Another young person said:

> Some of my friends whose parents would not give consent, they would be using safety pins or pushing studs through as hard as they can.

Another young person said:

> If they can't do it via a legitimate business, but they really want it, they will find somewhere.

That is the concern that YACVic has. I disagree. Legislation is vital to protect our young people. At the same time we need to ensure that education takes place as well.

Body piercing has become more and more popular among young people over the years, and today no part of the body seems to be off limits for the insertion of rings, studs and bars. Ears, navels, eyebrows, noses and genitals have become popular places for piercings. It is true that piercing has been around for a long time. It has been used in religious and cultural ceremonies, and it is common in some cultures around the world. Body piercing is an invasive procedure that is not without risks. We heard some of the risks earlier. They include allergic reactions, bacterial infection, excess scar tissue, trauma and viral infection. I have no problems with adults choosing to get a tattoo or undergo body piercing. That is their choice; if that is what they wish to do, so be it. But I do have concerns with young children being forced to undergo body piercing or tattooing.

Members of this chamber will know that I support cultural diversity and multiculturalism, but it is very important that we try to educate our communities to make sure they do not use the excuse of their culture to perform body piercing on a child as young as one or two. That is not something that happens here, and we need to educate them about that. That is why I really hope the government and the Victorian Multicultural Commission (VMC) will ensure that this message gets out across all communities so people in them they understand the dangers of body piercing and the fact that it is now illegal for a person under 18 to have intimate piercing done. It is important that our communities understand that and do not use their culture or religion as an excuse to do so. You can only achieve that if you do it with advertising through schools, the community and religious leaders. That is what is needed, and I urge the VMC and the government to ensure that this message gets out there, because the health of our children is paramount.

I support this legislation. It is much needed. I have seen in the past, even prior to entering Parliament, what this type of body piercing does to young people, and it is high time that this legislation was introduced. All we ask of the government is to ensure that education is part of the legislation.

Ms DUNCAN (Macedon) — I am pleased to rise in support of the Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008. As we have heard from members, this bill has very broad support in this chamber which is reflective of the support that the exposure draft had when it was released in the community between January and March of this year. There has again been general support for the proposals that were put up in that exposure draft.

As has been said before, this bill seeks to reflect changes in the practice of body piercing. I do not know if anyone watched Andrew Denton's show on Monday night, but there was a very interesting person on there who had lots of things pierced. Fortunately we were not able to see a lot of it. The man had big holes in his ears in both the lobe and then further up in the ear and he also, extraordinarily, had rods implanted in his skull and could screw little things onto the stems. On the show he actually had little arrow-like things in his head. He was also having made for himself a set of horns to screw into these things that were implanted in his head. I guess that is an extreme example of what people do, but clearly the fashion is changing.

I feel incredibly old because I do not get it. I do not get a lot of that stuff. This is from someone who has had her ears pierced. From memory I think that I was actually over 18 and the pain of it put me off for some years. But fashions have changed, and I suspect those things that we saw on Andrew Denton's show will become more commonplace. What that means for us as legislators is that we have to make sure that we keep pace and legislation keeps pace with changing trends.

We have heard from a number of people — and it is reflected in this bill — about the distinction that is made between intimate and non-intimate piercings. For children under 16 — we know that lots of children have their ears pierced well before they are 16, and that is fine and this Parliament is not seeking to stop that — we are seeking to ensure that non-intimate piercing comes with parental consent.

One of the important features of this bill that I think has possibly not been discussed as much is the changes to the offence of tattooing a person who is under 18. As much as some of the piercings that we have heard spoken of are quite extraordinary — intimate piercings,

belly piercings, tongue piercings — I assume that for a lot of them, if a young person changes their mind they can just remove a lot of these things and presumably the holes will heal up over time. While we have heard of some of the medical conditions that can arise after these things are done, I presume that eventually these things heal up.

My concern is really more about tattooing. A lot of people I know got tattoos before they were 18 and obviously that was in breach of the law at the time, but the penalty was relatively low. One of the features of this bill is to increase, fairly dramatically actually, the penalty for tattooing or performing a like process on a person aged under 18 from 5 penalty units, which is $550 — that is the current position — to 60 penalty units, which is $6600. That is a dramatic increase in the penalty for tattooing someone under 18. Hopefully this increased penalty will reduce the amount of tattooing that is done on people aged under 18.

Also as a result of this bill there will be communication to the industry highlighting these changes and ensuring that these practices do not continue. That is one of the features of this bill that I support most strongly because I have seen a lot of people in later life — men and women, but probably more men — who have bitterly regretted getting tattoos on their bodies and have gone to all sorts of lengths to try and have them removed. But it is an extremely difficult thing to do and the results are often less than satisfactory; attempts to remove tattoos can often lead to scarring as well as the tattoo actually still being visible, albeit slightly faded. It is a really difficult, expensive and, I understand, painful process to try and have your tattoos removed, but maybe it is no more painful than having them put on in the first place.

As I said, the bill increases the penalty for tattooing. It also more clearly defines what 'like processes' are. Some of these things like scarification, branding and beading were unheard of in my day, and I have to say that I do not quite understand what some of them are. The man on Andrew Denton's show had apparently had a brand put on his back and it had been done by a heat brand. He explained that it was not exactly the same as you might brand cattle with but it involved following a very similar process and, I can imagine, an extremely painful one. This bill seeks to define what those sorts of processes are and again prohibits these procedures being performed on persons aged under 18. It also creates an offence of a body piercer performing non-intimate body piercing on a person aged under 16 without the consent of a parent or guardian and where the young person has the capacity to give his or her consent. It also creates the offence of a body piercer performing an intimate body piercing on a person aged under 18 years of age.

One of the things that struck me when I first learnt about where some people have their bodies pierced was how you could actually go into presumably a tattoo parlour or a piercing parlour, if you were a young person, and have these parts of your body exposed to a stranger to stick a needle in. I cringe at the thought of going to a doctor, a professional medical practitioner, for these sorts of things, let alone going to some small tattoo parlour or piercing parlour to see some stranger who has few if any qualifications and being exposed to that situation. I imagine it can be fraught, and there may well be people who have found themselves in very vulnerable positions when they have been to those sorts of places.

This bill recognises that a greater level of consent to having those sorts of things done is required, and that is why it increases the age of consent for that sort of intimate body piercing to 18 years. This is consistent with many other laws in our state that regard 18 as an appropriate age for people to consent to, for example, drinking. It is not inconsistent with other legislation in this state and across this country which sets 18 as an appropriate age at which people can make those sorts of decisions for themselves.

I think this is a great bill. It has had broad consultation and it has the support of the Australian Medical Association and the Australian Dental Association. I think we are just starting to understand — well, some of us are now just starting to understand — what a tongue piercing can do, for example, to the enamel on your teeth. Obviously this bill has broad community support, and I commend it to the house.

Mr DELAHUNTY (Lowan) — I would like to speak on behalf of the Lowan electorate on this important bill, the Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008. As a proud member of The Nationals I believe the entire community must take responsibility for youth issues. We all know that our young people are our investment in the future, and the majority of our young people accept the values of independence, initiative and responsibility. But I am also a strong believer in giving support to our youth to develop their confidence and capabilities to pursue their personal aspirations.

As lawmakers and as a community, we sometimes have to put laws in place to protect or assist the community, and this bill is one step in that direction. As we know, the main purpose of this bill is to amend the Summary Offences Act of 1966 to prohibit scarification, tongue

splitting, beading and branding of persons under the age of 18 years. I have heard other members speak here today about some of these things. I have seen photos of them and I have seen some of them on TV. These are not things I would enjoy or appreciate — some people do — but I think it is important that they only be done for people over the age of 18 years.

Other purposes of the bill include increasing the maximum penalties for some of these offences and making it an offence for a body piercer to perform an intimate body piercing on a person under the age of 18 years — in other words, no intimate body piercing can be done on a person under the age of 18. The other main provision of the bill is to make it an offence for a body piercer to perform a non-intimate body piercing on a person under the age of 16 years without the consent of a parent or guardian.

I was doing some research on this, and there are a number of laws in place restricting the activities of young people including the Tobacco Act of 1987, the Liquor Control Reform Act of 1998, the Casino Control Act of 1991, the Gambling Regulation Act of 2003 and, interestingly, the commonwealth Marriage Act of 1961. There are already many acts of Parliament in place that restrict the activities of our youth.

I was in the library doing this research, and I want to compliment Rachel Macreadie from the Parliamentary Library Research Service who compiled a report on this bill, the Summary Offences Amendment (Tattooing and Body Piercing) Bill of 2008. It is a very worthwhile document that gives a good background to this topic. It highlights that there is currently no legislation in Victoria that specifically addresses the body piercing of people under the age of 18 years.

It is interesting to note that it was probably the Scrutiny of Acts and Regulations Committee — a good committee — that raised this issue in the first instance. From memory I think it was about six or seven years ago when it was reviewing spent acts or acts it thought should be made redundant. It was concerned about scarification at that stage, and it believed the legislation now in place was not right. But it was not until the member for Shepparton — I know she is not able to be in the chamber this morning — through consultation work she had done in her area met some parents who had come in concerned about the fact that their young son had had his tongue pierced without their consent and had suffered complications with infection, raised the issue that work began on this bill. The parents had been very concerned that there were no laws in place in relation to the age of consent for body piercing. For tattooing there are laws in place to prevent it from being done to a young person, but for body piercing there are no such laws.

The member for Shepparton then raised it in the Parliament, and I know there were many discussions in our party room. I congratulate the Wangaratta ladies executive of The Nationals, who also felt that there was an injustice here, that there were things wrong and that we needed to do something about it and set some parameters to protect our youth of today.

I believe it was back in about 2002 that the member for Shepparton started work on this, and I congratulate her on the work done. It was in 2007 that Damian Drum, a member for Northern Victoria Region in the Council, moved a private members bill in the upper house that was, at the request of the government, laid on the table. The government said it would finally, finally do something about it. It put out a discussion paper and received about 130 submissions on the exposure draft. Most of the people who made comments on the draft were concerned about the protection of the health and wellbeing of our young people. There was also interesting work done on scarification, but community consultations did not reveal evidence of this practice occurring in Victoria.

This bill is about protecting the health and wellbeing of our young people, and that is why I am a strong supporter of it. It encourages our young people to discuss body piercing with their parents or guardians in the first instance, but I also think we need to make sure they discuss it with their health professionals — doctors, dentists or whoever it may be — because we know the Australian Medical Association and the Australian Dental Association in particular feel that this is wrong. Their members have had to do a lot of repair work on teeth as a result of mouth piercings

Looking a bit further back, the briefing paper highlights that an Australian survey conducted in 1998 revealed that 1 in 10 people aged 14 years and over have had a tattoo at some time in their lives and 8 per cent have had some form of body piercing, excluding ear piercing. Body piercing has become the fastest growing form of body decoration, particularly among our youth. We need to be able to put some parameters around how that works. Unlike tattooing, there is currently no statutory offence that deals with body piercing, and that is why the legislation before us today is important.

In 2001, the Scrutiny of Acts and Regulations Committee looked at this matter as part of its review of redundant and unclear legislation. Back then the committee advised that a wider review of tattooing and body piercing should be conducted.

The main concern I have as a former Nationals spokesperson for health and for youth is that we have laws to protect the health and wellbeing of people involved in these types of activities. We know that the major concern in relation to body piercing is infection. But in the mouth there can be other problems, whether that be air obstruction due to swelling, damage to the teeth and gums or damage to the tongue nerves, and in respect of eyebrows there can be damage to the nerves responsible for eyelid movement. Apart from infection there are other things that can cause problems if the procedure is not done correctly and appropriately. In the mouth, obstruction to the airways from swelling can be a major problem, and there can also be interference with speech. From a medical point of view we need to make sure that we get the laws right.

I also have concerns that backyard operators will not be totally picked up by this legislation, so it is important that further work be done. We support the bill at this stage, but if we drive people into the backyard, whether it be for tattooing or body piercing, we could create bigger problems.

As I said, I congratulate the member for Shepparton and Damian Drum, a member for Northern Victoria Region in the other place, for their work on this bill. I know that the member for Kilsyth, who will be speaking later on this legislation, has raised this matter previously in the Legislative Assembly. It needs to be pointed out that in jurisdictions right across Australia there is no common thread in the way this issue is dealt with. In South Australia some work is being done, and I think five states are developing similar laws to the one we are considering here today.

In relation to tattooing, which I know is only a small part of this bill, with the exception of the Northern Territory and Tasmania the law is consistent across Australia, and tattooing without parental consent is banned under the age of 18 years. It is important that we have consistent laws because, as many of my colleagues in northern Victoria know, we have these border anomaly issues. We do not want to see laws that enable people to cross the river, or in my case the South Australian border, to undergo these procedures in another state.

In conclusion, a South Australian study found that doctors and piercing practitioners had treated more than 1000 people for body piercing infections or injuries in 2006. We can see that there is a major concern from a health point of view, and that is why I am a strong supporter of the legislation before us today.

Mr HUDSON (Bentleigh) — It is a pleasure to speak on the Summary Offences Amendment (Tattooing and Body Piercing) Bill. There has been a lot of toing and froing and discussion about who instigated this bill, who has lobbied most over this bill and who first raised the issue. That is quite irrelevant to this debate. Right across the Parliament on both sides of the house there has been concern about the increasing incidence of body piercing, and in particular the body piercing of young people under the age of 18 years, which can lead to complications and to infection.

It is great that we have bipartisan support for this bill because currently there is no legislation which addresses the body piercing of people under the age of 18. This bill addresses that issue. That is a good thing because body piercing is seen more and more as a form of art — and, of course, each to their own. Body piercing has a long and proud history. The piercing of ears and so on has been going on for many years. That is not the issue here. The issues here are giving informed consent, understanding the consequences of what body piercing might involve and also dealing with the health risks. They are the issues that this bill seeks to address.

A survey, which is now about 10 years old, found that 1 in 10 people aged under 14 get at least one tattoo at some point in their lives and that at least 8 per cent have some sort of body piercing, excluding ear piercing. Of course if we include ear piercing, we are talking about a dramatically increased number of people with those kinds of piercings. Clearly the popularity of piercing has increased over time, and many members have spoken about the wide range of piercings that people are now using to give expression to themselves, to their personalities and to the statements they want to make. That is not everyone's cup of tea. Personally I am not really into long safety pins through the ears or the nose, but it is not for me to make those aesthetic judgements. Some people would say that I am scary enough as it is! It is not about whether people look beautiful or not; it is not about personal beliefs; it is not about appearance; and it is not about cultures. It is about protecting young people; it is about making sure they are aware of the permanency — sometimes — of these kinds of modifications to their body; and it is about making sure they are aware of the health issues and the possible complications which can arise out of tattooing and body piercing.

I have a son who has a couple of piercings, and I know that often they make these decisions because there are other young people who have them or they want to make a statement. That is fine. That is something they can do as long as they are aware of what the impacts on

their bodies can be. We do not want young people rushing in to make decisions they will later regret. I think that is why it is important to have an element in this bill where parental consent is needed, where an intimate body piercing cannot be made if the subject is under 18 years of age and it is an offence to conduct a non-intimate body piercing on someone under the age of 16 years without parental consent. If you can get the parents involved, if we have a properly regulated system of commercial operators who respect the fact that parents have a role in this and parents can become engaged in it, then I think we can help our young people to make sensible decisions and also to manage the risks that body modification often involves.

All of us would recognise that in the past body modification had a subversive element to it. There was an image about it; if you had a tattoo in a sense it was the mark of an outsider. It was bikie gangs or prison inmates or junkies or others who had tattoos. But really it has become part of mainstream culture — for example, many celebrities now have tattoos. Personally I do not mind Jana Pittman's bumble bee. I think it gives some expression to her personality. I think it is quite cute. However, I find David Beckham's full-on tattoos down the arm less attractive. This is sometimes about the subtlety that people bring to it.

Tattoos are part of our cultural history and one of the oldest forms of personal or communal expression. It has often been the expression of spiritual beliefs, and for thousands of years people have been tattooing and piercing their bodies in different cultures. That is not going to change in the future. Tattoos and piercings have been used as part of rites of passage and as a form of tribal identification, and they have also been used to mark out people who have certain roles in certain communities. Again, we are not in the business of prohibiting that.

You can say that we have had a whole lot of modern tribes grow up in which people are using these forms of expression. However, it is about ensuring that whilst people may want to use them as a fashion statement, they are not making these decisions in the same way that they might make a decision about buying a pair of jeans. They last longer than jeans. They might appear just above the line of the jeans or below, but they are often permanent forms of body modification.

The health risks are evident in our hospitals. Between 2007 and 2008, 40 people were admitted to Victorian hospitals with injury or illnesses caused by body piercing. In the period 2000–02 it was found it was mostly young people who presented to Victorian emergency departments with complaints to do with body piercing. In South Australia a survey found that 96 per cent of doctors had treated infections from body piercing. It clearly is a major health issue.

This bill is about weighing up the risks and weighing up the benefits. Some of the risks are minor, and some of the risks are severe. When you consider that it can lead to severe infection; that it can lead to damage to nerves through eyebrow piercing; that nipple piercing can affect the ability to breastfeed later on in life; that tongue piercing can cause damage to teeth and gums, interfere with speaking and chewing and cause tongue nerve damage, with the possibility of permanent loss of taste and numbness; that it can lead to the rejection of foreign matter, infection and the spread of blood-borne viruses such as hepatitis C and HIV, you realise the risks are considerable.

I would like to highlight the case of 16-year old Michael Wilson who earlier this year was admitted to hospital with a severe infection of his nipple when his nipple piercing became infected after just four days. Michael's infection was so severe that he may need plastic surgery at a later date. In the case of a woman in that situation, it would have a huge impact on her ability to breastfeed at a later date. Michael has said that in hindsight he thinks he was too young for a piercing and that if he had been able to consider it more and to talk to his parents, he may not have done it. There are lots of people in Michael's situation; people who have run the risks, contracted infections and done themselves some serious damage. That is why we are acting as a government to protect the welfare of young people through this bill.

Previously the government had acted to make body modification safer. In 2004 we introduced new health regulations to ensure that body piercers have to give customers information on the health risks of the procedure they are undertaking. We have also provided guidelines to assist body piercers to comply with health standards via the Health (Infectious Diseases) Regulations. We have also ensured that the shops where tattooing and body piercing take place are registered under the Health Act, and local councils have to send health inspectors into the shops for inspections. We have a safe environment. We can make it safer. This bill will assist in this process. I commend the bill to the house.

Mrs VICTORIA (Bayswater) — I am very pleased to rise in support of the Summary Offences Amendment (Tattooing and Body Piercing) Bill. As the parent of a small child I am glad that these measures are coming into place now so that I do not have to argue with her. I will be able to say, 'It is the law, dear'.

This bill increases the maximum penalty for offences that already exist for offences relating to tattooing or performing a like process, which is now also more clearly defined and includes the areas of scarification, tongue splitting, branding and beading. The bill also provides that a person under the age of 18 years cannot have intimate areas of their bodies pierced — with or without consent, I should hasten to add — and that those under the age of 16 years can have no body piercing without the consent of their parents. The only hesitation I have about that is that some parents choose to pierce their children at a very young age. What they see as beautiful or attractive may not be what the child desires later in life. In the case of general piercing, if a child is aged under 10 years, then the child's parent has the right to say yes or no. If a parent decides that a child can have 10 earrings in each ear, then we are saying that is okay. Over the age of 10 years a child will have to give consent for that to happen.

Obviously tattoos remain with people for life. They can be removed, but generally they are more faded than removed. Many people do not realise that keloid scarring is caused on the body by piercings of any type, not only in the ear. An earring can be removed, but the scar of the hole will remain.

A couple of minor areas of concern have not been addressed sufficiently for my liking. Firstly, the legislation does not apply to body piercing that is done outside a body piercing business. As much as we would like to believe that everybody is smart enough to go to a registered practitioner for these types of procedures, not all children and young people have that sort of knowledge, and I do not believe this has been covered.

Infection control is covered by other legislation. However, I believe this should be covered under one piece of legislation, because it is very much to do with the process. The bill does not mention standards for equipment and the potentially poor standard of objects which are to be inserted into the body. Such things as beads and other objects are imported from other countries, and there are particular substances that are more acceptable to the body and therefore less likely to cause infection. I do not believe the quality of these sorts of items for implantation has been covered.

I was very excited to get my ears pierced. I was probably about 13 at the time. My father took me off to work for the day, and he said, 'Okay, today is the day. You have been nagging long enough. Would you like your ears pierced?'. I was so excited and, sure enough, out came the gun and — click! — in went the earrings. I was the proudest person. My hair was back the whole time and everybody had to see them. These days many medical websites are saying that the use of a gun is no longer best practice. I do not believe such issues have been addressed in this legislation. Hopefully those who are more knowledgeable in the practices of piercing have got into the newer technology of using needles which have tubes in them and through which items can be inserted.

Another area I think is deficient is education. I am not talking about the education of people under the age of 16 years or 18 years about the different types of piercing. I believe all people who are going to have piercing and other procedures, such as scarification or the insertion of beads and that type of thing, should be made aware of the potential consequences. When I had my ears pierced as a young girl I was told about infections and how to use alcohol rubs to keep the piercings clean. That is no longer best practice. I do not believe people are informed about the ramifications of what they are doing.

Whilst I was researching for the debate on this bill I came across some information on the website of the Children's Hospital Boston. The hospital has a fantastic website which is targeted at children in all sorts of areas. One area concerns body piercing and tattooing and asks, 'What are the risks with body piercing?'. The site says:

> The most serious risks are infections, allergic reactions, bleeding, and damage to nerves or teeth. Infections may be caused by hepatitis, HIV, tetanus, bacteria, and yeast. If the piercer washes his/her hands and uses gloves and sterile equipment and you take good care of your piercing, the risk of infection is lowered (but still exists).

Under the heading 'Did you know that …' it says:

> You can get and/or spread a serious infection including HIV, if the piercing equipment hasn't been sterilised properly.
>
> Infections caused by bacteria getting into the puncture of the piercing may also happen later, even after the piercing has healed.
>
> …
>
> Another cause of problems from piercings is the wrong kind of jewellery for the area pierced.

To my knowledge I am not aware of any education program which deals with these issues. The site says:

> If the jewellery is too small, it can actually cut off the blood supply to the tissue, causing swelling and pain. If the jewellery is either too thin or too heavy or if you are allergic to the metal, your body can sometimes reject the jewellery …

Under the heading 'Know the risks before you have your body pierced …' it states:

Bacterial infection …

Excessive … bleeding

Allergic reactions …

Damage to nerves …

Keloids —

the very thick scarring I talked about earlier, and —

Dental damage …

Many children and young people would say, 'I do not care about any of that. If I chip my teeth, it doesn't matter, I will get false teeth when I am older'. They do not understand the long-term ramifications. The website asks, 'Does it matter where on my body I get pierced?', and talks about the different healing times and why the healing time is so different between the earlobes and the side of your ear — for example, it can take up to a year to heal a wound on the side of your ear but only six to eight weeks a wound on the earlobes.

The site describes how tongue piercing can cause a lot of swelling and that the jewellery inserted can damage the gums and chip the enamel surface of the teeth, and it informs children that the American Dental Association is against any type of oral piercings. I will not read out the rest of the information, but it is a very good site, and I believe these safeguards should have been thought of when the bill was drafted. I would like to see the sorts of initiatives that are in place in the United States of America, although they vary from state to state.

Sometimes young people lack the worldly knowledge we sometimes refer to as common sense, so an education program would be very good idea. The United States has an association of professional piercers. Those people conduct education programs, and are accredited for performing these types of procedures safely. Inspecting the hygiene of places where piercings are undertaken should be mandatory.

I applaud the work done by several members of this house, not least the members for Shepparton and Kilsyth, and two members of another place, Mr Drum, a member for Northern Victoria Region, and Mrs Coote, a member for Southern Metropolitan Region. This is a very serious matter that has come before the house. I understand the need for young people to express themselves. It is incredibly important. Beauty is in the eye of the beholder. Even if you are not into beading and scarification, some people are, so let us support the move to enable decisions of this nature be made by those who are mature enough to make them.

Ms RICHARDSON (Northcote) — I am very pleased to rise in support of the Summary Offences Amendment (Tattooing and Body Piercing) Bill. Like the member for Bayswater and the member for Bulleen, I am very keen as the mother of two young children to see that these measures are put in place. I am a little squeamish when it comes to the sorts of practices that are being undertaken around the place. The thought that my four-year-old or my two-year-old could wander into the house at some stage in the future after having had a variety of practices performed on them really does send a shiver down my spine, so I am pleased to see that this bill has been brought before the house and has the wide support of members.

The bill amends the Summary Offences Act 1966 to better protect young people who are seeking the services of tattooists or body piercers. Specifically the bill will make it an offence for a non-intimate body piercing on a person under the age of 16 to take place without parental or guardian consent. It will also make it an offence for intimate body piercing to be done on a person under the age of 18 years. The bill will increase the maximum penalty for the existing offence of tattooing or like processes on a person under 18 years of age from $550 to $6600. Like processes are practices such as tongue splitting, branding, scarification et cetera, and in fact all are like tattooing. They are difficult to reverse and, in the view of the wider community and of this bill, they should be available only to adults.

In recent years there has been a significant increase in the various forms of body art that are being undertaken in the community, and at times I have had my head turned by some of the measures that have been undertaken by individuals around the place, not necessarily because it is unattractive but mostly because I am thinking about the pain they must have experienced when they undertook the procedure that created the body art they have chosen to display.

But of course these practices are not without health risk, and we know that the incidence of health complications that have occurred from these practices are on the rise. These include blood-borne diseases, infection, long-term nerve damage and the like. These have all been on the increase. I note that hospital admissions data indicate that between July 2007 and April 2008 around 40 people were admitted to Victorian hospitals with complaints relating to body piercing. Victorian research also suggests that a significant number of young people present to hospital emergency departments with body piercing-related complaints, and South Australian research suggests a significant number of people present to GPs with body piercing-related

complaints. Clearly it is not a practice you want to enter into without knowing all the various complications that can arise, and clearly some practices are going terribly awry for some individuals.

I was just speaking to a 16-year-old young person who did me the courtesy of having a conversation about some of these things and why it is that people would go down this path. She was not as squeamish as I am about some of these practices. She had numerous tales to tell of instances of piercings and tattooing and the like that have taken place among her peer group. Most of these had gone well, thankfully, but she did have some worrying stories of some incidences that had not gone so well for some of her friends. In fact she herself had a serious infection arising from a nose piercing, which sounds like a fairly straightforward procedure, but clearly it is not.

I would like also to congratulate the member for Mordialloc, who has campaigned studiously on this issue since she came across a dodgy operator in Edithvale. She discovered 13-year-olds were venturing down there, in their school uniforms, and getting a variety of procedures performed on them, including nipple piercings and other things. She got very, very angry about this practice and has campaigned extensively to ensure that children are protected from this kind of activity. The member for Mordialloc also told me that the operator's area itself was a fairly dirty kind of environment and she was very concerned, obviously, about the health and welfare of the young people and anyone who was coming into contact with this dodgy operator.

This bill is all about getting the balance right. We are not about stamping down on self-expression. It is very important that people have the chance to express themselves, but the thing we know about young people — and yes, it was a long time ago since I was a young person — is that they do have a sense of adventure and a sense of rebellion about themselves. They also have this amazing quality that makes them unable to be convinced that they would ever be as old as me or even older. I remember there was an advertisement depicting someone selling a frypan, I think, saying the frypan had lasted forever, and there was this 60-year-old, with a very intense tattoo on a bit of a saggy 60-year-old arm. So it is well known that these things are forever — like the frypan!

I remember being young and never thinking that I would ever be this age, and the thought of being even older was something that I never really contemplated. When I was a kid the thought of getting a piercing or a tattoo would send me screaming from the room. I remember getting my ears pierced. I was in my school uniform when it happened. I remember psyching myself up for the whole process — I was a bit of a wuss, really. I remember having one ear done and thinking it was so horrendous I would just leave it at that. My girlfriend then spent 10 minutes psyching me up to do the other ear, which you can see I had done. But it was something I swore to myself I would never go near again. The amusing part of the tale is that my girlfriend did not have her mum's consent on the day and her piercings were actually off-centre. I remember her saying, 'Not only do I have to tell my mum that I have had this procedure done, but it has not been done properly'.

Tattoos and things like that are there for a considerable period of time, or for life; they are very difficult to remove. They should be considered as things that will be there forever. Removing them is a very painful process, and there are no guarantees of success. We have always had the view that people under the age of 18 should not be able to receive a tattoo. This bill extends that provision to body piercing and other permanent works of body art that can be performed on people that, as I say, are becoming more and more popular in the community.

I must emphasise that this bill has wide support from the community at large and also from important bodies such as the Australian Medical Association and the Australian Dental Association, which have provided some very detailed and obvious reasons why they would be keen to see this practice banned for people under the age of 18 years. Perhaps the knowledge and views of the AMA and the ADA will not have a big impact on young people, but it will encourage parents to have discussion and dialogue with their children about the dangers of going down this particular path.

I would like to conclude by saying that I am very hopeful that by the time my children get to the age of exploring these kinds of procedures it will be a trend that has passed, but certainly while it is a trend that is on the rise I think this bill is an important measure to ensure that children are protected in the best way possible.

Mrs FYFFE (Evelyn) — I am pleased to speak on the Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008. This has taken a long time to come in. I remember when I was here in my previous term a former member for Frankston, Andrea McCall — an excellent member — raised in debate on a crimes amendment bill the issues with body piercing. There had been quite a bit of publicity about this in 2000, and we had been seen by parents who were very

concerned about it. On 1 October 2000 Andrea raised the case of a young girl in Frankston who had had her nipples pierced. Andrea discovered in her research that to have the nipples pierced they must be made erect to enable the rings to be put through, and she wondered how this was actually done. She raised this in a debate on indecent assault on minors.

Tattooing, body piercing, beading, branding and tongue-splitting seem to fulfil either a cultural or emotional need, or a sexual need, and is gaining popularity. In Western cultures it seems to be that it is underlying a compulsion by people to assert control over their own bodies. Perhaps it is because they feel they have little control over other aspects of life. When you think about it along these lines, it is little wonder that body modification is regarded by some as a powerful form of self-expression and transition to adulthood. *Miami Ink*, *LA Ink*, *London Ink* and *Tattoo Wars* on Foxtel have popularised the culture of tattooing and body modification. These shows have made heroes out of talented artists who are able to capture the significance of people and events in their customers' lives.

It is a far cry from when I was younger and tattoos were generally frowned upon. They were usually sported by ex-sailors, servicemen or people who had been guests of Her Majesty for some time and had some quite crude tattoos. The tattoo was often an anchor, a rose or a heart with the name of a loved one stencilled over the top. When I came to Australia my first job was as a youth officer at Winlaton Youth Training Centre. One of the girls, who worked as a prostitute, had tattooed on her body 'Pay as you enter', which may have been seen as a marketing ploy but certainly was not something that was to be recommended. When we were coming to this bill I was thinking about her, hoping that her life has changed, that she has a more sedate life than she had then and wondering what she thinks of that tattoo, which would be virtually impossible to remove.

As a mother, my instinct is to ask: what are the risks? Tattooing and other practices of body modification carry with them many risks that are often not fully appreciated by young people until they are older or, indeed, by the parents who may give permission for the tattoos or body piercing. I refer to the statement made by the former member for Frankston, who said that nipples had to be erect. I do not know if the parents would realise that this had to be achieved and how it would be achieved.

Intimate body piercing will be banned for people under the age of 18 years. Without going into graphic detail, it is important that we understand the logistics and psychology behind the piercing process. In order to pierce the intimate area, contact must be made by the professional. What might at first seem to a young person to be on par with a trip to the doctor can quickly become very confronting and uncomfortable. However, as I said, the bill permits a child under the age of 18 years to have genital piercing performed if parental consent is given. I cannot imagine many under-aged children going to their parents to discuss piercing their genitals with a view to obtaining their parents' consent. I would think that under-aged children would be fearful their parents might start probing as to why they feel the need to have it done. Parents who may have picked up their daughter's teen magazines or son's nature magazines would know that the rationale for intimate body piercing is predominantly sexual. It is believed the movement of a bolt or ring across sensitive nerve endings in intimate areas heightens sexual stimulation. Therefore a parent consenting to genital piercing may, by extension, be seen as giving consent or encouragement for what many regard as premature sexual activity. This could be to the detriment of the child and their reputation.

We have heard of insidious cyber bullying where photographs have been sent around of young people who have been encouraged by their boyfriends to take mobile phone photographs or whatever and send the explicit pictures either via email or text. This creates another problem for the government — that is, policing. When image and daring outweigh sensibility and maturity, the temptation may be to go to a backyard operator, or worse still attempt to self-pierce or tattoo or even have a friend do it. One of my staff members told me about a young girl with whom she went to school who cut the shape of a star on her skin with a razor blade and proceeded to draw over it with pen ink to create the tattoo her mother would not let her get. Of course it turned septic and the girl had to be taken to a doctor; she retained a scar from that tattoo.

With a genital piercing the results may be even more horrendous. Performed on one's own body or by someone without expertise and qualifications, the genitals can become disfigured and seriously infected. This could have lasting consequences and the child's ability to have a normal sexual relationship could be impaired if damage is done to the nerves. Back in 2002 body piercing programs for industry practitioners were pursued to help people make better choices. I would like to see more emphasis on educating young people, who I believe are still largely uninformed, and also their parents.

The issue of written consent raises some concerns, because many young people have been ingenious at

forging notes supposedly from their parents for school, often getting away with it. They might, with this provision, take a letter from their parents that is not actually signed by the parents.

In 2001 the Australian Medical Association published a brochure on the dangers of body piercing. It was displayed in many doctors surgeries; however, young people may not have been going to the surgeries or even seen the brochure, because if they were under age they probably went with their parents and the usual teenage activity is to not look at or observe anything that the parents might want to draw to their attention.

Proposed section 44A(2) to be inserted into the principal act states:

> A body piercer must not perform body piercing on a person under the age of 16 unless written consent has been given …

Written consent can take a number of forms. It can mean a letter written by the parent or guardian simply stating, 'I give permission for my child's ear to be pierced'. There is no obligation for informed parental consent. As I said, how do we know that that written consent is from the parent and that an ingenious young person has not produced it themselves?

Operators will be fined $2200 for performing a non-intimate piercing on someone under 16 years without parental consent. For the purpose of the bill a body piercer is defined as a person of or over the age of 16 who carries on a body piercing business, is employed by a body piercing business or performs body piercing for a fee, wage or other remuneration or payment of any kind. The likelihood of backyard operators and even friends piercing the bodies of friends may increase as a result of the bill. However, despite these anticipated consequences the penalties only apply to those operating as a business. They do not apply to a backyard operator who is stumbled on by other means and is found to be doing it.

Other speakers have mentioned the risk of hepatitis, which is re-occurring again in the Australian community and is something that causes damage that can last a lifetime. We have heard mention of people who are older having a tattoo on an aged part of their body, which does not look very attractive. It is something that I have never been inclined to have, but I am a wimp as far as pain goes. I could never endure someone hurting me like that. In the same way I could never have plastic surgery because I could not stand the pain.

I support the bill. There are some concerns about the non-registered tattooists and body piercers, but I am not quite sure how that could be handled. However, it is time for this bill to be introduced.

Mr LIM (Clayton) — I welcome the opportunity to speak on this bill because it protects our children and young people in the area of tattooing and body piercing. It is interesting to note that the speaker before me had the same feeling that we need to care and look after our children and young people. It is common knowledge that there are risks associated with both body tattooing and body piercing. These include the transmission of blood-borne infectious diseases such as hepatitis and HIV. There are also risks of scarring or necrosis of tissue. When such damage occurs to organs such as the tongue, the consequences can be quite dramatic.

The state can only do so much to protect consenting adults from their own follies. In this case I personally have knowledge of people whom I worked with before my life in Parliament who through their follies had tattoos done during their service in Vietnam. I know that when they came back they often regretted it, because they would show these sometimes disgusting tattoos. One particular gentleman had to go through the process of getting rid of them. He complained of the pain and of the scars still being there; that part of his arm is scarred for life as a result of trying to get rid of those so-called chic and trendy tattoos. The state will always have a responsibility for regulating tattooists and piercing parlours on health grounds. However, subject to that, if an adult regrets or finds embarrassing a tattoo they once considered chic or trendy, as I have just mentioned, they may have to accept responsibility for their own behaviour.

It is another thing, though, when it comes to children and young people. Not only can they not give informed consent, but when it comes to procedures such as piercing of intimate body parts it is not appropriate that parents give consent on their behalf. Indeed by toughening these provisions I suspect that in some cases we may be saving parents from the nagging of their kids.

This bill provides that protection by amending the Summary Offences Act 1966 by, first, increasing the maximum penalty for the offence of performing a tattoo or like process on a person aged under 18 years from 5 penalty units, which is $550, to 60 penalty units, which is $6600. Second, it defines 'like process' to include scarification, tongue splitting, branding and beading, thereby prohibiting the performance of these procedures on persons aged under 18 years. Third, it creates an offence of performing a non-intimate body piercing on a person aged under 16 years without the consent of a parent or guardian and, where the young

person has the capacity, his or her consent. Lastly, it creates an offence of performing an intimate body piercing on a person aged under 18 years.

I note that the Scrutiny of Acts and Regulations Committee in *Alert Digest* no. 8 of 2008, Tuesday, 24 June, at page 16 in relation to this bill states:

> … the committee is concerned that a ban on intimate body piercing (including nipple piercing for males) of 16 and 17-year-olds may be disproportionate to the goal of protecting children from inappropriate sexual conduct.

I appreciate the charter and responsibilities of the Scrutiny of Acts and Regulations Committee, but the committee, in expressing its concern, is not only out of step with community standards and expectations, but ultimately is missing the point of protecting our young people who cannot make a fully informed decision. Increasingly we understand that the brain of the adolescent is not fully mature and that young people are sometimes susceptible to a range of risk-taking behaviours. I do not see this provision, which would require young people to wait two years for intimate body piercing, as an unreasonable trespass on individual freedoms.

One further comment I make is where parents can give consent to children having non-intimate body piercing such as earrings, parents have a responsibility to work through with their kids issues such as ensuring the person performing the procedure is competent and that the child understands matters such as preventing infection following the piercing. With these comments I support the bill.

Mr CRISP (Mildura) — I rise to speak on the Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008. The Nationals in coalition support the bill. The purpose of the bill is to prohibit scarification, tongue splitting, branding and beading on persons under 18 years of age; to increase the maximum penalty for an offence of performing a tattoo or like process on a person under 18 years of age; to make it an offence for performing an intimate body piercing on a person under 18 years of age; and to make it an offence for a body piercer to perform a non-intimate body piercing on a person aged under 16 years. It also regulates a good deal of the tattooing industry.

I pay tribute to the member for Shepparton and Damian Drum, a member for Northern Victoria Region in the other place. They have done a lot of work in getting this issue recognised, as have many members of this house. However, despite the government's rhetoric over the years, it was not until The Nationals introduced a private members bill that the government acted. However, it has acted and now we have this bill before the house. I have sat and listened to many speakers state their support of the bill.

Like all MPs, I have had constituents come to my office about this issue. In particular parents have come to my office about something that has happened to their children afterwards. Like many others, I have been to the local tattooing parlour to lose an argument.

An honourable member — Was that the only reason you went there?

Mr CRISP — Yes. The interjection suggests that I have yet to find a cause, a reason or the courage to have a tattoo.

In working through this, I pay tribute to the library research service, particularly Rachel Macreadie, for providing notes on this. Those notes were extensive and in many cases revealing. Like many others, regarding this issue I have led a sheltered life, something I do not regret. The information provided has certainly widened my knowledge, if not my understanding.

The bill is particularly welcome in the way it has moved to define consent and provide when someone can give their consent and when they require parental consent. Extending the penalties for an offence is extremely important. I have some issues to raise around the age under which parental consent is required. I acknowledge the wonderful contribution made by the member for Evelyn. There was a lot in that I will not repeat, but I want to pay a compliment where it is due. Regarding the issues surrounding the minimum age and parental consent, I ask the question asked by the member for Evelyn: is a note from the parents sufficient? We have some work to do in that area, because these are complex issues, and I am sure they will be legal issues. The health complications have also been well covered in this debate. Shoddy workmanship costs our health system — a health system that is under pressure and does not need such expenses.

We have some way to go to get the definition of written consent sorted out. We may also wish to look at setting an age under which a child cannot have any of this work done. Something that has not been raised in my office but has been raised in my discussions with other members is the issue of whether a parent should be able to consent for a child and impose their will that way. That is an issue that will need to be sorted out as we go forward. This is not the first time that a bill will need to be amended as practices and knowledge changes. This

initiative is overdue. It is very much welcomed, and The Nationals will strongly support it.

Mr SEITZ (Keilor) — I support the Summary Offences Amendment (Tattooing and Body Piercing) Bill. As other members have said, it is necessary that the bill and some regulations be brought in because of the trends among the young in today's society. It is basically what you see on TV, in computer games and in various other activities that bring this sort of stuff to notice. Anybody who can see they can make a buck out of it will go into business to become a professional body piercer or tattooist. In my day, it was drunken sailors who woke up the next morning with tattoos they did not want, as the member for Evelyn said. Tattooing was abhorrent to me in my youth because under Hitler's regime people were tattooed to signify their nationality, who they were and what they were. For me, tattoos of any kind had an abhorrent sort of meaning because of what people were telling me as I was growing up. As I said, I always found it to be an offensive thing. Today it has turned into a modern sort of art display with which people can express their views.

Of course there can be lifelong damage when people realise what has happened in the later days of their lives. I welcome the requirement for parental consent for those under 16, and I hope that is upheld very strictly. I also welcome the requirement that people under 18 have to wait for their private parts to be tattooed or pierced, because that is a very young age, and people are not very mature at that age. I remember that in the 1970s everybody wanted to be a blond surfie, to the extent that many boys bleached their hair. A lot of them are now bald as a result, because they used all sorts of methods to bleach their hair. That was the trend in those days.

Ms Neville — Peroxide.

Mr SEITZ — That's it — peroxide was used, and a number of other bleaches. I personally discovered my son in the bathroom bleaching his hair; I smelled the funny smell before I knew what he was up to. He is suffering from the consequences now. My grandson says, 'Grandpa, how come you have so much hair and daddy hasn't?'. It is because of what he was up to and what the trend was at the time he was growing up. Body piercing and tattooing are the same in that respect. Hopefully this is a phase that we are going through.

It is good that we have some legislation here to control it. It is important that we have some controls concerning health and wellbeing. Infections can happen. From a personal point of view, during the school holidays my granddaughter had an accident with a sliding door and cut her ear. Her parents were concerned, as were we as her grandparents, to ensure that she got the best medical treatment. We had to take her from Phillip Island to the children's hospital to see a plastic surgeon and have the cut mended so she would not be left with scars and disfigurement. As the doctor on Phillip Island told us, she does not want to finish up with a bad growth on the ear and damage to her appearance for life, as can happen.

Some young people do not think of that. At that age of 16 or 17 they think they are invincible, the world is theirs and they can get away with anything. This incident brought home to me just how important this issue is and how grown-ups and the medical profession feel about these issues. The local doctor said they could stitch the cut but that she might end up with a cauliflower ear if it was not done properly and that it needed a plastic surgeon to do a proper job of it. I am sure that my son and daughter-in-law will be very reluctant to consent if their children ever consult them regarding body piercing, simply because of the reaction I saw when the lobe of my granddaughter's ear was cut in this accident.

I hope many other parents consider in the future what could happen to their children and do not consent to body piercing because a kid keeps nagging. Parents tend to give in to the wishes of their young ones at times. Sometimes parents have to be strong and withstand the pleading and their children saying that the girl next door or the boys at school are doing the same thing and they are the odd one out. Parents need to counsel their children on this. We need to go even further and talk to the parents about it. When this legislation passes through the house I would like to see some material go out to parents on how to handle situations where they are confronted by their children wanting permission, especially when it comes to the piercing of private body parts. With that, I wish the bill a speedy passage through the house.

Sitting suspended 1.00 p.m. until 2.04 p.m.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Brimbank: councillors

Mr BAILLIEU (Leader of the Opposition) — My question is to the Premier. I refer to allegations made in this house yesterday by the member for Keilor that

Cr Natalie Suleyman runs the City of Brimbank 'in the same way that Robert Mugabe runs Zimbabwe', that she had 'bribed one councillor', that she had threatened her opponents with 'trauma, hardship, anxiety and stress', that there is 'no transparency', that her father and adviser to the Minister for Planning is a 'standover man', that staff work 'under threats and intimidation from the ruling gang', and that funding and resources are being misused, and I ask: what action has the Premier taken to establish a full, independent inquiry into these extraordinary and unprecedented allegations?

Mr BRUMBY (Premier) — I was asked this question yesterday, and I answered the question yesterday, and that was that if any individual, whether it be the Leader of the Opposition or any member of this house — any individual — there are long-established — —

Honourable members interjecting.

The SPEAKER — Order! The Premier has been asked the question, and he will be given an opportunity to respond to it. I ask for some cooperation from the Leader of the Opposition, the member for South-West Coast and the Minister for Health.

Mr BRUMBY — As I was saying, there are long-established and well-established processes in place in this state. If any individual has a concern about the operations of a local council, they should refer it to the Office of Local Government.

Mr Baillieu — On a point of order, Speaker, the Premier is debating the question, not answering the question. He claims to be decisive, but he will take no action.

The SPEAKER — Order! I warn the Leader of the Opposition that I will not have points of order taken in that manner. I do not uphold the point of order. I believe the Premier has concluded his answer.

Dr Napthine interjected.

The SPEAKER — Order! I warn the member for South-West Coast!

Rail: regional links

Mr TREZISE (Geelong) — My question is also to the Premier. I refer the Premier to the government's commitment to make regional Victoria the best place to live, work and raise a family, and I ask: can the Premier update the house on recent investments in regional rail that will assist us in delivering on that commitment?

Mr BRUMBY (Premier) — I thank the member for Geelong for his question and for his passionate commitment to regional rail in this state. Earlier this morning with the Minister for Public Transport and the member for Ballarat East I was in Ballarat to make a further exciting announcement about investment in our regional rail network.

If you look over the period of the Labor government in this state, you will see there has been an unprecedented investment in country rail services in our state. We have of course reopened lines to Bairnsdale and Ararat — lines that were closed by the former Kennett government and reopened by our Labor government. We have delivered regional fast rail to each of the provincial centres: Geelong, Ballarat, Bendigo and the Latrobe Valley. We invested close to a billion dollars in doing this. All we ever heard from the Liberal and National parties was opposition to this project, but we pressed ahead with what is the biggest investment in regional rail this state has seen.

We have slashed V/Line fares by 20 per cent. We have bought back the rail freight network, and with the Australian Rail Track Corporation we will see over the next few years more than $600 million invested in restoring rail freight in our state. Is this not a dramatic turnaround from the dim, dark days of the 1990s when lines were closed and services were cut?

Honourable members interjecting.

Mr BRUMBY — Today the minister and I were delighted to announce as the centrepiece of what is a major new reinvestment in this regional rail system a further 28 V/Locity carriages to be purchased as part of a $236 million investment in the system. This is an investment which is fantastic for provincial Victoria and which future proofs the rail system for years and decades to come.

Honourable members interjecting.

Mr BRUMBY — I will just put this in perspective. Over recent years we have ordered 22 extra V/Locity carriages. They are being delivered from next month. Today's announcement of an additional 28 carriages brings the total to 50, and that will boost the capacity of the system by 50 per cent. The order we announced today will add more than 2000 extra seats across the network, and when combined with existing orders the total is 3800 extra seats. This has been a great success story for our state.

Mr K. Smith — No, it hasn't!

Mr BRUMBY — Victorians are voting with their feet and using this service in unprecedented numbers.

Honourable members interjecting.

Mr BRUMBY — The growth figures for the last two years tell the story: 30 per cent growth last year and 30 per cent growth the year before. This is unprecedented growth being delivered by a Labor government which supports and cares for the regions. It is a far cry from the sort of decimation of this system that we saw in the 1990s. The 28 additional carriages we have announced today will ensure that this is the best possible service for country Victorians for years and years ahead.

The SPEAKER — Order! Before calling the Leader of The Nationals, I seek some cooperation from the member for Warrandyte, the member for Bayswater, the member for Evelyn and the member for Kilsyth. The constant tig-tagging of interjections from the four of them will not be tolerated.

Anticorruption commission: establishment

Mr RYAN (Leader of The Nationals) — My question is to the Premier. I refer to the Premier's recent comments that an anticorruption commission will lead to 'not the sort of society we want to live in', and I ask: is it not a fact that the Premier's refusal to create an anticorruption commission has now led to a situation where even his own MPs, including the member for Keilor, are reduced to using Parliament to make serious allegations about corruption, fraud, standover tactics and bribery in local government and intimidation by ministerial staff, or is that the sort of society the Premier wants to live in?

Mr BRUMBY (Premier) — This issue of the government's attitude to an ICAC (independent commission against corruption) has been raised a number of times in question time. As I have said before, our position in relation to this matter has been consistent, but you cannot say that of the opposition parties, who have had seven different positions on this issue since the last election. Seven different positions!

The SPEAKER — Order! The Premier should not debate the question.

Mr BRUMBY — In relation to the mechanisms which are in place in this state, the Leader of The Nationals referred to some comments I made about not needing an ICAC. I will tell you why I said that: the mechanisms we have already got in place in this state go well beyond the mechanisms in other states.

Honourable members interjecting.

The SPEAKER — Order! The member for Hastings is warned.

Mr BRUMBY — In relation to the Ombudsman, the office of the Ombudsman of Victoria investigates allegations of corrupt conduct by public servants or local government officers.

Mr Ryan interjected.

Mr BRUMBY — Well that is what he does! The Ombudsman does similar work to the New South Wales ICAC but his jurisdiction exceeds that of the ICAC because the Ombudsman can investigate improper conduct as well as corrupt conduct. The New South Wales ICAC can investigate only corrupt conduct. Needless to say, one of the first acts that we put in place as a government was to guarantee the independence of the Ombudsman in the constitution.

Allegations regarding police corruption are handled by the Office of Police Integrity. The OPI has extensive powers, including being able to tap phones, undertake coercive questioning and hold public hearings. I would have thought that the events of the last few months and the last year, where the OPI has been investigating matters and people have now been charged in relation to those matters, show that the OPI is working in terms of its charter.

Victoria Police is able to investigate criminal corruption and is appropriately empowered and resourced to do the job effectively. In local government, any complaints regarding local government are investigated by municipal officers of Local Government Victoria. We then have the independent powers of the Auditor-General, which were enhanced, made independent and enshrined in the constitution by our government. The office of the Auditor-General has considerable powers to examine and audit over 600 public sector organisations, ensuring that taxpayers money is being correctly and effectively spent.

The point is that our model and all the mechanisms we have got in place — the powers of the Ombudsman, the powers of the OPI and the powers of the Auditor-General — amount to the most successful of any measures anywhere in Australia.

Honourable members interjecting.

The SPEAKER — Order! I ask the member for Bass for some cooperation.

Mr BRUMBY — That is why at the last state election the following policy position was advanced:

> Matters involving allegations of serious criminal misconduct and corruption by public officers and local government will remain the responsibility of the state Ombudsman working with Victoria Police.

Guess who said that? The state opposition!

Roads: government initiatives

Ms KAIROUZ (Kororoit) — My question is to the Minister for Roads and Ports. I refer the minister to the government's commitment to making Victoria the best place to live, work and raise a family, and I ask: can the minister update the house on action the government is taking in the area of roads to deliver on that commitment?

Mr PALLAS (Minister for Roads and Ports) — I thank the member for her question and for her support for major infrastructure projects that have taken place right across this state. We are taking action as a government now. The Brumby government is delivering vital infrastructure in order to ensure that we get the better services, the better living standards and of course the strong and growing economy that is so critical to the future development and improvement of this state.

Importantly we have delivered on projects such as the Hallam bypass, which was completed 17 months ahead of schedule and $10 million under budget. We have also delivered on the Tullamarine-Calder freeway interchange, which was worth $150 million, was on-budget and ahead of schedule. We also need to recognise that that project received the national award for excellence in major capital alliances. In the last year we have unveiled this government's Arrive Alive 2 strategy, which aims to reduce our road toll by 30 per cent over the next 10 years. If we achieve that objective, by 2017 we will have saved 100 extra lives on our roads every year.

We opened the Pakenham bypass on time and the Dandenong bypass 12 months ahead of schedule. Through completing these bypasses we have reduced commercial traffic in Dandenong and Pakenham, and of course that improves the amenity of those communities. We have also announced that the Deer Park bypass, which I am sure the member for Kororoit will be pleased to hear is up to 12 months ahead of schedule. We have also made commitments in respect of the M1 project, the biggest state-funded project in this state's history.

In the land occupied by those opposite there is no plan to improve our east–west connections. There was nothing at the last election, and no submission to the east–west needs assessment. The closest we have come is the opposition leader indicating in the Laverton *Star* — —

The SPEAKER — Order! The minister will not debate the question.

Mr PALLAS — This government supports an east–west needs assessment process. We support it because we believe it is critical that the community has a right to input, and we would like to hear a bit of input and vision from those opposite.

Outside the metropolitan area we have also put money into vital projects such as the Bendigo Box and $404 million to the Calder Freeway, a critical project that will improve connections to Ballarat. Some $110 million has also gone — —

An honourable member interjected.

Mr PALLAS — Bendigo, sorry. I will get to Bendigo.

We have committed $110 million towards the duplication of the Princes Highway west, a project which has federal funding — something the member for Polwarth would be very pleased to hear. He believed it was a state project. He believed the federal government would walk away from this project. In the land of those opposite it was costed at $80 million. Some $220 million has been committed to that project already. Back in the world of reality and the world of roads, the EastLink project, at a cost of $2.5 billion, has now been delivered five months ahead of schedule. It is estimated to save working families up to 30 minutes in travel time between Mitcham and the Frankston Freeway. This means people will have more time with their families — the thing that cannot be costed but the thing that we value most.

Thornbury resident, Richard Simon, recently told the *Herald Sun* that EastLink was the greatest thing that had ever happened to him. He is clearly a man who shares my passion for roads. He went on to say that the project had seriously changed people's lives. Currently we have $3.2 billion worth of road projects being delivered, and we still have plenty of petrol left in our tank, unlike the member for Hastings, who knows how it feels for those opposite to have no petrol left in the tank after his breakdown on EastLink recently.

There is always more to do, and that is why the government is now working on an integrated transport

plan to continue to provide world-class infrastructure for Victorians — real projects, not fanciful ones; real delivery, not vague promises and confusion; and real action now to ensure that Victoria remains the best place to live, work, raise a family and get around.

Office of the Australian Building and Construction Commissioner: future

Mr CLARK (Box Hill) — My question without notice is to the Premier. I refer the Premier to a gathering in Melbourne yesterday of 2000 unionists who threatened rolling walkouts and strikes if the Office of the Australian Building and Construction Commissioner, known as ABCC, is not immediately abolished, and I ask: given that the ABCC has delivered significant benefits to the Victorian economy and building industry, is it Victorian government policy to support the immediate abolition of the ABCC, as demanded by the union movement?

Mr BRUMBY (Premier) — The position of the Victorian government, as I think we have represented on a number of occasions, is that we support Forward with Fairness.

Health: government initiatives

Mr BROOKS (Bundoora) — My question is to the Minister for Health. I refer the minister to the government's commitment to making Victoria the best place to live, work and raise a family, and I ask: can the minister update the house on action the government has taken to deliver quality health services for all Victorians?

Mr ANDREWS (Minister for Health) — I thank the member for Bundoora for his question. This government is absolutely committed to providing our health services with the record funding they need to treat the record number of patients that are presenting for care right across our state. As a government we are absolutely proud to have been able to provide every single health service in every single year in government with record funding. That is what is required to ensure that the record number of patients who are presenting for care can get the care they need. That is what we have done as a government. We have proudly supported our health services with a 112 per cent increase in acute funding right across our health system.

I make the point again for all honourable members, and especially those opposite, that every single health service has received a funding increase in every single year of our term in office. It was not always the case, but that is our record and we are proud of it. What does that mean in terms of both ongoing funding and also a $4.7 billion boost to the health infrastructure that is so important right across our state — in regional and rural Victoria and in metropolitan Melbourne? We are investing to ensure that the quality of our buildings matches the quality of the care provided by our dedicated staff by providing record recurrent funding, record capital works and record infrastructure to treat record numbers of patients. What does that record funding mean? In real terms it means that this year we will treat 600 000 more patients across our system than were treated when we came to office in 1999 — a record number of patients.

As to of what that funding means in practical terms for real individuals and families across our state, we celebrated around the end of last year or early this year the one-millionth episode of elective surgery that was performed through the record funding provided by this government. It was a proud moment. We carry out fully 15 000 extra episodes of elective surgery each and every year compared with the number that were performed under the funding provided by those opposite. Again, there are real benefits for real people.

In terms of treatment and access to care right across our state, and in terms of health services in smaller communities, in rural and regional communities and in larger communities, record funding has been provided to again cope with the record demand pressures. That means real benefits for real people and families right across our community. There is no better example of our government's investment and our commitment to giving our health services the resources they need than the $8 million we provided in last year's budget to open the new elective surgery centre at the repatriation site of Austin Health. The Premier and I were out there on Monday afternoon to open that new, dedicated elective surgery centre for which we have allocated $8 million in capital funding and $9.9 million in additional recurrent funding and which will perform thousands of extra episodes of elective surgery to ensure that patients get access to the care they need sooner than they otherwise would have.

This is a new model of care. This is about saying you have emergency demand and you have elective demand and that if you separate the two you are better placed to provide the best care, whether it be at the Alfred Centre, a $60 million-plus investment as part of Bayside Health; at this new centre, which is our second dedicated elective surgery centre; or through the commitments we have made around St Vincent's and the need for and our commitment to the development of a specialist orthopaedic elective surgery centre at that fine health service.

The Premier and I were joined by staff and by the first patient who would receive his care in this new, dedicated elective surgery centre. It was a great day for Austin Health, a great day for people in the northern suburbs and a great example of our investment in the capital fabric and in the infrastructure that is important to drive new models of care, innovation and better outcomes for patients and to provide the recurrent funding to ensure that we can do that extra work.

The activity part of that funding comes as part of a record partnership between our government and the commonwealth government. It is a partnership that we have not enjoyed for many, many years. But we are providing $60 million of additional funding during calendar year 2008 to ensure that 9400 Victorians get the care they need and the elective surgery they need sooner than they otherwise would. Others can mock that and those opposite can laugh at it, but that is a serious issue. We are fundamentally committed to delivering on our commitments in terms of those additional 9400 patients — those 9400 episodes of elective surgery.

I can report to the honourable member for Bundoora that in terms of both his local community and across the state, in the three months to the end of June we have performed 3832 of those 9400 elective surgery procedures. We are on track to meet our target. That is only possible because of the commitment of this government in partnership with the commonwealth government. That is a partnership we welcome. It is a partnership that has not always been the case. It is a new partnership and a proper partnership to deliver the elective surgery care that long-wait patients — patients who have waited beyond the clinically appropriate time — have been calling for. We are delighted to be able to deliver this. In so many ways it tells the story of the record investment of this government.

Economy: performance

Mr BAILLIEU (Leader of the Opposition) — My question is to the Premier. I refer the Premier to his answer yesterday and his statement that economic conditions in Victoria are the worst since 1992, and further to today's retail sales figures, which show that Victoria suffered the biggest decline for the month of any state and the worst yearly growth of any state, and I ask: given this reversal within the Victorian economy, does the Premier still stand by the budget forecast for growth in Victoria of 3 per cent?

Mr BRUMBY (Premier) — The comments made at the beginning of the Leader of the Opposition's question are not correct. For the record, that is not what I said in the Parliament yesterday. If he intends to quote me, he should quote me accurately. What I said yesterday, and what I have said consistently, is that the global economic conditions are the toughest we have faced for 15 years. That is true; I would have thought it was self-evident. If you want to look at what any of the economic commentators are saying about the world economy — whether it be in the United States of America, Europe or the United Kingdom — you will find that these are the toughest conditions we have seen for 15 years.

What I said yesterday in answer to a question in Parliament was that in terms of how we address these conditions I believe the fundamentals in our state are as good as you will get anywhere in Australia and anywhere in the world, and that we are well equipped to address the more difficult economic environment around us.

I outlined to the house yesterday a number of the significant new capital works projects which are under construction and/or coming on stream in our state. I do not believe that any state government, certainly on the eastern seaboard, could match the number of significant new investments — whether it be the convention centre, the Monash-Westgate or a range of other private sector proposals — that are under way in our state. All of these things, plus the decisions we took with foresight at budget time to further reduce business costs, will equip our state well to meet these challenges.

Let us look at some of the decisions made over the past few months, such as Toyota's decision to build its new hybrid Camry in Melbourne. At a time when there are more challenges facing the motor vehicle globally than at any time in the last 15 years or more, to have Toyota lock in this decision is fantastic for our state. In Geelong we have been able to announce that Satyam Computer Services will invest tens of millions of dollars to create up to 2000 jobs.

Mr Ryan — What is the basic message? You are sending a mixed message.

Mr BRUMBY — I do not think it is a mixed message at all. There are tough conditions internationally, but because of the decisions that we have taken as a government, we are well equipped to work our way through them. Last week there was the announcement by ExxonMobil and BHP Billiton of a $1.4 billion new investment.

Mr Baillieu — On a point of order, Speaker, the Premier was asked about growth forecasts and whether he stands by the growth forecasts. He has had a lot to

say, but he has not addressed the question. If he declines to stand by the growth forecasts, he should indicate to the people of Victoria that that is the case. If he is simply going to equivocate, then there is no point in asking any questions in this house.

The SPEAKER — Order! The Premier is relating his answer to the question that was asked by the Leader of the Opposition. I do not uphold the point of order.

Mr BRUMBY — Generally in the energy area, with all the debate about energy and climate change in our state, I have consistently said throughout this debate that we will end up with more investment, not less, in our energy sector, and that forecast is correct. Just over the last few months we have had confirmation that TRUenergy will construct the Southern Hemisphere's largest solar plant in our state. As I said last week, Turrum is a $1.4 billion project, and the Origin development at Mortlake is 550 megawatts and involves hundreds of millions of dollars of new investment. HRL and Harbin's clean coal technology is a $750 million investment, and we have about $2 billion of investment scheduled before 2015 because of the Victorian renewable energy target. This is an unprecedented investment in energy, which will produce jobs, strengthen our economy and reduce greenhouse emissions.

In addition to all of that, BankWest has decided to establish new banking centres in our state. We have had Costco's decision to open its first Australian store in Docklands — the first in Australia! — in Victoria, after our visit to Seattle. The ANZ building, which is the biggest commercial office building anywhere in Australia, is under construction at Docklands. As I have said, we have been successful with more inbound flights, whether they be with Tiger, Emirates on triple daily or Etihad, as was announced on Monday.

We have been successful with more events for our state. We have resecured the grand prix for another five years. We have the current Melbourne Winter Masterpieces exhibition, and of course next year we will have the Salvador Dali and Pompeii exhibitions. I would have thought that those are all positive things for our economy. Instead we have had the member for Scoresby running around the state talking the economy down. That is what he has been doing.

Honourable members interjecting.

The SPEAKER — Order! The Premier will confine his comments to government business.

Mr BRUMBY — I indicated to the Leader of the Opposition yesterday the way in which the growth forecasts are established by Treasury. I have not received advice in relation to that matter. Obviously the normal time frame in which these matters are assessed is at the time of the end-of-year results for the budget, which are normally produced in October, and if there were any revision of those growth forecasts, that would be the appropriate time to make it.

Discrimination: government initiatives

Ms D'AMBROSIO (Mill Park) — My question is to the Deputy Premier. I refer him to the government's commitment to making Victoria the best place to live, work and raise a family, and I ask: can he outline to the house what measures the government is taking to ensure that Victorians are better protected from discrimination?

Mr HULLS (Attorney-General) — I thank the member for her question. The Brumby government continues working to ensure that all Victorians are given the best opportunity possible to fully participate in a productive and fair society. The government's A Fairer Victoria policy has invested some $4 billion since 2005 to address disadvantage and also to promote social inclusion.

Fundamental to addressing disadvantage is tackling discrimination, and we are committed to ensuring that in this state we have robust laws which aim to tackle discrimination in all its forms as far as possible. It was for that reason that in August of last year I commissioned Julian Gardner — most members of this house would know that Julian was formerly the public advocate in this state — to conduct a review of the Equal Opportunity Act. I have to say that the current act is somewhat outdated. It is really an outmoded antidiscrimination act and, sadly, as a consequence Victoria's equal opportunity regime lags behind those of other states and indeed other nations.

I was pleased to formally receive Mr Gardner's report today at an event that was attended by, amongst others, Kevin Sheedy, the former coach of the Essendon Football Club. As many members of this house would know, Kevin Sheedy was a leader — indeed is a leader — in working to eliminate racial discrimination in the Australian Football League. The work of the AFL highlights the enormous amount that organisations and communities can do to effect change without waiting for legislation.

The Gardner report identifies some of the key failings with the current act, which include that it relies solely on individual victims to make complaints, it provides the commission with very limited powers to enforce the

law and it focuses on complex complaint-based processes rather than early intervention and flexible alternative dispute resolution processes. It contains some 93 recommendations aimed at improving our current system.

Those recommendations include: giving the commission powers to launch its own investigations, rather than waiting for individuals to make a specific complaint; transforming the commission from a complaints handling body to one that can actually act on systemic discrimination and one that has the ability to facilitate resolution and compliance; giving complainants a new choice to go straight to the Victorian Civil and Administrative Tribunal; and also protecting people who are homeless, people who are volunteers and people who may have an irrelevant criminal record.

The Brumby government has invested very strongly in tackling disadvantage and discrimination in many ways, including with the Charter of Human Rights and Responsibilities. I must say, though, that it stands in stark contrast to those opposite who, when last in government, actually sought to rip the heart out of the equal opportunity commission. They sacked the commissioner, and they sought to leave all Victorians without any effective voice.

Mr Clark — On a point of order, Speaker, the minister is debating the question. I ask you to bring him back to order.

The SPEAKER — Order! I uphold the point of order. The Attorney-General should address the question.

Mr HULLS — I want to conclude by thanking Julian Gardner and his team for producing such a comprehensive report. The government will seriously consider each and every one of the 93 recommendations he has made. I certainly look forward to working with my colleagues to develop a more modern framework to address discrimination in all its forms, based on the recommendations of Julian Gardner.

Public sector: investments

Mr WELLS (Scoresby) — My question without notice is to the Premier. Will the Premier confirm that assets under management by the Victorian Funds Management Corporation have plummeted from $41 billion in 2007 to $38 billion in March 2008, and now, according to the Premier, to $34 billion — a drop of $7 billion in just over one year?

Mr BRUMBY (Premier) — The government's insurance and superannuation entities hold significant investment portfolios in order to fund the long-term liabilities of the entities. I understand the insurance and superannuation entities hold investment assets of around $35 billion against liabilities of approximately $47 billion. As I indicated yesterday, the Victorian Funds Management Corporation has no direct exposure to the subprime market. I do not have in front of me the information to which the member has referred, but what I do know is that the investments of the VFMC are directed towards the longer term returns. I think everyone is aware that the performance of the share market over the last year has been in decline, not increasing, but my understanding is that over last 10 years we have seen record asset growth in the VFMC through the prudent investments of the managers.

Water: Victorian plan

Mr HARDMAN (Seymour) — My question is for the Minister for Water. I refer the minister to the government's commitment to investing in the food bowl irrigation system, creating water for farmers, rivers and Melbourne. I ask the minister: is the government aware of any alternative strategies being put forward?

Mr HOLDING (Minister for Water) — I thank the member for Seymour, because, like all members in this place, he recognises that this government has a comprehensive plan to address Victoria's water challenges. As members know, whether they agree with this plan or not, this government has a commitment to reducing water use wherever possible by careful conservation strategies. We have a plan to promote water recycling, including the very substantial upgrade of the eastern treatment, plant which will deliver over 100 billion litres of class A recycled water.

This government has in place a plan to build Australia's largest desalination plant, which will supply more than a third of Melbourne's water needs. This government has in place a plan to provide a comprehensive statewide water grid, many elements of which are already in place, but which include the Wimmera–Mallee pipeline project, the goldfields super-pipe project, and of course the Sugarloaf interconnector. This government also has in place a plan to make a substantial investment in upgrading outdated irrigation systems in northern Victoria to provide the most modern irrigation systems possible and to return the savings that that investment can make to farmers, to irrigators, to the environment and to urban water users as well.

This is a comprehensive plan. In support of that plan, this government has been advocating strongly on behalf of irrigators in northern Victoria. We have been doing so by ensuring that the 4 per cent cap on trading out of water districts was not unilaterally and immediately lifted, as was proposed by some, and we were pleased that most irrigators and communities in northern Victoria supported the stance the Victorian government has taken in standing up for them.

But it is true also to say that not everyone supports the plans that the Victorian government has put in place. In fact in an extraordinary interview on Adelaide radio this morning the federal Leader of the Opposition had some quite amazing things to say in putting forward his plans and his critique of what the Victorian government is doing. Firstly, he said the Victorian government should not be supporting a plan to pipe 75 gigalitres of water to Melbourne. We say this: we strongly support this proposition.

Dr Napthine interjected.

Mr HOLDING — I was asked about alternative plans. What the federal Leader of the Opposition had to say was that — —

Dr Napthine — On a point of order, Speaker, the minister is debating the question, and I ask you to bring him back to answering it. The question itself was dubious, in that it asked for commentary on other plans rather than government business. But given the parameters of the standing orders, the minister is able to answer the question with respect to Victorian government business, rather than engaging in a wide debate and making commentary on other people's comments and other people's plans. I ask you to bring him back to answering the question rather than debating it.

Mr Hulls — On the point of order, Speaker, this is the second day in a row when the member for South-West Coast, in taking a point of order, has tried to retrospectively argue about whether or not a question itself was in order. The question specifically asked about other plans in relation to Victorian water, and indeed it is absolutely on point for the minister to be making comments about other plans that have been announced in relation to Victorian water. I ask that you rule his point of order out of order.

The SPEAKER — Order! I am not prepared to uphold the point of order at this stage. However, the question does ask about alternative strategies. I ask the Minister for Water, though, to confine his remarks to alternative strategies as they would affect Victorian government business.

Mr HOLDING — We support the use of Victorian water for Victorians, for Victorian communities, for Victorian irrigators, for the Victorian environment and for urban communities in Victoria. Therefore we were shocked to see that what is proposed by the federal Leader of the Opposition is:

> One of the other things that's extremely important is the piping of this water in Victoria from north to south. As much as 110 gigalitres of water and that's water that of course will not be coming down to the Murray and lower lakes.

That is exactly what the federal Leader of the Opposition said. Presumably it is now federal opposition policy to take water from Victoria and to supply it to the lower lakes; water that will come from Victorian irrigators.

The SPEAKER — Order! I cannot allow the minister to bring into debate federal opposition policy. The minister must relate his comments to Victorian government business.

Mr HOLDING — We will not let them take this water from Victorians. It is Victorian government policy — —

Honourable members interjecting.

The SPEAKER — Order! The minister may discuss Victorian government policy.

Mr HOLDING — It is Victorian government policy that Victorian water is used to support Victorian communities, used to support Victorian irrigators, used to support the Victorian environment, used to support Victorian rivers. It is Victorian government policy that Victorian water should be shared amongst Victorian users to support the Victorian community. For example, it is Victorian government policy not to support the compulsory buyback of water licences from Victorian irrigators, so it is unbelievable to hear that in response to the question, 'Would you buy back licences compulsorily?' the answer was, 'Well, I think that's the kind of thing that needs to be considered in different parts of the basin'. The Victorian government does not support that.

Victorian government policy is not to support the compulsory buyback of licences. We have always understood that it is the Victorian opposition's position to support this, but it has never been and is not the federal government's position to support the compulsory buyback of licences, so it is news to everyone in Victoria to learn that the federal

opposition's policy is to consider the compulsory acquisition. We will stand up for Victorian irrigators, and we will continue to implement a plan that protects all Victorians.

SUMMARY OFFENCES AMENDMENT (TATTOOING AND BODY PIERCING) BILL

Second reading

Debate resumed.

Mr NARDELLA (Melton) — I rise to support the bill before the house. It is all about protecting young people from acts that can occur when they are with their peers, acts that can occur on the spur of the moment and acts that can disfigure them for the rest of their lives. At the particular point in time they may not have really given much thought to the results of acts performed on their bodies as a result of peer group pressure. These acts can range from tattooing to body piercing in a number of areas of their bodies. It is especially important that young people under the age of 16 years be protected and that in regard to intimate body piercing and other intrusive forms of changes to their bodies the age of consent should be 18 years. That is appropriate. The bill is about how those young people are to be protected and how the penalties for transgressions and illegal acts after the legislation is passed will be put in place to stop these things from occurring.

It is also about trying to deal with health risks such as the transmission of hepatitis C and the occurrence of infections, nerve damage and scarring. We have heard a number of members talk about people they have come into contact with who have experienced problems in these areas. Some of them have ended up in hospital, especially after some types of body piercing, and that is extremely disturbing.

The legislation sets out clear rules and makes it an offence to body pierce a person aged under 16 years without parental consent. We understand that some parents would allow this to occur — some are more, I suppose, liberated or more broadminded than others — but the vast majority of parents would not agree with body piercing for a young person under 16 years of age.

The legislation promotes informed choices and will reduce the incidence of impulsive piercing as a result of peer group pressure. It will assist in after care and the prompt identification of treatment of complications. It is important to put in place the rules, the law and the guidelines to enable this to occur.

The bill also makes it an offence to conduct intimate body piercing on a person under 18 years of age, where it can certainly be inappropriate or indecent or where there is sexual contact with adults. Members have talked about body piercing and about the places where it can occur, and what is required or needed to allow body piercing. It is an extremely serious issue for young and vulnerable people. It should be understood that people should be over the age of 18 years to make those informed decisions regarding these types of acts performed on their bodies.

The bill also increases penalties for tattooing or a like process on a person under 18 years. This is about protecting people. Scarification, tongue splitting, branding and beading are prohibited for people under 18 years. There have been instances relating to peer group pressure or where young people have had too much to drink whereby on the spur of the moment they have had these operations. In the vast majority of instances when you analyse what is occurring they are operations upon their body. In many instances they are extremely hard, if not impossible, to reverse. My pain threshold is extremely low, like the honourable member for Evelyn, who is now in the chair, and it is beyond my comprehension why people would want to split their tongue or pierce very sensitive parts of their body.

Mr Batchelor — Or what you do with it!

Mr NARDELLA — That is right. What you do with it is beyond my comprehension. I have had some pain, and the member for South-West Coast has referred to the earring in my left ear. That occurred many, many years ago and I suppose it was an impulse. My family, and Laurel my stepdaughter, have a lot to answer for, but at least that was an informed decision by someone who was over 18 years. I was certainly over 18 years at the time. The legislation is about protecting people so they do not undertake these operations, which can cause scarring.

One of the things that amazes me is the way that tattoos change over the years. When young people, with supple skin, have tattoos or images put on their bodies, the tattooing can come up quite good, but when they are older those tattoos fade and do not look nice at all. If young people have access to tattoos without these checks and balances they will probably regret it for most of their lives. Many young people have operations to get rid of their tattoos because they got them on impulse when they were young and vulnerable.

The health aspects of the bill are also important. I have known people who have had body piercing, who have had earrings put in or who have pierced their bellybuttons, and that part of the body has got infected, not with hepatitis C but other forms of infection. If you have the parents' involvement in those decisions they can make sure those infections do not go any further and are picked up quickly and the young person does not suffer more permanent damage or injury.

This is good legislation. It is legislation that Labor governments are about — protecting young people from unscrupulous tattooists or body piercers and sexual deviants who sometimes get involved with these types of operations. I support the bill before the house.

Mr HODGETT (Kilsyth) — I rise to speak on the Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008 and note the main provisions of the bill outlined by other speakers on the bill as being those that amend the Summary Offences Act to prohibit the practices of scarification, tongue splitting, branding and beading on persons under the age of 18 years; to increase the maximum penalty for the offence of tattooing of persons under the age of 18 years; to prohibit the intimate body piercing of persons under the age of 18 years; and to insert new offences concerning other body piercing of persons under the age of 16 years.

As has been done to date, it is worth spending a few moments to give credit on the record to those responsible for this bill being debated before the house to date. As background, I was contacted at my office in Croydon some time ago by people concerned about minors, people under the age of 18 years, having body piercing and, in particular, concerned about minors having intimate body piercing. Upon investigation I was astounded and surprised that there is no legislation in Victoria that specifically addresses the body piercing of persons under 18 years of age. I discovered that the member for Shepparton had undertaken some work in this area, and on my contacting her, she was most helpful in assisting me with this issue. I learnt that the hardworking member for Shepparton had raised this matter in Parliament in 2004 and had written to the Attorney-General on numerous occasions requesting changes in legislation, but this lazy Labor government stuck its head in the sand and ignored the call.

On 17 July 2007 Damian Drum, a member of The Nationals representing Northern Victoria Region in the Council, moved a private members bill, the Summary Offences Amendment (Body Piercing) Bill 2007, which prompted government members to get off their backsides and draft separate legislation, and here we are today.

According to the Attorney-General, the bill's primary focus is to protect the health and wellbeing of young people and encourage young people to discuss body piercing with their parents or guardians, thereby equipping young people to make informed choices and to manage the consequences of these choices. I could not agree more with that. However, it raises the question as to why the Brumby government ignored requests to regulate the body piercing industry and delayed bringing in this legislation. How many more kids under 18 years have been permanently scarred and exposed to serious infection while the Brumby government has sat on its hands and failed to introduce legislation? There have been years of inaction while the government has ignored the need for good, sensible legislation to protect the health and wellbeing of our young people.

I refer to cases like the one that was reported in the *Herald Sun* under the headline 'Mum's piercing fury — my girl left in pain'. I quote from the article, which was published on 13 May 2007:

> A schoolgirl has been mutilated in a botched … body piercing, but police say they are unable to take any action.
>
> …
>
> Calls are growing for laws to ban under-age body piercing as the distraught mother has revealed how her daughter was mutilated in a genital piercing.
>
> Police say they cannot pursue the alleged culprit because there are no laws outlawing piercing …

This lady's daughter had a genital piercing and three days later came down with flu-like symptoms which a doctor said was an infection from the piercing. The mother said her daughter endured excruciating pain and was left deformed.

It is outrageous that our kids have been at risk for over four years more than they needed to be while this government dragged its heels, wondering what to do and delaying reform. It is nothing short of a disgrace. The Brumby government could not even be bothered looking at the *Herald Sun* of 12 September 2007. The Voteline question that day was 'Should body piercing be banned for under-18s?'. Nearly 84 per cent voted yes, with only 16 per cent voting no. The Brumby government ignored community sentiment and continued to stick its head in the sand.

I commend the member for Shepparton and Damian Drum, a member for Northern Victoria Region in the other place, for their assistance, which has pressured the

Brumby government and delivered this bill to the house for debate today. I also commend Cr Steve Beardon and the City of Casey for their efforts in lobbying and pressuring the government to introduce this legislation. Steve Beardon has been a champion of this cause for many years, having had many local families contact him complaining of health concerns and concerns about the inappropriate behaviour by some body piercing practitioners.

I too am happy to have been actively involved in lobbying the Brumby government for this cause. I wrote to the Attorney-General, the Minister for Health, the then Minister for Children and the youth affairs minister on 23 April 2007 expressing my deep concern at the lack of legislation with regard to the body piercing of minors under the age of 18 and seeking legislation requiring parental consent for minors who wish to have body piercing. Many young people have body piercings, and my emphasis has always been on involving parents in the decision-making process.

Minors under the age of 18 can at times make rash, spur-of-the-moment decisions which can be the result of peer pressure. This can lead to infections, scarring and swelling. Mandatory parental consent ensures parents are involved in the decision-making process, may prevent spur-of-the-moment decisions, may reduce peer pressure, allows for inspection of the piercing premises, allows for discussions on the placement of the piercing and offers a period of time to talk about it. It also offers the child — or the teenager — the security of parental supervision.

I wrote to the Attorney-General on 23 April 2007. On 8 May that year I received a letter of acknowledgement from the Department of Justice. It states:

> The Attorney-General, the Hon. Rob Hulls MP, has asked me to thank you for your letter of 23 April 2007 and asked me to respond on his behalf.
>
> Your correspondence is currently being considered and will be responded to by the Attorney-General as soon as possible.

I repeat 'as soon as possible'. The letter was dated 8 May 2007. I am most pleased to be here today on 31 July 2008 — after much lobbying, after raising my concerns in this Parliament and after applying pressure to the Brumby government to act — making a contribution to debate in support of this very important bill. I too wish it a speedy passage through the house.

Mr THOMPSON (Sandringham) — The Summary Offences Amendment (Tattooing and Body Piercing) Bill has as its principal objective the further regulation of tattooing, body piercing and like processes carried out on persons aged under 18.

The history of tattooing is very long. It is suggested by a number of reports that while it is not known when the practice first began, Egyptian mummies dating back to 1300 BC show evidence of blue tattooing marks. The process in relation to tattooing specifically involves the injection of coloured pigment into small deep holes made in the skin. According to one report, regardless of who injects the pigment — a tattoo artist or an untrained person — the marks or designs are relatively permanent. Sometimes people have regretted an early decision to undergo a tattooing procedure, so they turn to physicians to have the tattoo removed. Today there are some sound processes for removing tattoos — excision, dermabrasion, laser treatment and salabrasion. Nevertheless results can vary depending upon the size and depth of the tattoo.

The object of the legislation is to proscribe tattoos for people under the age of 18. It also covers some other procedures, and I advise the house that I had to go to the parliamentary library to ascertain what they were. In particular there is the process of tongue splitting or tongue bifurcation, which, according to *Wikipedia*:

> is a type of body modification in which the tongue is cut centrally from its tip part of the way towards the end.

This procedure has been banned in some areas of the United States of America and in the United States military. The issue of tongue splitting has apparently also divided bioethicists. I think for the purpose of the record it is of some interest to note, and I quote again from this *Wikipedia* article, that:

> … the split is created through scalpelling or surgical laser. To achieve a more rounded and natural look, the upper and lower part of the cutting area in both halves are often sutured together with stitches during the healing process. This prevents sharp, unnatural-looking edges on the new 'tongues' which would otherwise occur.
>
> Before splitting some have a relatively thick tongue piercing where the base of the split is supposed to be, and wait till this is fully healed before going through the procedure, but the stretched piercing location will usually result in a visually different tissue than the sutured area.

The *Wikipedia* article suggests one of the methods:

> … is long, arduous, and requires a high pain tolerance.

The member for Melton indicated that he, like many of us in this chamber, has a low tolerance to pain. Therefore this may not be something that we would choose to embark upon ourselves.

An article in the *Sunday Herald Sun* indicated that there is a process of young teenagers buying do-it-yourself (DIY) piercing kits over the counter in shops, and tongue and other piercing kits are available on eBay.

The article noted that the Australian Medical Association (AMA) slammed the kits, saying that young people risked contracting hepatitis. It also noted that prospective legislation was to be introduced. It should be pointed out that the bill before the house has taken the baton and lead from The Nationals. The member for Shepparton and a member for Northern Victoria Region in the other place sought to proscribe the activity.

There is also commentary regarding the do-it-yourself kits by Doug Travis of the AMA. He is reported as having said:

> We don't support the sale or use of DIY kits. They're likely to finish up with younger kids trying to get around the law …
>
> Their lack of knowledge of sterilisation would put them at even greater risk.

There are a number of problems with this area being unregulated.

The bill has a number of main provisions. It increases the maximum penalty for the existing offence of tattooing or performing a like process on a person aged under 18 years from 5 penalty units to 60 penalty units. It defines 'like processes' to include scarification, tongue splitting, branding and beading. It defines 'body piercer' to be a person aged 16 years or over who carries on or is employed by a body-piercing business or who does body piercing for remuneration. It prohibits a body piercer from performing body piercing on the genitalia, anal region, perineum or nipples of a person under the age of 18 years with or without consent. The penalty is 60 penalty units. It prohibits a body piercer from performing any body piercing on a person under the age of 16 unless written consent has been given in person to the body piercer. The bill provides a defence of having seen an evidence-of-age document that showed the person was of or over the relevant age. It prohibits a body piercer from employing, directing or allowing a person aged under 16 to do body piercing which the piercer is prohibited from doing. It exempts body piercing performed in the course of a regulated health service or in the course of clinical training.

From the point of view of the opposition, one area of concern is that the bill does not apply to body piercing done outside a body-piercing business. In addition, it leaves to be regulated by other means matters such as infection control, poor standard equipment and/or inserted objects, and properly informed consent. The opposition consulted broadly in relation to the legislation. It contacted a number of bodies for their opinions, although I might note that those opinions had not been forthcoming at the time the bill was presented to the house. Nevertheless the opposition strongly supports the legislation.

It is particularly important to protect vulnerable people who through their social circumstances may be subjected to some pressure to embark upon a course of action which on certain criteria could be described as disfigurement, especially if that is a course of action which they may regret in time. There are stories of sailors of yesteryear finding themselves in foreign ports and, under the influence of alcohol, ending up with body art when in other times and places they would not have chosen to have undergone such procedures on their bodies. Likewise young teenagers need to be protected from the pressures or uncertainties that might surround decision making and life journeys at that time. Therefore the opposition commends the initiative of Damian Drum and the member for Shepparton and their vigorous support of this legislation, which I trust will improve the life outcomes of many Victorians.

Mr BURGESS (Hastings) — It is a pleasure to rise to speak on the Summary Offences Amendment (Tattooing and Body Piercing) Bill. The purpose of the bill is to further regulate tattooing, body piercing and like processes carried out on persons aged under 18. The main provisions of the bill increase the maximum penalty for the existing offence of tattooing or performing a like process on a person aged under 18 years from 5 penalty units to 60 penalty units. This offence applies to tattooing or like processes carried out by anyone, whether for payment or not, unless it is done by or at the request of a medical practitioner.

The bill defines 'like processes' as including scarification, tongue splitting, branding and beading. It defines 'body piercer' to be a person aged 16 years or over who carries on or is employed by a body-piercing business or who does body piercing for remuneration. It prohibits a body piercer from performing body piercing on the genitalia, anal region, perineum or nipples of a person under the age of 18 years with or without consent. The penalty for that would be 60 penalty units. It prohibits a body piercer from performing any body piercing on a person under the age of 16 unless written consent has been given in person to the body piercer by the parent or guardian of the person to be pierced and the person themselves if they are aged 10 years or over and have the capacity to consent. It provides a defence of having seen an evidence-of-age document that showed that the person was of or over the relevant age. It prohibits a body piercer from employing, directing or allowing a person aged under 16 to do body piercing which the piercer is prohibited from doing. It exempts

body piercing performed in the course of a regulated health service or in the course of clinical training.

This bill addresses a serious matter. To illustrate the problem I would like to quote from an article that appeared in the *Sunday Herald Sun* on Sunday, 13 May 2007. It was written by Chris Tinkler. It states:

> A schoolgirl has been mutilated in a botched 'backyard' body piercing, but police say they are unable to take any action.

Further on it states:

> The mother has told how her daughter and a friend, both 15, phoned a Dandenong woman and organised a body piercing at her home after seeing a flyer advertising her services.
>
> Both girls had genital piercings.
>
> Three days later, her daughter came down with flu-like symptoms which her doctor said was an infection from the piercing.
>
> The mother said both girls endured excruciating pain and her daughter was left deformed.

The article earlier states:

> Police say they cannot pursue the alleged culprit because there are no laws outlawing piercing …

They did not believe an indecent assault took place because the piercer was a woman.

Members can see that this piece of legislation is concerned with a very serious issue. I fully support this bill. I congratulate the government for taking the lead from Damian Drum, a member for Northern Victoria Region in the other place, and having the courage to take this on after it had been raised by other people, which is sometimes seen in our industry to be a barrier to decent legislation being passed. On this occasion it was not, and the government deserves congratulation from that perspective. I also congratulate Cr Steve Bearden from the City of Casey. He has been fighting very hard to have this particular piece of legislation enacted.

I have been very concerned about the attitudes of some leaders of our community and certainly about how some people's propositions or utterings are taken seriously by our community, particularly by our children. Unfortunately they are being listened to. To illustrate that particular situation I would like to quote from an article which appeared in the *Herald Sun* of Saturday, 25 August 2007. It is headed 'Teens claim body rights', and it states:

> Child experts and Melbourne teens say a proposed law banning under-age body piercing without parent consent is too harsh.
>
> Under the proposal, people under 18 would be banned from having any part of their body pierced written parental consent.
>
> The piercing industry has supported the proposal, saying it would stamp out shonky operators and protect children.
>
> But experts say it would rob teens of their rights, and that 16 was a more realistic age of consent for piercings.

Further into the article there is a quotation from RMIT University professor of youth studies and sociology Judith Bessant. This particular quotation illustrates the problem that we have been facing and continue to face in many areas — not only in our state and not only in Australia but also across the world — of people tending to attribute to teens or children some form of maturity that really should not be attributed to them at those ages and allowing them and encouraging them, in fact, to make decisions that are inappropriate at those ages. The RMIT University professor made the following statement:

> I think we need to respect the rights of young people, and those rights include some degree of self-determination.

She went on to say that these sorts of things should be within the realm of decisions made by children. From my perspective, it illustrates a mistake that is being made across our community. In fact if you go further into that article, you will see in stark contrast the comments made by a person who runs one of these piercing and tattooing centres and who shows far more maturity and a far better understanding of the decisions people should be able to make and at what ages they should make them. Peter Sheringham, who owns a Prahran studio called The Piercing Urge, said the proposed law is not about banning kids but about involving parents. He went on to say that it is about informed consent. Mr Sheringham said he had seen children as young as 11 years, sometimes with their mothers in tow, wanting all kinds of piercings. He finished by saying, 'That to me is wrong and scary'.

Again, I congratulate the government for supporting this move and putting this legislation forward. It is good that the government has resolved this issue, hopefully once and for all, in favour of protecting our children.

Mr RYAN (Leader of The Nationals) — I rise to support this legislation. In so doing I make the observation that in many senses this is Parliament at its best. The legislation before the house has evolved through a series of events over literally years as a result of the joint efforts of all sides of politics within the chamber here today.

The member for Shepparton in the course of her contribution traced the history of her own involvement. It goes back to the initial correspondence she wrote to

the then Acting Minister for Health, the Honourable Sherryl Garbutt, going back some four-odd years. The member for Shepparton traced the response that she received from the then Acting Minister for Health. I should say the member's first letter was directed to the Minister for Health on 23 November 2004. Subsequently on 7 January 2005 she received a response from the then Acting Minister for Health. A sequence of events then followed, to which the member referred in the course of her excellent contribution.

All of that then led to the involvement of Damian Drum, a member for Northern Victoria Region in another place. He was eventually the sponsor of legislation which was introduced into the Legislative Council with a view to dealing with this issue. It is said by some that that legislation in the form it then took was deficient in certain respects. I do not want to delay the passage of this bill today by dallying over the niceties of whatever might be the commentary in that regard. I do say that the bill that was then introduced by Mr Drum was based on material which had initially been drawn by parliamentary counsel as an amendment to the Summary Offences Act. That draft from parliamentary counsel was converted into the bill which was ultimately introduced into the upper house and was to have been debated and passed, pending activity by the government. That activity will come to a conclusion today.

At the end of that rather protracted chain of events, lasting literally years, and after exchanges of correspondence particularly between the member for Shepparton and Mr Drum — but I am sure other members have been involved in this too, certainly from the perspective of the Liberal Party's ranks — ultimately the government acted upon something that we had been seeking action in relation to for years. Thus it is that the bill is now before the house.

The bill deals with a longstanding anomaly whereby tattooing was accommodated by legislation but the same was not the case in relation to piercing. That dichotomy will now be addressed by the terms of this bill, and so it is that we support it. I hope in the course of the closing commentary the Attorney-General is about to make he will have the good grace to make reference to the contributions made jointly by the member for Shepparton and Mr Drum in another place. Without a doubt they have been amongst the main drivers in seeing this matter come to a conclusion. As I said at the outset, I hope commentary of that nature by the Attorney-General will reflect my view that this is the best outcome in a parliamentary system where all sides of politics have been able to contribute in a constructive way.

Mr HULLS (Attorney-General) — I thank all members for their contributions on what I think is a very good piece of legislation. I know a lot of people want to take credit for this legislation, as is their wont. I have to say that it is true that success has many — I was going to say fathers or mothers — sponsors. But it is also true that I have received correspondence from a number of groups and MPs in relation to this matter, including the member for Shepparton and Damian Drum, a member for Northern Victoria Region in another place. I have to say that discussions in relation to this matter have also taken place with the honourable member for Mordialloc over a long period of time. She has bailed me up at every available opportunity. I want to thank all those people who have taken the time to lobby and put their views in relation to this matter. The outcome that we now have is an appropriate piece of legislation.

Most people were of the view that legislation that was previously introduced in another place — including, I think, the sponsor of that piece of legislation, Damian Drum — had some flaws in it. We always intended to put out a discussion paper in relation to this issue to make sure we got the legislation right. That proceeded, and as a result the legislation in the upper house did not proceed, and I think we now have an appropriate piece of legislation. It is an important issue. It is also a sensitive issue for many people and there are differing views in relation to which path we should have gone down, but we do believe the path down which we have travelled in relation to this legislation is the appropriate one.

Questions have been raised as to whether or not we should be more strictly regulating the body-piercing industry with measures such as mandatory qualifications and licensing. Our response is that the age-based restrictions in the bill, together with the existing health regulations requiring body-piercing businesses to meet hygiene and sterilisation standards and to provide prospective customers with health information, provide a level of regulation commensurate with the risks involved and effectively promote the health and wellbeing of young people and others who use body art services. Also, the regulatory approach that we are adopting here accords with that adopted in other Australian jurisdictions, but of course we will continue to monitor the development and operation of the body art industry and consider any further changes to the regulatory framework if and when a need becomes apparent.

Additionally, a number of young people have expressed the view that this legislation would unduly restrict young people's freedom of expression. The government

certainly understands that this is an emotive issue that raises complex health, human rights and cultural issues. We believe though that the bill, together with existing health regulations, will deliver a balanced regulatory framework that protects the health and wellbeing of young people without unduly limiting self-expression. The legislation certainly does not deny young people the right to express themselves by choosing to get a non-intimate body piercing. Rather, it actually balances these rights with the rights of parents and guardians to have input into important decisions affecting their kids. We believe the legislation gets the balance right. We believe it places appropriate importance on protecting young people from the health risks associated with body piercing. It also encourages informed choices and proper management of the consequences of those choices.

We believe the stricter limitations on intimate piercings reflect the protection that Victorian law generally affords young people from inappropriate, indecent and sexual contact with adults. The bill also ensures that procedures like scarification, branding, beading and tongue splitting are treated as like processes to tattooing, given that these procedures are — and I am sure everyone in this house would agree — relatively intrusive and of course very difficult to reverse.

We believe the bill is in keeping with other age-based restrictions on the availability of certain goods and services to young people such as liquor, tobacco, gambling, classified films and literature. It also reflects industry practice across reputable body piercing businesses. There is also the issue — and this arose in the discussion paper that we issued — of whether or not restrictions would unduly restrict cultural practices. We do not believe the bill unduly restricts cultural practices. Persons under 16 may obtain non-intimate body piercings with the consent of a parent or guardian which is likely, I suspect, to be forthcoming if the procedure has cultural resonance. More severe procedures, such as scarification, may have a cultural basis in some communities. However, I can say to the house that the consultation process, which was very important in relation to the exposure draft bill, did not reveal evidence of this practice occurring in Victoria. Furthermore we believe the intrusive and permanent nature of scarification warrants a more restrictive approach to protect the health and wellbeing of young people, and this certainly accords with the current approach in relation to tattooing.

We know, and members who have contributed to this bill have stated, that there is evidence suggesting that there are substantial health risks associated with body piercing, and they arise with some regularity. Hospital admission data indicates that between July 2007 and April 2008 about 40 people were admitted to Victorian hospitals with complaints relating to body piercing. Victorian research also suggests that a significant number of young people present to hospital emergency departments with body piercing-related complaints. South Australian research suggests that a significant number of people present to general practitioners with body piercing-related complaints. We also know that the Victorian branches of both the Australian Medical Association and the Australian Dental Association expressed concern about the adverse health impacts of body piercing in the submissions that they made on the exposure draft bill.

I want to thank all those who contributed not only to the bill but also to the exposure draft that we put out. We believe that putting an exposure draft bill out there, and the feedback we received in relation to it, has led to a very good piece of legislation. I think that the policy basis for this legislation is right. As we know, the legislation makes it an offence for a commercial operator to conduct a non-intimate body piercing on a person aged under 16 without the consent of a parent or guardian, and also makes it an offence for a commercial operator to conduct an intimate body piercing on a person aged under 18, and there are substantial penalties associated with anyone who breaches those particular sections of the legislation.

I want to conclude by saying that we think the process that the government has undertaken in relation to this has been appropriate. It has been a very consultative process. I want to thank all those who contributed to that consultative process and all those who contributed to supporting this bill before the house. I wish it a speedy passage and I look forward to it passing into law in the very near future.

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

COUNTY COURT AMENDMENT (KOORI COURT) BILL

Statement of compatibility

Mr HULLS (Attorney-General) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the County Court Amendment (Koori Court) Bill 2008.

In my opinion, the County Court Amendment (Koori Court) Bill 2008, as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill aims to increase the participation of the indigenous community within the administration of the criminal justice system and to allow for indigenous community involvement in the sentencing process. The bill will establish the Koori Court division in the County Court of Victoria to hear criminal proceedings. The bill builds upon the Koori Court model, already in operation at the Magistrates Court and Children's Court. The Koori Court division of the County Court will consider criminal matters, with the exception of sexual offences.

The Koori Court process is that once a defendant has been arraigned and consented to the jurisdiction of the Koori Court, a plea discussion takes place around the bar table, involving all court participants. The plea discussion allows an Aboriginal elder or respected person to bring their insight from the local indigenous community, to provide assistance with any cultural considerations that may arise during proceedings and to ensure the defendant understands the seriousness with which the indigenous community views their actions. In so doing, the plea discussion aims to increase the indigenous community's ownership of the justice process and strengthen linkages between the court and the indigenous community.

Human rights issues

1. Human rights protected by the charter that are relevant to the bill

Section 8 — recognition and equality before the law

Section 8(3) of the charter provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

The amendment to establish the Koori Court division in the County Court engages section 8(3), as the jurisdiction of the Koori Court is limited to offences committed by indigenous people, thereby differentiating between indigenous and non-indigenous people.

Section 8(4) of the charter provides that any measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination does not constitute discrimination.

Clause 6 of the bill provides for the establishment of the Koori Court division within the County Court. The purpose of establishing the Koori Court is to assist indigenous persons, who are disadvantaged and overrepresented in the criminal justice system. The Koori Court aims to redress the overrepresentation of indigenous people in the Victorian criminal justice system by reducing recidivism. The lower recidivism rates of indigenous defendants who have participated in the Magistrates Koori Court demonstrates that the Koori Court model is achieving this aim. Therefore, this proposed amendment falls within section 8(4) of the charter and is accordingly compatible with the charter.

Section 19(1) — cultural rights and section 19(2) — distinct cultural rights of Aboriginal persons

Section 19(1) of the charter provides that all persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practice his or her religion and to use his or her language. Section 19(2) further recognises that Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community to, inter alia, enjoy their identity and culture; maintain and use their language; and maintain their kinship ties.

The establishment of the Koori Court division in the County Court promotes the cultural rights of indigenous persons. It takes steps towards fostering positive relationships with the indigenous community in Victoria by enabling the County Court to develop an understanding and knowledge of the practices, cultural traditions and observances of cultural, religious, racial and language groups. The Koori Court division of the County Court will promote indigenous culture by commencing each session of the court with a welcome to country in recognition of the traditional custodians of the land. Furthermore, the Koori Court integrates indigenous support services with orders issued by the County Court thereby ensuring that defendants receive appropriate support in recognition of their cultural rights as indigenous people.

The Aboriginal elder or respected person plays an important role in reminding the defendant that their offending has consequences for the indigenous community and the wider community. The incorporation of Aboriginal elders or respected persons in the Koori Court division not only emphasises to defendants their importance in the indigenous community but also in the wider Victorian community. In particular, clause 6 of the bill (new section 4G(2)) provides that the Koori Court division may consider any oral statement made to it by an Aboriginal elder or respected person. This encourages the indigenous defendant and their family to participate in a plea discussion thereby emphasising the importance of maintaining kinship ties within the criminal justice system.

Section 24 — fair hearing

Section 24 of the charter provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Clause 6 of the bill (new section 4G) promotes the right to a fair hearing, as it provides that in sentencing, the court may consider any oral statement made to it by an Aboriginal elder or respected person. It may inform itself in any way it thinks fit, including by considering a report prepared by, or a statement or submission prepared or made to it by, or evidence given to it by a range of people including family members of the defendant and Koori Court officers.

Consideration of a range of submissions at sentencing differs from the way in which pleas are otherwise heard in the County Court. By hearing from a range of interested parties the court is provided with a broader understanding of the individual's sentencing needs which will result in more culturally appropriate sentencing orders. Such orders may include linking the defendant/appellant with support services from indigenous service providers including housing and drug and alcohol services.

Section 25(1) — the right to be presumed innocent

Section 25(1) of the charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Clause 6 of the bill inserts new section 4E(c) in the County Court Act 1958. Section 4E(c) requires that the defendant must plead guilty to the offence in order to have their proceeding dealt with in the Koori Court division of the County Court. If a defendant wishes to appeal to the Koori Court division of the County Court against a sentencing order made against him or her by the Magistrates Court, he or she must have pleaded guilty either as a requirement of eligibility for the Magistrates Koori Court or before the Magistrates Court sitting other than as the Koori Court division.

A guilty plea is a fundamental aspect of the County Koori Court model, based on the Magistrates Koori Court model already in operation. For the Aboriginal elder or respected person to have a significant participatory role in the plea discussion in the Koori Court division, the defendant must be willing to acknowledge their guilty plea and address the ways of resolving their offending behaviour.

It should be noted that nothing in the bill limits the right of an indigenous defendant to be presumed innocent in the County Court, nor to plead not guilty and have their proceeding heard at first instance or on appeal in the County Court, sitting other than as the Koori Court division. Therefore, the right to be presumed innocent is not limited.

Section 25(4) — right to review of conviction

Section 25(4) of the charter provides that any person convicted of a criminal offence has the right to have the conviction and any sentence imposed in respect of it reviewed by a higher court in accordance with law.

While the bill does not limit the right to appeal against a sentence order, the ability to change one's plea on appeal to the Koori Court division is not available under new section 4D(2) and (3). As stated above, the Koori Court division may only deal with proceedings where the defendant has pleaded guilty to the offence.

If a defendant wishes to appeal to the Koori Court division of the County Court against a sentencing order made against him or her by the Magistrates Court, he or she must have pleaded guilty either as a requirement of eligibility for the Magistrates Koori Court or before the Magistrates Court sitting other than as the Koori Court division. The appellant will be bound by their guilty plea and will only have a rehearing on the sentencing order.

However, nothing in the bill limits the right of an indigenous person to have both their sentencing order and plea reviewed in the County Court, sitting other than as the Koori Court division. Therefore, the right to review of conviction is not limited by the proposal.

Conclusion

I consider that this bill is compatible with the charter because this bill does not limit any human right protected by the charter.

ROB HULLS, MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

The County Court Amendment (Koori Court) Bill 2008 (the bill) establishes a Koori Court division in the County Court of Victoria. In so doing, it creates for the first time in Australia an indigenous sentencing court in a higher jurisdiction. It builds on the success of the current Koori Court division in the Victorian Magistrates Court.

The Magistrates Koori Court program was an initiative of the Victorian Aboriginal justice agreement. This historic agreement, entered into in 2000, embodied a partnership between various Victorian government departments and a number of key Victorian Koori organisations. It was a response to the issues and recommendations raised by the Royal Commission into Aboriginal Deaths in Custody to tackle disadvantage and inequity, reduce Koori contact with the criminal justice system, and improve justice outcomes for indigenous Victorians.

The Victorian Aboriginal justice agreement was reviewed in 2004 and recommended that both the government and the indigenous community renew their commitment to the agreement. This resulted in the development and release of a second phase of the agreement, which was launched in June 2006. The new agreement highlighted the need to enhance and expand the Koori Court network. The bill implements this objective and demonstrates the government's continuing commitment to implement the work of these partnership agreements.

It also demonstrates the willingness of the government, the Victorian indigenous community and the broader community to experiment with inclusive, innovative,

culturally appropriate and modern approaches to reduce indigenous overrepresentation within the criminal justice system.

The bill is consistent with my 2004 justice statement with its commitment to establishing problem-solving courts to address the underlying causes of crime and A Fairer Victoria which strives to improve the lives of disadvantaged Victorians, improve access to justice and build new partnerships with indigenous Victorians. The bill also promotes the values of the Victorian Charter of Human Rights and Responsibilities including its recognition of the distinct cultural rights of indigenous people.

The establishment of the first adult Koori Court division in the Magistrates Court by this government in October 2002 sought to provide a culturally appropriate legal framework to break the cycle of overrepresentation of indigenous defendants in the criminal justice system. The Koori Court model represents a fundamental shift in the way in which we, as a community, deal with indigenous defendants. It operates in an informal atmosphere allowing for greater participation by the indigenous community in the sentencing process.

An independent evaluation of the Koori Court division of the Magistrates Court found that Koori courts had successfully reduced levels of recidivism including breaches of community corrections orders. It also overturned the presumption that Koori courts would be a 'soft option'. It is now well recognised how confronting and difficult it is for an indigenous defendant to face senior members in his or her community and the community itself.

A further measure of the success of the Koori Court model is reflected in its expansion across Victoria, from its inception in 2002. Victoria currently has seven Koori courts which are located in Shepparton, Broadmeadows, Warrnambool, Mildura, Latrobe Valley and Bairnsdale, with a Koori Court launched recently in Swan Hill in June 2008. There are also two Children's Koori courts located at the Melbourne Children's Court and in Mildura.

Why have a County Koori Court?

The need for a specialised Koori Court division of the County Court, which builds on the successful Magistrates Court model, is essentially twofold. Firstly, indigenous defendants often come from the most disadvantaged of backgrounds of all Australians and continue to face inequities on a daily basis.

Secondly, there continues to be a significant overrepresentation of indigenous people in the Victorian justice system. While much of this is caused by indigenous social and economic disadvantage, there are other contributing factors, including the relatively poor outcomes indigenous people experience in the criminal justice system.

This overrepresentation is illustrated by Victorian statistics, which indicate that:

> currently indigenous adults are 11 times more likely than non-indigenous adults to be sentenced to prison rather than sentenced to serve a community-based disposition; and
>
> currently indigenous adults are 15 times more likely than non-indigenous adults to be placed on remand.

Establishing a Koori Court division in the County Court acknowledges the importance of incorporating indigenous communities' cultural beliefs and practices in our justice system. It is intended that this will produce fair and equitable treatment for indigenous people and address the underlying cause of criminal activity. These aims are best achieved through a partnership between the indigenous community and government which fosters trust, understanding and a commitment through the direct involvement and participation of the indigenous community in the development of justice solutions.

What is a Koori Court?

The Koori Court division of the County Court is based on the Magistrates Koori Court model. In essence, this model allows for the sentencing process to be more culturally accessible, grounded in indigenous communities' efforts to promote rehabilitation and promote sanctions which are comprehensible to the indigenous community.

The key emphasis is on creating an informal and accessible atmosphere. The model allows greater participation in the court and sentencing process by the indigenous community through the Aboriginal elder or respected person, Koori Court officer, indigenous defendant and their extended families or connected kin and if desired, victims. Additionally, a corrections officer or juvenile justice officer, the defendant's legal representative and prosecutor will be involved in the plea discussion to explore the offenders' sentencing needs. The model is designed to break down the disengagement that many indigenous people have experienced with the criminal justice system.

How will the Koori Court division of the County Court work?

The Koori Court division is a new way of approaching and dealing with indigenous defendants in the County Court. The bill establishes the Koori Court as a division of the County Court, rather than it being a new 'court'.

The Koori Court division will have the same jurisdiction as the criminal jurisdiction of the County Court to hear all offences, with the exception of sexual offences.

The Koori Court division will hear a proceeding where the defendant meets the definition of an Aborigine, as set out in the bill, and pleads guilty or is found guilty of an offence. The defendant must also consent to the proceeding being heard in the Koori Court division and the Koori Court division must consider that it is appropriate that it deal with the proceeding.

As in the general division of the County Court, the defendant will initially be arraigned with the judge sitting at the bench and the defendant sitting in the dock or at the bar table. This will be followed by the plea discussion. The manner in which the plea discussion is conducted represents a significant departure from the general operation of the County Court.

The plea discussion will operate as a conversation around the bar table with the judge seated on one side of the table accompanied by an Aboriginal elder or respected person on either side. The defendant and their family, the Koori Court officer, corrections officer, the defendant's legal representative and prosecutor, who are also seated at the table, will all have the opportunity to participate in plea submissions.

The Aboriginal elder or respected person will assist the court by providing information on the background of the defendant and possible reasons for the offending behaviour. They may also explain relevant kinship connections, how a particular crime has affected the indigenous community as well as provide advice on cultural practices, protocols and perspectives relevant to sentencing. The judge may confer with the Aboriginal elder or respected person and discuss the most appropriate sentence including the conditions placed on a sentence.

It is clear from the experience of the Koori Magistrates Court that one of the keys to its success is the participation of the Aboriginal elder or respected person who symbolises that the offence is not condoned by either the indigenous or the non-indigenous community and that any sentence imposed is only carried out after information is provided to the magistrate by the Aboriginal elder or respected person. In this way, the sentencing process as well as the sentence itself is community owned so that when a crime is committed against the wider community it is also seen as being against indigenous community standards.

Following the conclusion of the plea discussion, the judge may ask the Koori Court officer about the availability of appropriate local services and programs. This is consistent with the case management approach which will be adopted by the division to address the individual sentencing needs of the indigenous defendant. The corrections officer can also provide advice about indigenous programs offered by the Office of Corrections, either in the local community or in custody. This partnership approach aims to maximise the rehabilitation prospects of the defendant and incorporate locally based support services to meet the needs of an individual defendant. The sentencing stage in the Koori Court division will follow the same procedure as the general County Court. The court has the same sentencing dispositions available to it and the judge will sit alone at the bench to deliver the sentencing order. This reinforces to observers that the judge is the ultimate decision-maker.

The County Court criminal division hears more serious criminal offences than those heard in the Magistrates Court, with a greater likelihood of a custodial sentence being imposed. Aboriginal elders or respected persons will therefore be trained accordingly to address the needs of higher criminal jurisdiction. Training and orientation will include information on the types of offences likely to come before the court and familiarisation with criminal evidence and case materials, including depositions.

How will appeals work in the Koori Court division of the County Court?

The County Koori Court division will hear appeals from the Magistrates Court. This is an aspect which is unique given the appellate jurisdiction of the County Court. The creation of a Koori Court division in the County Court provides an indigenous appellant or respondent, or the Director of Public Prosecutions, with the opportunity to appeal a sentencing order from a decision of the Magistrates Koori Court or the Magistrates Court.

The eligibility criteria is the same for appeals as for cases heard at first instance in the Koori Court division. However, appeals heard in the Koori Court division depart from the general County Court procedure in that the appellant or respondent is bound by their guilty plea and the division conducts a re-hearing of the sentencing

order only and not the plea. This focus on the sentencing order reinforces the Koori Court model, which relies on the appellant or respondent's acceptance of their guilt and a willingness to address the reasons for their offending behaviour. If an indigenous appellant or respondent wishes to have their plea and sentencing order appealed they can do so in the general County Court.

Appeals heard in the Koori Court division provide indigenous appellants or respondents, for the first time with an opportunity to have a re-hearing of their sentencing order conducted in a culturally appropriate venue.

Conclusion

The Koori Court division of the County Court will produce meaningful and effective outcomes by focusing on the underlying causes of an individual defendant's offending behaviour and employing a case management approach to address their sentencing needs. This framework will utilise a collaborative framework featuring the Aboriginal elder or respected person, the Koori Court officer, the defendant and their family and community service providers and criminal justice agencies, all overseen by a judge.

The first Koori Court division of the County Court will be piloted over four years, commencing at the Morwell law courts in the Latrobe Valley. The decision to select Latrobe as the pilot site was made in partnership with the Victorian indigenous community and representatives of the justice system, including the County Court.

The Koori Court division will be supported by a range of significant local support services which will complement sentencing orders. These include a Koori drug and alcohol worker based at the Latrobe Valley Magistrates Court, a mentoring program and a learning place, located in nearby Yarram, which is a culturally appropriate residential learning place for up to 20 men undertaking community-based orders.

The government anticipates that the Koori Court division of the County Court will commence operation in the Latrobe Valley towards the end of the year. It has the strong support of the County Court, the local indigenous community and current Koori Court elders.

The County Koori Court project has been overseen by a reference group, including the County Court; the children's Koori Court; the Broadmeadows Koori Court; the Office of Public Prosecutions; Victorian Aboriginal Legal Service; Victoria Legal Aid; Corrections Victoria; and representatives from the Regional Aboriginal Justice Advisory Committee. I would like to thank them for the work they have already done and for their continuing efforts in ensuring the success of this important initiative.

I would also like to acknowledge the commitment of the County Court to this important reform and I particularly wish to acknowledge the Chief Judge Michael Rozenes for his leadership.

The County Koori Court pilot will be independently evaluated to determine whether it has been effective in reducing indigenous contact with the criminal justice system and recidivism. If the evaluation is successful, the Koori Court division of the County Court could be extended to further locations throughout Victoria.

I commend the bill to the house.

Debate adjourned on motion of Mr CLARK (Box Hill).

Debate adjourned until Thursday, 14 August.

BUILDING AMENDMENT BILL

Second reading

Debate resumed from 30 July; motion of Mr HULLS (Attorney-General).

Mr NORTHE (Morwell) — It gives me great pleasure to speak on the Building Amendment Bill 2008. The purpose of this bill is to amend the Building Act 1993, to enhance consumer protection and building practitioner and plumber standards.

The second-reading speech refers to the number of building approvals that have taken place throughout Victoria, which has been alluded to by the Premier over the last couple of days. In the Latrobe Valley we have seen substantial development take place over recent years in the city of Latrobe. I would like to run through a couple of statistics in that regard. It surprised me somewhat that the building approval numbers in Latrobe city have actually been quite consistent over a number of years when the perception is that there has been a lot of renewed confidence in Latrobe Valley in recent times. I would have expected to see a quite substantial increase.

However, if you look at the figures from 10 years ago, you see that in the calendar year 1998 the number of building permits in Latrobe city was 1310. Looking at the figures for the last three years, we see that the number of building permits has gone from 1301 in

2005 to really spike at a key figure of 1435 in 2006 and then to 1300 in 2007. It is quite a consistent number across the board, and it is quite amazing. People who may not have frequented the Latrobe Valley in recent times always comment on the growth that has occurred not only from a residential perspective but also from a commercial point of view. That is great to see, and we hope that continues.

However, we have had a number of issues in terms of building development and residential developments in our municipality. Some of those that have been quite topical in recent times have concerned the proposed Morwell north-west development, which basically adjoins the coal reserves. There has been some debate and friction over a period of time about making sure not only that we can access our coal reserves but also that our local municipality has the opportunity to grow. It is pleasing that that particular dispute has now been resolved. We look forward to Morwell in particular having the opportunity to expand residential development.

On the other side of the coin we saw in recent times a proposal by the Rural Outlook consortium, a local group of developers and investors who wanted to proceed with a proposal for a 3000-resident township between Traralgon and Morwell. This was looked upon quite favourably by the local planning authority, and local government certainly backed that consortium proposal. However, it has been well documented that because of the route determined for it, the Traralgon bypass would have had an impact on the township, so effectively the government has knocked on the head an opportunity for us to enhance our population by some 3000. That decision caused great concern to the local developers and the local community in general. Clauses 3, 5, 8 and 9 deal with enhancing consumer protection, which I will come back to shortly.

The bill will also allow the Building Practitioners Board to assume greater powers and have the flexibility to discipline building practitioners. Clause 8 of the bill will also allow the BPB to suspend and hold an inquiry into a builder's registration on grounds of public safety, which can now extend from a physical risk to a monetary risk. One anomaly the bill will address is that currently a builder's registration can be cancelled one day but that same builder can reapply for registration essentially the next day. This bill will prohibit such anomalies occurring in the future.

I want to come back to the consumer protection aspect of this bill. In her contribution the member for Yuroke outlined the unfortunate circumstances of one of her constituents who was caught up in a dispute that caused great financial and emotional grief. Whilst I believe that the bill goes some small way to address concerns from a consumer perspective, I do not feel that it goes far enough.

I would like to quickly outline a personal experience of one of my constituents. Not long after I was elected as the member for Morwell in November 2006 I received representations from a member of the community of Boolarra, who related some appalling circumstances. This resident had constructed a home under a contract with a particular builder. One of the issues that came to light was that the prefabricated roof trusses which had been erected on his home were really not up to standard. They were full of holes with gang nails holding them together. The resident contested the standard of the roof trusses. He contacted the Building Commission in December 2006, and me in January 2007. Through me, he contacted Building Advice and Conciliation Victoria to outline the concerns and had discussions with that authority. Unfortunately the constituent took legal advice and the BACV washed its hands of the matter at that point in time. Over time Peter Hall, a member for Eastern Victoria Region in the Council, and I contacted the Minister for Consumer Affairs and relayed our concerns. The matter has been toing and froing over a long period of time in regard to the standard of these roof trusses.

I applaud the Minister for Consumer Affairs who has had a representative from BACV go out and assess the work, and it was deemed in part that the work was defective. A technical expert, following a further inspection also in January of this year, said that the trusses did not meet the relevant standards. We wrote to the Minister for Planning in March this year to try to source a resolution for this particular constituent, and only in the last couple of weeks have we received a response that this issue has been handballed back to the Minister for Consumer Affairs. To give the Minister for Consumer Affairs his due, I have raised the issue with him this week and he has said to me that he will investigate it further. Here is an example of a constituent who has been caught up in bureaucracy for 18 months now, with no resolution in sight. It is an unfortunate experience that he should not have had to go through.

This matter raises the prospect of builders warranty insurance, something The Nationals have been advocating for some period of time, to give more protection for consumers. Queensland in recent times and Tasmania have implemented builders warranty insurance that goes to greater lengths to protect their consumers. The assumption in Victoria is that builders insurance provides first-resort insurance, but this is not

the case. Consumers can only claim if their builder dies, absconds or goes bankrupt. The member for Yuroke also mentioned in her contribution the circumstances of the HIH collapse and all the poor people who were unwittingly caught up in that particular scenario. There is no doubt that we need greater protection for consumers, as well as for our builders.

At the moment in the federal Parliament, the Senate Standing Committee on Economics is conducting an inquiry into Australia's mandatory last-resort home warranty insurance scheme. The first part of the committee's terms of reference is to look at the appropriateness and effectiveness of the current mandatory privatised last-resort builders warranty insurance scheme in providing appropriate consumer protection and industry management. We will watch with interest the outcome of that particular inquiry, the report from which I believe is due to be delivered to the federal Parliament some time in October this year.

I have had my own experience of the ineffectiveness of the current scheme. In 2003 we owner-built our home and installed a quite expensive heating appliance which simply did not work. Without going into the details because I do not have the time, we now have an asset in our home which does not work, which cost a considerable amount of money and which unfortunately the current system in Victoria does not allow me to claim for through insurance.

Overall we have some concerns about certain aspects of the bill before us. I have some fear that this bill does not go far enough and that we can enhance it. I believe the government should look seriously at the schemes that are in place in Queensland and Tasmania, which hopefully will be a subject for future debate in this house.

Mr BROOKS (Bundoora) — It gives me great pleasure to rise in support of the Building Amendment Bill 2008. The key components of this bill are about improving consumer protection, improving the operation of this act and clarifying certain provisions of the Building Act 1993. The key protection amendments in this bill will add to the suite of powers that the Building Practitioners Board and the Plumbing Industry Commission have at their disposal when they determine that a registered builder or a plumber has committed a breach. The sorts of powers that they will have following passage of this bill include the powers to disqualify a person from being registered for up to three years, to require a person to undertake a course of training and to impose an increased maximum financial penalty of up to 100 penalty units.

The bill also further extends the scope of the Building Practitioners Board to enable it to immediately suspend a builder pending inquiry where they pose a significant risk to the public. It ensures that registered building practitioners remain of good character and provides some clarification around owner-builder laws, ensuring that the purchaser of an owner-built home receives domestic building insurance even where the owner-builder is deceased or bankrupt. It also clarifies that municipal building surveyors can work outside the municipal area and provides for a two-tiered system of building surveying. These amendments are aimed at freeing up the surveying sector where there is an identified skill shortage.

It is worth remembering that this is consumer protection aimed at the rogue builders, the shoddy builders and people who do the wrong thing or who are poorly trained, not the majority of builders in this state who perform a great job. We have a very strong building sector in Victoria. Recent building approval figures released by the Australian Bureau of Statistics show that in Victoria building approvals for the last financial year were at $20.9 billion, the highest figure for any state in Australia.

When you consider some of the activity that is occurring because of the resources boom in states like Western Australia and Queensland, you see that that is a very strong result from the Victorian economy, and I think in some part it is due to the very strong economic management of the Brumby Labor government. The figures for building approvals were up 9.9 per cent in June. To put that in context, at the same time building approval figures were down 16.5 per cent in New South Wales. While there is a global economic tightening, here in Victoria we have very strong economic performance and a very strong building sector. It is important that people remember that this is about a range of factors, but in particular the population boom. Many people are choosing to live in Melbourne and in Victoria, and that is no accident. It is because this government has been investing in schools and hospitals and the sorts of services people want. That is why people want to live here. We are driving that economic growth, and it is in stark contrast to the time when the Liberals and The Nationals were in government in this state, when we saw people fleeing from Victoria in droves.

A number of issues have been raised by the opposition. In particular the member for Box Hill raised issues of detail in the bill, and I want to try to cover some of those issues. The member for Box Hill requested more information from the government about exactly what the good character provision of the bill means. He

described the term as open-ended and sweeping. The act requires the Building Practitioners Board to be satisfied that a person is of good character before it registers that person, so this bill provides a mechanism to enable the Building Practitioners Board to be satisfied that the person remains of good character. The provision does not change that; it simply provides a mechanism to ensure that the Building Practitioners Board is able to check that people are of good character on an ongoing basis.

Building practitioners deal with the public and enter into contracts involving large sums of money. The nature of their work often requires them to have unsupervised access to people's homes and properties, and the potential for conflict and dispute in the sort of work they are involved in is very high, therefore it is vital that this industry comprises honest practitioners who are able to act appropriately in all those situations.

In relation to the insolvency provisions, the member for Box Hill questioned whether they mean that detailed financial information would need to be constantly provided to the board. There will not be a requirement for the building practitioner to constantly update their financial position. What is meant by 'insolvency' is that the person is no longer in a financial position to continue trading.

The member for Box Hill also expressed concern about the fit-and-proper-person provision, saying that it is a very sweeping power and that a building practitioner would potentially be fearful that they could be deemed to be not a fit or proper person for a whole range of reasons, including personal opinions based on building policy, whatever that means. The bill amends the act to require the applicant for registration to make a declaration as to their good character. The bill also introduces a requirement that after registration the building practitioner must notify the Building Practitioners Board without delay of any change to the information provided. This power will provide the Building Practitioners Board with an ongoing ability to monitor the good character of registered building practitioners.

A corresponding ground of inquiry is introduced to enable the Building Practitioners Board to determine whether a person is a fit and proper person to practise as a building practitioner based on the notification of change of good character information. The powers of the Building Practitioners Board are not sweeping; they are clear and transparent. The powers will be constrained by matters set out in the regulations. Further, the board is bound by the principles of natural justice and the decisions can also be appealed to the Building Appeals Board.

There was also a question about what happens to the clients of a builder whose registration is suspended before an inquiry. These clients would be in exactly the same position as the clients of builders whose registration is suspended or cancelled after an inquiry, so there is no effective change.

The member for Box Hill expressed concern that the Building Practitioners Board may direct registered building practitioners to undertake courses conducted by a union provider. That is a conspiracy theory from the member for Box Hill. The Building Practitioners Board will direct the building practitioner to undertake a course which rectifies the identified skills gap. It will not direct them to any particular provider. These courses are offered by a range of organisations, and the Building Commission runs a continuing professional development program for registered building practitioners in Victoria. All universities, TAFEs and registered training organisations are automatically recognised as providers.

This is a very sound bill aimed at protecting consumers in Victoria from a very small element of the building industry and also at improving identified skills gaps, and I commend it to the house.

Mr CRISP (Mildura) — Mine will be a brief contribution to the debate on the Building (Amendment) Bill. The Nationals in coalition are not opposing this bill. The purpose of the bill is to increase the accountability of registered builders so that they are directly responsible for the work and conduct of their companies, to create two classes of building surveyors to increase job numbers, to clarify the powers of building surveyors, to enhance consumer protection mechanisms surrounding owner-builders while increasing the disciplinary powers of the Building Practitioners Board and to clarify and enhance the Plumbing Industry Commission's disciplinary power mechanisms.

Some of these provisions are a result of ongoing feedback to government from various sources such as the Building Commission, the Building Practitioners Board and the Plumbing Industry Commission. Other aspects result from decisions of the Council of Australian Governments in relation to building accreditation and the adoption of a national framework.

The bill contains a number of clauses that I think are of interest to the constituents of Mildura. I am sure that the issue of increasing builder accountability has come up

in every member's office. Someone who is very upset will have come into the office because they have been battling the system and the builder in order to try and get faults or defects rectified. In my office I have a case involving a builder which has been going on for more than 10 years, and everybody is exhausted from that process. I am hoping that the provisions that strengthen this power will mean that there are no more ongoing 10-year cases in my electorate.

In the area of creating two classes of building surveyors, there is a shortage of professional building surveyors in country areas, so anything we can do to help recruit and retain country professionals is welcome. I think that having two classes of building surveyors will help country municipalities and country people get swifter building survey work done. We also note that this is part of a national COAG agreement.

Municipal building surveyors are part of another profession whose practitioners are in short supply in country areas. Many municipalities now have to share professionals, not only in their building departments but in many of their other units. Allowing them to move around more freely is certainly a measure that will benefit country people. However, I note that there are cross-border difficulties. There is a small municipality just north of the river in Mildura which from time to time relies on Mildura professionals. Anything we can do to remove those cross-border anomalies would be greatly welcomed.

Clauses 3, 5, 8 and 9 relate to enhancing consumer protection, which is something we all need to be doing. The Building Practitioners Board will now have a greater ability to discipline builders and to make some judgements on matters of good character. We have not been prescriptive in this law about what is good character. I have some concerns that, over time, we will have to define 'good character' and other subjective terms in this legislation through the common-law process.

I think what people want from this whole process is to have a builders warranty insurance scheme that is not a last resort but a first resort. People are not lawyers; their home is their dream, and if it goes wrong, then life becomes pretty terrible very quickly. At present the Victorian system is a last-resort process. It is meant to protect the consumer in the event that a builder dies, disappears or goes bankrupt, but there are an awful lot of things that happen in between. A first-resort scheme would protect the consumer through the entire building process and would be a far more comprehensive scheme. I note that such schemes exist in Queensland and Tasmania, and I am sure that all those who have been through the process of a dispute with a builder would much prefer to have a first-resort system rather than a last-resort system.

Having outlined those areas of concern, I will conclude by saying the bill is a step forward, but there is still more to be done, and Victoria will need to join states like Tasmania and Queensland in having a first-resort protection scheme. The Nationals are not opposing this bill.

Mr SEITZ (Keilor) — I welcome this bill, particularly the fact that it includes a grandfather clause which will enable those who are now building surveyors to be automatically deemed to be municipal surveyors and so be able to work on the high-rise buildings. It is very important to enable that to happen, because it means we do not have to send a heap of people back to school and require them to cram in other hours of study to obtain that qualification. We have a shortage of building surveyors as it is, and that is well recognised.

We need more building surveyors, particularly with the current building boom. Most of them have experience only in villa constructions. In the past they have worked in councils, and they are now breaking out into their own individual businesses — but that means they are having to pay high insurance premiums to cover their public liability just in case something should happen in the future. It is important that we do not limit the people qualified to do that sort of work, because now even in the suburbs four or five-storey buildings and apartment blocks are being built and we need more of those people around. It is an important step to distinguish between a municipal surveyor and a private surveyor, and the position is clarified for people when they are working in private industry.

Acting Speaker, having come from a plumbing background as I have, I know you would also welcome the clarification of the steps needed to obtain registration and training. That adds protection for the consumer, but it also protects the practitioners. Many things can go wrong at different times on various jobs between the clients, the contractors and subcontractors. It is not always the fault of the actual plumbing practitioners, but there can be fallouts between the contractor who is building the place and the plumbers, who sometimes have to wait to get their pay. It happens quite a lot that subcontractors do not get paid their money. That is still my biggest complaint on behalf of small-scale plumbers, cabinet-makers and so on. In many cases they put in the equipment but then have to wait for months on end to get paid. The bill provides for reputable builders to be registered as builders, and

hopefully that will provide some protection and prevent some of those issues taking place.

A lot of my former students have come seeking character references from me in their endeavour to become registered as builders. They have been in the building game for quite some time around my own electorate and district, and so far — touch wood — I have had no complaints from the customers about the homes they have built for them. Either I did a good job as a teacher or they became much better as they went on in the trades, because in the main it is carpenters and plumbers who become registered builders. They do good work in the district. They are small-scale builders who might do 5 or 6 or a maximum of 10 houses a year. They are family businesses, and the community is very satisfied with and supportive of the work they are doing.

I will mention one more example of a house that had architects and top people involved in its planning and construction. The project went on for about six years before the building could be completed. It was not until one of my former students, who is a registered builder, was approached to see if he could help out that things were eventually sorted out and the building was finished. Another former student, who is a building surveyor, assisted in that matter. This case involved a family that had to spend nearly $3 million on their house to be able to move into it. That was a very difficult case. I hope this legislation will prevent things like that happening in the future. But we will always have problems in the industry. As the industry changes, things need adjustment, and there will always be some faults in the legislation. I am sure we will be making further amendments to this legislation in the future. With those few words, I wish the bill a speedy passage through the house.

Mr CAMERON (Minister for Police and Emergency Services) — On behalf of the government I thank the members for Box Hill, Yuroke, Morwell, Bundoora, Mildura and Keilor for their contributions to the debate on the bill and wish it a speedy passage.

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

CORRECTIONS AMENDMENT BILL

Statement of compatibility

Mr CAMERON (Minister for Corrections) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Corrections Amendment Bill 2008.

In my opinion, the Corrections Amendment Bill 2008, as introduced to the Legislative Assembly, is compatible with human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill will amend the Corrections Act 1986 to provide for the creation of prisoner compensation quarantine funds for the purpose of paying into them certain damages awarded to prisoners and to provide for the payment out of those funds of certain amounts recoverable by victims and others from prisoners.

Human rights issues

The provisions of the bill raise a number of human rights issues.

1. Right to equality — s 8

Section 8(2) of the charter provides that every person has the right to enjoy his or her human rights without discrimination. Section 8(3) of the charter provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination, and has the right to equal and effective protection against discrimination.

Discrimination is defined in s 4 of the charter as having the same meaning of discrimination as s 6 of the Equal Opportunity Act 1995, namely discrimination on the basis of an attribute including: age, breastfeeding, gender identity, impairment, industrial activity, lawful sexual activity, marital status, parental status or status as a carer, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, sexual orientation or personal association with someone who has any of the above attributes.

As the status of being a prisoner is not a prohibited ground of discrimination under the terms of s 4 of the charter and s 6 of the Equal Opportunity Act 1995, the bill does not engage the right to equality under ss 8(2) and (3) of the charter.

2. Right to privacy — s 13

Section 13 of the charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. An interference will not be arbitrary provided that the restrictions on privacy are reasonable in the particular circumstances.

This right is relevant in situations involving the disclosure of private information. The right only proscribes interference where that interference is unlawful or arbitrary.

The clauses of the bill which engage the right to privacy under s 13 of the charter are:

Clause 104X of the bill provides that a victim may apply to the secretary to be notified of an award of damages to a prisoner. Clause 104Y provides that the secretary must publish a notice advising of an award of damages to a prisoner as soon as practicable after the award is made, and the notice will include the name of the prisoner and the money in the award that has been paid to the Prisoner Compensation Quarantine Fund. The notice will be published in the *Government Gazette*, in a daily newspaper circulating generally around Victoria and in a daily newspaper circulating generally around Australia. The secretary may also publish the notice on the internet. Clause 104Z provides that the secretary may forward a copy of the notice under clause 104Y to any victim who has applied to the secretary under clause 104X. Clause 104ZA provides that victims may apply to the secretary for information about a victims claims fund within the initial quarantine period in respect of that fund.

Clause 104ZB provides that the provision of information by the secretary under these sections is authorised despite any agreement to which the secretary or state is party that would otherwise prohibit or restrict the disclosure of information concerning an award of damages, and does not constitute a contravention of such an agreement. Clause 104ZC provides that a person to whom information is provided under these sections must treat the information in an appropriate manner that respects the confidentiality of that information.

Where the information disclosed under the above clauses is already in the public domain (such as a court order made in open court) it is unlikely that any issue would arise in relation to the disclosure of information. However, even where the above provisions may engage the s 13 right, in that they relate to the disclosure of personal information and amount to an interference with a prisoner's privacy, they do not limit the right to privacy in s 13 of the charter, as s 13 only applies where the right is unlawfully or arbitrarily interfered with.

The interferences in the bill with privacy are not unlawful as they will occur pursuant to powers conferred by legislation and will be reasonable in the circumstances. Further, the interferences are not arbitrary, as any interference will occur only in precise and circumscribed circumstances, and the bill provides safeguards regarding the use of the information, apart from where the information is in the public domain.

Clause 104ZD creates offences where a person to whom information is disclosed under the above clauses discloses the information to any other person except for the purposes, or in connection with, the taking and determination of legal proceedings by the person against the prisoner concerned; and where a person who becomes aware of information disclosed to a person under the above sections uses that information or discloses it to any person. The creation of these offences protects information disclosed in accordance with the bill from being used inappropriately, and thus prevent a prisoner's privacy being interfered with arbitrarily.

Therefore, while the above provisions engage the right to privacy in s 13 of the charter, the provisions do not constitute a limit on the right to privacy.

3. Property rights — s 20

Section 20 of the charter establishes a right not to be deprived of property otherwise than in accordance with law.

Clause 104V provides that the amount of any award of damages to a prisoner must be paid to the secretary immediately after the damages are awarded, to be held in trust for the prisoner by the secretary. The money held in trust constitutes a prisoner compensation quarantine fund for victims of the prisoner and others. Any award of damages for a civil wrong (defined as an act or omission of the state that gives rise to a claim by a prisoner against the state, that occurred while the claimant was a prisoner detained in custody in a prison and that arose out of or in connection with his or her detention in custody in a prison) must specify the amounts, if any, awarded or agreed to in respect of existing and future medical costs and legal costs (clause 104T). Further, a court must not make an award or approve an agreement between the state and a prisoner for damages unless the court is satisfied that clause 104T has been complied with. It does not apply if the award of damages to a prisoner does not exceed $10 000. Clause 104O provides that 'award of damages' means damages awarded pursuant to a judgement of a court or paid or payable in accordance with an agreement between the parties to the agreement. An 'award of damages' does not include any amount specified in the award of damage made or approved by the court as attributable to existing and future medical costs, false imprisonment or legal costs.

Clause 104ZG provides that the secretary must not pay out any money in a prisoner compensation quarantine fund to a prisoner until the end of the quarantine period for the fund (defined in clause 104O as the period of 12 months following the publication in the *Government Gazette* of the notice in respect of the fund under clause 104W). The secretary must within 45 days after the end of the quarantine period pay out of the prisoner compensation quarantine fund to the person entitled to payment any amounts required to satisfy any debt of or award against the prisoner that was notified to the secretary by a victim under clause 104ZE(2) or by a creditor under clause 104ZF. If any amount remains in the prisoner compensation quarantine fund after all amounts are paid out, the secretary must pay the remaining amount to or at the direction of the prisoner within, or as soon as practicable after the end of, the period of 45 days after the end of the quarantine period.

Clause 104ZH applies where the secretary has received notice from a creditor of the prisoner, but has not received any notification from a victim. As with clause 104ZG, the secretary must not pay any money out of the prisoner compensation quarantine fund to any person until the end of the initial quarantine period. The secretary must within 45 days after the end of the initial quarantine period pay out of the prisoner compensation quarantine fund to the persons entitled to payment any amounts required to satisfy any debt of a prisoner that was notified to the secretary under clause 104ZF and that the secretary is satisfied is a valid claim. Again, if any amount remains in the prisoner compensation quarantine fund after all amounts are paid out, the secretary must pay the remaining amount to or at the direction of the prisoner within, or as soon as practicable after

the end of, the period of 45 days after the end of the quarantine period.

Money payable to a prisoner as damages would constitute property within the meaning of s 20 of the charter. However, the European Court of Human Rights has made clear that, in relation to the deprivation limb of the property right in article 1 of the First Protocol to the European Convention on Human Rights, temporary seizures of property do not constitute deprivations of property. As the bill does not permanently deprive a prisoner of his or her property (given that damages are temporarily held in trust rather than permanently acquired from a prisoner), the bill does not limit prisoners' property rights. While a prisoner may be deprived of the damages he or she received from the state permanently if a court awards damages to a victim of the prisoner, or if a creditor has a valid claim against a prisoner, the deprivation occurs by virtue of an order of the court rather than by operation of the bill.

Accordingly, the above clauses do not limit the property right in s 20 of the charter, as no deprivation of property occurs.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because to the extent that some provisions do raise human rights issues:

these provisions do not limit human rights; or

to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

BOB CAMERON, MP
MINISTER FOR CORRECTIONS

Second reading

Mr CAMERON (Minister for Corrections) — I move:

That this bill be now read a second time.

This bill amends the Corrections Act 1986 to further strengthen the recognition that this government has given to the needs of, and harmful effect of crime on, victims.

The government is committed to empowering victims to exercise all of their available rights and remedies to seek compensation for the effects that they have suffered due to crimes perpetrated against them. The effects of these crimes can be severe and long lasting and can also have a significant impact on families as well. The bill provides an opportunity for victims to consider their existing rights under the civil law through notifying them of moneys received by prisoners in respect of claims brought against the state and quarantining those moneys for a period of at least 12 months to allow victims to bring civil proceedings against the prisoner.

The government intends to address the situation where an offender receives an award of damages from the state and therefore has a much improved financial situation. Victims can then choose to take advantage of that improved financial situation by taking their own legal action in the knowledge that there are assets that may satisfy a successful judgement.

The government is aware of the perceived inequity when offenders are seen to use the law for their own purposes through pursuing compensation arising from their circumstances in custody. This bill represents a step in addressing that inequity.

In developing the bill the government has taken note of similar developments in the New Zealand Prisoners' and Victims' Claim Act 2005 and in the New South Wales Civil Liability Act 2002. In addition, similar reforms are currently before the Queensland Parliament. Whilst these jurisdictions are similar in many ways they do differ from Victoria, in the legislative and administrative context. Despite the differences, all of the schemes attempt to alter the balance between an offender and their victims after an offender receives an award of damages from the state that places them in a much improved financial position.

All victims of crime are able to bring a civil suit against perpetrators where they can satisfy the requirements of a relevant cause of action. However, the decision to bring a civil claim is dependent on the victim's financial resources to fund the claim, the likelihood of recovering damages if the claim is successful and the victim's willingness to pursue their perpetrator in the civil courts. In many instances, victims simply do not pursue civil remedies because either they lack the funds to bring the action or their perpetrator is impecunious or they do not want to face their perpetrator in a civil court. As often is the case, many convicted offenders have very few assets and no income for a victim to successfully enforce a civil judgement.

Under the Corrections Act 1986, victims can register and be told information about a prisoner's sentence, parole and release date.

At present, compensation paid to prisoners by the state can be disbursed or squandered by the prisoner prior to claims being made by victims or judgements being enforced against them by those who have a judgement in their favour or others, such as the child support agency. The scheme does not change the law as it currently stands as to who can claim the funds. However, it will allow victims and others to know where the funds are, in order to decide whether to make a claim or have an existing judgement enforced.

Under the bill, damages awarded to offenders will immediately be paid to the Secretary of the Department of Justice to be quarantined in a trust fund. A public notification process will then commence. Victims will have 12 months in which to consider and commence legal proceedings against the offender. They can do this with the knowledge that the quarantined funds may be available to satisfy a successful claim.

This is not a scheme to redress all wrongs done by offenders to their victims. It is a scheme that provides another opportunity for victims in Victoria to seek civil redress in the light of an offender's changed financial situation.

I move now to the substantive operation of the scheme. The bill amends the Corrections Act 1986 to:

quarantine damages and awards payments to prisoners received as a result of a successful claim against the state of Victoria or a private prison operator;

provide for the public notification of successful claims by prisoners to enable victims of crime and others to consider civil action to recover funds;

provide for the registration of victims to allow the disclosure of relevant information;

provide for the payment out of the fund to victims and creditors.

The bill does not affect the legal right of a current or former prisoner to bring a claim that may result in the payment of compensation or other award by the state of Victoria or a private prison operator.

It does not matter for the purposes of the scheme whether a prisoner brings their claim when in custody or after they have been released or whether a claim made whilst in custody is not resolved before their release. Provided the claim results in a payment by the state of Victoria or a private prison operator in relation to the conditions and circumstances in detention, it will potentially be quarantined. The bill applies to prisoners serving a sentence in custody and excludes prisoners on remand.

The aim is simply to provide victims the opportunity to bring a claim once they have been made aware of the existence of an asset that might be available to enforce a successful civil suit. The scheme only applies to damages or awards that relate to the circumstances of a prisoner's incarceration. The scheme does not guarantee that a victim will be able to recover damages, irrespective of whether they can bring a claim within the limitation period or following an extension of that period granted by a court. Where a prisoner receives a damages payment, the bill requires the money to immediately be paid to the secretary to be placed in the fund.

For the scheme to operate effectively, a broad definition of 'victim' has been included in the bill to provide maximum opportunity for potential victim claimants to seek redress in the civil courts. The definition of 'victim' captures:

a person who has had a criminal act committed against them by a prisoner;

a person who is the next of kin or a family member of a person who has died as a direct result of a criminal act committed against them by a prisoner (this may or may not include a deceased estate); and

a person who is the primary caregiver or a family member of a person who has had a criminal act committed against them by a prisoner.

The definition of victim is intended only to facilitate notifications and the disclosure of information. It is important to note that unlike other options open to victims this scheme does not require a victim to establish any threshold level of injury or harm. As a victim under this scheme they will simply have certain information disclosed to them; any issues concerning their level of injury or harm are issues that will be resolved during the civil process if they decide to take action.

The bill provides for a public notification of the fact that a prisoner has received a payment following a successful claim. Victims can then register and receive more detailed information to enable them to consider their situation.

In relation to other persons who might have a claim, such as creditors, the public notification aspects of the scheme are sufficient to alert them to the existence of funds against which a debt may be satisfied.

The scheme captures any payment of damages or an award following a successful claim made by a prisoner at common law or under statute. The types of claims that may be made by prisoners or former prisoners include allegations of negligence, breach of contract, breach of statutory duty and claims based on a statute such as antidiscrimination matters and breaches of privacy.

The scheme applies to payments made pursuant to a court order on the completion of a hearing and

payments made pursuant to a settlement agreement agreed between the parties. In all cases, it will only apply to claims made in relation to circumstances during the prisoner's time in custody. It will not apply to claims made by a prisoner against another prisoner.

The scheme does not quarantine an award after a successful claim for false imprisonment given the basis of such a claim.

Following a successful claim or settlement the award or damages may compensate a prisoner in relation to a number of different components, including:

medical costs;

loss of earning capacity;

pain and suffering;

loss of bodily function;

amounts referrable to a breach of rights and/or entitlements (e.g., discrimination claims and breach of privacy claims et cetera);

loss of reputation in the case of defamation;

punitive damages to punish the defendant; and

the replacement value of damaged or lost property.

It is not appropriate under the bill to quarantine all types of payments. Accordingly, the bill will not affect damages payable in relation to medical costs and the cost of future care. In addition, the scheme does not capture the payment of legal costs awarded against the state of Victoria or a private prison operator.

The bill ensures that a judgement or settlement agreement in favour of a prisoner specifies an amount available for the purposes of the scheme that will be placed in the fund. Where the parties cannot agree on that amount, the court is given the power to specify that amount. The scheme requires that a court cannot ratify a settlement agreement unless it is satisfied that the apportioned amount is appropriate in the circumstances.

The scheme sets a threshold quarantine amount of payments of or in excess of $10 000 as it is inefficient to include small amounts of money in the fund. This, in effect, will be a threshold amount determining when the scheme operates.

The money in the fund will be quarantined for a minimum of 12 months and, in the case where a victim brings proceedings during that initial period, the quarantine will last until the conclusion of those proceedings. At the end of the quarantine period, the secretary is authorised to pay moneys out of the fund to victims and/or creditors. In doing so, the bill requires the payments to be made pro rata and in accordance with the priority of payment required under the law.

This bill further strengthens the recognition that this government gives to the harmful effects of crime and the needs of victims of crime.

I commend this bill to the house.

Debate adjourned on motion of Mrs SHARDEY (Caulfield).

Debate adjourned until Thursday, 14 August.

EVIDENCE BILL

Second reading

Debate resumed from 30 July; motion of Mr HULLS (Attorney-General).

Mr WAKELING (Ferntree Gully) — It gives me pleasure to rise to make a contribution on the Evidence Bill. The primary purpose of the bill is to adopt the model of evidence law that is currently used in New South Wales and in commonwealth courts. The bill seeks to do a number of things. The main changes to the existing law of evidence are to allow the courts to give permission for witnesses who give evidence unfavourable to the party who called them to be questioned on that evidence as though they were being cross-examined. It will replace the privilege against giving self-incriminatory evidence with a certificate preventing such evidence being used in future against the person giving the evidence. It will restructure the exceptions to the hearsay evidence rule. It will make certain admissions not admissible in evidence. Admissions made to a police officer or investigating official are not admissible unless the circumstances of the admission make it unlikely that truth was adversely affected. Lastly, it places greater onus on counsel to request that a warning be given by a judge to a jury about relying on evidence that may be unreliable for various reasons.

As has been said by other members, particularly the member for Box Hill, the Liberal Party and The Nationals in coalition will support this bill. I am sure the Attorney-General will be pleased with that because he knows that unlike members of the government when in opposition, we are a constructive opposition. We will support legislation when it is good legislation, unlike those opposite who belligerently opposed good

legislation simply because it was put in place by a party not of their choosing.

Mr Hulls — Name them.

Mr WAKELING — Acting Speaker, I have been challenged by the Attorney-General to go through the good pieces of legislation introduced by the former Kennett government, but as you would appreciate I have only 10 minutes to make my contribution and I will limit it to the provisions in the Evidence Bill.

The member for Box Hill referred to the Scrutiny of Acts and Regulations Committee 1996 inquiry into whether Victoria should adopt the uniform evidence law. It concluded that whatever criticisms one may have of the legislation it is a significant improvement on the common law and existing statutory provisions. We on this side of the house concede this bill is beneficial to our judicial system and will support any legislation that is brought into this house that is constructive and will improve our judicial system.

Having tempered our comments on the basis that we are supporting the bill, I put on the record that there are a number of areas in which the government should be mindful of the way this may play out in the future. Given the fact that this is new legislation, there will be a steep learning curve for practitioners when using this legislation in courts. We are not presupposing that those in the judiciary or those who practise in the area of law will not be able to deal with this new piece of legislation, but we should be mindful of the fact that there will be a period when the practitioners will be required to apprise themselves of the new law and make sure it is applied appropriately.

There is also the risk of unexpected problems arising when making substantial changes to a fundamental area of law. We do not question the operation of the bill or believe the bill should not be proceeded with, but due to the difficulty practitioners may have with understanding this new area of law we believe there is a potential general risk. We do not presuppose what those risks are, but we should be mindful that there could be unexpected consequences that come out of legislation, albeit important legislation such as this, and we should be ready to deal with those issues appropriately in a bipartisan approach and bring legislation back to the house to ensure those problems, if and when they arise, are dealt with appropriately.

Some provisions of the bill incorporate amendments to the uniform evidence law that were recommended by the Australian, New South Wales and Victorian law reform commissions in 2005 and included in a model bill endorsed by the Standing Committee of Attorneys-General in July 2007. Those amendments are still to be fully tested in practice. Whilst the bill is seeking to pick up on legislation that is supported by other jurisdictions around this nation — and we support that — other jurisdictions, as has been indicated, have yet to fully test the practice of those pieces of legislation.

Putting those areas of concern aside, as has been indicated, the coalition will support this legislation. We believe it is important legislation and we congratulate the minister for the work he has done on this bill. We support bills that are well-thought through and that will take this state forward and not backwards. I hope legislation that the minister seeks to introduce in the future can follow the example of this Evidence Bill.

Dr HARKNESS (Frankston) — It is a pleasure to rise and speak in support of the Evidence Bill 2008. It is an extremely important piece of legislation which is significant, not just for legal practitioners but for all Victorians. It reflects the fundamental understanding of our liberal society as to what constitutes a fair hearing by a competent court — one of the most important rights that the modern state provides for its citizens.

The bill does not drastically alter many of the rules of evidence in Victoria, which have existed under common law and the Evidence Act 1958, but there are some key areas where the bill does reform the law which I will cover shortly. One of the most significant aspects of the bill is that it is a further step towards uniform rules of evidence across Australia. Victoria's introduction of the uniform evidence act will mean that the commonwealth, New South Wales and Tasmania will all have the same laws of evidence.

Reports by various law reform commissions on the prospect of uniform evidence acts have been around since the 1980s. From what I have seen, these reports have been compiled with great care and skill and after extensive consultation with judges, legal practitioners, academics and other relevant organisations. The process has not been rapid or narrow in scope; nor should it be when it comes to something as important as the rules that determine the nature of a fair and just trial.

The bill will be of great benefit to legal practitioners, who will now be able to more effectively and efficiently work between jurisdictions. It will help to reduce the costs of some legal proceedings, which I know will be welcome news in particular to businesses that operate across Australia. It is worth pointing out that the Attorney-General has been a national leader in

supporting uniformity of laws, legal procedures and regulations — —

Mr Hulls interjected.

The ACTING SPEAKER (Mr K. Smith) — Order! Self-praise is not good enough!

Dr HARKNESS — This has not just been contained in rules of evidence. I know that many in the legal community are grateful for the leadership and initiative that the Attorney-General has shown in doing this.

There are two specific reforms contained in the uniform evidence law for which I would like to express particular support. The first is the abolition of the common-law original document rule, and the second is the exception to the hearsay rule for Aboriginal and Torres Strait Islander evidence relating to traditional laws and customs. To speak briefly on the first of these, it is pleasing to see that clause 51 of this bill abolishes the original document rule. The traditional common law required that the contents of any document be proved by the original document itself. While this rule may have made sense at the time that it was developed, modern technology means that it is far outdated.

It no longer reflects the best way for businesses and other organisations to keep their records. This bill provides a broader and more modern definition of the word 'document' to include anything on which there is writing. This will allow computer printouts and copies, among other things, to be admitted as documentary evidence. This removes a huge burden on businesses and non-profit organisations in their record keeping. It means that hard copies no longer have to be kept because of outdated rules of evidence. I know this will be a welcome development for businesses in my electorate of Frankston, and also by charities and community groups that may struggle to find the physical space to store extensive hard copies of all their important documents.

Another significant reform comes with the exception to the hearsay rule for evidence about the traditional laws and customs of Aboriginal and Torres Strait Islander groups. One of the biggest differences between traditional Western culture and traditional Aboriginal culture is the way in which knowledge is transferred. The Western tradition largely uses written documentation to transfer its knowledge, whereas the Aboriginal tradition tends to pass on knowledge orally. This does not make Aboriginal history any less important or significant, and Australian law must recognise this. Our laws of evidence, however — particularly the hearsay rule — have sometimes operated to discriminate against the Aboriginal tradition of oral histories. This can unfairly disadvantage and often has unfairly disadvantaged Aboriginal parties in court proceedings, particularly in native title claims. It was an immense difficulty faced regarding the evidence given of the Meriam people in the Mabo case. Some 300 objections were made during the initial proceedings in the Supreme Court of Queensland, when Eddie Mabo was attempting to explain the traditional property laws of his people, as told to him by his grandfather.

Native title law does provide flexibilities and exceptions to overcome this problem, but there has been confusion for some time about the interaction between the hearsay rule and the requirements of a native title claim. This is obvious from the extensive commentary by judges and legal academics which this issue has generated. The uniform evidence law helps to provide clarity in the law, so that represents a welcome reform.

To conclude briefly, the Victorian Evidence Bill marks an important stage in our legal history. It represents a significant step towards uniformity of the rules of evidence across Australia, and it makes several important reforms to those rules to better reflect modern circumstances and expectations. In closing I commend this bill to the house and wish it a speedy passage.

Dr SYKES (Benalla) — I rise to speak on the Evidence Bill 2008. I endorse the remarks by the member for Ferntree Gully in relation to the merits of the bill as part of the process of adopting a uniform approach from a national perspective. I congratulate the member for Box Hill on another excellent presentation and legal dissection of aspects of the bill. I am not a lawyer, so I seek the understanding of the Acting Speaker and the Attorney-General, who is at the table, as I make my contribution. I guess I want to make it from the point of view of a layperson attempting to grapple with the complexities of law.

The particular clause I want to focus on is clause 141, criminal proceedings — standard of proof. Clause 141(1) states:

> In a criminal proceeding, the court is not to find a case of the prosecution proved unless it is satisfied that it has been satisfied beyond reasonable doubt.

I want to apply that to the act of trespass in the Summary Offences Act. I put that in the context of what was said yesterday by the Minister for Water in response to a question by the Leader of The Nationals. The minister said in part:

> I can inform the house that each and every action in relation to the Sugarloaf pipeline project has been done in accordance with the legislative requirements, the permits that have been issued and the arrangements and agreements that have been entered into with the commonwealth government in relation to accrediting this project under federal and state legislation.

He said each and every project conforms with federal and state legislation. The issue of trespass has been causing concern to the people along the proposed route of the pipeline. I quote from section 9(1) of the Summary Offences Act 1966:

> (1) Any person who —
>
> …
>
> (e) without express or implied authority given by the owner or occupier or given on behalf of the owner or occupier by a person authorised to give it or without any other lawful excuse, wilfully enters any private place or Scheduled public place, unless for a legitimate purpose …
>
> …
>
> shall be guilty of an offence.

You would think someone on that property — —

Mr Hulls — On a point of order, Acting Speaker, what we are debating is the Evidence Bill. If the honourable member wishes to publicly support the Plug the Pipe protesters in relation to the activities they have embarked upon and the issues that were raised yesterday by the Minister for Water, in particular the attempts to invade the Premier's private residence, he can do that in another forum. This is not the forum in which to do that; this is a debate on the Evidence Bill. I ask you, Acting Speaker, to draw him back to the bill.

Dr SYKES — On the point of order, Acting Speaker, I understand the Attorney-General's point of view. This is about clause 141, which relates to the standard of proof.

The ACTING SPEAKER (Mr K. Smith) — Order! Is this on the point of order?

Dr SYKES — I am indicating that I am building a case relating to the issue of the standard of proof of the evidence. I was drawing on an example that relates to trespass. It has nothing to do with the debate yesterday on talk about an invasion of the Premier's property.

The ACTING SPEAKER (Mr K. Smith) — Order! I ask the member to come back to the debate.

Dr SYKES — We then move to the issue of the standard of proof in relation to the application under the Summary Offences Act. I raise an example of some evidence which has been produced and which arguably supports a claim of trespass. However, under this Evidence Bill there may still be some debate as to whether it meets the requirements of adequate evidence. The particular example I want to use relates to a claim of trespass on the property of Mr Veale. The evidence he has to support his claim is a letter written by the Sugarloaf Pipeline Alliance, which starts by saying:

> I write to apologise — —

Mr Hulls — On a point of order, Acting Speaker, in relation to your previous ruling, which was quite specific, you drew the member's attention back to the bill. He has again strayed in relation to the Plug the Pipe issue. The Sugarloaf pipeline has nothing whatsoever to do with this debate. I ask you, Acting Speaker, to again draw the member back to the bill.

The ACTING SPEAKER (Mr K. Smith) — Order! I ask the member to come back to the debate.

Dr SYKES — Thank you, Acting Speaker, I respect your request. I reiterate that I am relating my comments to clause 141 of the bill, which talks about the standard of proof. I find it interesting that we are having points of order raised when I am attempting to explain a situation and use the pipeline issue as a live and current example of this legislation, particularly keeping in mind that under part 1.2 'Application of this act' of the Evidence Bill, clause 4 'Courts and proceedings to which Act applies' states:

> This Act applies to all proceedings in a Victorian court, including …

It then lists a number of proceedings. I find it interesting that I have been challenged by the Attorney-General while attempting to illustrate the issue by drawing on a current example. However, I will accept your ruling, Acting Speaker.

I note that in addition to the challenges of lay people seeking to establish a standard of proof, another issue confronting lay people is the issue of dealing with hearsay evidence. In other matters unrelated to Plug the Pipe activities I have had the experience of it being absolutely critical to take notes at the time of or shortly after a situation which may involve subsequent legal action so that the evidence you are able to provide is clear, concise and accurate. That then links with the provisions in the bill that make reference to notes. I note that the requirement is normally that witnesses exhaust their memory and can then refer to notes. As I said, referring to notes often enables you to more clearly recall incidents.

I recall one incident in the Northern Territory where I was called back to give evidence on behalf of the Northern Territory government 10 years after the event. Fortunately I had the advantage of notes taken at the time and, with the understanding of the court, I was able to use those notes to accurately reflect events that had occurred 10 years earlier. That is why we see recognition of the use of notes as an important component in ensuring satisfactory evidence and the carriage of justice rather than the miscarriage of justice.

The other issue I will touch on briefly is that of legal opinion being used. In the case of opinion there is clearly a differentiation in clause 78 between lay opinions and expert opinions. I had an interesting incident in my previous experience as a veterinarian when I was involved in providing expert opinion in relation to a government's failure to manage a wildlife reference area. As a result of wild dogs breeding in that area, they ventured out of it and killed sheep on an adjoining property. This caused enormous animal welfare problems and trauma to the owner, the net result of which was that the owner was unable to continue farming. My role as an expert witness enabled the farmer to win that case and establish the negligent management of the Labor government.

With those few remarks, I endorse the comments of previous speakers that this bill is a step in the right direction. Let us hope that justice prevails under all circumstances, including for those people affected by the north–south pipeline and actions taken by this government, which I do not think are always legal.

Ms MARSHALL (Forest Hill) — I am very pleased to make a contribution to the debate on the Evidence Bill 2008, as this is the end result of a very long and complex process, which does not in any way reflect on how important an issue this is. When the Australian Law Reform Commission undertook a comprehensive review of evidence laws in the 1980s there was specific mention that the law of evidence was in vital need of being updated. This bill introduces a uniform evidence act into Victoria with necessary amendments to fit the Victorian context and bring Victorian law into line with uniform evidence laws across Australia.

The agenda of this government has always included improving the accessibility and consistency of legislation. In the justice statement 2004 a commitment was made to introduce a uniform evidence act in Victoria. This bill will facilitate that, which in turn will allow for a much simpler approach and the cutting of red tape, which will save businesses in Victoria around $10 million per year. This important piece of legislation represents a major improvement in the ability of civil and criminal courts to conduct cases efficiently and consistently with the practices in other jurisdictions. It will also lead to significant benefits from the achievement of greater uniformity between the laws of evidence which apply in federal, Victorian and interstate courts. These include facilitating national practice and reducing potential differences in outcomes between jurisdictions.

The Evidence Bill 2008 involves changes to the current law in Victoria, particularly in the areas of compellability of witnesses, unfavourable witnesses, hearsay admissions, privilege against self-incrimination and the abolition of the original-document rule. As I have already mentioned, extensive consultation was undertaken by the Australian Law Reform Commission in the 1980s, with further consultation taking place in Victoria as part of the review of the uniform evidence acts by the Australian, New South Wales and Victorian law reform commissions. Consultation on the draft bill has also been undertaken with Victoria Police and those departments that are most affected by the proposed legislation.

Whilst this bill is an important step towards fulfilling the government's commitment as defined in the justice statement, it will also contribute to the Growing Victoria Together agenda by enhancing the operation of the justice system and reducing discrimination against same-sex couples. The bill is divided into five chapters. It is structured to reflect the order in which such issues would normally occur during the course of a trial. Chapter 1 deals with the application of the act, chapter 2 deals with adducing evidence, chapter 3 deals with admissibility of evidence, chapter 4 deals with matters of proof and chapter 5 deals with miscellaneous issues and the dictionary.

Chapter 2 is divided into three parts relating to witnesses, documents and other matters regarding adducing evidence. Chapter 3 contains comprehensive rules to control the admissibility of evidence. The primary evidentiary rule is that if evidence is relevant in a proceeding, it is admissible unless it is excluded under one of the exclusionary rules set out in the bill. Chapter 4 in part facilitates the proof of evidence produced by machines, documents produced during normal business, documents attested by a justice of the peace, a lawyer or public notary, as well as matters of official record. Chapter 5 includes the dictionary to provide the definitions of words and expressions in the bill. The definition of 'de facto' rightly includes same-sex couples and couples who have registered their relationship under the Relationships Act 2008.

Victoria has indeed waited patiently for this change. We have had until now a system that was outdated and complex when it came to evidence laws. The Evidence Bill 2008 not only provides uniformity in all federal, Victorian and interstate courts, but it also brings our legislation on this issue into the 21st century. I commend the bill to the house.

Mr CRISP (Mildura) — I rise to speak on the Evidence Bill 2008. The purpose of this bill is basically to adopt the evidence law currently in use in New South Wales, the commonwealth and other jurisdictions. I make an opening comment that it has been a long time coming. The Scrutiny of Acts and Regulations Committee (SARC) inquiry in 1996 was when this issue was first pointed out. I know you have to wait for good things, but 12 years is an awful long wait for this bill.

The main provisions of this bill will change the existing law of evidence, which includes allowing a court to give permission for witnesses who give evidence unfavourable to the party who called them to be questioned on that evidence as though they were being cross-examined; replacing the privilege against giving self-incriminating evidence with the ability for a certificate to be issued preventing such evidence from being used in the future against a person giving evidence; restructuring the exceptions to the hearsay evidence rule; making certain admissions not admissible in evidence — namely, admissions made to a police officer or investigating official are not admissible unless the circumstances of the admission make it unlikely that the truth was adversely affected — and placing greater onus on counsel to request that a warning be given by a judge to a jury about relying on evidence that may be unreliable for various reasons.

We have a number of concerns, and I would like to endorse some of the things that have been said previously, in particular by the members for Ferntree Gully and Benalla, who worked very hard to try to put a local slant on the bill being debated. The concern is the risk of unexpected problems in making substantial changes to a fundamental area of law, and some of the provisions in the Victorian bill incorporate amendments to the uniform evidence act that were recommended by the commonwealth. The bill includes a model that was endorsed by SARC in July 2007. No doubt these amendments will be fully tested in practice.

When it comes to evidence and courts of law most people when they enter the legal system have a great deal of difficulty understanding and navigating it. I would like to pay tribute to a group of workers in the courts called the Court Network. They try to help people navigate and understand this. I was privileged to attend the graduation of a number of Court Network workers in Mildura quite recently. Jan and Win are two wonderful people who have put a great deal of time into that network. These people give their time freely, and, as with most things, they must be trained and attend courses as well. Their work helps those who do not understand the legal system very well.

The changes to the hearsay rules are interesting and important. Although we have had today some discussion about how the legislation will help some sectors of our community, I hope the changes to those rules do not disadvantage others. This bill will also help cross-border issues, something that country Victorian members, particularly in the north, have a great deal of problems with. As we all have legal practitioners who work on both sides of the river, some uniform evidence laws will assist with speedier and hopefully more economic legal representation for a great number of people. With those comments, The Nationals will be supporting this bill.

Mr HULLS (Attorney-General) — I thank all members who contributed to this very important piece of legislation that will assist in the establishment of national uniform evidence laws right across the country. There was a question about the length of time it has taken to introduce this legislation. It is true that it has been a tortuous process, but I have to say that Victoria is ahead of most other jurisdictions in relation to this legislation. Some jurisdictions are nowhere near as advanced as Victoria.

It has to be remembered that shortly after the release of the government's justice statement in May 2004 the New South Wales and commonwealth governments gave a reference to the Australian Law Reform Commission and New South Wales Law Reform Commission to review the operation of uniform evidence acts in those jurisdictions where they had been established. In these circumstances it was appropriate that Victoria play an active part in the conduct of that review in order for any proposed amendments to the uniform evidence act to be relevant and appropriate to the Victorian context.

Accordingly a reference was given to the Victorian Law Reform Commission to advise on the action required to implement the uniform evidence legislation in Victoria and also to consult with the Australian Law Reform Commission and the New South Wales Law Reform Commission in their review of the uniform evidence act. The law reform commissions did consult very widely right across the depth and breadth of the country and found that the uniform evidence act was

working well but required some finetuning. The three law reform commissions produced a joint uniform evidence law final report, which was tabled in February of 2006. Also tabled at the same time was the implementation report, which was prepared by the Victorian Law Reform Commission, advising on the steps necessary to implement the uniform evidence act in Victoria.

The final report contains a large number of recommendations for improvement in the uniform evidence act. Following the tabling of that final report, the Standing Committee of Attorneys-General, or SCAG as it is very well known, set up an officers working group to discuss the recommendations and develop a draft model uniform evidence bill to amend the uniform evidence act. Victoria played a very active part in that working group, and a draft bill was presented to and approved by SCAG in July 2007. The outcome of this SCAG process for New South Wales, the commonwealth and Tasmania will be the amendment of the existing uniform evidence legislation. In Victoria, which has not previously had uniform evidence legislation, this is, as the house knows, a completely new bill.

This bill has been tailored to Victorian circumstances in accordance with the recommendations of the implementation report. As a result of taking the time to be part of the uniform evidence act reform and renewal process, Victoria will now have uniform evidence laws which are up to date and largely uniform with the uniform evidence acts in other jurisdictions. It is a good piece of legislation.

I just take on board the last point about the Court Network made by the member for Mildura. I know you, Acting Speaker, were a very active participant in the Court Network. It is a great organisation; there is no question about that. Anyone who has been to court and watched the Court Network in operation would be very pleased with the way it works. As a government we announced in the budget before last a blue jacket project for the Court Network, so that court workers can be more easily identified in court. They assist people, whether they be defendants or victims or witnesses. They give time to the justice system and assist in many and varied ways that are really something to behold. I echo the comments made by the member for Mildura in relation to the Court Network.

This is an important piece of reform. I thank all members for their contribution. I too wish this very important piece of national reform a speedy passage.

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

Remaining business postponed on motion of Mr HULLS (Attorney-General).

ADJOURNMENT

The SPEAKER — Order! The question is:

That the house do now adjourn.

Planning: Portland land

Dr NAPTHINE (South-West Coast) — I wish to raise a matter for the attention of the Premier. What I am seeking from the Premier is to provide fair and just compensation to Dean Winfield, the owner of 35 Rossdell Court, Portland. Mr Winfield, through his family company, DDKV Holdings Pty Ltd, purchased the land at 35 Rossdell Court from the state government on 27 April 2001. This land was sold with a residential zoning. The government determined that it was surplus to its requirements. It determined that it was appropriate to sell the land. It put it out for public sale and determined that it would be sold with a residential zoning, and Mr Winfield bought it under those circumstances.

In November 2005 Mr Winfield applied to the Glenelg Shire Council for an 18-lot residential subdivision at 35 Rossdell Court. The council failed to make a timely decision, and Mr Winfield went to the Victorian Civil and Administrative Tribunal to get a decision on his application. Incitec Pivot, a company nearby, lodged an objection to the residential subdivision, and the Minister for Planning called in the application. Two years later, on 26 June 2008, the Minister for Planning announced in a press release that:

> Permits will not be granted for the residential subdivision of land at 35 Rossdell Court.

This caused an enormous amount of distress to and financial difficulties for Mr Winfield. I quote from a letter dated 30 June 2008 Mr Winfield sent to the Minister for Planning in which he stated:

> I am writing to convey my disappointment at your decision to not allow our 18-lot subdivision to proceed …

Further, he stated:

> In regards to the issue of compensation, the directions hearing panel have now ruled that this land is not appropriate for residential development, and this begs the question as to why the land was sold to us by your government with a residential zoning in 2001.

He stated further:

> As a private citizen, if I do the wrong thing by someone else, I either get punished by the law or have to compensate the other party. This begs the question: is government above the laws and moral obligations that apply to individuals or are you accountable for your actions like everyone else?
>
> Clearly your government has made an error in the past and now needs to rectify the problem …

He concluded by saying:

> I must stress that this is not a political issue; however, it was a Labor government that sold the block to us and it is now a Labor government that is trying to shirk their responsibilities to do the right thing.

I agree with that. It is time the government did the right thing. Whether the decision to allow the residential subdivision to proceed is correct or not is not relevant. The decision has been made, and now the government needs to accept responsibility for making that decision. This Labor government sold the land to Mr Winfield in 2001 with a residential zoning. That is what it sold it as. He wanted to proceed with the residential development, and this same government has stopped him from proceeding with that same residential development. He deserves fair and just compensation. That is the right thing to do, and I call on the Premier to do it.

Buses: Yan Yean electorate

Ms GREEN (Yan Yean) — The matter I wish to raise is for the attention of the Minister for Public Transport, and the action I seek is a significant increase in bus services in my electorate, particularly in the growth areas. I would like to commend the minister and the Department of Transport for the way that they have conducted the Whittlesea bus review, which was held with a series of workshops late last year. I would also like to commend the many community members, bus operators, representatives of local government and community groups who worked really hard in participating in the workshops and coming up with ideas about how we could improve bus services in the area. In the *Meeting Our Transport Challenges* document that was released, $650 million was identified for new bus services, and I urge the minister to look very strongly at spending a lot of that money in the growth suburbs in my electorate.

The requisite services that I identify include an increase in frequency of services to the growing areas of Epping North and better connections for the Whittlesea township into Epping. I think now there is a very strong argument for Hazel Glen Drive and Masons Lane to be connected over the Plenty River. The growing communities of Mernda and Doreen would then be able to benefit very strongly from a frequent bus service getting people to school, shopping and work. The workshops came up with a fantastic idea that a service could run from Epping through South Morang and up to Mernda, across to Doreen and then back down Yan Yean Road to Greensborough, giving those communities access to train lines, which would provide people in that community with a lot of options.

There has been a great increase in the bus services from Donnybrook station, and we have also seen that fantastic service that now operates from North Melbourne station connecting the education and hospital precincts. I know that students and people in my electorate are connecting with that service from Donnybrook station, but what is missing are the bus connections beyond Donnybrook station. A shuttle service, in particular, coming down from Whittlesea to Donnybrook station would capitalise on some of that great frequency of service that has been improved at Donnybrook. Some consideration may even be given to extending that service to begin Kinglake.

I again commend the community members who have worked hard on requesting improved bus services, and I urge the minister to act on the results of the Whittlesea bus review.

Border anomalies: heavy vehicle regulation

Mr JASPER (Murray Valley) — I raise a matter for the attention of the Minister for Roads and Ports and, in his absence, the minister at the table, the Attorney-General. I raise the issue particularly looking at the need for a single national system for heavy vehicle industry regulation across Australia. It is interesting to do so today because this morning in my 90-second statement I spoke about border anomalies. The trucking industry suffers from border anomalies right across Australia, and it is an issue that must be addressed. I acknowledge that the roads ministers throughout Australia met on 25 July and there has been agreement that they should be looking to modernise the nation's transport sector.

I bring to the attention of the house a letter I received from Brian Hicks, who is a transport operator from Cobram in my electorate. He runs a large number of trucks within his business and is completely frustrated

with the operations of the trucking industry and the penalties imposed on the industry in trying to meet all the regulations. I want to read some paragraphs from his letter because it highlights the difficulties being experienced by transport operators and the need for urgent action to be taken to achieve uniformity and to look at eliminating anomalies not only between Victoria and New South Wales but between all the states and territories throughout Australia. He stated in his letter:

> To date, my business and my drivers have been frustrated and penalised routinely by inefficient and ineffective regulation of the road transport industry …

He went on to say:

> … the road transport industry is separately regulated by every state and territory government as well as by the commonwealth government …
>
> As an example, there are individual pieces of legislation in every state and territory governing numerous issues that affect the day-to-day operation of my business, ranging from fatigue … driving hours, vehicle axle and gross weights, dimensions, road rules, driver licensing, registration, vehicle access, driver behaviour, vehicle roadworthiness, load restraint, vehicle design, combination design, emissions and noise control, to name a few.

He said that this is duplicated right across Australia. He went on to say that in addition he often has to carry 30 individual permits in just one vehicle to move freight around the country for the benefit of the nation. Further on in his letter he said:

> It is in this context that I write to you seeking your support to bring some sanity to the current situation. I cannot emphasise strongly enough that running an interstate transport business is … almost impossible. The paperwork is never ending.

That situation has been highlighted by other truck operators I have spoken to across my electorate of Murray Valley. They are completely frustrated with the problems they face in trying to run their trucking operations. In Australia today we have increases in charges for fuel and increases in other charges and impositions which must be addressed. The government should be trying to assist in getting uniformity across Australia on all these issues relating to trucking.

Dental services: western suburbs

Ms THOMSON (Footscray) — The matter I raise is for the attention of the Minister for Health. I ask the minister to take action to support dental services in my electorate of Footscray and services in the west more broadly. The west is one of the most disadvantaged areas in Victoria. The Labor government has invested over $950 million in oral health since 1999, and it has certainly done a lot to support dental services in the west, but we have issues around waiting times. While we have seen a reduction in waiting times there is still a need to do more to assist these services in administratively dealing with waiting lists, progressing them and making them more efficient. With an increase of 49 dental chairs there are now 371 public dental chairs across the state. The recent Victorian budget also included $13 million for the provision of 30 dental chairs, including 12 in Melton and services in Niddrie. However, as I said, there is still more that can be done.

I know that the minister recognises that more can be done to support our dental services. I ask him to take action to ensure that funding is provided to health services in Melbourne's western suburbs to allow initiatives such as the dental waiting times grants program to be introduced in the west.

Aireys Inlet and Deans Marsh schools: speed zones

Mr MULDER (Polwarth) — The matter I wish to raise is for the Minister for Roads and Ports. It concerns an article in the *Colac Herald* of 28 July headed 'Police say drivers are ignoring limits'. In this case Lorne police claim that motorists are ignoring 40-kilometre-per-hour speed limits near schools at Aireys Inlet and Deans Marsh and that the offences are occurring every time police patrol the zones at those locations. If this is occurring while the police are present — and quite often motorists detect police cars in and around school zones and slow down — we can imagine what is happening when police are not there.

I call on the minister to install time-based electronic signage at these school crossings before a serious accident occurs. I also ask him to seek feedback from other police regions on the extent of this problem, because it appears as though the major offenders are international tourists. If international tourists are doing this on the Great Ocean Road and in the Otways hinterland, no doubt it is occurring in other tourist locations around the state.

The police who patrol these zones are reported in the article as saying that local motorists seem to be taking care and abiding by the speed limits at these locations and that it is the out-of-towners and international tourists who are causing the majority of problems. There have been a number of instances involving international tourists in the Great Ocean Road area and the Otways hinterland. They have left motels and hotels early in the morning, have driven out on the wrong side of the road and have featured in a number of very

serious accidents. This is another issue that has not been raised in the past but oddly is a problem.

We do not want to discourage international tourism, because it is very important to that part of Victoria, but I am concerned that there will be a very serious accident at Aireys Inlet and/or Deans Marsh. I call on the minister to take urgent action to ensure that this issue is dealt with very quickly. The police acknowledge that local motorists are generally behaving exceptionally well in and around these areas and say that the problem lies with international tourists.

There was a lot of discussion on the rollout of 40-kilometre-per-hour speed limits around schools. A lot of the 40-kilometre-per-hour speed zones were very close to 50 and 60-kilometre-per-hour speed zones and the situation was quite confusing. The Premier at the time said that motorists were angry and confused about a lot of the signage around the state, and a review was promised to improve signage, particularly around schools. It would appear that it is not working. It is important that we get on top of this issue very quickly. As I said, I do not want to see a serious accident occur in my electorate, and I ask the minister to act immediately.

Tertiary education and training: student support

Mr PERERA (Cranbourne) — I wish to raise a matter for the attention of the Minister for Skills and Workforce Participation. The action I seek is for the minister to include in the Victorian government's submission to the review of Australian higher education, the Bradley review, an emphasis on the importance of providing opportunities for all capable students to participate in higher education. This review presents an opportunity for the minister to propose that the federal government review existing income support arrangements for students.

I have been a firm believer in supporting higher education. The electorate of Cranbourne and its surrounding areas are well resourced when it comes to further education facilities. We are fortunate to have Chisholm TAFE, with its Cranbourne, Berwick, Dandenong and Frankston campuses. All these campuses cater for my constituents in Cranbourne.

Recently the minister announced $1.68 million in Brumby government funding to Chisholm TAFE, which includes $447 000 for maintenance and equipment upgrades at its Frankston campus, $184 000 for maintenance and equipment upgrades at the Dandenong campus and $754 000 for a pilot wireless network across all six Chisholm campuses.

We are also fortunate enough to have the well-established William Angliss Institute of TAFE, Cranbourne campus. William Angliss Institute delivers a Youth Pathways program which it operates at the vibrant Casey Cafe in Cranbourne, in partnership with other community organisations. The program is for people aged 15 to 19 years. It is an innovative way to support local youth who have left mainstream education and are looking for ways to enter the workforce or for further training in the hospitality industry. The program is delivered four days a week for nine weeks. Many referrals come from local schools and youth support agencies. There are some great stories to be told out of this great local institution.

In addition to our vocational education and training facilities, higher education plays a vital role in securing Victoria's future. This is a great opportunity for the Victorian government to take part in this proactive Rudd federal government initiative.

Drivers: occupational therapy assessments

Mr INGRAM (Gippsland East) — I raise a matter for the attention of the Minister for Roads and Ports and the action I seek is for the minister to investigate the behaviour of occupational therapy driver assessors who appear to be deliberately manipulating the assessments to create industry business and income from lessons and so on. I recently received representations from an extremely concerned constituent who was referred to an occupational therapy driver assessor because another sibling in the family had been diagnosed with a condition which may have been hereditary. That person was referred by the hospital to a particular business. When that person went through the assessment, which was done by Mr Ashok Jamini at the Kingston Centre in Cheltenham, the assessor basically ruled that she was not suitable for driving and then immediately said, 'To address this we can give you a series of six lessons'.

This may be an isolated case, but the assessor did not realise that the hospital had referred my constituent's brother to him as well. The brother has a different surname. The brother had the same issue and was also ruled unsuitable for driving and had to go through a process of licence suspension. My constituent then went through the process of getting a reference from a doctor who said she was capable of driving, went back to another occupational therapy driver assessor for an assessment, got a clean bill of health and was deemed suitable to drive. The brother went through the same

process and, when he was reassessed, he passed with flying colours.

This appears to be a case of some people in the industry not behaving appropriately. In my view it is up to the government through the minister to thoroughly review the behaviour of some of these occupational therapy driver assessors, particularly in view of the high costs associated with this process, as the member for Murray Valley indicated earlier, and the very limited availability of assessors in many regional areas. In addition, once the black mark is on a person's licence they are required to go through six-monthly tests, even if they are subsequently found to be suitable. I believe the minister must investigate this thoroughly, particularly the complaint against Mr Ashok Jamini and any other people who may be behaving in the same way.

Dingoes: owner code of practice

Ms CAMPBELL (Pascoe Vale) — I raise a matter for the Minister for Agriculture and the action I seek is that he meet with one of my constituents, Dr Ernest Healy, who together with the Dingo CARE Network has done a significant amount of work in relation to dingoes and their care and preservation. The Dingo CARE Network is very concerned about the draft code of practice for the private keeping of Australian mammals. Members of the network have been to my office expressing their concerns, some of which I will briefly outline. I am sure they would be able to do so far more eloquently in a meeting with the minister and his advisers.

The Dingo CARE Network is particularly concerned that the code on the keeping of captive dingoes has devolved to the Department of Primary Industries (DPI). It is Dr Healy's contention and that of the Dingo CARE Network that this sits at odds with DPI's responsibility for regulations regarding the dingo as a designated pest animal, and believes any code of practice relating to captive dingoes should be treated as an environmental and conservation issue under the Department of Sustainability and Environment.

Over the last number of years I have received many very extensive submissions in my office and as a result of those representations I have learnt quite a lot about the dingo and the importance of its preservation. Section 7.2.2 of the draft code of practice sets minimum standards for captive dingo enclosures. If the Jackson 2003 recommendation recommending 300 square metres per pair is adopted, then most of the current dingo keepers will not be able to comply with the new standard. These people are from a particularly vibrant and well-informed group, and I ask the minister for his serious consideration of this issue.

Franchising industry: code of conduct

Mrs VICTORIA (Bayswater) — I rise to ask the Minister for Consumer Affairs to conduct an inquiry into the franchising industry. This industry, governed by the franchising code of conduct which was introduced only in March this year, has clear holes in it and as a result of that franchisees are at a disadvantage. This inquiry is very obviously needed as tactics of bullying and harassment are going on and hardworking Victorians are being forced out of their businesses and being left in perilous financial situations. Often smaller operators are forced out of their franchises, which are then sold off at 'mates rates' by the franchisor so others can benefit.

The South Australian and Western Australian governments have conducted such inquiries recently, and they have led to the federal government now launching its own inquiry. The Brumby government often lauds itself as being the national leader in so many areas, yet in this regard Victorians have very little protection. This is an opportunity for the Brumby government to take the lead in protecting small business operators.

A large number of small business owners go into franchising to make their own life or to start afresh, yet quickly discover the reality of this bloodthirsty industry. What is truly worrying is the number of franchisees who are afraid to come forward due to fears of having their licences removed or revoked and the potential for losing not only their businesses but also their life savings and even their homes.

I have come to learn of the reality of this industry through some brave franchisees who want me to stand up for their rights. Through these contacts I have learnt of several franchisees — believe it or not, all within one company — who are being bullied and harassed within my own electorate. I dread to think how many franchisees across Victoria are suffering under similar circumstances where the threat of eviction looms over their heads.

The statement released last week by business advisory firm PKF regarding franchisers confirms the need to call for more assistance for franchisees. There is a need to provide viable and ongoing support for them. Franchisees need support, as many of them are mums and dads who want to make a fresh start and may not have the necessary support or business nous to recognise financial stress that may manifest itself in

their being pushed out of their businesses. Ultimately it comes back to industry regulation and protection. There is no reason why a fair and equitable solution cannot be found for all. By conducting an inquiry into and reforming the sector the industry can flourish and those who are currently without protection can operate their businesses without fear of being ousted.

I call on the minister to conduct an inquiry into the franchising industry so that we can prevent bullyboy tactics pushing people into financial peril.

Small business: Forest Hill electorate

Ms MARSHALL (Forest Hill) — I raise a matter for the attention of the Minister for Small Business. The action I seek is for the minister to come to the electorate of Forest Hill and visit the city of Whitehorse during the festival that is specifically for small business operators — Energise Enterprise 08. I ask him to attend one of the events or some of the activities that will be occurring during that time to service some of the small business operators in my electorate. I have met many of these small business operators. I have been fortunate to have many discussions with them regarding some of the impacts and challenges they face. The Victorian Business Centre is on Canterbury Road in Vermont South, and I have directed some of the small business operators to it. The centre offers business planning and a mentoring program, and it puts the power back into the hands of the small business operators by dissecting their businesses and educating them.

The festival is an opportunity for small business operators to get together. Many of them are very isolated as they have businesses that are literally run from a room in their houses or sometimes from the garage at the back of their properties. Energise Enterprise 08 allows them to come together to meet and share ideas, to learn from one another and probably to get some of the information that they are not even aware they do not know. I think that is one of the hardest things in being a small business operator.

It is incredibly interesting to see how quickly situations within small business can change and how difficult it is for the operators themselves to get access to current information and some of the tools that will enable their businesses to flourish. We understand that small business operators are instrumental in supporting our economy. Obviously by providing them with the support that they need we are able to help them grow their businesses, which in turn creates jobs and has an enormous effect on our local areas.

The city of Whitehorse has a large proportion of small businesses that are run from homes, so this is a very important festival. I call on the minister to come and speak firsthand to the small business operators in the electorate of Forest Hill and to understand their situations.

Responses

Mr WYNNE (Minister for Housing) — The member for South-West Coast raised a matter for the attention of the Premier in relation to a matter in the Portland area. The member sought just compensation on behalf of Mr Winfield, who purchased land in residentially zoned land in that area. Subsequently Mr Winfield was unable to complete a subdivision, and the member has asked that the Premier consider the question of compensation. I will refer that matter for the Premier's attention.

The member for Yan Yean raised a matter for the Minister for Public Transport in relation to increased bus services in her electorate, and I will make sure the minister is made aware of that matter.

The member for Murray Valley raised a matter for the Minister for Roads and Ports in relation to a single national heavy vehicle legislative regime, and I will make sure that the minister is aware of that matter.

The member for Footscray raised a matter for the Minister for Health in relation to supporting dental services in the Footscray and Werribee region. I will make sure that the minister is aware of that request.

The member for Polwarth raised a matter for the Minister for Roads and Ports in relation to motorists ignoring school speed zone limits in the Deans Marsh and Aireys Inlet areas — —

The DEPUTY SPEAKER — Order! He requested that the minister install time-based electronic crossings.

Mr WYNNE — Indeed, Deputy Speaker. I am just getting to the time zone matter right now, because I am reading my colleague's copious notes. As you would be aware, I was otherwise engaged during the earlier part of the adjournment debate. In relation to time-based electronic signage, the member can be certain that I will make sure that the minister is well aware of that matter.

The member for Cranbourne raised a matter for the Minister for Skills and Workforce Participation in relation to opportunities for constituents in his electorate to be provided with further support services, particularly overseas students.

The member for Gippsland East raised a matter for the Minister for Roads and Ports in relation to the behaviour of occupational therapy driver assessors. I will refer the matter to the minister.

The member for Pascoe Vale raised a matter for the Minister for Agriculture seeking a meeting with Dr Ernest Healy in relation to the very important Dingo CARE Network. I will make sure that the minister is made aware of that request.

The member for Bayswater raised a matter for the Minister for Consumer Affairs in relation to her concerns about alleged fear and intimidation of franchisees by franchise organisations and the need for an inquiry into the industry. I will make sure that the Minister for Consumer Affairs is made aware of that matter.

Finally, my colleague the member for Forest Hill raised a matter for the Minister for Small Business seeking his participation in the City of Whitehorse-sponsored Energise Enterprise 08 events for small businesses in her electorate. She seeks the support of the Minister for Small Business at those events. And that concludes the event for me.

The DEPUTY SPEAKER — Order! The house is now adjourned.

House adjourned 5.47 p.m. until Tuesday, 19 August.