PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 4 December 2008

(Extract from book 17)

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By authority of the Victorian Government Printer

The Governor

Professor DAVID de KRETSER, AC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

The ministry

Premier, Minister for Veterans' Affairs and Minister for Multicultural Affairs	The Hon. J. M. Brumby, MP
Deputy Premier, Attorney-General, Minister for Industrial Relations and Minister for Racing	The Hon. R. J. Hulls, MP
Treasurer	The Hon. J. Lenders, MLC
Minister for Regional and Rural Development, and Minister for Skills and Workforce Participation	The Hon. J. M. Allan, MP
Minister for Health	The Hon. D. M. Andrews, MP
Minister for Community Development and Minister for Energy and Resources	The Hon. P. Batchelor, MP
Minister for Police and Emergency Services, and Minister for Corrections	The Hon. R. G. Cameron, MP
Minister for Agriculture and Minister for Small Business	The Hon. J. Helper, MP
Minister for Finance, WorkCover and the Transport Accident Commission, Minister for Water and Minister for Tourism and Major Events	The Hon. T. J. Holding, MP
Minister for Environment and Climate Change, and Minister for Innovation	The Hon. G. W. Jennings, MLC
Minister for Public Transport and Minister for the Arts	The Hon. L. J. Kosky, MP
Minister for Planning	The Hon. J. M. Madden, MLC
Minister for Sport, Recreation and Youth Affairs, and Minister Assisting the Premier on Multicultural Affairs	The Hon. J. A. Merlino, MP
Minister for Children and Early Childhood Development, and Minister for Women's Affairs	The Hon. M. V. Morand, MP
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
Minister for Education	The Hon. B. J. Pike, MP
Minister for Gaming, Minister for Consumer Affairs and Minister Assisting the Premier on Veterans' Affairs	The Hon. A. G. Robinson, MP
Minister for Industry and Trade, Minister for Information and Communication Technology, and Minister for Major Projects	The Hon. T. C. Theophanous, MLC
Minister for Housing, Minister for Local Government and Minister for Aboriginal Affairs	The Hon. R. W. Wynne, MP
Cabinet Secretary	Mr A. G. Lupton, MP

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

Leader of the Parliamentary Labor Party and Premier:
The Hon. J. M. BRUMBY (from 30 July 2007)
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:
Mr E. N. BAILLIEU

Deputy Leader of the Parliamentary Liberal Party and Deputy Leader of the Opposition:
The Hon. LOUISE ASHER

Leader of The Nationals:
Mr P. J. RYAN

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

Member	District	Party	Member	District	Party
Allan, Ms Jacinta Marie	Bendigo East	ALP	Lindell, Ms Jennifer Margaret	Carrum	ALP
Andrews, Mr Daniel Michael	Mulgrave	ALP	Lobato, Ms Tamara Louise	Gembrook	ALP
Asher, Ms Louise	Brighton	LP	Lupton, Mr Anthony Gerard	Prahran	ALP
Baillieu, Mr Edward Norman	Hawthorn	LP	McIntosh, Mr Andrew John	Kew	LP
Barker, Ms Ann Patricia	Oakleigh	ALP	Maddigan, Mrs Judith Marilyn	Essendon	ALP
Batchelor, Mr Peter John	Thomastown	ALP	Marshall, Ms Kirstie	Forest Hill	ALP
Beattie, Ms Elizabeth Jean	Yuroke	ALP	Merlino, Mr James Anthony	Monbulk	ALP
Blackwood, Mr Gary John	Narracan	LP	Morand, Ms Maxine Veronica	Mount Waverley	ALP
Bracks, Mr Stephen Phillip [1]	Williamstown	ALP	Morris, Mr David Charles	Mornington	LP
Brooks, Mr Colin William	Bundoora	ALP	Mulder, Mr Terence Wynn	Polwarth	LP
Brumby, Mr John Mansfield	Broadmeadows	ALP	Munt, Ms Janice Ruth	Mordialloc	ALP
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
Crutchfield, Mr Michael Paul	South Barwon	ALP	Overington, Ms Karen Marie	Ballarat West	ALP
D'Ambrosio, Ms Liliana	Mill Park	ALP	Pallas, Mr Timothy Hugh	Tarneit	ALP
Delahunty, Mr Hugh Francis	Lowan	Nats	Pandazopoulos, Mr John	Dandenong	ALP
Dixon, Mr Martin Francis	Nepean	LP	Perera, Mr Jude	Cranbourne	ALP
Donnellan, Mr Luke Anthony	Narre Warren North	ALP	Pike, Ms Bronwyn Jane	Melbourne	ALP
Duncan, Ms Joanne Therese	Macedon	ALP	Powell, Mrs Elizabeth Jeanette	Shepparton	Nats
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
Fyffe, Mrs Christine Ann	Evelyn	LP	Ryan, Mr Peter Julian	Gippsland South	Nats
Graley, Ms Judith Ann	Narre Warren South	ALP	Scott, Mr Robin David	Preston	ALP
Green, Ms Danielle Louise	Yan Yean	ALP	Seitz, Mr George	Keilor	ALP
Haermeyer, Mr André [3]	Kororoit	ALP	Shardey, Mrs Helen Jean	Caulfield	LP
Hardman, Mr Benedict Paul	Seymour	ALP	Smith, Mr Kenneth Maurice	Bass	LP
Harkness, Dr Alistair Ross	Frankston	ALP	Smith, Mr Ryan	Warrandyte	LP
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
Holding, Mr Timothy James	Lyndhurst	ALP	Thomson, Ms Marsha Rose	Footscray	ALP
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

CONTENTS

THURSDAY, 4 DECEMBER 2008

CONTENTS

Thursday, 4 December 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 22 to 27, 133, 134 and 208 to 218 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.

Dr SYKES having given notice of motion:

Mr Ingram — On a point of order, Speaker, the notice of motion relates to a motion to be moved on the next day of sitting calling for an action to be taken today. I ask the Speaker to look at the notice of motion, because it is an item that should be debated at a different time.

The SPEAKER — Order! The Speaker and the clerks will review the notice of motion.

Further notices of motion given.

TRANSPORT LEGISLATION GENERAL AMENDMENTS BILL

Introduction and first reading

Mr BATCHELOR (Minister for Community Development) introduced a bill for an act to amend the Transport Act 1983, the Rail Corporations Act 1996, the Rail Safety Act 2006, the Children, Youth and Families Act 2005 and the Borrowing and Investment Powers Act 1987 and for other purposes.

Read first time.

PETITIONS

Following petitions presented to house:

Schools: Catholic sector

To the Legislative Assembly of Victoria:

The petition of Victorian residents who choose Catholic education, or support this right of choice, draws to the attention of the house that the level of funding provided by the Victorian state government to Catholic schools is inadequate and discriminates against families who choose a Catholic education for their children.

The petitioners therefore request that the Legislative Assembly of Victoria guarantee funding at 25 per cent of the average cost of educating a child in the Victorian government school system, indexed annually and to provide equal funding for children with disabilities who attend a Catholic school.

By Mr HUDSON (Bentleigh) (648 signatures)
Mr CLARK (Box Hill) (756 signatures)
Mr BROOKS (Bundoora) (614 signatures)
Ms THOMSON (Footscray) (371 signatures)
Ms MARSHALL (Forest Hill) (622 signatures)
Mr BURGESS (Hastings) (103 signatures)
Mr LANGDON (Ivanhoe) (276 signatures)
Mr DELAHUNTY (Lowan) (120 signatures)
Ms DUNCAN (Macedon) (601 signatures)
Mr ROBINSON (Mitcham) (341 signatures)
Mr MORRIS (Mornington) (1697 signatures)
Mr HULLS (Niddrie) (1509 signatures)
Mr THOMPSON (Sandringham) (283 signatures)
Mr HARDMAN (Seymour) (189 signatures)
Mr NOONAN (Williamstown) (132 signatures)

Police: Boronia

To the Legislative Assembly of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the house the increasing number of crimes against the person and property in Boronia.

The petitioners therefore request that the Legislative Assembly of Victoria resolves that the Minister for Police and Emergency Services undertakes an immediate review of police numbers at Boronia police station with a view to increasing them to restore a safe environment for shoppers, commuters and residents.

By Mr WAKELING (Ferntree Gully) (45 signatures)

Essendon Airport: future

To the Legislative Assembly of Victoria:

This petition of the citizens of Victoria draws to the attention of the house the intention of the Victorian Labor government to close Essendon Airport.

The petitioners therefore request that the Legislative Assembly of Victoria call upon the Victorian Labor government to abandon its misconceived policy which is a threat to the location and operations of the Victorian Air Ambulance, the Police Air Wing, firefighting aircraft and other essential public and private enterprises as well as causing the closure of an important facility for rural and regional Victorians commuting to Melbourne.

By Mr RYAN (Gippsland South) (217 signatures)

Baxter-Tooradin Road, Baxter: pedestrian safety

To the Legislative Assembly of Victoria:

We, the undersigned citizens of Victoria, draw to the attention of the house community safety concerns with the lack of a pedestrian crossing in Baxter-Tooradin Road, Baxter, adjacent to the new Baxter shopping centre.

We, the undersigned concerned citizens of Victoria, therefore ask the Legislative Assembly of Victoria to request the Victorian government to instruct VicRoads to urgently install a pedestrian crossing in Baxter-Tooradin Road, Baxter, adjacent to the new Baxter shopping centre.

By Mr BURGESS (Hastings) (33 signatures)

Rail: Mildura line

To the Legislative Assembly of Victoria:

The undersigned petitioners therefore ask the Legislative Assembly to bring forward the reinstatement of the Melbourne–Mildura passenger train, especially in view of:

1. the many undelivered promises;

2. the urgent need to promote public transport in a global warming context;

3. the pressing need to connect remote Mildura to both Melbourne and the national rail network; and

4. the geographic distance now requiring a rapid service (very fast train) to be competitive.

By Mr CRISP (Mildura) (34 signatures)

Police: Red Cliffs

To the Legislative Assembly of Victoria:

This petition of residents of Red Cliffs and surrounding communities in Victoria draws to the attention of the house the need to increase police presence in our district.

The petitioners register their dismay after a weekend of vandalism with damage estimated to be in excess of $60 000 to the local bowling club and private and public property.

The petitioners therefore request that the Legislative Assembly of Victoria take action to increase staff levels at the Red Cliffs police station as a proactive step in ensuring that this criminal activity is not repeated.

By Mr CRISP (Mildura) (226 signatures)

Paterson's curse: control

To the Legislative Assembly of Victoria:

This petition of the citizens of Victoria draws to the attention of the house the critical need for continuing state government support for the eradication of Paterson's curse as a noxious weed, recognising that it has been relegated in importance by the Minister for Agriculture, Joe Helper, MP, and the Department of Primary Industries, with other exotic weeds now being given precedence.

The petitioners therefore request that the Legislative Assembly of Victoria call upon the Victorian Labor government to clarify responsibility for the control of noxious weeds, and increase funding levels to all government authorities, including local government, to implement appropriate eradication programs, and to include Paterson's curse.

By Mr JASPER (Murray Valley) (162 signatures)

Vision Australia: school closure

To the Legislative Assembly of Victoria:

The petition of Coalition for a Blind School Now! supported by the general public as petitioners draws to the attention of the house that Vision Australia's announced closure of Victoria's only blind and vision-impaired school (the old Royal Victorian Institute for the Blind) located in Burwood means integrating into mainstream state government schools all blind or vision-impaired children. There will no longer be a suitable specialist educational facility in the state of Victoria.

The petitioners therefore request that the Legislative Assembly of Victoria provide, by the beginning of school year 2010, a fully functional specialist educational facility for students who are blind/vision impaired, with or without additional needs, with access to core curriculum and expanded core curriculum and necessary therapy services.

By DIXON (Nepean) (6892 signatures)

Planning: Knoxfield

To the Honourable the Speaker and members of the Legislative Assembly in Parliament assembled:

The humble petition of the undersigned citizens of the state of Victoria sheweth the petitioners register their opposition to the inappropriate development of medium and high-density housing in Knoxfield.

Your petitioners therefore pray that the state government places a moratorium on medium and high-density housing developments in Knoxfield in order to protect the unique character and environment of Knoxfield.

And your petitioners, as in duty bound, will every pray.

By Mr WELLS (Scoresby) (1581 signatures)

Tabled.

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

Ordered that petitions presented by honourable members for Bentleigh, Bundoora, Footscray, Forest Hill, Ivanhoe, Macedon, Mitcham, Niddrie and Williamstown be considered next day on motion of Mr DIXON (Nepean).

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

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

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

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

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

Ordered that petition presented by honourable member for Murray Valley be considered next day on motion of Mr JASPER (Murray Valley).

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

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

Ordered that petitions presented by honourable member for Hastings be considered next day on motion of Mr BURGESS (Hastings).

RULINGS BY THE CHAIR

Hansard: disorderly comment

The SPEAKER — Order! Before calling the Clerk to present documents, I report to the house on the point of order taken by the member for Kew before question time yesterday. On consideration of *Hansard* and advice from Hansard, I conclude that the comment the member for Kew referred to was amongst a number of comments across the table and across the chamber while I was on my feet calling for order. As is the normal custom, that comment was not included in *Hansard* because the control of the house was in the Speaker's hands.

MINING WARDEN

Yallourn mine batter failure

Mr BATCHELOR (Minister for Energy and Resources), by leave, presented report and government response.

Tabled.

Ordered to be printed.

AUDITOR-GENERAL

Response by Minister for Finance, WorkCover and the Transport Accident Commission

Mr CAMERON (Minister for Police and Emergency Services), by leave, presented response to reports for 2007–08.

Tabled.

ELECTORAL MATTERS COMMITTEE

International investigations into political donations and disclosure and voter participation and informal voting

Mr O'BRIEN (Malvern), by leave, presented report, together with appendices.

Tabled.

Ordered to be printed.

LAW REFORM COMMITTEE

Vexatious litigants

Mr CLARK (Box Hill) presented report, together with appendices and transcripts of evidence.

Tabled.

Ordered that report and appendices be printed.

DOCUMENTS

Tabled by Clerk:

Commissioner for Environment Sustainability Act 2003 — State of the Environment Report 2008

Geoffrey Gardiner Dairy Foundation Ltd — Report 2007–08 (two documents)

Parliamentary Committees Act 2003:

Government response to the Electoral Matters Committee's Report into the Conduct of the 2006 Victorian State Election

Government response to the Environment and Natural Resources Committee's report into the Impact of Public Land Management Practices on Bushfires in Victoria

Police Integrity, Office of — Report 2007–08 under s 31 of the Crimes (Assumed Identities) Act 2004

Statutory Rules under the following Acts:

Cemeteries and Crematoriums Act 2003 — SR 145

County Court Act 1958 — SRs 147, 148

Liquor Control Reform Act 1998 — SR 143

Motor Car Traders Act 1986 — SR 144

Police Integrity Act 2008 — SR 146

Second-Hand Dealers and Pawnbrokers Act 1989 — SRs 140, 141

Trade Measurement Act 1995 — SR 142

Trade Measurement (Administration) Act 1995 — SR 142

Subordinate Legislation Act 1994:

Ministers' exception certificates in relation to Statutory Rules 124, 138, 139, 147, 148

Ministers' exemption certificates in relation to Statutory Rules 141, 142, 145

Ministers' infringements offence consultation certificates in relation to Statutory Rules 140, 144.

ROYAL ASSENT

Message read advising royal assent to Water (Commonwealth Powers) Bill.

PARLIAMENTARY COMMITTEES

Inquiry references

Mr BATCHELOR (Minister for Community Development) — By leave, I move:

That under section 33 of the Parliamentary Committees Act 2003 the following matters be referred to the joint investigatory committees specified:

(1) To the Education and Training Committee: for inquiry, consideration and report no later than 31 December 2009 on skills shortages in the rail industry; and the committee is to explore possible solutions and, in particular, is asked to consider:

(a) factors influencing recruitment and retention;

(b) demographic profile of the workforce and the outlook for future retirements and loss of skills;

(c) implications of the Victorian Industry and manufacturing statement commitment in relation to local content; and

(d) whether there is any need for increased training opportunities at university and trade levels and, if so, how industry can stimulate student/user demand.

(2) To the Education and Training Committee: for inquiry, consideration and report no later than 1 July 2010 on the potential for developing opportunities for schools to become a focus for promoting healthy community living, in particular:

(a) existing activities carried out by schools to promote holistic healthy living within their school communities involving healthy eating, active lifestyles, sun smart awareness and appreciation of the effects of harmful substances;

(b) successful programs which have been instituted in schools in other states or internationally;

(c) identify whether it is appropriate for the state to encourage schools to extend health programs to be directed at the broader school community and, if so, what the most effective and efficient approaches are;

(d) opportunities for linking with community leaders and forming partnerships with business and community organisations;

(e) existing broader health promotion policies and activities; and

(f) how school-based activities could relate and coordinate with these to maximise impact and efficiency.

(3) To the Law Reform Committee: for inquiry, consideration and report no later than 31 December 2009 on law reforms aimed at streamlining and simplifying powers of attorney documents to enable more Victorians to plan for their future financial, lifestyle and healthcare needs; specifically the committee is asked to:

(a) consider the differing formality requirements and terminology, and coverage of the power of attorney documents, governed by the Instruments Act 1958

and the Guardianship and Administration Act 1986;

(b) establish whether the donor of a power of attorney has capacity to create a legally enforceable document and differing execution requirements and the different tests that apply;

(c) clarify the powers granted by the donor when making a power of attorney;

(d) examine ways of minimising abuse in relation to the execution of and exercise of powers under powers of attorney documents;

(e) consider the issue of legal capacity in the context of when an enduring power of attorney is executed and activated; and

(f) advise on the need for adopting potential safeguards such as the registration of documents (voluntary or mandatory).

(4) To the Environment and Natural Resources Committee: for inquiry, consideration and report no later than 31 December 2009 on opportunities to reduce red tape associated with the approvals process for renewable energy projects in Victoria; in particular the committee is asked to consider:

(a) the major obstacles facing investors in large-scale renewable energy projects in Victoria, including environmental, planning and other regulations;

(b) how Victoria compares to other Australian jurisdictions with regard to relevant approvals for renewable energy projects — in particular, wind farms as they are the most common form;

(c) opportunities to reduce risk and delays for investors, whether that be through streamlining regulatory processes, appeals processes or other costs/risks;

(d) the likely future drivers of renewable energy in Victoria, particularly in the context of the carbon pollution reduction scheme and the expanded federal renewable energy target;

(e) other reviews and inquiries covering similar issues; this would include the Australian Energy Market Commission's review of energy market frameworks in light of climate change policies and the Environment Protection and Heritage Council's report on impediments to environmentally and socially responsible wind farm development.

(5) To the Road Safety Committee: for inquiry, consideration and report no later than 31 May 2010 on the current rules and standards that apply to pedestrian safety in car parks; and the committee is to recommend potential measures that relevant authorities should consider to improve safety for pedestrians.

Motion agreed to.

STANDING ORDERS COMMITTEE

Review of standing orders

Mr BATCHELOR (Minister for Community Development) — By leave, I move:

That the Standing Orders Committee:

(1) be required to undertake a review of the standing orders to consider and make recommendations for new and/or amended standing orders regarding the passage of legislation, the opening of Parliament and petitions;

(2) present its report on the review to the house six months from the date of this resolution; and

(3) have the power to confer with the Standing Orders Committee of the Legislative Council regarding a review of the joint standing orders and to report jointly to the house.

Motion agreed to.

LAW REFORM COMMITTEE

Members of Parliament (Register of Interests) Act

Mr BATCHELOR (Minister for Community Development) — By leave, I move:

That, under section 33 of the Parliamentary Committees Act 2003, the Law Reform Committee:

(1) be required to undertake a review of the Members of Parliament (Register of Interests) Act 1978 to consider and make recommendations on amending the act; and

(2) present the report on its review six months from the date of this resolution.

Motion agreed to.

MEMBERS STATEMENTS

Cassie Embling

Ms GREEN (Yan Yean) — This week I had the privilege of hosting a very keen and intelligent young work experience participant, Cassie Embling, a year 9 student at Diamond Valley College. She has written a members statement which she wishes me to deliver on her behalf today.

My name is Cassie Embling. I am currently in year 9, and I am undertaking my week of work experience in the office of the member for Yan Yean. On Tuesday I was fortunate enough to spend the day in Parliament House. I started off the day with a public tour of the grand building followed by a 2-hour private tour of the library. I spent time in the main

library in Parliament House and across the road with the media staff. After lunch in the cafeteria I was taken to sit in the public gallery for question time.

As a vision-impaired person I am able to hear things like this on television and the radio, but I do not get to see it. It was fantastic to be so close to the action.

After question time the member for Yan Yean organised for me to meet Premier Brumby and have a photo taken. He was very nice. My last activity for the day was to go and meet the Hansard officers. They showed me the different ways they record what is being said in Parliament. The Hansard officers were of particular interest to me as my aunty is a Hansard reporter in Queensland.

I would like to thank everyone I met during the day. They were all extremely kind, caring and willing to help me. The whole day was a fantastic educational experience for me that I will never forget.

Well done, Cassie, and thank you for the work you have done in my office this week. I am immensely proud of great government schools like Diamond Valley College that go the extra mile to ensure that students like Cassie with disabilities are able to reach their full potential. Good luck, Cassie, in your future studies and career.

I commend the fantastic staff of the Parliament for their care of Cassie this week.

Hurstbridge Primary School: departmental investigation

Mr DIXON (Nepean) — Members would be aware that I have raised the issue of the long-running saga of the investigation of the former principal of Hurstbridge Primary School, Margaret Uren. The Minister for Education has said that due to disruption to the school the investigation would be settled quickly. The member for Yan Yean has also called for a speedy settlement, yet here we are, one year and four acting principals later, with no end in sight to the dispute, despite the wishes of the member for Yan Yean and the assurances of the minister. The school has had a terribly destructive year, and no-one in government cares enough to stop the haemorrhaging.

It has come to my attention that an individual has been questioned by police in connection with stalking of the former principal. Investigations are continuing in regard to this matter. This development has real implications for the Department of Education investigation into Margaret Uren. The minister must reveal whether the person under investigation has been a witness in the case against Ms Uren, as that would have profound implications for the case.

Vision Australia: school closure

Mr DIXON — On another matter, I have tabled a petition with almost 7000 signatures calling for the government to act on the impending closure of Vision Australia's school in Burwood. The government's facile solution is to integrate all the children affected into mainstream schools.

Victoria needs a vision facility that will provide the intensive support that many visually impaired children need. Some need specialist support programs; other children need occasional programs; and some children, families and teachers need professional development and special materials.

The closure of Vision Australia's school will leave a large hole in the education of Victoria's hundreds of visually impaired children. The government is obliged to educate and provide services for these children.

Ford Australia: Geelong plant

Mr EREN (Lara) — The announcement made by Ford recently to continue operating its Geelong engine plant beyond 2010 did not happen by accident. It happened because the state and federal Labor governments worked together with the Ford Motor Company — that is how it happened.

This decision has secured jobs for 400 Ford employees and has injected confidence into Geelong's workforce, which I believe will strengthen our local economy. The Brumby government has worked closely with Ford to produce this outcome and is fully committed to securing the company's future in Victoria, particularly in Geelong. This was not just about securing the 400 jobs with the new Euro engine; it was just as important that hundreds more jobs would be secured in the supply chain and other local businesses.

In the lead-up to Christmas this decision has provided a confidence boost for all our local workers, from those who work in supermarkets to those who work in the construction industry building our homes.

The new Euro engine is an example of what can be achieved when the state and federal Labor governments work with business to protect local jobs and support working families. Ford's commitment to the engine plant is a real investment in Geelong's future, providing a solid foundation for economic growth and security for our community, and I will continue to work hard to ensure that local families benefit from all that Geelong has to offer.

For workers, a secure job means they can plan for their future, pay their bills and provide for their family. That is why our Labor Prime Minister, Kevin Rudd — —

The SPEAKER — Order! The member's time has expired.

Preschools: funding

Mr WALSH (Swan Hill) — Little has changed for the state's preschools since coming under the umbrella of the Department of Education and Early Childhood Development more than a year ago. When he made the announcement, Premier Brumby promised 'a new era in the education and development of our children'. The sad reality is that, despite this promise, many preschools will be rattling tins again next year because their budgets have been short funded by the government by many thousands of dollars.

Boort preschool in my electorate expects 15 enrolments next year, earning government funding of around $35 000. However, wages alone cost the preschool about $43 000. Strict criteria set by the government demand that each preschool employ a director and an assistant. In spite of this the government fails to fund them the full amount to hire the staff they require. Add to this the ongoing costs of running the centre, and parents will again be forced to fundraise thousands of dollars to cover a widening funding gap. Cake stalls, raffles and garage sales will again be the order of the day for the preschools in my electorate to meet those essential costs in communities where drought has already stretched household budgets to breaking point.

Premier Brumby must explain to these preschools why he expects government services like their kinders to provide each child with the best opportunity but does not give them the funding to match that aspiration. Once again, the Brumby government is all announcements and no responsibility.

Narre Warren South electorate: Premier's reading challenge

Ms GRALEY (Narre Warren South) — I am pleased to report the great success of the Premier's reading challenge in Narre Warren South. It is a fantastic program that local students took to enthusiastically. Over 3500 students registered for the challenge, with almost 2000 completing it. Special mention should go to the wonderful students and staff at Kilberry Valley Primary School in Hampton Park where over 700 completed the challenge. I get the feeling that the school organiser of the challenge, Roslyn Carabott, will not rest until every child at Kilberry Valley has completed the challenge. In 31 classes at the school every child in the class completed the challenge — that is, 100 per cent effort and 100 per cent success in these classes.

I visited Kilberry Valley primary to hand out the certificates, and I must say I have been very busy having the fun of congratulating and shaking the hands of over 700 avid readers. In 6CT I met a girl, Nasima from Afghanistan, who had only been in Australia for three years but had enthusiastically completed the challenge — an inspiring story. Well done, Nasima. Cameron from grade 4LC, Isuru from 4BC, Hasini from 1GH, Delukshi from 1GH, Dulini from prep RW and Kavin from prep CH all read more than 100 books. There was also a grade that together read 100 books. This class is called 4TT, and the teacher is Trisha Thomas. A super result!

The Premier's reading challenge is a great way that many of our students can be given the precious gift of a love of reading. Congratulations to all the students, staff and supportive parents at Kilberry Valley Primary School.

Australian Synchrotron: operations

Mr KOTSIRAS (Bulleen) — This inept and ineffectual government has shown again that it cannot manage a major project. The synchrotron — this important and vital project — is still behind schedule and might turn out to be a white elephant for the Victorian taxpayer because of this government's incompetence. On 21 July 2006 the Premier said in a media release that funding commitments for the initial nine beamlines had reached $50 million. The *National Science Case for the Initial Suite of Beamlines*, published in December 2003, indicated that the cost to build the nine essential beamlines was $49.5 million. These were the nine beamlines that had to be built before the commissioning of the synchrotron in 2007, so if the government reached the $50 million mark, why have the nine essential beamlines not been built? Today only six essential beamlines are fully operational.

The imaging and medical therapy beamline, which is considered to be essential and one that will be used more than any other beam at a cost of $7.6 million, has not even been built. I have been advised that for the open day, the government constructed a shell simply to give the impression that it was built. Mr Jennings said in a media release on 12 February 2008 that:

> … with construction beginning on a new $10 million facility for advanced medical research …

…

> Opening in late 2008, the new imaging and medical therapy centre will use synchrotron X-rays to advance studies in biological, medical and industrial sciences.

Unfortunately there is no money to start building this beamline. Perhaps Mr Steve Gower, who is the government's mouthpiece, should recheck his numbers without the use of smoke and mirrors.

Stephen Drazetic

Mrs MADDIGAN (Essendon) — I would like today to pay tribute to a true believer, Steve Drazetic, who was one of my Ascot Vale branch members for many years. Steve was a very loyal and enthusiastic member of the Labor Party, as indeed he was of a number of other clubs. It is very hard to mention Steve without a smile coming to your face because those who knew him know that he did everything with unbounded enthusiasm and unbounded optimism.

Steve worked for many years in the state legal aid office and had a wide range of friends in that area. He came from Croatia as a 12-year-old with his family. We tended to call him Steve O'Drazetic, which was a reflection of how much time he spent at the Celtic Club, of which he was very fond. Steve was a great supporter of the Melbourne Knights soccer club and the Maribyrnong Park Football Club.

Stephen's funeral was held at St Brendan's Church, Flemington, in October, and the list of people who attended his funeral gives us an idea of how well known and well liked Steve was. People from Victoria Legal Aid, leading Queen's Counsel, Crown prosecutors and solicitors, senior police officers, union officials and some old clients all came to farewell Steve. It is interesting to note that the attendees at his funeral included the federal finance minister, Lindsay Tanner, the state Attorney-General and Mick Gatto, reflecting the range of people Steve had come across in his life.

Planning: Mornington Peninsula

Mr MORRIS (Mornington) — Yesterday morning I presented to the house a petition containing 1763 signatures bringing to the attention of the Legislative Assembly the failure of the Minister for Planning to make a decision on amendment C87 to the Mornington Peninsula planning scheme. The amendment, which I have raised before in this place, was lodged with the minister well over 12 months ago.

We hear repeatedly from this government that it is cutting red tape and speeding up the process of planning in this state. We also keep hearing that the real cause of the ridiculous delays that have become routine in planning is the way councils administer their local schemes. Apparently it has nothing to do with the government. The reality is that the minister's office has become a black hole into which planning scheme amendments disappear, never to be seen again.

Amendment C87 is certainly not the only local amendment that has enjoyed overwhelming support from the community but has met with problems when dealt with by with the minister. The approach seems to be that when a proposal he does not like comes into his office it is simply ignored. The effect of that with amendment C87 is that subdivisions are still being approved by Victorian Civil and Administrative Tribunal despite the clear intention of the planning authority to prevent further partition. In other cases projects may well fail because of the minister's inaction. In public he claims, and I quote from *Hansard* of 28 October:

> The department is currently in discussions with the council to progress resolution of the amendment as soon as possible.

The council is of the view that all necessary information was provided to the minister a very long time ago. He should stop his procrastination, make a decision and sign the amendment now.

Haines Hunter: headquarters opening

Mr LANGUILLER (Derrimut) — I was honoured to officiate at the opening of the Haines Hunter national manufacturing headquarters in the electorate of Derrimut. I wish to acknowledge and place on the record my congratulations to Edwin Cole and John Haber, directors of the company. My parliamentary colleague the member for Narre Warren North attended on behalf of the Premier.

Manufacturing is vital to Victoria. It contributes $29.6 billion to the state economy, employs around 330 000 Victorians and is the largest provider of full-time jobs.

Haines Hunter is a legend within the local marine industry. Over the last 50 years it has established itself as a market leader with an enduring reputation for excellence in design, quality of workmanship and commitment to safety. It has been recognised through the Victorian Manufacturing Hall of Fame and initiatives such as the Industry Capability Network industry achievement awards.

This new state-of-the-art national manufacturing design, research and development headquarters will add

further to Haines Hunter's credentials. It combines cost-effective, lean manufacturing techniques and advanced manufacturing equipment with a dedicated research and development and design centre. It will not only expand the company's manufacturing capacity but will also enable the company to release designs which until now have not been possible to produce. This new headquarters is also great news for the local area and will create around 60 jobs.

Racing: Wangaratta

Mr JASPER (Murray Valley) — I rise to express my concern for the future of thoroughbred and harness racing in country Victoria. I call on the government to detail its commitment to the racing codes and the continued successful existence across the state.

Members would be aware that few years ago Harness Racing Victoria closed seven racing facilities in country Victoria — with devastating effects on the clubs involved. The relocation of racing from Wangaratta to Shepparton resulted in the closure of the Wangaratta harness racing facilities at Avian Park. A subsequent investigation conveniently did not support development of a new facility at Wangaratta. However, Wangaratta's Avian Park still runs greyhound races each week, and Greyhound Racing Victoria is prepared to jointly redevelop the facilities for harness and greyhound racing. I call on Harness Racing Victoria and the government to support the development of the facilities at Wangaratta in recognition of the need for a specific joint racing facility in north-eastern Victoria.

A further concern is the apparent proposal by Racing Victoria to rationalise thoroughbred racing in country Victoria. Country racing clubs have already lost some race meetings, with action being taken to further rationalise facilities and race meetings. Again, I am concerned about the possible downgrading of Wangaratta Turf Club, which has excellent facilities supported by a large number of trainers, including the well-known trainer John Ledger.

Country people, including the racing fraternity in my electorate of Murray Valley, demand strong support from the state government and the three racing codes to protect the future of racing in country Victoria.

Hadfield Netball Club and Hadfield Sporting Club: courts

Ms CAMPBELL (Pascoe Vale) — Congratulations to Hadfield Netball Club and Hadfield Sporting Club members on the completion of their two netball courts, which was made possible after their successful application through Moreland City Council for $60 000 funding from Sport and Recreation Victoria's community facility funding program.

The new courts will provide the opportunity to run Net Set Go programs for younger children and will also provide for training and playing times more suitable to older members with work and school commitments. The safer surface and access to clubrooms makes the whole experience much more user friendly and allows the members, who are predominantly female, to gain a real sense of club and community.

I pay tribute to a woman passionate about women's sport, president Donna Gleisner, and to the hardworking members of the netball club committee: Helen Brooks, Elaine Symons, Leanne Freeman; treasurer Fay Sinclair and assistant treasurer Lauren Toner; secretary Angie Yilmaz; former secretary Jan Flanagan; former committee member Debra Kelso; senior and under-17 development coach Fiona Gribble; and founding members, long-time players and supporters Linda Gumley, Liz Gumley and Sharon Delaney.

I congratulate the members of the Hadfield Sporting Club committee and particularly the president, Paul Golding; vice-president Rhett Kelly; secretary Annette Pell and past presidents Peter Gleisner and Stephen Gumley for their support in the initial push for the project. Thanks to all these dedicated people, the Hadfield Netball Club now has a home to accommodate its 13 junior teams and 2 senior teams and to cement its place as a lively, healthy association in local sport and particularly in women's local sport.

Water: Greensborough infrastructure project

Mr HODGETT (Kilsyth) — The Minister for Water should hang his head in shame for allowing millions of litres of water to be wasted while he watches over Victoria's deteriorating water infrastructure.

In August 2007 a leak was discovered in a major supply main running under Greensborough Highway. Local residents said that water was gushing out of several holes in the road day and night. The water was flowing like a spring, and the road was constantly covered in water. Melbourne Water was called in to patch it up and the leak disappeared, but let us ask the minister what really happened. The truth is that the leaking supply main was hooked up to the nearby stormwater pipe that runs alongside the road. Why? It was because the minister would not allocate the necessary funding for stage 6 of this water infrastructure project. Instead he

turned a blind eye and let the leak be diverted into the nearby stormwater system. Publicly the problem disappeared, but hidden beneath the ground the water continued to gush into the stormwater system.

Since August 2007 millions of litres of precious Victorian drinking water have been wasted in Greensborough from a water main that was due to be replaced last winter but the replacement of which deferred due to the procrastination of those opposite. While thousands of Victorians have reined in their water usage, the Minister for Water has overseen this deceitful and devious operation that continues to see precious water being wasted. Meanwhile, the minister and the Premier are out announcing plans for water prices to skyrocket to 96 per cent by 2012 and introducing personal water targets this summer.

The minister is a hypocrite for asking people to use no more than 155 litres each a day while he knows of and condones the sizeable flow rate of pristine water into the underground stormwater system. The minister should allocate the $2.5 million required to fix this problem, then do the honourable thing and resign!

Terrorism: Mumbai

Ms THOMSON (Footscray) — Last week the population of Mumbai was shocked by attacks centring around the Oberoi Hotel, the Taj Mahal Palace hotel, Nariman House, which is a Jewish centre, the Leopold Cafe and Mumbai's busiest train station.

I would like to express my condolences to the families and friends of the approximately 170 victims and also stress the importance of ensuring that we continue to build on the ties that we have with the Indian community both here and in India. I have been fortunate to have a very close association with the Indian community here and also to have visited India on a number of occasions. Indians are warm, generous and intelligent people who open their arms to us, and in this time of difficulty, after such a cold, calculated and callous act, we as a community need to lend our support to the people in India.

It is not unusual for India to experience terrorist attacks, but nothing of this magnitude, nothing so calculated, so cold and so targeted has happened before. It is important that we reassure the Indian community here that it has our full support and that we will continue to support it.

Stamp duty: home buyers

Mr WAKELING (Ferntree Gully) — I wish to direct to the attention of the house the important issue of the Brumby Labor government's exorbitantly high level of stamp duty. While other Australian states are easing the burden on home buyers, particularly first home buyers, this government persists in raking in significant levels of stamp duty. The government's rhetoric on this issue is persistently hollow — claiming that bonuses are helping home buyers.

The family that purchases a median-priced home in Rowville, which is not their first home purchase, would face a stamp duty bill of $18 910, while a family that intends on purchasing a median-priced property in Lysterfield would attract a stamp duty bill of $22 090.

It is time this government moved on from empty words and hollow rhetoric. I therefore call on the Brumby Labor government to take real action and reduce the burden of stamp duty.

Police: Ferntree Gully electorate

Mr WAKELING — I voice my disappointment at having to again rise to call on the Brumby Labor government to increase police numbers in my electorate. Incidents of crime are constantly reported, yet the Brumby Labor government refuses to provide the protection that Victorians deserve.

Recently released police roster figures highlight how incapable this government is in ensuring that police numbers are at capacity. Of the three stations that service my electorate, all are well below capacity, with between 20 per cent to 30 per cent of positions remaining unfilled.

At Boronia, 11 out of 47 police officer positions remain unfilled; at Rowville, 9 out of 47 positions are unfilled; and at Knox, 21 out of 70 positions are unfilled.

I again call on the government to take real action against violent crime and increase police numbers at all three stations which service my electorate.

William Cooper

Ms RICHARDSON (Northcote) — This coming Saturday marks the 70th anniversary of one man's extraordinary protest against oppression. On 6 December 1938, William Cooper, then aged 77, walked from his home in Footscray to the German consulate in South Melbourne to protest against the appalling mistreatment of Jews on Kristallnacht, four weeks earlier. This remarkable protest has been almost forgotten in Australian history.

William Cooper was a Yorta Yorta man, forcibly retained as a station labourer and later sent to

Melbourne to work as a coachman for John O'Shanassy, the second Premier of Victoria. He attended adult literacy classes, joined the Australian Workers Union and worked as secretary of the then Australian Aborigines League.

In 1938 he organised a Day of Mourning amid celebrations for the 150th anniversary of the arrival of the First Fleet. In March that year the commonwealth refused to forward his petition, containing 1814 signatures, that sought political and land rights for Aboriginal people, to the King of England.

It was against this background that William Cooper heard about Kristallnacht, when the German Nazis began their physical destruction of Jewish people. William Cooper took his own action in support of the Jews, who, like indigenous Australians, were an ancient and dispossessed people — an extraordinary act when so much of the world had fallen silent. His resolution to the consul voiced, 'On behalf of the Aborigines of Australia, a strong protest at the cruel persecution of the Jewish people by the Nazi government of Germany, and asks that this persecution be brought to an end'.

William Cooper understood that standing up for the rights of others is a universal responsibility. Where there is intolerance and violence, we should all recall this remarkable man and strive to follow in his footsteps.

Shepparton: VET in Schools awards

Mrs POWELL (Shepparton) — On 24 November I attended the ninth annual Careers Connection VET in Schools excellence awards in Shepparton. These awards recognise students who have excelled, as well as the secondary schools who participate in these vocational programs. I want to acknowledge the hard work and commitment of Mr Damian Smith, executive officer of Careers Connection, and Mr Daryl Herring, chairperson of Careers Connection. Thank you to the businesses, sponsors, parents and teachers who supported the students and their training.

A special thank you goes to the secondary colleges who support these VET programs year after year, because they understand the importance of linking students to a career. Congratulations to the winners. Domenic Fera from Notre Dame Secondary College won the multimedia award and also became the 2008 VET student of the year. From McGuire Secondary College, Thomas Carroll won the automotive award, Alex Blokker won the building and construction and furnishing award and Danielle Tate won the business administration award. From Wanganui Park Secondary College, Alan Thomson won the electrical-plumbing award and Liana Reid won the sport and recreation award.

Further awards were: from Mooroopna Secondary College, Joel Penno won the engineering award; from Nathalia Secondary College, Stephanie Graham won the hospitality award; Elli Cowcher from St Mary of the Angels Secondary College, Nathalia, won the community services award; Shaun Burgess from Kyabram Secondary College won the Gawne Aviation award.

I thank the sponsors: Mediart, Alan Rowe Automotive, SDP (Steve Di Petta), The Apprenticeship Factory, Printworks, Gawne Aviation, SPC Ardmona, Goulburn Valley Hotel, Liberty Kitchens, Goulburn Ovens Institute of TAFE, Michel Signs, Goulburn Murray LLEN, Goulburn Valley Health, and BASS (Bruce Adderly Sound Studios). It was a wonderful night of celebration, and I know the families of all the participants were very proud of their children's achievements.

Member for Keilor: parliamentary role

Mr SEITZ (Keilor) — Firstly, I draw the attention of members to the fact that during the last three months I have not spoken in the house a lot because my voice has given way on me. On medical advice I have had to preserve or conserve my vocal chords. I want to place that on the public record, particularly because one of my colleagues has been attacked through the local newspaper saying how many speeches she has made in the house.

I want to assure everybody that I have checked with the whip's office and was told I used to be among the top speakers in this house. I do not want somebody to misuse my unfortunate throat illness. I have worked very hard for my electorate right through this period. I have attended functions where I represented the government, sometimes twice in one evening in respect of different organisations. I have worked and lobbied very hard for people.

Roads: Keilor electorate

Mr SEITZ — I want to congratulate the Minister for Roads and Ports for the expenditure of over $100 million on works which were long overdue in my electorate. That led to the completion of the duplication and grade separation works on Kings Road, the grade separation on Taylors Road, and the connection of East Esplanade. It took a Labor government to provide that relief for the community, whose members are pleased.

Now we need to complete works on the bottleneck at Taylors Road, which is a job to be done by Brimbank council.

Police: Gippsland South electorate

Mr McINTOSH (Kew) — The member for Gippsland South, the Leader of The Nationals, has drawn my attention to an article which appeared in the *South Gippsland Sentinel-Times* on 11 November. It was reported that a police officer had described the shortage of police numbers in South Gippsland as 'beyond a disgrace'. The police officer went on to say:

> … it just makes me sick every time that you think of the service people get down there and how unsafe it is.

The police officer continued:

> … if some poor bastard in Korumburra is having some kind of violent incident occur, he's got absolutely zero hope of getting any kind of prompt police help.

I am very grateful that these articles have been drawn to my attention by the Leader of The Nationals, and I note that similar concerns have been expressed by the hardworking members for Bass and Morwell. When you examine police numbers in South Gippsland and the Latrobe Valley, you can see why the police officer said this is a bloody disgrace.

As of November last year, police rosters show that police numbers in South Gippsland have been critically depleted due to long-term absences. In Leongatha and Wonthaggi, one in seven police officers is missing. In Warragul and Moe, the figure is one in five; in Traralgon and Korumburra, the figure is one in four; and in Morwell, one in three. No wonder the police officer says it is a bloody disgrace!

Yarra Glen Primary School: 140th anniversary

Mr HARDMAN (Seymour) — I rise to congratulate Yarra Glen Primary School on the 140th anniversary of its provision of quality education to the young people of Yarra Glen, since it opened on 1 April 1868, when it was named Yarra Flat School. When I visited Yarra Glen Primary School last week, the school community's commitment to education was evident.

The school's vision is to strive for excellence by providing foundations for lifelong learning in a safe and supportive environment that engages and involves all in a learning process that celebrates achievements and values differences. These are not just words but a reality due to the actions the school is taking.

The school has on display two murals created with the children's artwork that reflect the school's aim to provide an environment that promotes human growth and learning. The school uses the Tribes program and process as a resource for this. One of the murals was of sculptures of the faces of all students at the school.

The school also sets a great role model for students by involving them in impressive vegetable gardens based on permaculture practice. The school has also installed rainwater tanks, which it has connected to its toilets, showing students how they can live sustainably. The school is also looking at installing solar panels for the future.

I congratulate the principal Joe Pacquola, the staff, parents and students of the Yarra Glen Primary School community on their fantastic school and their dedication to providing the young people with a great start.

Parliament: staff

Mr NARDELLA (Melton) — I want to thank Kellie Dundon, my parliamentary intern, for her report on new migrants in the Melton electorate. As the parliamentary year comes to an end, I want to thank all the parliamentary staff for their hard work and commitment to Victorians and parliamentarians, including Mark Smith and his team, Ray Purdey and his team, the Hansard team, Sean Coley and Natalie-Mai Holmes from the Outer Suburban/Interface Services and Development Committee, of which I am a member, the committee teams and the IT teams.

I also want to make mention of the parliamentary library, ably led by Marion King and the research service which does so much great work for us — Gregory Gardiner, Bella Lesman, Rachel Macreadie and Claire Higgins. I mention also other staff in the parliamentary library such as Jon Breukel, Debra Reeves and Tim Fewings. Others who have helped me include Michael Mamouney, Victoria Spicer, Tim Brown and Julie Gardner.

I would also like to thank the coalition opposition for its laziness, incompetence and division, and for making this year a really great year for us!

BUSINESS OF THE HOUSE

Order of the day

Mr BATCHELOR (Minister for Community Development) — I move:

> That the following order of the day, government business, be read and discharged: assistance for Alicia Withington — petition presented by the member for Bellarine (29 May 2008) — requesting that the houses consider helping Alicia Withington meet some of the costs associated with recent life-saving brain surgery and retaining her family home.

We are moving this procedural motion this morning because as all members of this house would know, this motion is actually in the wrong place on the business program. It is contained under government business, when all members know that motions relating to petitions should be contained under general business, orders of the day. I refer all members to that part of the notice paper, which already contains motions asking for various petitions to be considered.

This is, without any doubt, a procedural motion. It is not a motion debating the terms of the petition, any of the issues raised in the petition or any of the issues around the cost of medical treatment for Ms Withington. We will be conducting this debate in the context of this procedural reality. To try to extend the debate beyond the parameters of the parliamentary procedures and its technical aspects would not only be a breach of the parliamentary rules but it would also be resisted. To try to abuse the procedures of the house would be a gross abuse of the support for Alicia Withington. It would be an abuse of her case and would be done for purely political reasons.

How did this notice of motion get here? The local member, the member for Bellarine, received a petition. All members receive petitions and cause those petitions to be presented to the Parliament. That is the standard procedure for all members. The local member, the member for Bellarine, did the right thing and presented that petition. That is what all members are expected to do, and in support of Ms Withington that is what the member for Bellarine did. The member, who is also a minister, moved that it be considered, but doing that caused the motion to be put on the wrong part of the notice paper, and we are seeking to have it put on the right part through this procedure.

Honourable members interjecting.

Mr BATCHELOR — It is interesting to note that we have a number of people interjecting who I anticipate are going to try to abuse parliamentary procedures. I indicate that we will be resisting that. At no stage has the opposition sought to deal with this matter through the appropriate processes. It has been inappropriately on the government business program for some time, but in the intervening period between May, when it was inappropriately placed on the notice paper, and now, when we are proceeding to do the correct thing, the opposition has done nothing. It has a deserved reputation for being lazy, inept and ineffectual, and this debate today demonstrates that once again.

Opposition members want to abuse not only the Parliament but also the circumstances surrounding this petition, and they also want to be abusive towards Ms Withington. This will be a disgraceful abuse of parliamentary procedures, and the speeches to follow will prove that everything I have said is absolutely accurate. This is a procedural debate about a technical mistake that the grasping, snivelling opposition will seek to exploit in the most extraordinary way, and we will be resisting that in all terms.

Ms WOOLDRIDGE (Doncaster) — I rise today to strongly argue that government business, order of the day 18, Assistance for Alicia Withington, should not be discharged from the notice paper. It is unbelievable, but absolutely consistent, that the member for Bellarine, who moved this motion and put this petition on the government notice paper, is not even present in the chamber to defend her actions and to argue for her constituents why this issue should be debated by the Parliament. She has not fronted up. That is absolutely consistent with the way she has dealt with this issue all along.

To say that this notice is in the wrong place is absolutely wrong, because the minister, with intent, moved that this item be put on the notice paper. She stood up and asked for this notice to be put on the government business program, and that happened, so to say that it is in the wrong place is absolutely wrong. Every single week we have stood up and asked that we bring this issue on for debate, and every single week the government has failed to bring this item on. We are discussing this today because this petition was the result of the hard work of a group of ladies in Ocean Grove to support Alicia Withington, a young woman who was declined brain surgery in Victoria and sought private treatment in New South Wales which saved her life.

This is a procedural motion, so we will be debating the procedures. We believe this motion should remain on the notice paper, as the people of Ocean Grove and the Bellarine Peninsula are seeking answers. They have tried every other way to get answers from this government, but the government has failed to

satisfactorily provide any or to clarify its decision in this matter. The fact is that the government is seeking to discharge this motion, and the member for Bellarine, who placed this petition on the notice paper, never had any intention of debating it — a disingenuous act which has become completely transparent to the thousands of people who signed this petition. She wanted the credit from her constituency for tabling the petition. She assured them she would do all in her power to help Alicia, but in fact she hoped the petition would sink without a trace, which is what the government is trying to achieve.

The removal of this motion from the notice paper will highlight how heartless the government is in not even letting the Parliament debate this important issue regarding the provision of services in Victorian hospitals and what happens when Victorian doctors are unable or unwilling to perform lifesaving surgery. This notice should not be removed from the notice paper, as it is important to debate this matter. The people of Bellarine want to understand the decision-making process around the issue.

Mr Batchelor — Why haven't you taken the opportunity?

Ms WOOLDRIDGE — The Minister for Health has repeatedly — —

Mr Batchelor — You've never raised it anywhere. You've never spoken on it.

Ms WOOLDRIDGE — I have, and I have spoken in this Parliament

Mr Batchelor — No, you haven't. You haven't taken it up.

Ms WOOLDRIDGE — I have, and the minister is wrong. The Minister for Health has repeatedly trotted out the same rote responses to many letters from Alicia's concerned friends and family members, but he has not addressed the core questions they have asked. This matter must remain on the notice paper so the Parliament can genuinely discuss these important matters because, incredibly, the local member, the member for Bellarine, who tabled this petition with 3281 signatures back in May, six months ago, has never made the time to meet her constituent Alicia Withington — I have met her; I have been down to talk to her and discuss her situation — and this is despite numerous invitations from the community and even a commitment from the member that she would meet her.

It is important that this matter remain on the notice paper so we can debate it and the truth can come out about the government's consideration of Alicia's case. I have submitted three FOI requests to the government, all of which are up to five months overdue, and I have not had one response, which is well outside the government's statutory requirement time to respond to FOIs.

Honourable members interjecting.

Ms WOOLDRIDGE — If the member for Bellarine had genuine concern about this issue we would have had some action. She would have persuaded her cabinet colleagues to debate this issue. But instead she has supported the motion and not even turned up today in removing it from the government business paper.

Mr Batchelor interjected.

The ACTING SPEAKER (Ms Munt) — Order! There is far too much argument across the table. I ask that the member for Doncaster be given her time to speak.

Ms WOOLDRIDGE — It is important that this matter remain on the notice paper so the member for Melton can speak in favour of it, as he pleaded with the Minister for Health to find a way for this operation to be undertaken, and I am sure he is going to be speaking in favour of this motion remaining on the notice paper so that we can debate this issue and Alicia can be considered for the support she needs. We need to draw attention to her plight, because the local member has failed to do so. We need to give proper consideration to the issues, as the local member has not even bothered to meet her. We have to get the answers, because all the community gets from the Minister for Health is rote responses. I oppose this motion. We should be debating these issues.

Mr LUPTON (Prahran) — I rise to support the motion moved by the Leader of the House that this item be discharged from the notice paper. We are currently engaged in what is really a narrow procedural issue, and that is the process for removing this matter from the government business program. The circumstances in which this matter made its way onto the government business program have been explained lucidly by the Leader of the House, and it is accurate to regard that process as an error, and that is the nature of it. It was not the intention to have the matter dealt with in that way. Nonetheless, the Leader of the House has moved this discharge motion today, and it is entirely appropriate that the matter be dealt with in that fashion. It is completely improper for the opposition to come here today and oppose this procedural motion and

attempt to play very low-grade politics with this issue. What we are dealing with here is a procedural matter. It is a narrow matter that does not go to the merits or otherwise of the issue that is contained in the item that we seek to discharge from the notice paper.

Nonetheless the opposition takes this opportunity to play politics with people's circumstances in this case, and it is deplorable that it does so. The way the opposition seeks to deal with this matter today is in stark contrast to the way it ignored it during a whole range of possible parliamentary procedures through the course of this year while the matter has been on the notice paper. The opposition speaks hollow words about these sorts of matters — —

Mr Batchelor — Empty actions.

Mr LUPTON — And with empty actions, as the Leader of the House says. It comes along in a procedural matter today — —

Mr McIntosh — On a point of order, Speaker, the member for Prahran is misleading the house: on every single occasion, every single week, the opposition has asked for this matter to be brought before the house. He is misleading the house, and I ask him to withdraw that misleading comment.

The ACTING SPEAKER (Ms Munt) — Order! There is no point of order.

Mr LUPTON — There were a number of ways in which the opposition could have raised this matter and had a discussion and a debate about it. It could have raised it in a whole range of different ways in this house according to the forms and procedures of this chamber. Opposition members mention the name, but then they move on and forget about it; then they use the procedures of the house at another time just to mention the name, but again they move on. All they do is try to play politics with the very unfortunate circumstances of a person. They do not really want to get into the detail of all of those sorts of things; they want to continue to recite the headline. That is not the way that we should be proceeding with this kind of thing.

It is right that we deal with this matter in the procedural way that the Leader of the House wants to use, because at the end of the parliamentary year it is necessary to make sure that we make these appropriate changes to the notice paper and clear the deck in that sense. It is entirely appropriate that we do so.

However, it is a situation where in a procedural debate this is the only opportunity the opposition has taken through the year to talk about the matter. What opposition members are trying to do in a procedural debate is talk about the merits or demerits of the issue. It is not appropriate to do it in the way opposition members are doing it. If they thought seriously about this issue and really cared, they would have done something instead of using the hollow words that they used today in these circumstances. They stand condemned for it.

Mrs FYFFE (Evelyn) — Usually when we stand in this house we start with the words 'Speaker, I am pleased to speak on' with the title of whatever it is we are debating. This morning the opposite applies, as I rise to speak on the motion to remove government business order of the day no. 18, Assistance for Alicia Withington — a petition tabled by the member for Bellarine — from the orders of the day. This item should not be removed — discharged — and the lack of interest shown by the member for Bellarine and the Minister for Health by not being in the house and standing up to explain why they are supporting this motion by the Leader of the House shows how little they care.

The petition of 3281 signatures was collected not by a political lobby group, not by an organised single-issue group; it was organised and signed by the ordinary men and women of Bellarine who became united in wanting to help a member of their own community. The petition asked that the Legislative Assembly of Victoria seriously consider helping a young woman meet at least some of the costs of her life-saving brain surgery as well as retaining her family home. Government assistance had previously been refused because the operation was deemed too risky.

The fact that this matter is listed on the notice paper and is now proposed to be removed by the government without being debated is appalling. The petition was signed and collected in good faith by caring and concerned men and women. It was presented to the member for Bellarine for tabling in the house. She did that and it has been on the notice paper since 29 May 2008. The member for Bellarine said she would do everything in her power to help and that she really cared. However, today we have this government proposing to remove no. 18 — Assistance for Alicia Withington — from the notice paper. The member for Bellarine is a member of the cabinet in her role as the Minister for Mental Health, Minister for Community Services and Minister for Senior Victorians. The cabinet is where decisions such as this are made. The minister — the member for Bellarine — has failed to convince her cabinet colleagues; in fact, one wonders whether she even argued the case to keep this item —

Assistance for Alicia Withington — on the notice paper.

Mr R. Smith — On a point of order, Speaker, I ask you to exercise control over the member for Melton.

The ACTING SPEAKER (Ms Munt) — Order! There is no point of order.

Mrs FYFFE — One wonders: did the member for Bellarine even argue the case to keep this case — Assistance for Alicia Withington — on the notice paper? Did she argue that the notice be brought into the house for debate? I fear not. The good people of Bellarine — the 3281 men and women who signed the petition — rightly feel let down and betrayed by the member for Bellarine. The government is showing today by this proposal to remove or discharge the item from the notice paper exactly how much it cares about the people of Victoria who in good faith believe the Parliament will listen and respond to them, who in good faith believed what they were told by the member for Bellarine — by the minister.

We have to stand in this place to discuss many things, and we spend a lot of time — hours, even — discussing matters that are not as important as this. This is a very important matter to a group of people. It has been on the notice paper, and we should be debating it.

Mr LANGUILLER (Derrimut) — I rise in support of the motion moved by the Leader of the House to have this matter and petition removed from the notice paper.

Let there be no misunderstanding about this: it is purely a technical matter. If we were to have — we have had and I am sure we will continue to have — debates about the merits of the government or the merits of the opposition in terms of our commitment to health care and our commitment to looking after people in Victoria, let me tell you one thing: the people of Victoria would know only too well that this is a government that cares.

But this is not about that issue. This is not that debate and this is not the debate we should be having. This debate is about a technical procedure and about how we should structure things in this house. This matter belongs to general business and has absolutely nothing to do with and reflects not at all the merits of the petition and whether the individual warrants treatment or support. It ought to be absolutely clear that this is purely a procedural motion about how we run the house in a technical sense.

It is incumbent upon me as the member for Derrimut and as the Parliamentary Secretary for Human Services to respond to suggestions made by members of the opposition, and I do so respectfully, but I strongly suggest to them that they are wrong. The members who have made contributions and advanced the argument that it is incumbent upon politicians, or the Parliament for that matter, to determine whether issues of a clinical nature should be determined by the Parliament — by politicians, or for that matter by the minister — are absolutely wrong. I invite members to read their own speeches.

Members of the opposition have suggested that this matter should be listened to and that the Parliament and the government should respond to it. I register my absolute respect and sympathy for the case, but I say respectfully, unequivocally and unashamedly to members of the opposition that it would be a sad day for our democracy if a patient were to get treatment based on whether or not they knew a politician, be it a minister or a member of the government. This is purely a clinical matter, and members of the opposition understand that. To come into this chamber today and use the situation as an opportunity to argue the merits of the case and advance the proposition that the government, the Parliament or the minister should interfere or intervene in a matter which is purely clinical is absolutely wrong.

There are jurisdictions in other countries — luckily not in Australia — where patients get treatment and support based on who they know and whether they are able to influence a minister, their government or Parliament. This matter is not about that. This government has a proud record of supporting patients and health care and supporting Victorian communities right around the state. We are happy to have that debate any time in any week because we are proud of our record.

This is a procedural motion. It provides a structure to deal with the way in which we run business in this house. Members of the opposition know only too well that this motion does not belong under government business. Consequently it should be appropriately discharged from the notice paper and dealt with under general business. Let me assure everybody that this government is one which cares and which will pay close attention to each and every human being in the state. We are proud of that record, and members of the opposition know that. They should not come into this chamber and use this petition — least of all this person — as a political football.

Mrs SHARDEY (Caulfield) — I support the contention of the member for Doncaster that this matter should stay on the notice paper. The member for Bellarine, who is the Minister for Mental Health and

Minister for Community Services, was very happy to take the kudos when she put this matter on the notice paper under government business, with more than 3000 constituents of the Bellarine electorate having signed a petition in relation to what is a very serious health matter requiring great compassion. We have had members of the Labor Party come in here, one after the other, trying to argue that the removal of this notice is purely a procedural matter. It may be to some degree, but it is also a matter of somebody's life. This woman had to go outside the Victorian health system to get treatment elsewhere without the support and help of her local member, who had promised to help her.

Prior to this woman having her operation in another state, even the member for Melton wrote to the minister and asked that he have compassion. I will even quote to the house what the member for Melton wrote. His letter states:

> I am seeking your consideration in this very rare instance for this type of operation to review the case of Ms Alicia Withington, to consider if there is any possible mechanism for this life-saving operation to be undertaken and paid for either through the Alfred hospital or via other government funding sources, or, via any other funding source.

Even the member for Melton, one of whose constituents is the mother-in-law of Alicia Withington, bothered to take this matter up, but it was the member for Bellarine who wanted to take all the kudos. She has put this nice big petition on the notice paper, but she does not have the courage to come in here and argue that the matter should not be debated and for it to be taken off the notice paper. When this house divides on this matter, will the minister come in here and vote; and if so, will she vote for it or against it? Is she going to come in here and vote to have this matter stay on the notice paper so she will have the opportunity to argue for her constituent as the member for Bellarine? No, she will not. I guarantee she will not.

Members in this chamber have raised this matter every single sitting week on behalf of this woman. It is an absolute disgrace, firstly, that the minister will not let other people argue the case. He likes to interject across the table. He makes brazen and ridiculous comments about this being only a procedural matter.

Some of this petition should be read into *Hansard*, because in the name of democracy I believe that these 3200-odd constituents should be heard. Why should they be ignored by this chamber? Let me quote part of the petition. It states:

> The petition of the residents of Ocean Grove, Victoria, draws to the attention of the house the plight of an Ocean Grove resident by the name of Alicia Withington. Alicia, 28 years old, has recently undergone life-saving brain surgery in Sydney at the Dalcross Private Hospital by the only neurosurgeon in Australia willing to perform the very risky operation. Alicia was suffering arteriovenous malformation (AVM) and was at risk of suffering bleeding in the brain resulting in severe stroke or death.

The petition goes on to refer to 'horrendous medical costs', and the last paragraph states:

> The petitioners therefore request that the Legislative Assembly of Victoria seriously considers helping this young woman meet at least some of the costs of her life-saving brain surgery as well as retaining their family home. Government assistance has previously been refused because the operation was deemed too risky. Alicia has proved the forecasts incorrect and has successfully survived the operation and now desperately needs financial assistance.

This is one of the saddest cases I have come across. A large number of people in the Bellarine area have supported this young woman and her husband, and members of this Parliament have supported the family. I believe it is outrageous that this minister is somehow claiming that she naively did not know that if she put the matter on the notice paper it would finish up where it is. I cannot believe she is so lacking in knowledge about her role as a minister. As a minister she is also supposed to be a compassionate woman. I have doubts about the level of her compassion and about her intention. The fact is that she never thought the matter would be debated.

House divided on motion:

Ayes, 46

Barker, Ms	Kosky, Ms
Batchelor, Mr	Langdon, Mr
Beattie, Ms	Languiller, Mr
Brumby, Mr	Lim, Mr
Cameron, Mr	Lobato, Ms
Campbell, Ms	Lupton, Mr
Carli, Mr	Maddigan, Mrs
Crutchfield, Mr	Morand, Ms
D'Ambrosio, Ms	Munt, Ms
Donnellan, Mr	Nardella, Mr
Duncan, Ms	Noonan, Mr
Eren, Mr	Overington, Ms
Foley, Mr	Pandazopoulos, Mr
Graley, Ms	Perera, Mr
Green, Ms	Pike, Ms
Hardman, Mr	Richardson, Ms
Harkness, Dr	Robinson, Mr
Herbert, Mr	Scott, Mr
Holding, Mr	Seitz, Mr
Howard, Mr	Stensholt, Mr
Hudson, Mr	Thomson, Ms
Hulls, Mr	Trezise, Mr
Kairouz, Ms	Wynne, Mr

Noes, 31

Asher, Ms	Northe, Mr
Baillieu, Mr	O'Brien, Mr

Blackwood, Mr	Powell, Mrs
Burgess, Mr	Ryan, Mr
Clark, Mr	Shardey, Mrs
Delahunty, Mr	Smith, Mr K.
Dixon, Mr	Smith, Mr R.
Fyffe, Mrs	Sykes, Dr
Hodgett, Mr	Thompson, Mr
Ingram, Mr	Tilley, Mr
Jasper, Mr	Wakeling, Mr
Kotsiras, Mr	Walsh, Mr
McIntosh, Mr	Weller, Mr
Morris, Mr	Wells, Mr
Mulder, Mr	Wooldridge, Ms
Napthine, Dr	

Motion agreed to.

Mr McIntosh — On a point of order, Speaker, in relation to the division that just occurred, perhaps the record should show that the Minister for Mental Health was not in the house at the time of that division, and I ask whether you, Speaker, could make inquiries as to whether or not the minister actually gave her consent to this matter being withdrawn from the notice paper, given that the motion was moved by the Leader of the House and spoken on by government members, certainly not the minister, and that the petition was in her name.

The SPEAKER — Order! There is no point of order.

RELATIONSHIPS AMENDMENT (CARING RELATIONSHIPS) BILL

Second reading

Debate resumed from 12 November; motion of Mr HULLS (Attorney-General).

Mr CLARK (Box Hill) — The Relationships Amendment (Caring Relationships) Bill 2008 is a bill to amend the Relationships Act 2008 to allow two persons who are not a couple and not married to register what the bill describes as a caring relationship as their primary relationship. The bill also provides for property adjustments and maintenance on the breakdown of such relationships, and it extends to such relationships many but not all of the entitlements of persons who are married or who are in registered domestic relationships.

It is worth making the point at the outset that caring relationships as referred to in this bill are not to be confused with the role of a carer who cares for a person who has a disability or who is otherwise in need of care. There may of course be an overlap of situations where a person who is in the role of a carer in that sense decides, in conjunction with a person being cared for, to form what the bill describes as a caring relationship, but the concepts are indeed separate. That is a point the government itself has made and the Attorney-General has referred to in his second-reading speech. The concept that is intended to be covered by the bill may perhaps be described by a term such as 'adult companions' — in other words, people who are not a couple in the conventional sense of the word and are not married to each other but nonetheless have a relationship with each other such that they feel they want that relationship to be registered as their primary relationship. Indeed that is reflected in the definition in the bill.

The bill defines as a 'registrable caring relationship' a relationship between two adults who are not a couple or married to each other and who may or may not be related, where one provides personal financial commitments and support of a domestic nature for the material benefit of the other. The definition excludes relationships where the domestic support or personal care is for fee or reward or on behalf of another person or an organisation. That definition is set out in clause 8. The bill then provides, in clause 9, that persons in a caring relationship as so defined who are not married or in another registrable relationship may register a caring relationship.

The bill requires that prior to registration each applicant must obtain independent legal advice from different legal practitioners regarding the consequences of registration. Clause 14 of the bill applies to registered caring relationships the same laws regarding relationship agreements, property adjustments and maintenance as are applied to registered domestic relationships. The bill also applies to registered caring relationships most of the entitlements and responsibilities that are currently applied to married and domestic relationships. The main exceptions to this are pension and superannuation entitlements, death benefits, taxation and other concessions, certain aspects of parental responsibilities, and a reference to marital status under the Equal Opportunity Act.

The bill that comes before us now adds to the Relationships Bill that was passed by this Parliament earlier in the year. Different members had different views on that piece of legislation. In the debate on that bill, reference was made by a number of members, including the Attorney-General, to the fact that in similar legislation passed in Tasmania in 2004 there is provision not only for domestic relationships but also for caring relationships. The Attorney-General undertook at the time the Relationships Bill was debated to consider adopting in Victoria provision for

caring relationships along the lines of the Tasmanian legislation, and the provisions in the bill before the house are very similar to those regarding caring relationships in the Tasmanian legislation.

The bill before us raises a range of issues, and there have been a variety of responses and approaches put by various groups and individuals who have made representations to us. It should be said, however, that the opposition parties have not received a great deal of response to this legislation from those to whom we have referred it for any opinions, views or input they may wish to express. Most people who turn their minds to it do not believe this is a bill that has widespread implications or application to large numbers of people, at least to the extent that people who might be qualified to take advantage of it would be likely to want to do so. I understand that, at least until very recently, only one such caring relationship has been registered in Tasmania since its legislation was enacted in 2004.

The argument in favour of this legislation is that it gives flexibility for two people who are in a non-couple relationship of mutual domestic support, such as siblings who might never enter into any other relationship and may continue to live in the same house and provide domestic support to each other into their adult lives. It could also apply to other persons who might form a long-term relationship of companionship and again, in most instances, share a house and may wish to designate the other as their partner for matters such as inheritance and medical treatment decisions. This bill will enable that to occur.

Of course, those matters could already be dealt with under existing law through the making of a will or through a suitable authorisation such as one under the Guardianship and Administration Act in relation to making medical treatment and other health-care decisions. Nonetheless, this bill would enable that to be done in a range of different contexts by the single registration of the caring relationship.

The point needs to be made that the caring relationships proposed to be established by this bill are quite distinct from the domestic relationships that were provided for in what is now the principal act. Although a number of the mechanisms and operative clauses of the legislation will be the same for the two different sorts of relationships, conceptually they are quite distinct. At the time of the debate on the Relationships Bill a number of people put forward the proposition that it would have been better if that bill had provided a much broader opportunity for registration of relationships than the qualifications that were singled out at that time. But regardless of the merits of that issue, this bill does not resolve the concerns many people had about the Relationships Bill for reasons that we in this house debated at length at that time and which I do not intend to go over again today. For people who opposed the Relationships Bill at that time, and I was one of them, the matters dealt with in the bill before the house do not cure, alter or improve the principal act in relation to the matters which I and others opposed at that time. They are two separate and distinct subjects.

Another concern that has been raised with us about this bill is whether or not the regime that will allow the registration of caring relationships could make it easier for some persons who might seek to exploit elderly or vulnerable persons to do so to obtain their assets, either through inheritance or property adjustments or through registering a caring relationship and then departing from that relationship and seeking maintenance from the other party. I think it is fair to say that is a risk element. It can perhaps be debated how extensive it is. Arguably, if one person has a mind to exploit another person who is elderly, vulnerable or susceptible to improper influence, the presence or absence of this legislation may not make a great deal of difference.

However, we certainly have to be cognisant of the fact that, as evidence shows in relation to elder abuse and indeed as the concerns of many people with disabilities who have carers have raised in the context of the family violence legislation, there are real risks of exploitation and abuse or neglect of people who are elderly or who have disabilities or who are otherwise vulnerable.

As a Parliament or as a community we certainly should not underestimate those risks or in any way cease to look for ways to ameliorate those risks to prevent them arising and to protect people from them, because it is a very grave problem that we face in our community. Regrettably there is a minority of people who seem willing to place their own interests in a most improper way ahead of the interests of those who are vulnerable and dependent on them or otherwise to take advantage of those persons. They need the protection of this Parliament, and we need to scrutinise all legislation very carefully having regard to that potential risk.

Nonetheless, on balance the view of the coalition parties is that we do not oppose this legislation. It may have the potential to offer some opportunity to a number of people who are adult companions and who do have a caring relationship, where they are not a couple and are not married, to register that relationship and obtain recognition and status for that relationship across the board.

There is one particular aspect of the bill to which I want to refer. It is an aspect that has been raised by the Scrutiny of Acts and Regulations Committee in its *Alert Digest* No. 15. It is a point that goes yet again to the operation of the so-called Charter of Human Rights and Responsibilities that the government has caused to be enacted. At page 8 of its report, the Scrutiny of Acts and Regulations Committee says:

> Under clause 9(2) only single people may register a caring relationship. The clause may treat married and partnered people less favourably than single people. This possible limitation of the charter's equality rights does not appear to have been demonstrably justified. The committee will write to the Attorney-General about the statement of compatibility. The question of possible charter incompatibility is referred to Parliament.

Later on the committee says:

> Whilst the committee recognises that the bill is beneficial, it is nevertheless concerned that clause 9(2) may treat married or partnered people less favourably than single people.

Later it says:

> The committee therefore considers that the statement of compatibility does not appear to provide a demonstrable justification for any limitation on the charter's equality rights …

The committee referred the issue to the Parliament.

This yet again highlights some of the contortions and difficulties that we get into when we have a charter which seeks to impose a new-speak about rights onto our existing legal system and our democratic Westminster system of government. If you take the logic of the charter, the Scrutiny of Acts and Regulations Committee has a reasonable point. This bill does treat people who are married or are in a relationship of a domestic partnership less favourably than single people. Frankly, so it should in the sense that that is the whole logic of the bill — that the bill intends to say the caring relationship that is to be registered is the primary relationship of the persons concerned.

One could with equal logic say that the domestic relationships bill that the Parliament passed earlier this year treated married people less favourably than single people because only single people were entitled to register a domestic relationship while married people were not.

Honourable members interjecting.

Mr CLARK — Honourable members opposite say they are already registered because they are married. Of course they are not registered under the Relationships Bill because they are married. They are married under the commonwealth's Marriage Act. If you take the logic of the charter, then people who are married were being treated less favourably by the Relationships Bill than people who were single.

Of course government members take exception to that, and it is understandable that they should, because they and I, and I think most people, think, 'A registered relationship was intended to be for non-married people', and that was the whole purpose of it, for better or for worse. But I make the point that when Scrutiny of Acts and Regulations Committee (SARC) looks at the charter, it is logical and correct in saying that this caring relationships bill treats married and partnered people less favourably than single people and, by extension, it would be logical and correct in saying the relationships bill treated married persons less favourably than single persons.

That is yet another demonstration of the folly of the Charter of Human Rights and Responsibilities and the folly of this whole panoply of artificial appeal to broadly phrased statements of rights. As I have said on other occasions, you are trying to graft a continental style of law onto a common-law system. You are trying to express complex concepts in just a few succinct words, and you end up, rather than enhancing and improving people's rights, actually undermining rights and undermining the democratic system. You end up undermining the ability of the community, through the Parliament, to form policy on these issues and instead leave matters that Parliament may want to decide as a matter of policy liable to be overturned by judges, who are not appointed to make policy decisions but are appointed to judge in accordance with the law and who instead, through the charter, you are vesting with the responsibility to make, in effect, policy decisions on policy grounds.

Bob Carr and many others are absolutely right in pointing to the risks and dangers of this. To put that in the context of this bill, if the Scrutiny of Acts and Regulations Committee assessment is correct as to implications of the charter, this bill, which one assumes will be passed by the Parliament and become law, will be open to challenge in the courts on the basis that it imposes a greater restriction on human rights than is demonstrably justifiable and therefore create a situation where a court would be liable to make such a finding and remit that issue back to the Parliament.

That would be an absurd result. I think we are all agreed in this chamber that it would be an absurd result, but that is the absurdity that follows from the government's own charter and the mechanisms it has

set up. As I say, if you take the argument a step further, you could apply exactly the same argument to the Relationships Act 2008, and that also could be subject to challenge.

We see that the whole rights dogma, based on statements such as the Charter of Human Rights and Responsibilities, actually ends up tying up this Parliament, tying up the public service, tying up the courts and tying up the community in red tape and logical contortions rather than doing anything practical to improve rights, improve access to justice, clear the backlogs in the courts and enable people to get their cases decided expeditiously and fairly.

I would be most interested in the responses that government members make to SARC's comments on this. I think SARC's report highlights the absurd way in which the charter is operating and its potential to operate detrimentally to the policy that the Parliament wants to adopt, and also the fact that the government itself refuses to take its own charter seriously and have statements of compatibility address issues that the charter requires to be addressed. Yet again, as happened with the major crimes legislation and with numerous other bills, when there is a problem like this, the government just puts its head in the sand.

However, in relation to the bill itself, as I have indicated, on balance, while the opposition parties do not believe there is likely to be a wide range of circumstances in which people will in fact want to take advantage of its provisions, there may be some cases where the legislation can operate to the benefit of people in an adult companion relationship who may want to register that relationship. The issues raised by the bill are completely separate from those raised by the Relationships Act 2008, and the opposition parties do not oppose this bill.

Ms THOMSON (Footscray) — It is a pleasure to rise to speak in support of the Relationships Amendment (Caring Relationships) Bill 2008. At the onset, I will go straight to the issues that the member for Box Hill has raised about the Charter of Human Rights and Responsibilities. The charter is there to put our legislation into a perspective that reflects the values that should underline the legislation we bring to this chamber. It is about trying to ensure at every stage that we are not discriminating against people based on race, religion, colour of their skin or sexual preference. It is about trying to ensure that when we bring legislation into this place we are non-discriminatory in the deliberative approach we take to individuals in the state of Victoria.

This legislation does not allow for discrimination. It may be differential but it is not discriminatory. From the interjections in the house I think all members made it very clear that the reason this legislation does not deal with married couples is that their union is in fact registered — under births, deaths and marriages. So they already have a status that was not available to those who are now covered by the Relationships Act or those who will be covered under this amending bill. Therefore there is a difference, but there is a reason that married couples are not included in the caring relationships bill. As the member for Box Hill stated, the bill is about primary relationships, and once people are married their primary relationship is with their marriage partner. This legislation is far from being discriminatory. It addresses what was and was definitely considered to be discriminatory before the bill was brought before the house. I want to get that on the record. I think that adequately deals with the reference to the charter and the bill.

Going to the bill, its purpose includes providing for an adjustment of property interests between caring partners who are in, or have been in, a registered caring relationship and for the right to maintenance of caring partners who are in, or have been in, a registered caring relationship. When the original Relationships Bill was brought to the Parliament it was acknowledged that this amending bill would be introduced. The government committed to it at that stage. It certainly has wide support in the community. The Australian Christian Lobby said it would support a Victorian relationships register:

> … provided that it was the same as the Tasmanian system in that it:
>
> > doesn't include an official ceremony or celebrant;
> >
> > extends to all people in caring or interdependency relationships and isn't based on sexual relationships;
> >
> > does not involve any changes to the definition or terminology of marriage in state legislation.

The government has covered all those aspects.

The bill meets all the needs and the commitments the government has made. It will ensure that we have in place a system that looks after and benefits all those in relationships, including those in caring relationships where that is their primary relationship.

The caring relationships legislation will be different from other legislation in three areas. Legislation dealing with the following matters does not extend to registered caring partners: reversionary pensions under a superannuation or judicial pension scheme;

compensation on the death of a partner in a transport or workplace accident; and other issues concerning taxation, concessions and financial duties and benefits. All the other matters will be the same.

The definitions clause provides:

> … registrable caring relationship means a relationship … between two adult persons who are not a couple or married to each other and who may or may not otherwise be related by family where one or each of the persons in the relationship provides personal or financial commitment and support of a domestic nature for the material benefit of the other, whether or not they are living under the same roof, but does not include a relationship in which a person provides domestic support and personal care to the other person —
>
> (a) for fee or reward; or
>
> (b) on behalf of another person or an organisation … a body corporate or a charitable or benevolent organisation).

It is obvious why the government has introduced this bill. There are a whole set of circumstances where a relative may be looking after and be the primary carer of another relative. They are doing it because they care for and love that person. There could be two sisters or a brother and a sister looking after each other. As our community ages, recognising and understanding the significance of these relationships and what they mean to the individuals involved in them is important. This legislation deals with that. All of us would be aware of those kinds of relationships. Some of us may be hoping that that kind of relationship might be available to us, should the need arise when we get older! We are having to look at how people now define relationships and the new way society is dealing with relationships we strike up with one another. What we consider to be a primary relationship might be a lot different from what it might have been decades ago.

It is good to note that the Prime Minister is also supportive of the legislation. In a recent radio interview the Prime Minister said about the register:

> Our position on that has always been that what we need is a nationally consistent relationships register, both for same-sex couples, for de facto heterosexual couples, if they wish to use it, or for carer relationships.

This bill mirrors the Tasmanian legislation. It means that we will have national uniformity with other states that may move in this direction to ensure that there is consistency and uniformity, as we have with the registration of births, deaths and marriages.

With this bill we have moved away from the controversy of the original relationships legislation and the concerns that people have had. All of us agree that this bill gives carers another sense of being recognised in the role they play with their relations or close friends as people who take on that primary carer role. As I said, they do so not because they want monetary return or to be a beneficiary but because they genuinely care about the person they are looking after — and love them. Given the role these people play, they could not commit to it if there were not an element of love in that relationship.

As this bill goes through the house, I commend its swift passage. I am glad that we are meeting the commitment the government made to bring this amendment into the house to ensure that we cover carers and the role they play in looking after those in need of care. I commend the bill to the house.

Mrs SHARDEY (Caulfield) — I too rise to speak on the Relationships Amendment (Caring Relationships) Bill 2008. I am pleased to note that the coalition does not oppose this piece of legislation. I personally view it as a non-contentious piece of legislation that gives recognition to some of the close relationships that we see in our community and which I think need some recognition.

The purpose of the bill is to allow two persons who are not a couple and not married to register a caring relationship as their primary relationship, to provide for property adjustments and maintenance on the breakdown of such relationships, and to extend to such relationships many but not all of the entitlements of married and registered domestic relationships.

In relation to the main provisions of this piece of legislation, it defines as a 'registrable caring relationship' a relationship between two adults who are not a couple or married to each other, and who may or may not be related, where one provides personal or financial commitment and support of a domestic nature for the material benefit of the other. Of course this does not include relationships where the domestic support or personal care is for a fee or reward or on behalf of another person or an organisation. This is clarified in clause 8.

The second-reading speech refers to such relationships as a broader concept of relationship than a couple. It could, for example, include two adult companions or two adult siblings who have a mutual commitment to support each other in practical and emotional ways.

I attended a girls school for most of my education, and a number of staff of that school lived together in these kinds of relationships. I recall going back to the school reunions and seeing some of these women who lived together, and in many cases they lived together and still

cared for one another until they died. They had been together because their professional relationship obviously became a very supportive friendship of long standing.

This bill includes persons in a caring relationship who are not married or in any other registrable relationship; these people may register a caring relationship.

Prior to registration each applicant must obtain legal advice from different legal practitioners — not the same person — regarding the consequences of the registration. This is clarified in clause 10. I will go to the second-reading speech because it gives some reasoning for this. It says it is necessary to obtain separate legal advice because parties in caring relationships may be less likely than domestic partners to expect legal consequences to attach to their relationship, particularly consequences whereby the caring relationship overrides other family relationships. Independent legal advice will also act as a safeguard against caring relationships being orchestrated by unscrupulous people in contact with a vulnerable older person or by family members seeking to advantage themselves over other family members in relation to access to financial resources and inheritance. This bill seeks to clarify that and ensure that people get proper legal advice to make sure they know what they are getting into. This legislation is not meant to override people's other legal rights. I think this is a very sensible part of the legislation.

The bill applies to registered caring relationships the same laws regarding relationship agreements and property adjustments and maintenance as apply to registered domestic relationships. In relation to these entitlements, again the second-reading speech offers some clarification. It says:

> So, while the property and maintenance jurisdiction under the Relationships Act will be extended to registered caring partners, the bill makes consequential amendments to a number of other acts to clarify that the rights and obligations that currently apply to domestic partners in those acts do not extend to partners in registered caring relationships … in clarifying the application of these existing laws to registered caring partners, it is not intended to change the current entitlements of spouses and domestic partners under Victorian law.

This refers to entitlements to superannuation and judicial pension schemes, for instance. The speech further says:

> Such entitlements are given to a spouse or spouse-like partner on the death of the judicial or superannuation member.

If this were to change — if entitlement were extended to apply to registered caring partners — that would constitute a fundamental change to this policy basis. I am glad the second-reading speech makes that very clear. The bill applies to registered caring relationships most of the entitlements; I think I have explained that adequately.

The term 'caring relationship' in this bill is not to be confused with the role of a carer who cares for a person who has a disability or is otherwise in need of care.

I would like to summarise my feeling about this bill. It is a sensible piece of legislation. It will mean that people can care for one another in a reasonable way. More particularly in relationship to my own portfolio responsibilities I think it will enable a situation where people in a caring relationship can help one another with medical treatment decisions. Often a person goes into hospital and decisions have to be made about their care — such as whether they should access medical treatment, whether they should be resuscitated and so forth — and if the partner in the caring relationship has the legal right to speak on their behalf, that is to be commended.

I note, however, that in Tasmania, where similar legislation exists, there has been only one registration of such a relationship. I suspect that as the legislation becomes known and understood we will perhaps see more registrations here in Victoria. I think registration gives some security to the people in such relationships, and therefore I wish the bill a speedy passage.

Mr NOONAN (Williamstown) — It gives me great pleasure to rise and make a contribution in support of the Relationships Amendment (Caring Relationships) Bill 2008. I note from the outset that the opposition is not opposing the bill, which I think is a very positive step and respects the diversity which exists in the state of Victoria. Many of us remember that the original Relationships Bill was introduced into this house back in December 2007. At the conclusion of the debate on that bill, in which I proudly spoke in support of the legislation, the Attorney-General indicated that he would instruct his department to develop legislation that would allow for the registration of caring relationships. I congratulate the Attorney-General for meeting his commitment. I also congratulate the department for its work on this. Importantly this announcement came with the backing of Carers Victoria, the statewide voice for family carers.

The bill amends the Relationships Act 2008 to provide for the registration of caring relationships on the relationship register and for the recognition, where appropriate, of registered caring relationships in legislation across the statute book. Like the registration

of a domestic relationship, the registration of a caring relationship will provide conclusive proof of the relationship where such relationships are recognised under Victorian law. Also, as with domestic relationships, the bill allows partners in registered caring relationships that have broken down to apply to a court for an adjustment of the interests in the property of the relationship and for maintenance, and allows people to enter into a relationship agreement in relation to a caring relationship.

The bill inserts into section 5 of the principal act a separate definition of a 'registrable caring relationship', which will be similar to the definition of a domestic relationship. As other speakers have pointed out, the significant difference between the two will be that the caring relationship will be defined as a relationship between two people who are not a couple or married. The member for Caulfield correctly referred to the fact that the bill precludes relationships being registered where domestic support and personal care to the other person is provided on a fee or reward basis or on behalf of another person or an organisation — for example, government agencies, body corporates or charitable or benevolent organisations.

I think the strength of this bill is that it broadens and respects the concept of relationship and recognises that a valuable relationship can be based in the act of giving ongoing care and/or mutual support to another, regardless of whether the relationship has a sexual aspect to it. In these terms, what the bill says about the state of Victoria is that it will recognise and respect the importance and value of such relationships. I think it is important to extend the same rights afforded to domestic relationships to registered caring relationships because such relationships are based upon a deep commitment of one person to another without financial remuneration, and often those relationships have developed over many years. In my view many of the arguments used to advance the case for domestic relationships apply equally to caring relationships — for example, access to a person who is in a critical condition in hospital, rights to property and maintenance, either after the death of one partner or following a relationship breakdown, and a number of further aspects.

Some in the community might ask why it is important to recognise and have the opportunity to register the existence of a caring relationship. I think the answer is quite simple. The bill recognises the inherent value to society of caring relationships. It acknowledges that despite the absence of a sexual element that is present in domestic relationships, caring relationships are similar in that either one person is reliant upon the other or both rely upon each other in the course of their day-to-day lives. The role of individual carers will take on greater importance as Victoria's population continues to age. I think it is pretty clear that life expectancy rates continue to increase and life expectancy is being pushed well into the 80s. Meanwhile, there are increasing numbers of people who are living longer who have a physical or intellectual disability or mental illness and who will require ongoing care.

In doing some research for my contribution to this debate, I had a look at a report entitled *Carers in Australia*, which was released in October 2004 by the Australian Institute of Health and Welfare. It identifies a number of sociodemographic changes that are likely to impact on informal care in the community over the next decade. They include:

> absolute growth in the numbers of people with a severe and profound restriction requiring care in the community;
>
> higher numbers of adult offspring carers relative to the number of older people in need of care due to the progression of baby boomers to pre-retirement and early retirement stages of life;
>
> increasing need for care from ex-household family members due to changing patterns of family formation and geographic ageing;
>
> extended working lives, especially for women, which imply increased pressure on many carers at an emotionally vulnerable stage of life;
>
> older, more dependent care recipients and older primary carers.

The projections are that by 2031 almost 1.5 million Victorians will be aged 65 or over compared to the current figure of approximately 625 000. If people ask the question and look at Tasmania and say, 'Why would we do this?', the answer is because it is clear on all of the projections that there will be more caring relationships of one form or another over the coming decades. On that basis I think this bill sets the right direction in dealing with an increasingly complex society and provides an opportunity for those living in a caring relationship to have that relationship properly recognised by law. It is also for that reason that I have provided my support for this important bill and commend the Attorney-General for fulfilling his commitment to bring it to the Parliament for debate.

I reiterate a number of points. Clearly this bill is an extension to the relationships bill that was introduced in March. The house then had a healthy debate but there was a degree of support and, based on the community response, it was well received. As I said at the outset, the bill respected what we in Victoria value very dearly:

diversity in community, a diversity of views and a diversity in terms of expectations for relationships.

Clearly Carers Victoria plays an important role when it comes to this bill. I am fortunate to be a member of the Family and Community Development Committee, which was looking at the issue of supported accommodation for people with a mental illness or a disability. As I said, Carers Victoria members play a very prominent role in advocating for those people who are in need of care. I commend them for their interest and the backing of this bill, because it emphasises their role and voice in the Victorian community. With those few words I commend the bill to the house and wish it a speedy passage.

Mr HOWARD (Ballarat East) — I am also pleased to add my comments in regard to this bill before the house. Earlier this year the government brought forward legislation that commenced a register for couples who were not married but were in a domestic relationship and wanted to register that relationship and gain legal support and recognition as a result. This week we are celebrating the commencement of that legislation, because it came into effect on 1 December. Many couples who are not traditional couples or who are not in a formal marriage relationship can benefit by this piece of legislation.

When we introduced the legislation it was drawn to the government's attention that people not in a married or coupled relationship but in a caring relationship do not have legal rights and the opportunity to register their relationship and have legal rights attached to that recognition. At the time the government promised it would look into that issue and in doing so we saw that in Tasmania and other parts of Australia people have the ability to register caring relationships. In line with that promise we are now enacting this piece of legislation.

Other speakers in this debate have indicated that a caring relationship is a special relationship. It is distinctly different from a couple-type relationship and in many cases it will be members of a family, perhaps siblings, caring for each other: it is a mature relationship between two people who are supporting each other in a range of ways, financial and practical, and there would be reasons that those two people may wish to register their relationship so that they gain legal protection for each other.

I am pleased that the opposition parties are supporting this bill and not looking to misrepresent it, as can happen in such legislation where there may be some sensitivity, because clearly it will not have any deleterious effect on married relationships. We are simply recognising that there are other forms of relationships that are deserving of legal protection where people seek it. I am pleased to see that is happening. With this legislation we are saying that people who wish to register their relationship should seek legal advice so they understand the impact of becoming registered as caring couples. A requirement before they are able to register that relationship is that separately they seek independent legal advice to ensure they understand the implications of going on to the register. There is a cost of $180 to be registered, and there is also the opportunity, if for some reason or other the relationship breaks down — such as one person getting married or dying — for the relationship to be discontinued, dissolved and removed from the register.

This is a sensible way of recognising the needs of people in caring relationships so that they can be recognised legally. The parties have to be two consenting adults, obviously over the age of 18 years, which is an obvious protection for anyone under the age of 18 years, and it will give security to both partners in that caring relationship. I am pleased to see this bill is now in a position to be carried and is supported by both parties — —

Mr Delahunty — All parties!

Mr HOWARD — Yes, all parties. Sometimes the coalition is one party but technically there are two parties. Even The Nationals are supporting this legislation, which is a remarkable thing and very pleasing. I am pleased also to support the legislation, which I understand will come into effect from April next year. This is a sound way forward, and I am pleased to be part of a progressive government that listens to the concerns of people in a diverse range of relationships and to see that the bill will now be carried.

I am very supportive of this bill and am happy to trust that it will be carried both by this house and the upper house when it gets there and that people in these relationships will be able to recognise they will be supported by action this government has taken.

Mr MERLINO (Minister for Sport, Recreation and Youth Affairs) — This bill recognises the needs of those in caring relationships and fulfils the commitment of this government to do so and to provide security and certainty for anyone who wishes to register as being in a caring relationship. I thank all speakers on this bill and wish the bill a speedy passage through the house.

Motion agreed to.

Read second time; by leave, proceeded to third reading.

Third reading

Motion agreed to.

Read third time.

CRIMES LEGISLATION AMENDMENT (FOOD AND DRINK SPIKING) BILL

Second reading

Debate resumed from 3 December; motion of Mr HULLS (Attorney-General).

Mrs MADDIGAN (Essendon) — I am very pleased to speak on the Crimes Legislation Amendment (Food and Drink Spiking) Bill 2008 because I think food and drink spiking is an appalling crime. It is one of those crimes that people do not even realise has been committed against them until afterwards. As a government we have a responsibility to protect our young people and give them a safe environment, and I think this legislation is part of a raft of legislation that the government has brought in to do so.

Our young people get a really bad press in Victoria. My experience of young people is that they are generally terrific. If you go to secondary schools and see some of the young people there and some of the things they have achieved, you can be very confident about the fact that we are educating and seeing before us people who are upright and responsible citizens who will be leaders of the future. It is only a tiny percentage of people who cause trouble, although if you believe everything you read in the *Herald Sun*, you would think that the whole of Melbourne city was a place of warfare, which is totally untrue. I would like to see us be able to better protect young people so they can go out at night, especially on weekends, and be safe from predators — and people who spike food and drink are predators — so this is really good legislation.

As members know, we already have quite severe penalties for people who have spiked drink or food that has been eaten or drunk, but this bill relates to a slightly different situation. It creates an offence of food or drink spiking where a person gives another person or causes another person to be given or to consume food or drink that is spiked and either knows that the victim is not aware or is reckless as to whether the victim is aware that the food or drink is spiked and intends the victim to be harmed by consuming it. The difference between this bill and legislation we have already passed is that under the bill it is no longer necessary for the food or drink to be actually consumed, just that there be an intention to cause harm.

Sometimes people do not realise how serious drink spiking and food spiking — or drug spiking, in fact — can be, especially when these substances are mixed with a variety of other substances. 'The source', an information page for young people available on the net and put out by the federal government, looks at the substances used in drink spiking, and they are probably much wider than we normally would think. One of the fairly commonly known areas the federal government looks at is alcohol, but prescription drugs are also frequently used, including benzodiazepines, barbiturates, muscle relaxants and hypnotics such as Serepax, Valium and Rohypnol. These are quite dangerous, and it is dangerous when drugs such as ecstasy, LSD, fantasy and some of the other drugs are used as well. These drugs, particularly GHB (gamma hydroxybutyrate) can cause really quite serious medical problems. People cannot just sleep it off; they need to get medical treatment, and if they are not aware they have had this substance administered to them, they are not likely to be trotting off to the doctor to have a medical check-up.

There can be quite a significant range of effects from drink spiking, depending on what has been used to spike a drink. These include vomiting, loss of consciousness, poor balance, slurred speech, muscle spasms and respiratory difficulties, and in some cases drugs mixed with alcohol can cause death. That is apart from the fact that some of these substances result in lowered inhibitions and so on — in people losing control or acting in a more sexually active and aggressive way than they normally would. This is quite a serious issue and one that is important that we address.

National research by the Australian Institute of Criminology indicates that four out of five drink-spiking victims are female. About half are aged under 24, two-thirds of suspected incidents occur in licensed premises and one-third are associated with sexual assault. This is therefore certainly an area where females are very much a target, and in many cases they are quite innocent victims — quite young people.

This bill will go a long way towards protecting our young people further. I should point out something that probably has been mentioned by other speakers. If a bartender gives you a slightly stronger drink than normal because it is your birthday, the bartender will not be charged — but in that case you know you are getting a slightly different drink to the usual measure.

That is, of course, quite different to people trying to abuse others by spiking their food and drink.

This is an excellent bill which it would be very difficult for any party in this house to oppose, and the Liberal-Nationals coalition is supporting the bill. I look forward to its progressing through the house. As I said, it is an excellent bill in response to law reform recommendations which will further protect young people from those who mean them harm.

Mr THOMPSON (Sandringham) — The legislation before the house endeavours to improve the shortcomings of existing legislation and represents some improvement to the law. The opposition does nevertheless have some concerns in relation to it. They include the fact that the new summary offence does not apply where a person is reckless as to whether the victim will be harmed by the consumption of the spiked food or drink. This will make convictions harder, as it can often be difficult to prove actual intent, and it does not close the gap identified in Victorian law by the Model Criminal Law Officers Committee of no specific offence of drink spiking with intent to commit an indictable offence.

When one is under the influence of alcohol, there can be many sad outcomes in the lives of people; they can affect their welfare and subsequent life journey. It is important that there are legal avenues available which proscribe behaviours that can adversely impact on the welfare of young Victorians in particular. The purpose of the bill is to create a new offence under the Summary Offences Act dealing with the spiking of another person's food or drink and to extend the existing offence in the Crimes Act 1958 to also apply to administering a drug with the intention of performing an indecent act.

In my time as a member of Parliament I have become aware of many adverse outcomes where young people have been under the influence of alcohol and their lives have been tragically affected. One example was of a 16-year-old who worked at a local fast food outlet and was invited to a Christmas party, I think unbeknown to her family. She was subsequently pack-raped, contracted a venereal disease and became pregnant as a result of that incident, which had a significant impact on her life.

It is important that people are, to the extent possible, able to regulate their lives with their full sensibilities so they can make wise decisions as to their behaviour in social settings. To the extent that the bill endeavours to improve the operation of the law, the opposition supports it.

Mr SCOTT (Preston) — I rise to support the Crimes Legislation Amendment (Food and Drink Spiking) Bill. As outlined by previous speakers, this bill seeks to amend the Crimes Act 1958 to extend the offences of administering a drug with the intention of rendering a person incapable of providing resistance to an act of sexual penetration. It also amends the Summary Offences Act to create a new offence of spiking of another person's food or drink.

I could not imagine any member of this house opposing this bill. The act of drink spiking or providing drugs in this sort of context is one of the most reprehensible and disgusting forms of behaviour in our society. I have spoken during debate on bills such as the upskirting bill about the importance of consent.

Individuals have the right to control their own bodies, and they certainly have the right to consent as to who their sexual partners should be or the state of intoxication they are in. It is important to ensure that individuals are suitably punished for seeking to violate people in a very fundamental way, whether that involves sexual assault or administering a drug to people without their consent or knowledge. That is an absolutely reprehensible act that goes to the heart of the individual's right to control their own bodies and lives.

I find this to be an excellent bill which seeks to address deficiencies pre-existing in the law by creating specific offences. I am glad it is being supported by all parties, and I hope it will speedily pass through the upper house.

I note that the member for Sandringham touched upon the impacts that such events can have. I hope all members realise that drink spiking is not a party activity or laughing matter. Terrible things can happen to individuals that shape the rest of their entire lives in a completely negative way and can destroy people's lives. I commend the bill to the house. It is an excellent bill that addresses an important issue which we should all take seriously. I wish it a speedy passage.

Mr HODGETT (Kilsyth) — I rise to make a brief contribution to the debate on the Crimes Legislation Amendment (Food and Drink Spiking) Bill 2008, which is a very important piece of legislation. I state at the outset of my contribution that I support the legislation as the issue of drink spiking is a very serious offence that deserves to be treated very seriously. This bill creates a new offence under the Victorian Summary Offences Act 1966 dealing with the spiking of another person's food or drink and extends the existing offence in the Victorian Crimes Act 1958 to also apply to

administering a drug with the intention of performing an indecent act.

Having listened to the speeches of honourable members in the house yesterday and today, I think we all agree that the act of administering a drug with the intention of rendering a person incapable of providing resistance to an act of sexual penetration is absolutely disgusting. Drink spiking is an issue that has always given me great concern in my role as the father of seven, with a wife who likes to go out from time to time with her girlfriends. It is always on my mind to remind my kids and my wife to be careful when they go out, because you do hear stories.

Thankfully I do not know anyone who has been the subject of drink spiking to the extent that they have been taken advantage of in the way we have heard about in the house today. You always warn your partner, wife or kids when they go out to be careful where they put their drinks. In any situation, whether it be at a nightclub, a function or a gathering, it is so easy to put your glass down while you go and have a dance, chat to someone or go to the toilet, and these indecent predators prey on people in those situations. This has always given me great concern, so I am very pleased to see this legislation being debated in the house, and I wish it a speedy passage through the house.

Can I also say I support the member for Bulleen's comment that the government should make sure that the effect of this legislation is advertised. The government spends a lot of money on advertising, but this is a worthwhile piece of legislation, and the government should spend a bit of money informing the community about this new legislation, about the offence and about the purpose of the bill. As the member for Bulleen said in his contribution yesterday, it should not just be in the mainstream media such as newspapers but perhaps in other media outlets like Channel 31 and multicultural media such as SBS so that we get the message out far and wide across Victoria that this is unacceptable; and we could highlight the disgusting behaviour of drink spiking.

Can I also say before concluding that I have heard members talk about the spiking of drinks with the intention of taking advantage of the situation, but I also wonder how the victim will be harmed by the consumption of those drugs. I am not familiar with the names of the drugs used in drink spiking, but we do not know the effects that substances put into someone's body without their knowledge will have.

There could be long-lasting detrimental effects on existing medical conditions and on health and wellbeing, so we need to look at how the victim will be harmed not just in the short term but in the long term by this reckless behaviour of drink spiking causing them to take substances they are unaware of taking. I strongly support this legislation. I agree with all members that drink spiking is a disgusting act, and I wish this legislation a speedy passage through the house.

Ms KAIROUZ (Kororoit) — Like others, I stand in support of the Crimes Legislation Amendment (Food and Drink Spiking) Bill. I strongly support it, because it produces two new offences which relate to food and drink-spiking behaviour. The first offence is the administration of a drug to a person with the intention of rendering the person incapable of resisting an indecent act. The second offence is where a person gives or causes another person to consume a drink that is spiked, knowing or being reckless as to whether the victim is aware that their food or drink has been spiked or intending the victim to be harmed by consuming food or drink that is spiked.

An offence will be committed even if the intended person does not consume the spiked food or drink. Alcohol is a drug that can be used to spike drinks. It is cheap, accessible and common, and it is often used for spiking non-alcoholic drink. The effects of spiking can vary depending on the weight and size of the victim and the number of drinks they consume. This type of spiking can cause a victim to be harmed. It can make them unable to defend themselves and can suppress their memory. Often young women are the victims of drink spiking. National research by the Australian Institute of Criminology indicates that four out of five drink-spiking victims are women.

Drink spiking can happen anywhere. It can happen at bars and nightclubs, at restaurants, at parties or even in our own homes. It is very hard to determine the exact number of incidents that take place each year, but it is something we often read or hear about in the media. Some of us may know someone who has had their drink spiked. What we also hear about is the prevalence of binge drinking among young people. This is something I am concerned about, because there are a lot of young people in my electorate of Kororoit and the community is increasingly concerned about it. It is an issue of great importance that continually needs to be addressed.

Under the bill Victorians will be better protected from drink spiking, and hopefully victims of this crime will have the comfort of knowing the government has introduced laws that make this kind of behaviour unacceptable and illegal. Hopefully the offences introduced in the bill will encourage people to come

forward and report drink spiking. The introduction of the laws should be advertised everywhere. The unacceptable behaviour of food and drink spiking and binge drinking should always be discussed in the community, whether it be at school, home or work. We live in a society where people are entitled to go out, have a drink or two and enjoy themselves without fear of being in danger. The bill enhances human rights by ensuring that every person has the right to liberty and security. I support the bill and commend it to the house.

Mr K. SMITH (Bass) — This is a good opportunity for members of the house to stand up and be counted on a very important social issue. We have all been waiting for some time to see the Crimes Legislation Amendment (Food and Drink Spiking) Bill before Parliament so we can take action against the sick — I can only call them sick — bastards out there who are prepared to spike people's drinks and food so they can take unfair advantage of them.

One would have to wonder what sort of people do this? They are obviously mostly men — probably in some cases they are women — who have no confidence in themselves or their ability to have a proper relationship with others and who think it is easier to put some type of a drug into another person's drink to render them incapable of defending themselves at a time when the offender seeks sexual favours against the will of the victim. In four out of five cases it is women who are attacked, but in one out of five cases — 20 per cent — men, possibly young men, are victims and are subjected to a homosexual attack regardless of their sexual orientation. These are terrible impositions that result in the victims suffering long-term psychological effects. It does not seem right to me.

Drink spiking has been going on for some time, and it has taken some time for this legislation to get to the house. This is a quite simple bill of seven pages, but it will work as a good deterrent for some of the sickos in our society who wish to take advantage of people. Year after year during schoolies week young girls and boys go to Phillip Island or Lorne in Victoria or up to Queensland and put themselves at risk. We also hear of the toolies, who go to these places to take advantage of these schoolies. These young kids work their butts off all year to try to get themselves in a good position as far as their schooling is concerned, and sometimes ratbag mongrels try to take advantage of them. These young kids go to places like the Gold Coast to have a good time. They will drink a bit of booze and they might have a sexual experience. However, they should not be in a position where they may be rendered unable to look after themselves, unable to choose whether they want a sexual partner and who it might be, or unable to choose whether or not they want to have a drink.

We have all as adolescents thought we were old enough to have an experience. Schoolies week is an opportunity for kids to go away together, but there are people who wish to take advantage of them. This law is going to be good. It will certainly be of some help in our society. I am sorry it has taken so long for it to get here. I strongly support this piece of legislation.

Mr BROOKS (Bundoora) — I rise to speak in support of the Crimes Legislation Amendment (Food and Drink Spiking) Bill. This bill amends the Crimes Act 1958, extending the offence of administering a drug with the intention of rendering a person incapable of providing resistance to an act of sexual penetration and to also apply to an indecent act. It will also amend the Summary Offences Act 1966 to create a new offence for the spiking of another person's food or drink.

Drink spiking is a scourge in society that can occur in a variety of locations. Most people would imagine it occurs in bars, in pubs and at parties, but it obviously could occur in a range of other locations. The information at hand suggests there is no real way of knowing exactly how prevalent this practice is, but there have been many prominent cases that have attracted attention in the media and have been reported on quite widely at the more serious end of the scale. There is also a belief that there is a fair degree of underreporting of this particular problem, in that people who have been victims are sometimes embarrassed or afraid of reporting the activity.

Research indicates that four out of every five victims of drink spiking are female, and interestingly about half of those are under the age of 24 years. When you look at those figures it is very obvious who the victims are — that is, young women — and you do not need to be a brain surgeon to work out who the likely perpetrators are. This is a good way of sending the message to the community that this sort of practice is not tolerated at all.

A number of speakers have mentioned the fact that they feel this bill is overdue. A range of offences already deal with the more serious end of this practice, and this bill follows some recommendations that came out of the Model Criminal Law Officers Committee that determined that some offences needed to be slotted in at the relatively less serious end of this scale. Although all of us here would agree that all of these incidents are serious, that is what this bill is aimed at achieving.

Interestingly, the new offence in this bill of intending to cause harm by spiking someone's food or drink will not require that the actual food or drink be consumed but that there is an intention from someone. The same applies to the fact that harm does not have to be caused to a person but simply that there is an intention to harm the person whose food or drink has been spiked. It is also clear that the bill does not attempt to criminalise or encapsulate the well-meaning person who might be working at a bar or a pub, or someone at a party who is pouring a drink and who does not intend to spike someone's drink but simply misjudges the amount of alcohol they provide to someone.

This is all about making sure that the community understands the concerns and dangers of drink spiking. It is about protecting communities, in particular young people and more particularly young women. Hopefully it will encourage those people who have been victims to come forward and to report incidents of drink spiking to the authorities.

A number of speakers have said that highlighting these laws to the community is very important. When people go to celebrate events at a party, a hotel or a bar they need to have it clear in their minds that intentionally spiking someone's drink is unacceptable behaviour. I commend this bill to the house.

Mr MULDER (Polwarth) — I rise to support the Crimes Legislation Amendment (Food and Drink Spiking) Bill. Over many years it has been considered by a lot of people to be something of a joke to put a bit of vodka in or to spike someone's drink to see the outcome. I would have to say it has been a very common practice.

In recent years it has come to light that it is the practice of predators to spike the drinks of young women with the resultant outcome of using that effect for sexual gratification. It is a very serious offence. As parents, particularly of daughters, we are always worried about who our children are out on the town with, whether they are being taken care of, whether they have friends around them all the time to ensure that they do not fall into harm's way and, in particular, the issues that are raised in this bill.

Last weekend I was down at Lorne during schoolies week; the member for Doncaster was down there as well. Late on Saturday night it was quite obvious that a lot of the young people who were out and about were under the influence of alcohol. My understanding is that there was some drug activity down there as well. To see those young people leave the main street, go down to the grassed area opposite the beach and then down onto the sand area in front of that again, where there are no lights, and to see what they call the toolies hanging around — predators who hang around younger people — caused me a great deal of concern.

An honourable member — Scum.

Mr MULDER — They are absolute scum. All they were doing was waiting for an opportunity, and that opportunity presents itself in the form of a young woman who is in a vulnerable position and under the influence of alcohol. To think that somebody would go down the pathway of spiking a drink with the full intention of taking advantage of that young person when the effects of the alcohol or drugs set in is completely and totally unacceptable.

I take my hat off to the member for Doncaster, who was at Lorne on the Saturday night working with a group of youth workers. She was taking younger people from the foreshore and the beachfront up to the hospital. Some of these young people were under the influence of alcohol — they were basically unconscious — and could not possibly have defended or looked after themselves. The youth workers were not just handing out bottles of water; they were also handing out condoms to the young people. Many of these young people were in the state they were in through their own doing, but you only have to think of what could happen if the actions of a predator made those young people unconscious. The consequences of that are somewhat extraordinary and very hard for us all to come to grips with.

I have been to Lorne a couple of times during schoolies week and talked to a lot of the young people. I think we could do something about establishing a venue, or the state government could work with local government, as was done at Lorne on New Year's Eve, when we had all those troubles years ago. The former Rock Above the Falls event has become the Falls Festival. At that festival the young people are out of the town and in a confined area with security so that people can keep an eye on them. However, the issue of schoolies week is totally out of control. We are going to end up with situations of drink spiking and serious assaults unless the state government takes some action.

The member for Doncaster made a great effort in going to Lorne in her own time over the weekend and working with youth workers to get a firsthand understanding of the situation. That ties in very well with this bill. Having witnessed firsthand what can take place, I absolutely support the legislation before the house. We have to make sure that these predators do not get a chance and that they fear their actions if they

are involved in any sort of food or drink spiking. I commend the bill to the house.

Ms DUNCAN (Macedon) — I am pleased to rise in support of the Crimes Legislation Amendment (Food and Drink Spiking) Bill. I agree with virtually all of the comments made in this chamber this morning in support of this bill, and I am pleased that opposition members are not opposing or talking it down in any way. It is pleasing to see the level of bipartisan support that the debate on this bill is providing.

Some comment has been made about the timing of the introduction of this bill. It is important to recognise the fact that this bill has been drawn up and investigated nationally by the Model Criminal Law Officers Committee. The intention was to take a national approach to this offence. This piece of legislation is consistent with the recommendations of that committee. It is important that we take a national approach.

We know lots of students from Victoria go up to Queensland for schoolies week, and presumably vice versa, so it is important that this sort of legislation covers us on a national basis rather than on a state-by-state basis.

In my day, as a young female — and I was young once — you would worry about how much alcohol you drank. We did not have drugs like Rohypnol, or if they were around we were not aware of them. We did not fear our drinks being spiked with those kinds of drugs; we feared only someone mixing strong drinks, but you could always tell that that was happening yourself.

It is really frightening to think there are now drugs that are apparently fairly easily available for predators to use to spike people's drinks. There is a great need to raise this issue — we have been doing this, but we certainly need to continue doing it — to make people aware that this is a possibility. Some of the signs I have seen in bars and clubs try to do exactly that by warning people not to leave their drinks unattended, to make sure they buy their own drinks, or if any drinks are purchased for them to make sure they are there to observe them being served, and if the bottle has a screw-top to make sure it has not been messed with in any way.

We try to highlight this problem in all sorts of ways, and I think obviously we need to do that. It is something the government is keen to do. It has already made a number of policy and legislative changes to deal with what we now generally refer to as alcohol-fuelled violence. This is all part of that broader issue: the problems that we have with alcohol and the situations young people increasingly find themselves in lead to increases in these sorts of offences taking place.

We already have a range of offences to deal with more serious incidents of drink spiking, such as when an injury results from the spiking or where a sexual assault occurs. However, in its consideration of national offences in respect of spiking, the MCLOC (Model Criminal Law Officers Committee) determined that jurisdictions should introduce a model drink-spiking offence to address a gap at the less serious end of the spectrum of the offence of drink spiking. We know it does not always lead to rape, for example, which might be at the serious end of the spectrum: a lot of things can occur which are less serious than that but which still need to be addressed.

This new offence to be inserted in the Summary Offences Act of 1966 implements this particular recommendation of the committee and creates an offence of food or drink spiking. It stipulates that the offence has occurred even if the food or drink was not consumed but there was an intention to harm. As I said, there are already a number of indictable offences which cover the more serious outcomes, and these range from specific administration of drug offences that already exist through to the full range of assault-related offences that already exist. The gap at the moment is at the lower end, as I said, and the committee recommended that the new offence should carry a maximum sentence of two years imprisonment, which makes this a summary offence.

The bill also covers situations where a person's drink has been spiked or may have been spiked with additional alcohol; so it deals with spiking with not just drugs, but additional alcohol as well, where more of an intoxicating substance has been added than the person would reasonably expect would be contained in their drink.

We heard from the member for Bundoora, who said this legislation distinguishes this offence from the act of perhaps a well-meaning barman or friend who adds an extra shot to someone's drink, possibly even thinking they are doing them a favour. This is not intended to capture such an act; where there is no intention to harm that person it is not intended to address that sort of situation. As I said, the provision captures only those people that are spiking either food or drink with the intention of harming another person.

Also the definition of 'harm' is very broad, as it should be. There have been references by previous speakers to the level of harm maybe being more acute than might initially be envisaged — for example, if that person has

a particular medical condition or has a reaction to a drug that might not be common in other people — and the need to recognise that. That would currently be recognised in the definition of 'harm'. It is difficult, though, for courts to predict what future harm may arise from an offence. There may be a reaction to a drug some time down the track.

The courts can only deal with the extent of the harm as it exists at the time the court is dealing with the matter. So some amendment that might try to capture future harm is extremely difficult to encapsulate in legislation. We rely on our courts using good sense and assessing the harm to the victim through victim impact statements, for example, but it is hard in a court case to predict and account for harm that may manifest itself in the future. I understand the sentiment, but it would be quite difficult to address.

This bill also makes it an offence where there has been an intention to render someone incapable of defending themselves against sexual penetration, for example. This bill makes it clear that an offence occurs even if there is not penetrative sex, and any other sexual assaults are also captured under that provision.

This legislation complements the government's Growing Victoria Together policy, which is about building confident and safe communities. The government's commitment in the Victorian alcohol action plan to prevent and reduce harm associated with alcohol misuse in Victoria is also encapsulated in this legislation. This bill is consistent with the government's commitment and investment in reforming the justice system in response to a range of sexual offences. We have seen that reform progressively occurring in this chamber over the last few years, and no doubt we will continue to strengthen existing legislation to make our criminal justice system more responsive to what appears to be an ever-increasing range of offences. As legislators we need to make sure our laws keep pace with these changes in behaviour, changes in technology in some cases, and also changes in the way some people use drugs like Rohypnol. That is not to say that it has not already been around, but I think its application has become more sinister in recent years, or possibly in recent decades. We are certainly seeing a lot more of it now and we are much more conscious of it as legislators and as communities.

Just to summarise, this legislation will make it an offence to spike a person's food or drink and thus increases the protection for consumers from the threat of harm and sexual assault. As I said, it also deems it an offence regardless of whether or not the food or drink has been consumed. It is also not restricted to spiking with drugs. As we said, it also addresses situations where the drink has been spiked with alcohol. While Victoria has a range of offences with a range of maximum penalties to address the harm of drink spiking, this legislation addresses the gap at the lower end of the offending spectrum and creates a new summary offence. I commend the bill to the house.

Motion agreed to.

Read second time; by leave, proceeded to third reading.

Third reading

Motion agreed to.

Read third time.

MAJOR CRIME LEGISLATION AMENDMENT BILL

Second reading

Debate resumed from 3 December; motion of Mr HULLS (Attorney-General).

Mr WELLER (Rodney) — During my contribution to the debate on the Crimes Legislation Amendment (Food and Drink Spiking) Bill I spoke about the Echuca police station. If we are fair dinkum about battling organised crime in this state we need not only the amendments this bill will make but also to give our police the proper facilities. The Echuca police station, as I pointed out last night, is being eaten away by white ants and is definitely in need of a rebuild if we are to have the proper facilities to fight organised crime.

There is another police station at Rochester in my electorate, and the police force has outgrown it. The interview room is an old storeroom, and if a witness is being interviewed you need to have the door open. We should be looking at the facilities with which the police are battling organised crime, because the police should be given appropriate facilities. This should include the rebuilding of the Echuca and Rochester police stations. We also need to have police on the beat to fight organised crime. Clause 13 of this bill refers to 'a member of police personnel'. The wording has been changed from 'police force' to 'police personnel'. What we need to fight organised crime is police on the beat. We keep hearing about the extra police who have been employed over the last nine years, but all I can do is ask: where are they?

The other day I obtained some interesting statistics. In Echuca, where there are 39 police, 4 are absent on WorkCover or long service leave — 10 per cent of the available workforce is not at work. If we are going to be fair dinkum about organised crime we have to have the personnel available. It gets worse. In Kyabram, another major town in my electorate, 4 out of 12 police are absent on WorkCover or long-service leave — that is 30 per cent. Many constituents have come into my office over the last 12 months saying they called the police but the waiting time was too long. The police at Kyabram do a wonderful job, but they are understaffed. I have had many calls on this subject. If we are going to be fair dinkum about fighting organised crime, we should come down like a ton of bricks on people who commit criminal acts against children. We should bring in standard minimum sentencing as a matter of urgency. I am disappointed that that was not in the legislation, but I will not be opposing the bill.

Mr STENSHOLT (Burwood) — I am delighted to speak in favour of and support the Major Crime Legislation Amendment Bill. It is the intention of the Brumby government to take action to fight major crime, and it is doing so by providing more police. We have provided far more police. In contrast to the cutting of police numbers we saw under the Kennett government, the increases — —

Mr McIntosh interjected.

The ACTING SPEAKER (Mr K. Smith) — Order! The member for Kew is out of his seat.

Mr STENSHOLT — The member for Kew will find that the number of police in Boroondara is far higher than it was in 1999.

The Brumby government, as I said, is committed to tackling serious organised crime and has had a lot of success in this regard. Many cases have come before the courts and successful prosecutions have taken place.

This bill follows the recommendations of the special investigations monitor, David Jones, in a report pursuant to the Major Crime (Investigative Powers) Act 2004 in June this year. The SIM is required to report on operations on a regular basis, and he made a number of recommendations in his report. From memory there were nine recommendations, most of which were of a technical nature and intended to improve the operation of the coercive questioning regime. The bill before the house implements a number of those recommendations and includes amendments to a number of other acts — namely, the Major Crime (Investigative Powers) Act 2004, the Casino Control Act 1991, the Racing Act 1958 and the Surveillance Devices Act 1999. These amendments relate to matters of major crime, including, for example, the coercive powers under the Major Crime (Investigative Powers) Act I have just mentioned.

This bill implements the majority of the recommendations made by Mr Jones in that regard and includes a number of other amendments to the act arising out of submissions made to him. In the course of drafting this bill consultations have taken place with the special investigations monitor, the chief examiner and Victoria Police. This legislation will ensure that the operations of the special investigations monitor are thoroughly workable in practice and appropriate from an oversighting perspective.

We in Victoria are making sure that we are fighting major crime. A number of significant criminals are now well and truly behind bars. I am very pleased in particular that this bill will give the chief examiner coercive questioning powers to enable the targeting of organised paedophilia. Paedophilia is not a crime which enjoys any support in our community; in fact it is regarded as abhorrent, and I am sure everybody in this house shares my view of it. I am very happy this bill will ensure paedophilia is targeted. Paedophilia rings do exist, and they are regarded as organised crime. They are making use of the internet and other means to spread what is literally — we should call it what it is — evil.

We want to make sure that community safety in that regard is high on the agenda and high in implementation in regard to the action by the police and in this regard by the special investigations monitor. We also see this bill ensuring that the government's community safety election commitment is there to safeguard against the potential disclosure of sensitive police intelligence arising from challenges to casino and racetrack exclusion orders, so I am pleased that this bill implements the promise we made in that regard.

I will not go on much more about this bill; other speakers have done that. I notice, as the previous speaker said, that there is an amendment to the act to define the term 'a member of police personnel'. This is to ensure that any public servants employed by the chief commissioner or other contractors engaged by the chief commissioner, as well as police members, are clearly included in the purpose of the secrecy provisions of the act and for the purpose of providing assistance to the chief examiner in conducting examinations.

As I mentioned before, it is all part of making sure that this legislation ensures there is a workable environment in which the chief examiner and special investigations monitor can do their work — and do the work well — and ensure that major criminal rings, particularly the paedophilia ones, as has been mentioned, as well as the other ones which the police have been very successful in cracking, and these criminal gangs do not leach their influence into the police force in any way. That is a very important role that has to take place in making sure the police force is the best possible police force in Australia, and is the benchmark in terms of performance.

This bill, as I have mentioned, shows the government's commitment to tackling serious organised crime and ensures that the best possible arrangements and systems are in place for that to occur. I commend the bill to the house.

Mr WAKELING (Ferntree Gully) — It gives me pleasure to rise to contribute to the debate on the Major Crime Legislation Amendment Bill 2008.

The primary purpose of this bill, as has been mentioned by members before me, includes to amend various acts relating to major crime, including the expansion of the definition of 'organised crime offence', amending provisions regarding coercive powers orders and confidentiality notices and appeals against an order made by the chief commissioner to exclude a person from Crown Casino or racecourses, and providing that technical experts can provide assistance with surveillance devices.

This bill seeks to amend a number of pieces of legislation, including the Major Crime (Investigative Powers) Act 2004, the Crown Casino Control Act 1991, the Racing Act 1958 and the Surveillance Devices Act 1999.

The major changes in regard to the Major Crime (Investigative Powers) Act 2004 include the altering of the definition of 'organised crime offence' to provide that an organised crime offence will include an indictable offence punishable by level 5 imprisonment or one that has the purpose of obtaining sexual gratification where the victim is a child. Certainly abhorrent acts such as those should be dealt with in a serious manner, and we are certainly supportive of that provision.

It also seeks to establish new procedures for revocation applications against coercive powers orders, including the appointment of a special counsel to represent an absent party. It will also include a number of other changes, including altering the provisions for regulating the cessation of confidentiality notices. It also defines a police station at which an examination under the act may not occur as police premises where a counter inquiry service for the public is provided.

It is always very interesting to hear the comments from members opposite when they talk about the police services of this state and the allocation of police numbers. On many occasions we hear those opposite talking about the bountiful number of police members who are working throughout this wonderful state.

As the member for Ferntree Gully and as a member of the opposition, can I say that we strongly support the work that our officers do, but certainly it is very trying for those men and women attempting to do their job with one hand tied behind their backs, because, as the community clearly understands, there is shortage of police out on the beat.

I need only look at my community which has suffered greatly over recent times with a spate of assaults. In Boronia a 69-year-old woman was assaulted whilst retrieving money from an automatic teller machine, and that led to a public meeting which was well attended by residents and addressed by local residents as well as local dignitaries. The overwhelming message from that meeting was that the community wanted more police on our streets, which led to over 1000 people in that community signing a petition which the member for Bayswater and I have tabled in this house calling upon the government to increase police numbers.

Those opposite will tell us that there are enough police currently servicing our stations. That is very interesting. because recent figures that were released, not readily provided by this government but released under freedom of information to the opposition, proved the current state of the number of serving police members on active service in our local stations.

The electorate of Ferntree Gully is serviced by three stations — Knox, Boronia and Rowville. The interesting point is that on many occasions we have raised concerns about the lack of resources at those stations, and the pressure is always put onto the few members who are left at those stations to perform the proactive policing.

The figures prove that there are not enough police at those stations. The Knox police station is currently short by up to 21 members, which is a 30 per cent shortfall; that is an appalling indictment on this government. At Boronia station — and I woke up not too long ago hearing another report on 3AW of an

attack in Boronia — the hardworking members were short by nine, which is a 23 per cent reduction in the required number of members. It is a sorry tale at Rowville. It is 11 police short, which represents a 24 per cent reduction in its capacity.

Members should not forget that in 1999 the promise was made by those opposite that the Rowville community would be provided with a brand-new police station that would be open 24 hours a day. I can tell the house that it has never operated 24 hours a day. No-one should bother going there at night, because the station is closed then.

One poor taxidriver who was recently assaulted drove to the station and got out of his cab to go inside to get assistance. He soon discovered that the door was locked, and it was expected he would drive all the way to Knox police station to seek assistance.

That is the way that this government has treated the community with its provision of adequate police resources. But members should not simply take it from this side of the house when we talk about 24-hour police stations in Rowville. It was those opposite — government members — that gave clear undertakings, but what did they do? They pulled the rug out from under the Rowville community when they provided a station which was not adequately resourced to operate for 24 hours a day. The government's own figures prove that of the police numbers that currently serve that station, there is nearly a 25 per cent reduction.

The ACTING SPEAKER (Mr K. Smith) — Order! I take it that the member for Ferntree Gully is demonstrating that there is major crime because there are not enough police in the stations?

Mr WAKELING — Very much so. I appreciate that, Acting Speaker.

Ms Duncan interjected.

The ACTING SPEAKER (Mr K. Smith) — Order!

Mr WAKELING — I am very pleased that those opposite are listening to the concerns about law and order in this state. I can only hope that those on the backbench will take up the issue with the minister to ensure that he will finally start listening — —

Ms Duncan — Haven't read the bill!

Mr WAKELING — I am very pleased for the interjections, but I am happy to proceed with talking about the bill. I am happy to proceed to talk about clause 9. Those opposite would know that clause 9 deals with giving jurisdiction to the Supreme Court and the County Court to determine any dispute regarding an application for legal professional privilege made to the chief examiner during the examination hearing. This bill seeks to make a number of other changes. Clause 11 will enable an application for warrant for the arrest of a witness to be made to the Supreme Court.

I can go on with other clauses for the time remaining. We can talk about clause 13. This is a clause that the member for Melton has clearly understood and read, because he knows it deals with the extension of the secrecy provisions under section 68 of the principal act to cover all police and public servants working for Victoria Police as well as persons engaged by the Chief Commissioner of Police to provide services.

In the time left to me I can talk about changes in regard to the Casino Control Act 1991 and the Racing Act 1958. Clauses 14 and 15 will be amended to provide for thinning out the procedures relating to an application made to the Supreme Court to review a decision of the chief commissioner to exclude a person from a casino or racecourse.

A range of changes are being made by this bill, but I think the fundamental point is that if you are going to have a bill dealing with major crime you need a police force that can actually provide the services on the ground, that will deliver a better and safer Victorian community.

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

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Victorian Funds Management Corporation: investments

Mr BAILLIEU (Leader of the Opposition) — My question is to the Premier. I refer the Premier to a media report today that states:

> Victorian public servants' superannuation is under threat after the state's investment arm ploughed more than half a billion dollars into an obscure Gold Coast 'death fund'.

Does the Premier stand by his statement in this house on 11 September this year, that:

> Any decisions made by the Victorian Funds Management Corporation in terms of its investment strategies … are matters for the board and investment managers.

Mr BRUMBY (Premier) — I thank the Leader of the Opposition for his question. I reiterate the comments that I have made in the house previously in relation to the Victorian Funds Management Corporation and its independence — that VFMC has been given the mandate to independently source and assess suitable investment assets for the state's investment portfolio, which includes of course superannuation and insurance entities.

The board and the investment managers exercise their professional judgement, and they are guided by the broad prudential guidelines which the state puts in place through the Treasurer of the day. As I have indicated to the house previously, the prudential guidelines have been strengthened during the period in which we have been in government.

I am advised that VFMC gained its exposure to the life settlement sector via an investment in the Life Settlements Wholesale Fund. This fund's responsible entity recently decided to temporarily suspend redemptions and new applications due to the lack of liquidity in this market caused by the global credit crisis. I am also advised that the VFMC has indicated that it intends to continue to hold these investments through to maturity, which is between 5 and 10 years. Further, VFMC holds these investments as long-term investments, not investments held for the purposes of short-term liquidity. It is also important to note that this does not impact in any way on any of the benefits or payments that are made to clients of ESSSuper.

I would also add to my comments that I know there have been a number of questions raised by the Leader of the Opposition in relation to the investment performance of VFMC. There was an article in the media over the weekend which ranked Australia's superannuation funds, and I think it is worth noting for the record that the last year has been a difficult one in terms of the equity market. If you look across Australia you see that Colonial First State, BT — the investment arm of Westpac — AMP and AXA all saw significant reductions in the value of their portfolios. For example, AXA's balanced fund showed losses of 25.75 per cent over the year; AMP's SS fund had losses of 23 per cent, and so it goes. Anybody who has been following what is occurring internationally and what has been happening on the equity markets or in relation to global credit would know it has been a difficult environment.

The average rate of return of VFMC over the last five years has been in excess of 10 per cent per annum. It holds investments for the long term for superannuation and for long-tail insurance policies. I believe the government's prudential requirements that have been put in place and the independence of the board are the best safeguards in terms of appropriate investment.

Volunteers: government support

Ms BEATTIE (Yuroke) — My question is to the Premier. I note that tomorrow, 5 December, is International Volunteer Day, and I ask: will the Premier inform the house of the role volunteers and philanthropic organisations play in making Victoria not just the best place in the nation to live but also the fairest, and what the government is doing to support those people who give so generously?

Mr BRUMBY (Premier) — I thank the member for Yuroke for her question. It is an excellent question to ask at this time of the year. As we move closer to Christmas, as we move into January and the fire season, it is time to observe and note the extraordinary contribution that is made to our community and our society by volunteers. It is the efforts of volunteers right across our state, whether in Melbourne or in little country towns or provincial cities, that help make our state one of the great places in the world to live.

The latest Australian Bureau of Statistics figures tell us that one in three Victorians is involved in some kind of formal volunteer work. We all know that may be a conservative figure. Whatever the correct figure is the bottom line is that we have an army of volunteers — more than 1 million Victorians who work in school canteens, sporting clubs and community organisations and join great institutions such as the Country Fire Authority, the State Emergency Service and Life Saving Victoria.

Members would be aware that tomorrow is International Volunteer Day and it is a great opportunity to recognise the outstanding contribution of Victorians right across our community. I said this is a timely question because at this time of the year volunteering is very much at its peak in our community. Thousands of volunteers put their lives on the line to protect our state, particularly during the bushfire period. We think about the firefighters, and there are also the volunteers who look after the firefighters and the communities that are affected by fire. There are the volunteers who look after our beaches to keep us and our children safe right through the summer period.

On behalf of the government I am proud of the volunteering that occurs in our community and of the support we provide for volunteers. We have committed more than $6 million over four years to support volunteering and particularly to try and get more young people in our community involved in volunteering. We

also introduced the $13.87 million Stronger Community Organisations action plan in April this year to strengthen community groups where so many people volunteer their time.

I just add to my answer in this way in relation to volunteers. There are those who give their time in our community, but there are also those who donate resources and money for public good causes in our community. I am proud to say that when you think of philanthropy, you realise it is one of the great enduring attributes and qualities of our community. Melbourne is Australia's most philanthropic city: 80 per cent of the nation's philanthropic foundations are based here in Melbourne.

I saw a great example of that last week when Rosemary and I attended the Royal Children's Hospital Foundation annual dinner. You would not get a greater example than that of people contributing to public good to help sick children. Last year that foundation donated $30.7 million to the children's hospital, not for the basic running costs but to provide, if you like, the cream on the cake, the extras that go to families and patient treatment and helping the sickest kids. It was an inspiration to me on the night to hear of all the extraordinary work which is done by the hospital and by those who volunteer, who contribute their time and donate their money for what is an outstanding public good cause.

Earlier this year I witnessed the generous efforts of Grocon, teaming with HomeGround Services, Yarra Community Housing and the state government to build the new $50 million supported housing facility. That will be a fantastic facility in Elizabeth Street that will house and provide services for up to 120 people in need. With the funding that we achieved from the Prime Minister at the weekend at the Council of Australian Governments meeting we will be able to undertake more of those sorts of projects in the future.

Finally I repeat a point I have made in many speeches over the last year: that Victoria cannot be the best place in Australia unless it is also the fairest place in Australia. What we see with volunteerism, what we see with philanthropy and what we see through our own government's statement *A Fairer Victoria* is a great example of how government and community, working together in partnership, can really change our state for the better.

Tomorrow is International Volunteer Day, and as we move forward through Christmas and think about people in real need in our community, and as we move into the bushfire season and think about the extraordinary contribution made by volunteers, we thank them for the wonderful contribution they make to making our state a great place to live, to work, to invest and to raise a family.

Victorian Funds Management Corporation: investments

Mr BAILLIEU (Leader of the Opposition) — My question is to the Premier. I refer to an internal memo prepared by the former chief investment officer of the Victorian Funds Management Corporation. It is dated 5 November 2007 and states, in part:

> The VFMC has been instructed by the state to take a certain level of risk in bond and stock markets to earn a higher return than we could earn from investing in risk-free Australian index-linked bonds.

I ask: why did the government instruct VFMC in 2007 to increase the risk profile of its investments?

Mr BRUMBY (Premier) — I have not seen — —

Honourable members interjecting.

Mr BRUMBY — Back in the 1990s, actually.

The SPEAKER — Order! I warn the member for Polwarth. I suggest to members of the opposition that the Premier be given an opportunity to address the question. Interjections of that nature will not be tolerated.

Mr BRUMBY — As I was saying, I have not seen the document to which the Leader of the Opposition has referred. What I can do is reiterate the comments I have made previously here — that is, that the prudential guidelines through this last decade in relation to the investment practices of VFMC have been tightened.

Dr Napthine interjected.

The SPEAKER — Order! The member for South-West Coast can choose whether he stays or goes this question time. I warn him.

Mr BRUMBY — The guidelines that are in place are designed to ensure that the risk to the state through any investments which are made are minimised. That is the purpose of the guidelines. As I said, VFMC has had a period of — —

Mrs Fyffe interjected.

The SPEAKER — Order! I warn the member for Evelyn.

Mr BRUMBY — The Victorian Funds Management Corporation has had a period of sustained strong performance in our state, and I expect that to continue in the future.

Geothermal energy: exploration

Mr CRUTCHFIELD (South Barwon) — My question is to the Minister for Energy and Resources. I refer to the government's commitment to make Victoria the best place to live, work and raise a family, and I ask: can the minister update the house on the action the Brumby government is taking to develop Victoria's geothermal energy resources and to encourage new renewable energy investment in our regions?

Mr BATCHELOR (Minister for Energy and Resources) — I thank the member for South Barwon for his interest in this exciting new area of energy. He is a champion of geothermal exploration in the south and west of Victoria.

Generating electricity from geothermal resources has huge potential and an important part to play in changing the energy mix in Victoria. In changing that energy mix it will also provide for new investment and new jobs, particularly in regional Victoria. We all know that new jobs and new investments are important in regional Victoria, and we are trying to make sure that geothermal energy plays an important part.

The Brumby government is taking action to encourage exploration for geothermal energy, and we have been issuing a second round of exploration permits which cover almost 90 000 square kilometres of Victoria. Over the last week a number of companies, including Hot Rock; MNGI, a subsidiary of the South Australian company Petratherm; and a new company, Earth Solar Power, have been awarded new exploration permits. These companies have committed to spending millions of dollars to explore for geothermal power right across Victoria over the next five years. What was interesting was that there was very strong competition in this round of exploration permits, with over 30 applications received for the various areas that were on offer.

This strong industry interest is because in Victoria we have a huge potential to establish geothermal industry. That is because the industry knows it will get support from this government. Unlike other renewable sources of energy, geothermal energy is available 24 hours a day, 7 days a week, and accordingly has the ability to provide baseload power. Unlike solar, which reduces when the sun goes down, or wind, which reduces when the wind stops blowing, geothermal can operate 24 hours a day.

This latest round of permits is on top of the 12 permits we released in 2007. Companies are now exploring from Mildura to Portland and all the way across to Lakes Entrance, because the government supports geothermal exploration. We provide world-class geological data, we have introduced industry-specific legislation and of course we are also providing support through the Victorian renewable energy target (VRET). This is in stark contrast to other parties, which — —

Dr Napthine — On a point of order, Speaker, perhaps the minister can explain why if the government is so supportive of geothermal, it closed down the geothermal operating system. Why did it close the only one that was operating — —

The SPEAKER — Order! The member knows full well that is not a point of order. The member for South-West Coast will not be warned again.

Mr BATCHELOR — It is interesting to note and record that recently the front page of the Warrnambool *Standard* praised the efforts of this government to bring about geothermal exploration in the exact area that the member represents. You would think the member would be supporting geothermal exploration, like the member for South Barwon is. We know this is important. It was not this party that at the last election promised to cancel VRET, that wanted to abolish VRET — —

The SPEAKER — Order! The minister will not debate the question. I ask him to continue to address the question and suggest that he has now been speaking for 5 minutes and should conclude his answer.

Mr BATCHELOR — We put in place the Victorian renewable energy target which has encouraged some $2 billion worth of investment proposals here in Victoria in the renewable energy sector. This will provide in excess of 2000 jobs in regional Victoria, and what we would like to see is geothermal energy play a key part in the renewable energy target here in Victoria.

Healesville and District Hospital: future

Mrs SHARDEY (Caulfield) — My question without notice is to the Minister for Health. Will the minister guarantee the house that the Healesville and District Hospital will remain open and retain its current service profile under this government?

Honourable members interjecting.

The SPEAKER — Order! I ask the Minister for Education and the Minister for Regional and Rural Development not to interject in that manner.

Mr ANDREWS (Minister for Health) — I thank the member for Caulfield for her question. What I say to the member is that every single campus in Eastern Health has been supported by this government, and I can inform the member that every single campus in Eastern Health will continue to be supported by this government.

The Department of Human Services and Eastern Health are committed to improving facilities and improving care for Healesville families. Let me be abundantly clear about this: this government will not do to Healesville what those opposite did to Essendon, Altona, Burwood and so many more.

Honourable members interjecting.

The SPEAKER — Order! Government members will come to order.

Mrs Shardey — On a point of order, Speaker, the minister is debating the issue, and I ask you to bring him back to answering the question that was asked.

The SPEAKER — Order! There is no point of order. The Minister for Health has concluded his answer.

Skills training: government initiatives

Mr HOWARD (Ballarat East) — My question is to the Minister for Regional and Rural Development. I refer 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 to build the skills and capacity of Victorian industry, particularly in regional Victoria?

Ms ALLAN (Minister for Regional and Rural Development) — I thank the member for Ballarat East for his question and also for the opportunity to inform the house today of the action that the Brumby government has taken over the course of 2008 to help Victorian industries and businesses grow, compete and, most importantly, ensure that they continue to provide a broad range of job opportunities for Victorians no matter which part of the state they live in.

There have been big investments by this government over the course of 2008. We have seen $300 million in a new innovation statement. There has been $316 million to deliver a better skills system in Victoria that is about providing individuals and businesses with the skills they need. Just this morning the Minister for Small Business and I announced the next stage of this strategy with the launch of our $52 million program Skills for Growth, which is helping small and medium-size businesses in their workforce access training.

Finally, there has been $245 million in our Victorian industry and manufacturing statement. A key part of this statement was the establishment of the new $50 million Industry Transition Fund. This is a fund we have established to support industries that are in transition as a result of technological changes and as a result of some of the challenging economic times that we are faced with. The fund is designed to help them get through this period of time. This new fund is going to be particularly important for regional industries, but it is important that the house note it comes on top of the extensive assistance that this government already provides to regional industries and communities through our $502 million Moving Forward action plan.

I would like to share one recent example of how this action plan is continuing to support communities and industries. As the Minister for Energy and Resources stated, last week I also had the great pleasure of visiting Warrnambool to announce more than $200 000 in Brumby government funding to the region to help it keep pace with the unprecedented growth and opportunities that it faces, and also to support strong population and jobs growth. This was well received by the local community, and the Warrnambool *Standard* highlights this in a headline saying — —

The SPEAKER — Order! The minister will not use that piece of paper as a prop or she will find herself out of the chamber. The minister may refer — —

Ms ALLAN — Thank you, Speaker. I will delightfully refer to it. It says 'Boom cash — state spending to secure jobs and attract investment'. This is the sort of action that we on this side of the house take, and this certainly is not a one-off. We are committed to supporting regional economies and communities right across the state, and we are particularly doing this in the face of meeting some of those particular challenges that are faced in our community with the changing economic circumstances internationally.

The importance of government investing in communities, in industries, in jobs and in infrastructure cannot be understated, and the shining example of the investment that we have made over the course of this year has been the investment in the food bowl modernisation project, which will provide a massive boost to jobs and investment. The $1 billion first stage

of this project alone and the $750 million investment in the Sugarloaf pipeline will inject $367 million into the economy of the Goulburn Valley region, and it will create more than 1700 new jobs during the construction period — and it will give a great boost to that local community. This is also a legacy project. This project is going to provide increased water security into the future, which is vital for those communities and those industries.

It was very pleasing to hear this year that the member for South-West Coast joined with the government in recognising the benefits of this project with his call for the project to be brought forward. He was calling for the food bowl project works to be brought forward.

Whilst this project is well received, it appears that there are some in the community who do not agree with the member for South-West Coast and do not agree with the Brumby government. Just yesterday the transformational food bowl project was attacked and opposed in this very place by the member for Swan Hill, who labelled it a contentious project. The Nationals continue to attack the project.

Honourable members interjecting.

The SPEAKER — Order! The minister has been speaking for 5 minutes. I ask her to conclude her answer.

Ms ALLAN — What I have outlined today is only a snapshot of the action the Brumby government has taken in 2008 to support regional communities and the Victorian economy. For those opposite, their action in 2008 can be summed up in six words: stand for nothing and do nothing.

Provincial Victoria Growth Fund: allocation

Mr RYAN (Leader of The Nationals) — My question is to the Minister for Regional and Rural Development. I refer to the $100 million Provincial Victoria Growth Fund announced in November 2005 and to the government's budget forward estimates prediction that $50 million of the fund would be spent by 30 June 2008. I ask: how does the minister explain the fact that the 2008 Regional Development Victoria annual report shows that to date only $28 million of the $50 million has been spent?

Mr Jasper interjected.

Ms ALLAN (Minister for Regional and Rural Development) — Thanks, Ken.

The SPEAKER — Order! Before the minister starts, I ask the member for Murray Valley and the member for Rodney to cease interjecting.

Ms ALLAN — At risk of repetition, my answer will be very similar to an answer I gave to the Leader of The Nationals recently in the house, when once again in attacking the government on the operation of funds, whether it be the Provincial Victoria Growth Fund or the Regional Infrastructure Development Fund, he was attacking the very communities the funds are designed to support.

Mr Eren interjected.

The SPEAKER — Order! The member for Lara is warned, and I will not warn him again.

Mr Ryan — On a point of order, Speaker, the minister is debating the point. She promised $50 million and she spent $28 million. We just want to know why the rest has — —

The SPEAKER — Order! I am prepared to uphold the point of order raised by the Leader of The Nationals. However, the Leader of The Nationals continued with comments that were not part of the point of order. The Minister for Regional and Rural Development should confine her answer to the question.

Ms ALLAN — I will repeat once again for the benefit of the Leader of The Nationals how we operate funds under these programs.

Mr McIntosh interjected.

The SPEAKER — Order! The member for Kew will not try to shout down the minister. I ask for some cooperation from the Leader of the Opposition.

Ms ALLAN — Once again I will repeat how we operate the funds within Regional Development Victoria — funds which are about supporting regional communities. We ensure that the funds meet agreed milestones and payment is made on the delivery of those agreed milestones. This is the appropriate way to allocate funding. This is the appropriate way to work with regional communities, particularly those communities that are going through periods of very difficult circumstances. We work with those communities during periods of drought, during periods of flood and during periods of bushfires. We do not pull the rug out from under those communities, which is the way the Leader of The Nationals operated in the — —

The SPEAKER — Order! The minister will confine her remarks to government business.

Ms ALLAN — We support regional communities. Through our Moving Forward action plan we have committed $502 million in funding that we are committed to spending — —

Mr Ryan — On a point of order, Speaker, the minister is debating the question. I ask you to have her answer the question she has been asked. It is simply a case of saying, 'Show me the money'.

The SPEAKER — Order! There is no point of order. The minister is being relevant to the question.

Ms ALLAN — As I was saying, we have committed $502 million to regional Victoria under this fund. The reason the Leader of The Nationals continues to attack this fund is because he is embarrassed. His record is a shameful record in regional Victoria — —

The SPEAKER — Order! The minister has concluded her answer.

West Gate Bridge: upgrade

Mr TREZISE (Geelong) — 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, raise a family and drive a car. I ask: can the minister outline how the government's upgrade to the West Gate Bridge will improve travel efficiency and help Victorians spend less time in traffic?

Mr Mulder interjected.

The SPEAKER — Order! I suggest to the member for Polwarth that interjecting even before the minister has been given the call is a little excessive. I suggest that he has been warned once already this question time. If he wants to remain until the end of question time, he should watch and listen.

Mr PALLAS (Minister for Roads and Ports) — I thank the member for Geelong for his question and for his continuing interest in developments to improve Victoria's transport infrastructure. The West Gate Bridge is one of Melbourne's iconic structures. It is also one of Victoria's most important economic and transport assets, providing a critical link between the city and our western suburbs, which is an area that is rarely visited by those opposite.

The Brumby government's $240 million West Gate Bridge strengthening project is a key part of our upgrade of the M1 corridor, and it is being delivered in partnership with the Rudd Labor government. The M1 project is worth $1.39 billion. It will reduce congestion and improve reliability, and it will also increase traffic throughput by 50 per cent and reduce casualty crashes by up to 20 per cent. It is part of our plan to maximise our transport connections, which can only occur by our investing in new transport infrastructure, but importantly also making investments in existing infrastructure to get maximum utility out of that infrastructure. The M1 project would never have happened if those opposite had been in government. We need to remember that only this government has a plan.

The SPEAKER — Order! The minister will address the question.

Mr PALLAS — Our investment in the West Gate Bridge will ensure its long-term sustainability. We will be increasing its capacity from four lanes to five lanes in each direction 24 hours of the day, and we will be employing state-of-the-art traffic management systems to ensure the smooth and efficient flow of traffic.

These plans to meet our future traffic needs are the result of tremendous work undertaken by national and international experts who have been retained for the purposes of this project. The important thing about it is that the project team formulating the design has looked at every nut, bolt and weld on that bridge.

The Brumby government recognises that we must cater for the future of our transport needs in our community. Currently the Monash West Gate corridor, and in particular the West Gate Bridge, has traffic volumes of about 160 000 vehicles a day. By 2031 our expectation is that the traffic volume will have grown to 250 000 vehicles a day.

Safety is a key feature of this upgrade, and the lanes will be reconfigured to a width of 3.1 metres. That is wider than the 2.8 metres in width that is currently employed on the Sydney Harbour Bridge, for example, and it is consistent with the width on Queens Road and even on the West Gate Bridge on the Williamstown Road off-ramp, so it is typical for our arterial road network.

When completed this project will ensure that road users can spend more time at home and less time stuck in traffic. For others it could mean spending more time doing the things that they enjoy, no matter how strange they may appear to the rest of us. Their personal preferences can all be expressed with the extra time that they have — concocting conspiracy theories, drumming up bodgie stories, formulating leadership coups — so

the member for Polwarth should be a big supporter of this project.

Honourable members interjecting.

The SPEAKER — Order! I ask the minister not to invite that level of discontent. I ask him to confine his remarks to the question as it was asked.

Mr PALLAS — The West Gate Bridge upgrade will reduce congestion, improve safety and ensure that Victoria remains the best place to live, work and raise a family.

Gunnamatta: sewage outfall

Mr RYAN (Leader of The Nationals) — My question is to the Minister for Water. How many billions of litres of water has Melbourne Water pumped into the ocean at Gunnamatta during the nine-year life of this government?

Mr HOLDING (Minister for Water) — I thank the Leader of The Nationals for his question and welcome the opposition's foray into water policy this week of all weeks, which has been marked by backflips and backdowns from those opposite.

The SPEAKER — Order! The minister will not go down that path.

Mr HOLDING — The Leader of The Nationals has asked about the water that is discharged at Gunnamatta, which the government recognises, through the plan that we released in mid-2007, as something we wish to address. It is also something that Melbourne Water has recognised for some period of time through its discussions with the Environment Protection Authority (EPA), and it needs to be addressed. It is for that reason that Melbourne Water has committed $300 million — in 2006 dollars — to the upgrade of the eastern treatment plant to deal with the water which is discharged at Gunnamatta. The real issue is what ought to be done with the water that is currently discharged from Gunnamatta.

Mr Ryan — On a point of order, Speaker, during question time, with respect, we ask the questions and the minister should answer them. He cannot concoct his own question and then try to answer it. I ask that the minister be required to answer the question that I have asked.

The SPEAKER — Order! The Leader of The Nationals knows that is not what standing orders provide. The minister's answer needs to be relevant to the question asked.

Mr HOLDING — The public policy questions that need to be addressed are, firstly, what treatments are required by Melbourne Water in order to address the standards required by the Environment Protection Authority, and then what can be done with that water when it has been recycled. The upgrade — —

Honourable members interjecting.

The SPEAKER — Order! The opposition and the government would serve the Parliament much better if they allowed the minister to continue with his answer.

Mr HOLDING — The upgrade contemplated by Melbourne Water for the eastern treatment plant will enable it to treat approximately 100 billion litres of water to class A — water that is currently released — —

Mr Hodgett interjected.

The SPEAKER — Order! I warn the member for Kilsyth.

Mr HOLDING — The upgrade contemplated by Melbourne Water for the eastern treatment plant will enable it to treat approximately 100 billion litres of water to class A — water that is currently released from the Boags Rocks outlet at Gunnamatta. In relation to the question asked by the Leader of The Nationals, I can inform him that not one litre of drinking water is released from Gunnamatta in any given year.

Workplace relations: federal reform

Mr BROOKS (Bundoora) — My question is to the Minister for Industrial Relations. I refer the minister to the government's commitment to supporting working Victorians and ask him to update the house on recent developments in workplace relations.

Mr HULLS (Minister for Industrial Relations) — Last week the federal Minister for Employment and Workplace Relations, Julia Gillard, delivered what I would call a Christmas bonus to many Australians when she introduced the Fair Work Bill, a bill which will dismantle the destructive WorkChoices legislation and a bill endorsed by the Victorian government because it will restore fairness to Victorian workplaces.

Honourable members interjecting.

The SPEAKER — Order! I think the chamber should realise by now, given the microphone the Deputy Premier has, that he will not be shouted down. I ask for some cooperation from all members so that question time can conclude.

Mr HULLS — Thank you, Speaker; it is a special microphone!

There is no denying the extent of the damage that had to be undone. In Victoria work began some nine years ago as we rebuilt the industrial framework that was dismantled by the former Kennett government. Concurrently we were striving to mitigate the decade-long federal onslaught that culminated in WorkChoices.

Honourable members interjecting.

The SPEAKER — Order! I ask the Deputy Premier to confine his remarks to the question, as asked.

Mr HULLS — I was asked about recent developments in workplace relations. We did deliver on our commitment in that area to do everything we could to protect Victorian working families. We legislated to shield outworkers, owner-drivers and public servants from the worst excesses of WorkChoices. For over two years now the Office of the Workplace Rights Advocate — —

Mr Clark — On a point of order, Speaker, the minister is defying your ruling to confine his remarks to the question on the subject of recent developments in workplace relations. I ask you to bring him back to the question.

The SPEAKER — Order! I uphold the point of order.

Mr HULLS — One of the recent developments indeed is, as the member would know, the issue of the workplace rights advocate and the fact that he has processed more than 11 000 complaints and 120 investigations, I might say, in relation to unfair or illegal working conditions.

More recently we have legislated to allow parents to request flexible working arrangements. That is very important recent legislation, which of course was opposed by those on the other side of the house. We also introduced recently new laws which will protect vulnerable employees from having their pay unfairly docked. In fact that is so recent that it came into operation only this week.

These laws are very timely, because they coincide with the Christmas break, which will see thousands of young Victorians taking up jobs for the first time. Many of these inexperienced workers are vulnerable to unscrupulous employers, and reports have been received recently of examples of pay being docked — for instance, for people who work in petrol stations. When there is a drive-off they have their pay docked. People or young kids who work in hotels have also had their pay docked for glass breakages. This is sensible legislation, which was opposed by those opposite, I might remind the house.

The most recent announcement is that by the Deputy Prime Minister, Julia Gillard, in relation to the Forward with Fairness legislation. We all know that as a result of that legislation WorkChoices — the rotten piece of legislation — is dead.

Honourable members interjecting.

Mr HULLS — It is dead as a dodo. It is dead as a doornail, Speaker. It is not just me saying that. The federal Leader of the Opposition recently said the new industrial relations laws mean that WorkChoices is dead.

Honourable members interjecting.

The SPEAKER — Order! I ask the minister to come back to the question and Victorian government business — and I ask for the level of interjection to quieten.

Mr HULLS — I was asked about recent developments. One of the recent developments is that WorkChoices is dead. But there are those who do not believe it is dead. They believe it is like the Norwegian blue parrot in the Monty Python sketch: it is not dead, it is just resting!

The SPEAKER — Order! The minister has concluded his answer.

MAJOR CRIME LEGISLATION AMENDMENT BILL

Second reading

Debate resumed.

Mr LUPTON (Prahran) — I am pleased this afternoon to make a contribution to the debate and support the Major Crime Legislation Amendment Bill 2008. The impetus for this piece of legislation really comes from a report by the special investigations monitor, and the government having adopted recommendations that were made in that report.

In particular it deals with extending the provisions of the major crime legislation to broaden its scope in relation to certain aspects of organised crime, the investigation of paedophilia and the greater ability for

our law enforcement agencies to deal with that very serious criminal activity. It also picks up on some other recommendations made by the special investigations monitor in relation to the coercive powers of the chief examiner and also some further powers of the Chief Commissioner of Police in relation to banning notices to keep certain individuals away from racecourses and casinos.

Overall the general import of this amending legislation is very commendable, because it picks up and addresses a number of important ongoing aspects of dealing with different aspects of organised crime activity in a more concerted manner. The principal legislation that is being amended has been in place for the last three or four years and has really enhanced the ability of Victorian law enforcement agencies to investigate organised crime and to bring appropriate charges against people involved in organised crime activities. It has led to convictions and ultimately to the confiscation of assets and the closing down of organised crime activity in a more comprehensive and effective way.

One of the aspects of the definition of organised crime has been to encapsulate those sorts of criminal activities that involve more than one person that are organised in a particularly concerted manner and are activities that have been motivated by the desire for profit, gain, power or influence. The legislative amendment before the house that deals with the ability to better investigate and crack down on paedophilia organisations broadens the definition of organised crime so that it is able to take into account matters that do not involve just the desire for profit or gain, because sometimes the people who are involved in these appalling practices are not necessarily motivated by a desire for financial gain but rather just their involvement in the activities of these paedophilia rings. The definition of organised crime in the legislation is being broadened in order to effectively capture that type of activity, and that is a very commendable thing.

The coercive powers used by the chief examiner and the examiner under the Major Crime (Investigative Powers) Act are also very important. Organised crime is a very special type of criminal activity that needs to be investigated in a particular way and in an effective way. It is not simply the uncoordinated and random criminal activity that a lot of police work is involved in investigating; it is highly organised activity that involves a great amount of planning and coordination. Likewise, to successfully investigate it requires a considerable amount of specialised attention, the ability of particular police task forces to operate in this field and the collection of evidence in a range of ways that are not necessarily the way that ordinary police activities are carried out. It involves surveillance, the gaining of intelligence and a range of those types of activities.

Under the legislation the chief examiner has important and very significant coercive powers to demand answers to questions and to demand documents and information to enable that kind of intelligence gathering and evidence to be accumulated where organised crime is occurring. The legislation before us today makes significant improvements to the way in which the evidence-based process used by the chief examiner will operate in Victoria. I think it strikes the right balance between giving the examiner the powers he or she needs to effectively enforce this legislation and allowing appropriate review by courts of applications where people believe they should not be subjected to those coercive powers. This legislation also provides our judicial offices in this state, particularly the County and Supreme courts, with the ability to effectively monitor those powers and provide justice to all parties concerned.

The legislation also, as I mentioned, deals with the powers of the Chief Commissioner of Police to more effectively ban certain people from racecourses and casinos, particularly Crown Casino. The house dealt with legislation around these issues some time ago, and as a result of the operation of that legislation over the last couple of years the chief commissioner has found that there are requirements for a certain amount of refinement to that legislation as it applies to the working of those banning notices. This bill will effectually make those improvements. It safeguards the best legitimate interests of the racing and gaming industries and means there will be less potential for criminal activity in those areas. It will provide not just the ability to investigate and charge people where offences have occurred but the power to prevent offences from occurring in the first place.

Finally, I have listened with interest to some aspects of the contributions to the debate on this bill from members during this week and I have been greatly disturbed by some of the contributions by members of the opposition. The main concern I have is that members of the opposition, when talking about organised crime, unfortunately misunderstand the nature of that type of criminal activity and the nature of the sorts of activities that the police need to engage in when dealing effectively with organised crime. A number of members of the opposition have made the point that the way to deal with organised crime is to have more police on the beat. Of course in Victoria at the moment we have far more police than there were when our government came into office — something

like 1500 more police, with 350 police to be added during the term of this government; and we have made recent announcements that those police numbers are being fast-tracked.

It is unfortunate when opposition members come into this chamber and try to assert to the people of Victoria that the way to deal with organised crime is to have more police on the beat because we know that the police are doing a great job. There are more police on the beat under this government than there have ever been in the history of Victoria. But we are also making sure that those specialised police task forces and divisions that need to operate to tackle organised crime, which is very different from other sorts of random crime, are effectively resourced. That is what this government is doing, and we should be supporting this legislation before the house today.

Mrs POWELL (Shepparton) — I would like to speak on the Major Crime Legislation Amendment Bill. The purpose of this bill is to amend various acts of Parliament which relate to major crime. That includes expanding the definition of an organised crime offence. Clause 3 of the bill alters the definition of organised crime offence to provide that it includes an indictable offence punishable by level 5 imprisonment or more that has a purpose of obtaining sexual gratification where the victim is a child. Therefore coercive powers orders can be obtained against such offenders.

The bill talks about level 5 imprisonment, which is a maximum of 10 years. Over the years we have heard talk about introducing maximum penalties, but certainly not about introducing minimum penalties. Time and again people in the community talk to us and say that while the government over the years has been changing the legislation for the judicial system, it continues to fail the community by not bringing in standard minimum sentencing for certain heinous crimes.

The community's view, rightly, is that crimes against children, especially when the crimes are sexual in nature, are the most heinous crimes imaginable. The children are vulnerable. They need our protection, the family's protection and the community's protection. The community is saying, 'Where there are crimes against children or elderly people or those vulnerable in our community, the law must protect these people'. The community wants justice. It has lost confidence in the judicial system. It continues to come out and say that it wants to see standard minimum sentences.

The government has made legislative changes over the years to change the judicial system. It has brought in legislation to retrain judges, to remove wholly suspended sentences and to create a new offence of child homicide.

This bill will change the definition of 'organised crime'. There have been bills that increased maximum sentences for certain offences. Again the community is saying, 'You are failing the community. You are tinkering around the edges. If you want to get real about making sure there is not a perception in the community about going soft on criminals, you have to bring in minimum jail terms. You have to bring in jail sentences for those who continue to commit these dreadful crimes against our most vulnerable'. They should be in jail for a minimum period of time, and that time can be set by the Sentencing Advisory Council, which was set up a number of years ago to talk to the community and find out what the community is saying. The community is saying very strongly to the Sentencing Advisory Council, 'We understand it is difficult in sentencing, but again we want standard minimum sentences where offenders spend the appropriate time in the jails'.

I first started raising this issue on behalf of two young girls in my community and on behalf of the family, and again every time I get the opportunity I talk about Colleen and Laura Irwin, the injustice of the judicial system and the way in which the judicial system let those young girls down. In 2006 at Altona both the girls were killed in their own home by a person who had a 20-year history of violent crime, including raping and bashing an elderly, defenceless woman. That man had been in jail a number of times and on his last offences, which were coupled together, he got two and a half years jail.

The family was absolutely outraged, and they and the community asked me to do something about it. The parents, Alan and Shirley Irwin, were furious at the light sentences given to this man, and they said, 'What can we do to make sure that no other family ever goes through what we have had to go through?'. Not one daughter but two daughters — aged 21 and 23 — were killed in the prime of their lives, with their lives in front of them. Because that monster of a man had been out of jail, not in jail, for the appropriate amount of time, he was on the streets; he murdered and raped not one but both sisters. Over a number of weeks and months I have presented to this Parliament petitions with 12 500 names attached, and I could easily have got more signatures.

There should be standard minimum sentences for serious offenders. We are not talking about mandatory sentencing. I have spoken to Arie Freiberg from the Sentencing Advisory Council, and he continues to say, 'We do not agree with mandatory sentences'. We are

talking about where a judge will have the discretion to increase or decrease sentences, but the judge will have to justify the reasons for that decrease or increase, and those reasons must be set out in legislation.

That legislation is going to be with the benefit of the Sentencing Advisory Council, the community and members of Parliament. It not up to us to make those sentences; it is up to the courts to make those sentences, and we will go back to the community and say, 'What is it that the community believes is an appropriate amount of time?'. We have to start listening to the community.

On other issues, there is a definition of 'police station' as 'police premises where a counter inquiry service for the public is provided'. In my electorate the Mooroopna police station is about a 1950s-style station. It is outdated; it is not a good workplace; it services quite well, but under huge challenges, a town population of 9000 people. The member for Prahran said that there were more police on the beat. That is terrific, but I do not know where they are. They are certainly not in the Shepparton district.

Mr McIntosh — They're not in Prahran either.

Mrs POWELL — And they are not in Prahran either, the member for Kew says. We can go through our electorates where the police are not, so while the government brags about how many police are going through the academy — —

The ACTING SPEAKER (Ms Beattie) — Order! I would prefer that that did not happen — that is, that you go through the electorates.

Mrs POWELL — No, I said I 'could'. I accept your ruling, Acting Speaker. It would take too much time to go through all of the electorates that need more police. The Police Association's newsletter identified those electorates that need more police; it said the greater Shepparton electorate is understaffed by 50 officers.

Mooroopna has four full-time and one part-time police officers. Due to stress leave, sick leave or mandated days off, there are often only three or fewer officers left on duty to service that town. Three of the five police officers have taken stress leave in the last 12 months. The police station office has to close at 4 o'clock during the week because the officers have to catch up on all the administration and other work they need to be involved in. They have to close the police station to the public because there are not enough officers there to actually and adequately service the community. It closes at about 4 o'clock each day during the week, and through the day as well when those officers have to go out on duty.

Mr McIntosh — It is a scandal.

Mrs POWELL — It is a scandal, as the member for Kew says. I have raised my concern in this place again and again. Greater Shepparton is a huge area. We have a large migrant population, a large Aboriginal population, a large ethnic community — all of those formula additives, if you like, that should give us more police under the formula the government is looking at. We have those formulae; we have that diverse community; we have the need.

Chief Commissioner Christine Nixon said last year that she would do a review of police numbers and report back. That has not happened, so I urge the government to take note of what we are saying. There are not enough police, particularly in the country areas but right across Victoria, and we need to have those police out there. The community needs to have the confidence in our police officers who are doing a brilliant job under huge challenges. We try to support them as much as possible, but they say to me that they cannot go off on sick leave; they cannot go off on stress leave because there is nobody to backfill them.

We need to make sure they can have recreation leave and sick leave, and that there is somebody there to take their place so the community is not going to be unprotected. That is their biggest concern: if they leave to go on holidays or other leave, or even to do some training, they are leaving their community unprotected, and that really causes them great stress.

So while the government brings in all these bills and utters all its rhetoric, I say to them, 'Make sure our police are supported. Make sure we have the appropriate police and protect our communities, but more importantly have a look at the sentencing regime, listen to the community and bring in standard minimum sentences where we have a look at keeping these offenders in jail for the appropriate amount of time, not letting them out onto the streets so that people out there have no confidence in the judicial system'.

Ms DUNCAN (Macedon) — It is a pleasure to follow the member for Shepparton, and I would like to refer to a couple of the comments she made. She referred to what she calls a lack of police numbers at Shepparton and across the state. I can only wonder how much worse the situation would have been when we had 1500 fewer police than we currently have today, so while the member for Shepparton may refer to what she sees as a loss of numbers or fewer numbers than she

might like, one can imagine, had this government not invested in increasing police numbers, how much worse the situation described by the member for Shepparton would have been.

We also heard from the member for Shepparton her suggestion that we introduce minimum term sentences. She made the point that that is not mandatory sentencing. I am not sure how if you mandate a minimum sentence that is not mandatory sentencing. I ask the member for Shepparton whether she is able to name any cases where a judge has found a person guilty of a major crime and that person has not gone to jail. I take the very tragic case she referred to, and I believe has referred to previously, where that family has asked her — I am sure it was done in a very heartfelt and passionate way — to guarantee that the tragic things that happened to that family will not happen to any other family. I wish any of us were in a position to give any family that sort of guarantee. Sadly, none of us is ever able to guarantee that such crimes, as horrendous as they are, will not be committed again.

I think what I hear in her suggestion of a minimum mandatory sentence, which the member for Shepparton says is not a mandatory sentence, is that a judge who makes a decision not to impose a minimum mandatory sentence should be required to give reasons for that decision. Judges give very detailed reasons now for their sentences. The tragedy in our justice system is that nobody bothers to read those judgements and the media rarely if ever reports on the reasons for a sentence. We see headlines telling us what the sentence is; we rarely, if ever, get any analysis of the reasons behind that sentence.

I take the point about the Sentencing Advisory Council and its chair, Arie Freiberg. The member for Shepparton may be aware that Arie conducted community sessions entitled 'You be the judge'. I am not sure if this program is continuing.

Mrs Powell interjected.

Ms DUNCAN — I see that the member for Shepparton acknowledges that she is aware of that program. The outcomes of those sessions are very interesting. It was found that when members of the public are given the same evidence as the judge is given — in real cases — the public generally and often would give a lesser sentence than was given in the particular case. Contrary to what the member for Shepparton might like to think, it has been found that often when people are given the same level of information as is presented to courts they often recommend lesser sentences than were imposed by judges in this state.

I have confidence in the justice system. My view is that the more people know about what goes on in courts — not the less they know; the more they know — the more confidence they have, with good reason, in our judicial system. I have been caught in my response to the member for Shepparton and I am not speaking directly on the bill.

I come now to the Major Crime Legislation Amendment Bill 2008. I am pleased to support this bill because it continues to refine and extend the legislative framework that this government has introduced that has seen very good results in this state in tackling organised crime — or, as some might say, disorganised crime — in this state.

The bill does a number of things. It involves three categories of reform to the statutes that relate to Victoria's major crime legislation scheme, which covers the portfolios of the Attorney-General, the Minister for Police and Emergency Services and the Minister for Gaming. The bill makes a number of amendments which pick up the recommendations made by the special investigations monitor in his report tabled in Parliament in June. This bill continues to implement the government's commitment to community safety and to implement safeguards against the potential disclosure of sensitive police intelligence arising from challenges to exclusion orders banning crime figures, particularly from racecourses and the Melbourne casino. It also makes a technical amendment to the Surveillance Devices Act 1999.

One of the amendments expands the definition of 'organised crime offence', in particular for the purposes of using coercive powers. Currently coercive questioning powers can be sought only in relation to an organised crime offence, as under the major crime act. It is defined as an indictable offence that is punishable by 10 or more years imprisonment. It must involve two or more offenders and substantial planning and organisation. It must also form part of a systemic and continuing criminal activity and must have the purpose of obtaining profit, gain, power or influence, as provided by section 3(d) dealing with definitions. We know that many heinous crimes do not have the purpose of obtaining profit, gain, power or influence — although it might be true for power. The bill extends that definition by including the purpose of obtaining sexual gratification where the victim is a child. We know that most of that is also about power. The amendment is designed to ensure that serious and organised crime involving the abuse of children and

paedophilia networks is clearly captured for the purpose of coercive questioning. This is a strong extension of existing powers. The government considers the amendment necessary as many organised crime groups involved in child abuse and pornography are not necessarily motivated by profit, gain, power or influence.

The bill makes a number of other amendments. For example, on the prohibition on coercive questioning at a police station or jail, the bill clarifies that coercive questioning cannot be undertaken at a police station, as defined under the major crime act, but that that questioning can occur at other facilities shared with Victoria Police. The major crime act already precludes the conduct of coercive questioning examinations at a police station or police jail. However, currently there is no definition in any Victorian statute of a police station. The bill clarifies that any police activities unrelated to the office of the chief examiner that take place within the same building as coercive questioning must not involve the attendance of members of the public. This is to ensure the confidentiality of witnesses and examinations.

The primary bill gives very serious and extensive powers. It is important that we continue to ensure safeguards exist, but it is important also that we continue to recognise the changing nature of organised crime. The government is committed to ensuring confidence, resilience and safety in communities. This reform is a necessary part of the ongoing program the government has to continue to ensure that our criminal justice system keeps pace with modern standards and that Victoria is a very safe place to live.

Mr McINTOSH (Kew) — It is a pleasure on what is perhaps the last sitting day for the year to be able to make a contribution to the debate on the major crime bill. The bill does a number of things and the opposition does not oppose the legislation.

This is a very complex bill. I do not propose to spend much time on the bill but will address one part — that is, the amendment to the Surveillance Devices Act. Generally the bill proposes to add to the definition of 'organised crime offence', which is probably the most significant change made by this bill, as far as the public is concerned. In respect of the gain from an organised crime offence, the bill adds to the definition the words 'sexual gratification'. This will enable the activities of paedophile rings to be brought within the ambit of the major crime legislation and defined as organised crime and therefore subject to the coercive powers of the chief examiner.

I will briefly touch upon a number of other amendments that more or less mirror some of the provisions contained in the Police Integrity Bill, which I was responsible for debating on behalf of the opposition as it passed through the houses. Those significant developments caused the opposition a great deal of concern given that essentially the amendments provide a mechanism whereby the integrity of the chief examiner, the processes, the information, the documentation and indeed any link that they have with other law enforcement agencies can be protected.

That protection, which was provided in a similar way in the Police Integrity Bill, gives the opposition a great deal of concern, because it is the right of any individual who might ultimately be brought before a court charged with a serious offence to have a fair trial, which means all of the methods and processes of the prosecution can be made available for the purposes of that trial procedure. However, as we have seen, given the confidential nature of the work that is done by the OPI (Office of Police Integrity) and the chief examiner, much of that work needs to be protected. It is a balancing act.

In this circumstance, while the opposition raises its concern, it feels the balance may have been got right. It always keeps an eagle eye out in relation to that matter, but in the end the opposition parties will not oppose these changes save and except for expressing our concern, which the member for Box Hill on behalf of the opposition has far more eloquently expressed.

In my contribution I would like to focus on what can be seen as a reasonably narrow or small amendment to the Surveillance Devices Act. Notwithstanding that we are not opposing the amendment, it needs to be said that the amendment in clause 16 could have significant ramifications in relation to law enforcement. The amendment, albeit a technical one inserted in an abundance of caution, essentially enables other persons, whether or not they are law enforcement agents, to provide technical advice to law enforcement agencies that seek to use surveillance devices.

I raised this issue because earlier this week the very group inside Victoria Police that may be using that technical advice was the subject of significant concern raised in an article over a couple of days in the *Age*. The surveillance squad itself, the very body to which we are going to give this additional opportunity to go outside and take expert advice, is now the subject of profound concern among the people of Victoria, if not Australia, and is the subject of significant allegations about the secure information they hold being leaked to organised criminals. The government has to face another great

challenge in investigating whether its own police officer surveillance squad has leaked to organised crime groups secure, dangerous and highly confidential material that has been discovered to be in the hands of organised criminals. Not only is it a concern to the people of Victoria but it is also a concern to the people of Australia, because the credibility of Victoria Police is now seriously under threat amid these allegations, when viewed in the light of other state police forces, the Australian Federal Police and the Australian Crime Commission.

All this suggests, given the fact that there is nothing new about these allegations, that the problems inside Victoria Police and the management of this secret information that Victoria Police maintains, looks at and keeps has been a matter of ongoing and profound concern. Six years ago the LEAP (law enforcement assistance program) database was used by a former police minister to attack political opponents. The LEAP database was accessed and used against Kay Nesbit when she was standing for council election.

Some 20 000 pages of the LEAP database were inappropriately leaked to a prison officer, and some 450 individual files were leaked to another person who was noble in coming forward and disclosing the mistake — but that mistake involved 450 individual files. Three or four years ago, then Premier Bracks promised we would get a new LEAP database. His government said it would spend some $50 million and that the database would be ready for use by August 2008. We are still waiting for that new database. The problems in relation to information certainly do not end there.

In 2005 the OPI began to issue warnings in relation to the ability of Victoria Police to properly maintain confidential information. Recently the director was quoted in the *Age* as saying:

> Information security within the Victoria Police has long been of concern to the OPI and has been addressed in several of our public reports …

But it has not necessarily properly addressed them. That same article quoted from the most recent report of the Victorian government's own commissioner for law enforcement data security regarding her ongoing concern about:

> the force's failure to implement its central information security policy to govern the storage and handling of all sensitive information.
>
> Ms Bebbington said the policy was in a perpetual state of review, edit and partial completion …

Frankly, it is a disgrace, and it begs the question: why are we right back to square 1 when it comes to the maintenance and proper security provided for our confidential information? Why have we got these allegations of leaking information and posing doubts about the credibility of our police force? Now we are talking about extending the powers of people who can be involved as experts in the game.

I understand why you need those experts, but it certainly beggars belief. The very week that we get these profound concerns, we are now extending these sorts of powers. Yes, I do understand, but it begs the question: what is this government doing? It has never ever demonstrated that it is fair dinkum in ensuring the integrity of Victoria Police's information service. I notice the Minister for Police and Emergency Services is in the house, and I note that he should be able to make a contribution on this debate to provide some security to the people of Victoria on the way we are going to manage this information.

It is an appalling indictment on this government; it is certainly an appalling indictment on the Premier and the Minister for Police and Emergency Services, and begs the question of what they are going to do to solve the problem. Frankly the only way they can do that and provide that degree of integrity is to have an independent broadbased anticorruption commission. Every single credible commentator in this state agrees with the opposition. The only people who do not agree are in the government, which raises the question of why.

Mr LIM (Clayton) — I am very pleased to be contributing to debate on the Major Crime Legislation Amendment Bill 2008; and I am very happy to support the bill. It is pleasing also to note that this bill has received support very much from both sides of the house. What is significant about this bill is that we tend to forget and take things for granted, like the fact that Victoria, and particularly Melbourne, has an international reputation to protect. Melbourne has been voted by the highly respectable Economist Intelligence Unit of the *Economist* magazine in London for three years running as the most livable city in the world. For them to come to that conclusion and vote Melbourne as such is because they have assessed Melbourne against 12 criteria, one of which is safety. This bill is doing a lot to further our reputation in that regard.

Instead of following in other members' footsteps in going into and dwelling on the details and technicalities of the bill, I think it is timely to remind the house of how important this bill is internationally in sending a very strong and powerful message that we are not

mucking around, that we are taking criminal activity in our community very seriously and are tackling it accordingly.

Having said that, it is also worthwhile to remind the house that this Labor government, going back to Premier Steve Bracks, brought the safety and policing of the community a long way from when police numbers were dwindling to a miserable number. We built up the numbers to a figure that we can now all be very proud of. Consequently we can walk tall and hold our heads high internationally, because we have maintained our reputation as the most livable and, of course, safest city in the world.

The safety of the community and of Melbourne cannot be taken for granted, so any measure taken by the government in legislation introduced into the house that protects this reputation and ensures that our community is and continues to be safe will have far-reaching implications. We are talking about tourists coming to Victoria and about our city as a destination for international students — we take large numbers of international students, second only to London.

This is not as easy as it sounds because we have built up a reputation as a safe city. Every Chinese parent I have met on my private and official trips to China — we have the biggest number of Chinese students here — is very proud of the fact that they have sent their kids here, because they know Melbourne is the safest city in the world. We cannot take the safety of our city for granted, so I commend the action taken by the government to introduce this legislation, to take Victoria in the right direction. I commend the bill to the house.

Mr K. SMITH (Bass) — In joining this debate regarding the Major Crime Legislation Amendment Bill 2008 I state up-front that the opposition does not oppose this bill but has some areas of concern about it.

I would like to put on record at the very start that I have the greatest belief in the integrity of our police force, but at times, despite saying what I just said, I find it disappointing to see that a very small minority of police abuse their right to interrogate people and get the necessary information, whether it be in an open way or through coercing people into giving them information.

Major crime is an issue that members have talked about a fair bit in this debate. Members on both sides of the house have talked about the lack of police and the effect of numbers on having a strong force of police in their local area, which then ensures major crime is not a problem. I must say that the police in the Pakenham and Bass Coast areas have been very good in keeping major crime to a minimum, and I congratulate them for that, but they have all been under some sort of stress because of the shortage of police officers in various parts of my electorate.

I have a lot to do with the police in the Wonthaggi area. They are hardworking and are in a position where they should have a full-strength force of 44 members, but unfortunately at any one time there have been up to six members of that number missing — in other words, about 15 per cent of the force is missing.

At the opening of the San Remo police station some two or three years ago I spoke to the then Minister for Police and Emergency Services, who is now the Minister for Finance, WorkCover and the Transport Accident Commission. I raised with the former minister for police and an assistant commissioner the lack of police at that station. There were supposed to be six full-time members operating in the station, but we are still not up to that level. It is good to see the Minister for Police and Emergency Services in the chamber. I hope he will take notice of this, but he does not seem to take much notice of anything we put to him. He denies that he has any responsibility for police numbers at any police station.

San Remo police station was 50 per cent short. There were supposed to be six officers at the station, but the best we had on any one given day was three officers! You can imagine the stress that is put on those officers in the expanding areas of San Remo, Newhaven and Cape Woolamai. The police officers have to patrol those areas when the nearest police station is at Wonthaggi or Cowes, probably 30 minutes by road from the San Remo area. Imagine if there are problems in those areas. We have a couple of pubs down there, which are very well run, but from time to time you get people who drink to excess, causing great problems. It is a large tourist area, and we have major events there. The police are under great stress because of the difficulties they have got.

We have a brand-new police station in Pakenham that was opened a few years ago. I think the Minister for Police and Emergency Services opened that station. They have 62 members, which is terrific and is something that is badly needed. There were times when they were 16 officers short in an area like Pakenham, which is within the fastest growing municipality of Cardinia. There was a shortage of 25 per cent of the full complement of officers who were able to go out on the beat.

We have heard arguments about the lack of police on the streets causing problems in investigating major crime. We hear about the 1200, 1400 or 1500 new police officers — one can never quite get one's head around how many police the government says it has put in — but there is a failure in not having police on the beat, doing things in the street, looking after major crime and keeping it down. The stress on the officers is immense.

In relation to major crime — and the lack of police officers is an important part of it — the bill will change the definition of 'organised crime offence' so that an organised crime offence will include an indictable offence, punishable by level 5 imprisonment or more, that has the purpose of obtaining sexual gratification where the victim is a child. Members may not be aware that some years ago I had the great honour of chairing the Crime Prevention Committee, an all-party parliamentary committee of the Parliament. The committee had the job of reporting on sexual offences against children. The committee tabled a report in the Parliament in the period of the former Liberal government under then Premier Kennett. There were 136 recommendations made in that report and a number were adopted, but a number were not adopted, which was a great disappointment to me. For two and a half years that all-party parliamentary committee investigated what I would call one of the most despicable crimes that could be committed — a sexual offence against a child. In talking about that we are talking about paedophilia.

Recently we have become aware of the amount of child pornography that is on the internet. We know from the reports in newspapers and on the television and from major crime reports that these creatures — these mongrels — who attack children are very well organised. They use the internet to their great advantage so they can show their sick colleagues photographs of children being sexually offended against. Our committee learnt that when a child has been photographed in a sexual context, whether in a compromising position or not, that child has been sexually abused, even though the photograph may have been taken when the child was two or three years of age. The fact is that child has been abused, and every time such a photograph is taken, every time the image is sent around the world and every time the photograph is distributed among these scum who are called paedophiles, the child is abused.

Members of this Parliament and of parliaments around the world must be active in ensuring that legislation is enacted that makes the lives of those people — the paedophiles — as miserable as possible. We must take any type of coercive action necessary to prevent the collection of this type of material. We must ensure that not only is it an offence to distribute this material but that these people are caught and charged. We must ensure that our police can get onto the internet and join the network of paedophiles so they can follow them up and use the great skills of police officers around the world to find out where the people are who are involved. Sometimes hundreds of people are involved in looking at child pornography, photographing children in sexual poses and taking part in sexual offences against those children. These people must be caught and punished. I know what sort of punishment I believe should be applied to them, but unfortunately the death penalty is not available in this country. The things those people do and the crimes they commit against children damage the children concerned for life. It is not a matter of them being damaged because a photograph is taken; they are damaged for life, and their trust in adults is ruined. If this legislation is able to do something about that, then well done, and I hope it passes through this place.

Mr FOLEY (Albert Park) — I rise to speak in support of the Major Crime Legislation Amendment Bill 2008 and I do so noting that the other side of the chamber has indicated support for this important bill. The bill continues the record of this government in its historically significant redirection and refocusing of Victoria Police. The government has a proud record of resourcing Victoria Police appropriately through providing record numbers of police out on the streets making Victoria the safest state in the commonwealth. It also has the proud record of delivering appropriate powers for police to carry out their organisational duties. This bill continues in significant ways that part of supporting Victoria Police in their efforts and it also goes to a number of mechanisms of how Victoria Police organise and administer the way they go about delivering that service. Those three areas of resourcing, powers and organisation of Victoria Police have all come together to ensure that Victoria is the safest state in the commonwealth. We have seen a record reduction in crime.

However, the price of this Australian and international best practice in dealing with the impact of criminal activity and inappropriate behaviour in our community is very much eternal vigilance. The best practice arrangements in dealing with organised crime in particular are continued through a series of amendments proposed in this bill. In many respects the bill represents another important chapter in the taking of steps to continue that work.

I have listened to some of the contributions from members opposite and certainly do not deny for a minute the heartfelt nature and urgency of some of the contributions, certainly in regard to the activities of paedophile and organised crime rings carrying out paedophilia, and in sentencing and dealing with rapists and murderers. All of these are very significant issues, and I do not for a minute begrudge any member of this house their passion and urgency in representing their communities in this debate. However, I think a necessarily considered view in terms of how that translates into outcomes of this bill is a different matter again.

We have learnt through this debate that the bill arises from a number of investigations carried out and recommendations made relating to how the regime of the Major Crime (Investigative Powers) Act has worked and what its successes have been, particularly around the operation of coercive questioning and other coercive powers given to Victoria Police and to those oversighting bodies that monitor these special powers. Earlier this year the special investigations monitor, Mr Jones, tabled a comprehensive report dealing with some of the recommendations he made on how to improve the system even more. Some of the successes to which this bill's predecessor, which became the Major Crime (Investigative Powers) Act 2004, have contributed are the work of the Purana task force and the work of a range of other major crime investigatory bodies that have seen some very bad people held to account for their actions, with Victoria being made a safer place.

The special investigations monitor concluded that the coercive questioning regime that we have works effectively and is contributing significantly to the objective of dealing with major crime in our community. He also raised a number of provisions or amendments that he believes would make what is fundamentally a good model — a model that stacks up well against others in Australia and internationally — work even more effectively.

We have heard a number of members adequately address some of those matters. I might just very briefly deal with some of the whistlestop aspects of them. For instance, as we heard the member for Bass indicate, these amendments to the Major Crime (Investigative Powers) Act 2004 deal with how organised paedophilia rings, which are not necessarily motivated by what motivates other major or organised crime groups — profit, gain, power or influence — can be brought under the umbrella of major crime. The bill inserts a further plank in the definition of organised crime which will make sure that serious and organised crime involving the abhorrent aspects of abuse of children and paedophilia networks are brought within the powers of the principal act. That can only be a good thing. One would sadly assume, from the reports that both Victoria Police and the special investigations monitor have brought to the house, that there are such organised rings out there that need to be brought within the power of the act.

As we also know, the bill establishes in the same area procedures for courts to sensitively and at times confidentially deal with the use of coercive powers in such a way as to protect both police operations and police information. These are highly sensitive types of information sought and obtained using existing coercive powers orders. These powers are set out within the Police Integrity Act 2008 for the determination of the objections by protected persons. That is how they deal with that through the director of the Office of Police Integrity.

This bill continues on and does not in any way seek to take away the standing of third parties summoned before such special hearings of the Supreme Court but seeks to make sure that those persons' rights and liberties insofar as they may be affected by coercive powers are dealt with fairly and on balance. However, if a person seeks to make an application under this provision of the amendments to the Major Crime (Investigative Powers) Act 2004, there will be clear legislative procedures within which the court can determine matters by way of a confidential affidavit in a closed court or in a hearing from which one or more of the parties is absent so as to ensure the protection of both parties and the information sources that police or others might well be relying on.

The court will also have the power to appoint special counsel to represent the interests of such parties or the interests of absent parties. In this regard a series of further recommendations has been made by the special investigations monitor in relation to how confidentiality notices that arise from the earlier pieces of legislation that form the backdrop to this legislation are dealt with. The major crime act that this bill seeks to further refine in many ways empowers the chief examiner, who oversees and protects the rights and obligations of the special investigations monitor, concerning how the special powers used are dealt with in court. This legislation deals with criminal and other matters that come before the courts in a way that continues the protection of these powers in an appropriate manner that ensures that the major crime aspects of the way Victoria Police deals — —

Business interrupted pursuant to standing orders.

The ACTING SPEAKER (Ms Beattie) — Order! The time set down for the consideration of items on the government business program has arrived, and I am required to put the appropriate questions.

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

SHERIFF BILL

Second reading

Debate resumed from 3 December; motion of Mr HULLS (Attorney-General).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

CRIMINAL PROCEDURE BILL

Statement of compatibility

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

I make this statement of compatibility with respect to the Criminal Procedure Bill 2008 (the bill) in accordance with section 28 of the Charter of Human Rights and Responsibilities (the charter).

In my opinion, the bill 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 purpose of the bill is to overhaul existing criminal procedure laws — including summary proceedings, committals, pretrial matters, trials and appeals — to ensure that criminal procedure is modern, accessible, coherent and easy to follow.

The bill clarifies Victoria's criminal procedure laws by rewriting current statutory provisions in a clear and concise manner and by consolidating and rationalising the criminal procedure laws from various acts and regulations into one piece of legislation. The order of the provisions follows, as closely as possible, the order of criminal proceedings. The bill also abolishes a number of outdated and redundant provisions. The bill is designed to maintain and further enhance an environment in which criminal justice is administered fairly and efficiently.

The bill makes a number of policy changes to Victoria's criminal procedure legislation. The key policy changes relevant to this statement are referred to where necessary.

The bill is not a code. It is designed to operate in tandem with good practices and processes that have been developed by our courts over more than 100 years, and with other central pieces of relevant legislation, such as the Evidence Act 2008.

Human rights issues

The charter includes a number of rights which are directly relevant to criminal procedure. Those rights were not created by the charter afresh. They reflect and reinforce rights in the criminal process that have been developed by the courts and Parliament over a long period of time and have shaped the Victorian system of criminal procedure. These familiar and longstanding rights include, for example, the right to a fair hearing and the right to have convictions and sentences reviewed by a higher court. This bill does not seek to alter the fundamental shape of Victoria's criminal justice system, nor the procedural rights which underpin it.

The bill also does not operate in a vacuum, but in a system where judicial officers exercise discretions and make orders in accordance with long-developed principles of fairness and natural justice, and where the accused's rights are often protected by the active participation of defence practitioners. It also operates symbiotically with common-law powers and processes. All of these contributors need to be considered when analysing this bill from a charter perspective.

At one level, every clause in this bill can be said to have charter implications because each is a small part of a complex process ultimately designed to provide a fair hearing of criminal allegations to those accused of crimes, to victims of alleged crimes and to the community.

This statement does not include analysis of every clause in the bill, but instead identifies and reviews those clauses, groups of clauses and processes that genuinely raise substantive charter issues. As will be obvious, many of these issues involve balancing legitimate competing interests, including different rights in the charter.

That is not to say that existing procedures have been accepted uncritically as being charter compatible. The development of this bill has required every process, whether re-enacted or created, to be analysed for compatibility with human rights and, throughout this statement, I will identify areas where changes have been made in order to improve compatibility.

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

The principal rights under the charter relevant to the bill are:

section 24: fair hearing; and
section 25: rights in criminal proceedings.

Additional relevant rights are:

section 8: recognition and equality before the law;
section 12: freedom of movement;
section 13: privacy and reputation;
section 15: freedom of expression;
section 17: protection of families and children;
section 20: property rights;
section 21: right to liberty and security of person;
section 23: children in the criminal process;
section 26: right not to be tried or punished more than once; and
section 27: retrospective criminal laws.

For each right, clauses and processes in the bill that will have an impact on that right are identified and analysed to determine whether they limit or restrict the right and, if so, whether they are compatible with the right. Where a clause or process involves considering more than one right I have made that clear.

Section 8: recognition and equality before the law

Section 8(3) of the charter provides that '[e]very person is equal before the law and is entitled to the equal protection of the law without discrimination …'. 'Discrimination' refers to different treatment based on one or more of the attributes set out in section 6 of the Equal Opportunity Act 1995 (EOA), which include age, impairment and physical features. A number of the bill's provisions raise the right to recognition and equality before the law as, on their face, they provide for differential treatment between persons or groups of persons based on the EOA attributes of age and impairment.

Human rights law recognises that formal equality can lead to unequal outcomes and that to achieve substantive equality, differences in treatment may be necessary.

The bill provides special rules for the giving of evidence and the cross-examination of complainants in committal proceedings for sexual offences if the complainant is a child or cognitively impaired. Clause 123 provides that a child or cognitively impaired complainant cannot be cross-examined at a committal hearing. The bill also provides for shorter time limits for holding committal hearings and filing indictments (clauses 99 and 163) and there are time limits for holding trials in relation to sexual offences generally which will also include such complainants (clause 212).

On their face, these provisions discriminate in that they give protections to complainants who are children or who are cognitively impaired which are not given to complainants who do not have those attributes.

Consideration of reasonable limitations — section 7(2)

However, the above limits on the right to equal protection of the law are clearly reasonable and justifiable in a free and democratic society for the purposes of s 7(2) of the charter having regard to the following factors:

(a) the nature of the right being limited

Freedom from discrimination and the right of all people to be treated equally by the law regardless of age, impairment or physical features.

(b) the importance of the purpose of the limitation

It is important that all relevant evidence is available to the court. Special protections are necessary to ensure that children and other vulnerable witnesses are able to give evidence in a way that is appropriate to their particular disadvantage and minimises trauma and delay. Criminal proceedings relating to a charge for a sexual offence can be particularly traumatic. Clauses 8(4), 17, 23, 24(3) recognise the importance of providing special protections to children and other vulnerable persons.

(c) the nature and extent of the limitation

The limitations are relatively minor in that they provide extra protections for a vulnerable category of witness, rather than removing protections for others.

(d) the relationship between the limitation and its purpose

The limitations are rationally and proportionately connected to the purpose of protecting and assisting witnesses of reduced capacity to ensure that relevant evidence is available to the court.

(e) any less restrictive means reasonably available to achieve the purpose

There are no less restrictive means of achieving this purpose. The provisions incorporate appropriate safeguards to ensure that the limitations are no more restrictive than necessary.

(f) other relevant factors

These limitations are also relevant to rights that the accused enjoys including the right to examine witnesses in section 25(1)(g) and the right to adequate time and facilities to prepare a defence in section 25(1). As I discuss later in relation to those specific rights, I consider that they are sufficiently protected in the bill because the prohibition on cross-examination only applies at committal (not at, before or during trial) and because the court has a discretion to extend the time limits for trial to ensure that an accused has adequate time and facilities to prepare (clause 247).

(g) conclusion

The extent of the limitation is proportionate to the desirability of protecting vulnerable witnesses and ensuring that relevant evidence is available in criminal proceedings while still maintaining the right to a fair hearing for the accused.

Section 12: freedom of movement
Section 21: right to liberty and security of person

I have chosen to deal with these rights together as they raise issues which substantially overlap. Provisions that compel the accused to attend court to answer to a charge or a witness to give evidence in criminal proceedings raise both of these charter rights.

The right to freedom of movement in section 12 of the charter is a basic human right. The right is not dependent upon any particular purpose or reason for wanting to move or stay in a particular place and encompasses a right not to be forced to move to, or from, a particular location. It includes freedom from physical barriers and procedural impediments such as prior notification or authorisation. However, it is also a right limited by necessity in many common situations.

Section 21 articulates a range of rights most of which relate to the rights of persons detained or arrested. The bill is not relevant to most of these rights which are addressed through other legislation and processes, most notably the Bail Act 1977 and the Crimes Act 1958. However, section 21(3) affirms the important right not to be deprived of liberty except on grounds, and in accordance with procedures, established by law. In the context of the bill, the right not to be deprived of liberty raises similar issues to the freedom of movement protections in section 12. The difference between the rights is that section 21(3) allows for the deprivation of liberty in accordance with procedures established by law, whereas limits on freedom of movement must be justifiable limitations under section 7(2).

Different considerations apply to provisions which impact on those accused of criminal offences and those who become involved in the criminal justice system in other ways, primarily as witnesses.

The accused

An accused person's loss of liberty is primarily determined under the Bail Act 1977 rather than under this bill. However, the bill includes provisions which, both in conjunction with the Bail Act 1977 and independently of it, can deprive an accused of liberty and impact on their freedom of movement.

Some clauses in the bill facilitate decisions being made under the Bail Act 1977 pending, or during the course of, proceedings (e.g. clauses 265, 310, 323, 359 and 362). Any resulting loss of liberty requires an independent assessment to be made under the Bail Act 1977.

The bill also contains provisions that require an accused to attend at court, regardless of whether the accused is on bail. The bill clarifies existing law as to when an accused is required to attend court. The word 'attend' is used when an accused must be physically present, whereas 'appear' is used when a person is entitled to send a representative (clause 3). The bill strikes a careful balance to ensure that interference with freedom of movement is limited unless genuinely necessary. It provides general rules for each type of proceeding (summary, committal, trial and appeal) and broad powers to require or excuse either attendance or appearance (clauses 329 and 330).

The starting point in summary proceedings is that an accused can appear and need not attend (clause 329). This is subject to the general power to excuse and a specific requirement that the accused attend at a contest mention (clause 55(4)). Contest mentions are an important case management event and are best progressed with an accused being physically present at court.

For committal and trial proceedings, an accused is required to attend all hearings (clauses 100(2) and 246). This reflects the more serious nature of the charges, but is still subject to a general power to excuse. In appeals, the general requirement to appear applies, subject to the general power to excuse.

A number of clauses give the court power to issue a warrant to arrest an accused (clauses 81, 80, 87, 268(2) and 330(4)). Each of the warrant powers is discretionary and circumscribed and exists for a good reason, including:

> a proved failure of the accused to attend when required (e.g. clause 330(4));
>
> to ensure that an accused is aware of the charges that he or she faces (e.g. clause 80(1)(b)); and
>
> to secure the accused's presence when the case cannot be progressed in their absence (e.g. clause 87(3)).

The above clauses do not limit the right to liberty as the interference in each case will be on grounds and in accordance with procedures established by law. They do prima facie restrict freedom of movement but reflect a careful balancing of the rights and interests of the accused, witnesses, victims and the community and are justifiable limitations on the right on the basis of the analysis below.

Witnesses and other persons

Several clauses impact on the right of persons involved in, or who wish to attend, criminal proceedings to move to and from or stay at the location of the proceedings. Clauses 11 and 169, for example provide for the place of hearing and clauses 31 and 192 provide for the change of venue. The bill also provides for the exclusion of the public to maintain the privacy of certain information, for example, the complainant's evidence during committal proceedings in a sexual offence case (clause 133(3)).

Witnesses may also be compelled to attend for the purpose of being examined or giving evidence in proceedings under clauses 104, 129, 150, 151, 198, 318 and 336. Clause 134 provides for the issue of a summons or a warrant to arrest for a witness to give evidence at a committal hearing. The Court of Appeal's general power to issue any warrant necessary for enforcing the orders of the court under clause 324 also applies to witnesses. Although these clauses restrict the right to freedom of movement, they are reasonable limits necessary to facilitate criminal proceedings on the basis of the analysis below.

Consideration of reasonable limitations — section 7(2)

The above limits on the right to freedom of movement (both for an accused and for witnesses) are 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 move freely within Victoria encompasses a right not to be forced to move to, or from, a particular location and includes freedom from physical barriers and procedural impediments.

(b) the importance of the purpose of the limitation

The limitations are important because they enable the court to secure the presence of accused persons and witnesses who may have relevant evidence and/or information in relation to criminal offences. The ability to secure the presence of the accused and relevant witnesses is essential to the effective administration of the criminal justice system and the right to a fair hearing, which is a key charter right.

(c) the nature and extent of the limitation

The bill limits freedom of movement to the extent that: persons may be compelled to be physically present at court or another location for a limited time to be tried for a criminal offence or to give evidence; an accused may be detained or

imprisoned pending proceedings; and persons may be excluded from the court when a complainant in committal proceedings for a sexual offence gives evidence.

(d) the relationship between the limitation and its purpose

The limitations are rationally and proportionately connected to the purpose of ensuring the effective administration of the justice system and the right to a fair hearing.

(e) any less restrictive means reasonably available to achieve the purpose

There are no less restrictive means of achieving this purpose.

(f) other relevant factors

The court's powers to issue warrants or take other steps to require attendance are discretionary. Importantly, the court does not issue a warrant to arrest in the first instance, rather, less restrictive measures are utilised unless a warrant to arrest is necessary to secure the person's presence at court. There are also relevant court practices that ameliorate any interference with freedom of movement, for example, the practice of allowing witnesses to leave the court temporarily if their evidence is not required immediately, and to release witnesses once they have given evidence.

(g) conclusion

These are reasonable limitations of the right to freedom of movement as the justice system would not be able to function if the court did not have the power to compel persons to attend and, where necessary, to be brought before the court to be tried or, in the case of witnesses, to give evidence.

Section 13: privacy and reputation

Section 13 requires that a public authority must not unlawfully or arbitrarily interfere with a person's privacy, family, home or correspondence. 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 limit the right if the interference is neither arbitrary nor unlawful. Arbitrariness will not arise if the restrictions on privacy accord with the objectives of the charter and are reasonable given the circumstances. An interference will not be unlawful if the law, which authorises the interference, is precise, circumscribed and determined on a case-by-case basis.

Disclosure of private information by witnesses in court is an inevitable part of the criminal process. The privacy of witnesses is balanced against the need to obtain relevant evidence and the public interest in court processes being open to the public and able to be reported upon (which is an important component of freedom of expression protected in section 15 of the charter). However, the bill recognises that certain types of information should be kept private and provides for the court to be closed to the public in committal hearings for sexual offences (clause 133(3)).

This protection of privacy rights is not a consequential breach of freedom of expression. Section 15(3) authorises limitations on freedom of expression which are necessary to respect the rights and reputations of other persons. Section 24(2) (including the right to a public hearing) also confirms that laws which exclude people (including media organisations) from hearings are not a breach of the right to a public hearing. A more general power to close courts to the public is given to judges in other legislation (section 18 of the Supreme Court Act 1986, section 80 of the County Court Act 1958 and section 126 of the Magistrates' Court Act 1989).

The following specific provisions of the bill engage the right to privacy under section 13(a) of the charter because they provide for the disclosure of personal information of witnesses by the prosecution to the defence. However, as discussed below, the bill introduces new procedures that enhance the privacy rights of witnesses.

Disclosure of witness details

Clauses 48, 114 and 186 allow the prosecution to delete personal contact details of witnesses. Each creates an identical regime in summary, committal and trial proceedings. The court may require disclosure of those personal details. The current equivalent provisions (clause 8, schedule 5, Magistrates' Court Act 1989) do not include any reference to privacy interests when the court decides whether to require disclosure. The bill remedies this and privacy is now a mandatory consideration in relation to the disclosure of personal witness details both by the informant and the court.

Clauses 43, 119 and 187 provide mechanisms for the defence to request and the prosecution to provide details of previous convictions of witnesses. Such convictions may well be relevant to the credibility of a witness and therefore important to an accused's defence. The bill ensures that details must only be disclosed if the prior conviction is relevant and the court has the power to make orders about disclosure of convictions in individual cases.

More generally, clauses 45 and 122 permit the prosecution to refuse disclosure of any information to the accused where it would, or is likely to, identify a confidential source of information, or endanger the lives or physical safety of witnesses or persons involved in law enforcement.

These clauses engage but do not limit witnesses' privacy rights. The interference is not unlawful as it is provided for in law, will occur in circumscribed and precise circumstances, subject to the court's discretion or oversight.

Section 15: freedom of expression

Section 15(2) of the charter provides that every person has the right to freedom of expression which includes the right to seek, receive and impart information and ideas orally, in writing, in print et cetera. The right encompasses a freedom not to express. Section 15(3) qualifies this right. It provides that the right may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons or for the protection of national security, public order, public health or public morality.

'Public order' is the sum of rules that ensure the peaceful and effective functioning of society. Effective criminal procedure laws are necessary to ensure the proper administration of justice, to protect the parties to proceedings and to ensure that they have a reasonable opportunity to present their case to the court. This is a key element of public order.

The purpose of the bill is to regulate the initiation and conduct of criminal proceedings, which inevitably requires interference with the format, time, place and manner of expression of persons involved in the process. Laws regarding

the commencement and notification of proceedings; the form, content, filing and serving of documents; pretrial disclosure; and the conduct and determination of hearings and appeals are necessary for the operation of criminal proceedings and for the protection of other human rights.

Many clauses require the prior approval of the court (by leave, review or notice) before expression. For example, notice is required prior to the presentation of expert or alibi evidence (clauses 50, 51, 189 and 190) and to address the court or call evidence not previously disclosed (clauses 65, 73, 233 and 236).

Some clauses compel persons to express information for evidential purposes, for example, clauses which provide for the issue of subpoenas and witness summonses (clause 336); disclosure (clauses 35–51, 107–117, 185–190, 317 and 318); and for the compulsory examination of witnesses (clauses 104–106, 152 and 198). Other clauses in the bill compel expression for procedural purposes such as: to notify an accused of the commencement of proceedings (clause 13); to inform the juries commissioner as to the need for a jury (clause 248); to inform the court of counsel's intention to appear for an accused (clause 249); and to prove service (clause 347).

These clauses are plainly necessary for the proper administration of the criminal justice system — a key element of public order — hence, are lawful restrictions under section 15(3).

When the Criminal Procedure Legislation Amendment Bill 2007 was before Parliament, the Scrutiny of Acts and Regulations Committee raised the issue of whether not asking an accused if they wish to reserve their plea in a committal proceeding engages the freedom of expression. The committee noted that freedom of expression includes the freedom not to speak and that removal of the ability to reserve a plea may limit that right by requiring speech in the form of a plea of guilty or not guilty.

The bill raises the same issues in that it requires the court to ask the accused whether the accused wishes to plead guilty or not guilty at the end of a committal proceeding (clause 144). In my opinion, the process does not engage freedom of expression rights. Previously, a magistrate asked an accused whether they wished to plead guilty, not guilty, or reserve their plea. Now, the magistrate does not indicate that the accused may reserve their plea but continues to ask whether the accused pleads guilty or not guilty to the charge.

In response to the question from the magistrate, an accused may choose to answer or not answer. There is no mechanism to compel an answer. A non-answer will be treated as a plea of not guilty. Accordingly, to the extent that it can be said that the charter right to freedom of expression is engaged by this process, it is not limited.

Section 20: property rights

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law.

Deprivation of property will be 'in accordance with law' where it occurs under powers conferred by legislation pursuant to a law, which is formulated precisely and not arbitrarily, or under a power to be exercised by a court on a discretionary basis with associated procedural protections.

Clause 336 allows a party to apply for a summons or subpoena. By this method, a person can be compelled to come before a court and produce items of property. However, the courts have developed protections which allow a person to object to providing any item and ensure that the person is not deprived permanently of an item under this process, but only for the time that the property is needed in the criminal proceeding. A similar power is given to the Court of Appeal under clause 317 for limited purposes and only where 'it is in the interests of justice'. These restrictions are prescribed by law, are not arbitrary and incorporate procedural protections. They therefore do not limit section 20.

There are also a number of clauses that promote this right by ensuring that property taken from a person is both protected (clause 312 which protects property from being destroyed during an appeal period) and available to be returned (clauses 34 and 157 which enable the return of seized property on request).

Section 24: fair hearing

Section 24 of the charter guarantees the right to a fair and public hearing. As I noted at the beginning of this statement, almost every provision of the bill engages the right at some level. For the reasons earlier discussed, I have focused on those clauses and processes in the bill which genuinely raise substantive charter issues.

What amounts to a 'fair hearing' takes account of all relevant interests including those of the accused, the victim, witnesses and society. For example, it may be in the interests of an accused to know the addresses, telephone numbers and particulars of previous convictions of witnesses. However, clauses 48 and 114, (which allow such information to be withheld from the accused for privacy and safety reasons) do not breach the right to a fair hearing because they reflect an overall balance of competing interests.

Section 25 of the charter sets out specific minimum rights in criminal proceedings and gives much of the content to the section 24 right to a fair hearing. Most 'fair hearing' issues fit within a specific right in section 25 and I have chosen to analyse them in that way in this statement, while bearing in mind the overall right to a fair hearing. However, observance of the requirements of section 25 may not always be sufficient to ensure the fairness of a hearing under section 24. There are two issues which I have chosen to analyse as 'fair hearing' issues on that basis.

Defence disclosure

A number of clauses require the defence to give information to the court or the prosecution before a summary hearing, committal hearing or trial. These requirements already exist (in the Magistrates' Court Act 1989 and the Crimes (Criminal Trials) Act 1999) and the bill does not create any significant new obligations or powers. However, provisions which require the accused to give information before hearing need to be considered to ensure that they are not incompatible with either the right against self-incrimination or the right to be presumed innocent.

The defence disclosure provisions fall into two categories. First, provisions requiring an accused to give the prosecution notice of evidence to be called at trial (alibi evidence in clauses 51 and 190, and expert evidence in clauses 50 and 189). Secondly, provisions which require or request the

accused to give information to the court for case management purposes (clauses 55, 183 and 200).

I do not consider that any of these provisions limit the right against self-incrimination because they do not require an accused person to give evidence or to confess guilt. Similarly, these provisions do not limit the right to be presumed innocent because they do not involve any reversal of the ordinary burden of proof on the prosecution.

Having concluded that these specific rights are not limited, I have considered whether defence disclosure provisions might limit the more general right to a fair hearing under section 24. I am aware that in *Hamilton v. Oades* (1989) 166 CLR 486 at 499, the High Court indicated that at common law the right to a fair trial does not encompass a right not to disclose one's defence. I have nonetheless chosen to analyse them against the more general right to a fair hearing. That is because it is at least arguable that some forms of compulsory defence disclosure could breach the right to a fair hearing under commonly accepted due process principles, informed by the charter rights discussed above. However, for the reasons that follow, I have concluded that the defence disclosure requirements in the bill do not limit the right to a fair hearing.

In summary proceedings clauses 50 and 51 require the accused to give notice of evidence of alibi and expert evidence seven days before a contest mention hearing or summary hearing. At trial the same notice has to be given 14 days before trial.

The reasons for notice are both principled and practical. As a matter of principle, a central goal of the criminal process is truth finding and to allow expert or alibi evidence to be given without a reasonable opportunity for the prosecution to test it could well defeat that goal. From a practical perspective, if such evidence is called without notice, the prosecution would usually be granted an adjournment to properly investigate and respond to such issues, resulting in wasted court resources.

Clauses 55 (for summary proceedings), 125 (for committal proceedings) and 179 (for trials) give the court the power to hold hearings for case management purposes. Such case management is critical to ensuring that court resources are efficiently used and directed at issues that are genuinely in dispute. In order for those hearings to be effective, the bill gives the court the power to request (but not require) information about, for example, the evidence that the accused intends to call, the issues in dispute and special requirements for witnesses. These powers are carefully structured not to interfere with the right to a fair hearing and to strike an appropriate balance.

Clauses 182 and 183 (re-enacting sections 6 and 7 of the Crimes (Criminal Trials) Act 1999) create an information sharing regime for cases going to trial. The prosecution must file and serve a prosecution opening outlining the case against the accused, including the 'acts, facts, matters and circumstances' relied on. The accused must then respond by identifying which of those 'acts, facts, matters and circumstances' the defence takes issue with.

This regime is important in narrowing the issues at trial to make sure that valuable court and jury resources are carefully used. However, clause 183 does not abrogate the common-law right to put the prosecution to proof on each element of the offence.

Power to order legal representation

Clause 197 raises a number of charter rights and represents a balancing between rights, which, in my opinion, has the ultimate effect of enhancing fair hearing rights.

Clause 197 re-enacts section 360A of the Crimes Act 1958. It prevents the court from staying or adjourning a trial because an accused has been refused legal assistance. It was enacted to deal with problems highlighted in the High Court's decision in *R v. Dietrich* (1992) 177 CLR 292, in which it was held that if the trial judge forms the view that a fair trial is unlikely because of the accused's inability to obtain legal representation, a stay of proceedings may be ordered. This can create a stalemate if legal aid is refused in a case where the court considers that legal assistance is necessary to ensure a fair trial. Clause 197 creates a circuit breaker for this problem by empowering the court to order Victoria Legal Aid to provide legal assistance to an accused.

Before making such an order, the court must be satisfied that the accused cannot afford the full cost of private legal representation. It would be inappropriate for the prosecution to be actively involved in such determinations and, as a result, the bill requires the defence to satisfy the court of the accused's inability to afford representation. This onus on the accused does not breach the right to be presumed innocent as it does not relate to an element of an offence.

Clause 197 ensures that charges are resolved by a jury rather than being stayed due to lack of representation. It does so by empowering a court to order legal assistance which in turn enhances access to legal representation. That strikes the correct balance and does not limit the right to a fair hearing. In order to ensure that it is not taken as a provision overriding the charter, the charter is expressly excluded from the phrase 'despite any rule of law to the contrary'.

Section 25: rights in criminal proceedings

Section 25 sets out detailed procedural rights in criminal proceedings and I will address each substantive right in the context of the bill. Some of these are informational rights that require active steps to ensure compliance. I have identified where the bill takes such active steps.

(1) A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Section 25(1) protects the presumption of innocence, a well-recognised civil and political right and a fundamental principle of the common law. It provides that a person charged with a criminal offence is entitled to be presumed innocent until proven guilty of committing the offence charged.

The presumption of innocence places the burden of proof on the prosecution to prove the guilt of the accused beyond reasonable doubt. This usually means the prosecution must prove both the physical and the fault elements of an offence and disprove any exceptions or defences raised by the accused. Reverse onus provisions, or laws that shift the burden of proof to the accused or apply a presumption of law or fact against an accused, may breach the right. The bill contains no such provisions.

However, clause 72 (re-enacting section 130 of the Magistrates' Court Act 1989) places an evidential onus on an

accused in summary proceedings. An accused who wishes to rely on an exception, exemption, proviso, excuse or qualification in relation to an offence heard summarily, must point to or present evidence that suggests a reasonable possibility of facts that, if they existed, would establish it. Once this happens, the prosecution bears the legal burden of disproving the issue beyond reasonable doubt. Clause 72 applies to both summary offences and indictable offences triable summarily. However, in relation to indictable offences, an accused has the right to trial by jury, which will avoid the application of clause 72.

There are competing views internationally as to whether the imposition of an evidential onus amounts to a limit on the presumption of innocence. The Supreme Court of Canada has taken the approach that an evidential onus to raise a defence does not limit the presumption of innocence because it does not require the accused to prove anything and does not reduce the standard of proof on the prosecution. Similarly, the Court of Final Appeal in Hong Kong has generally regarded an evidential burden as consistent with the presumption. In the United Kingdom, it has been held that an evidential onus can, depending on the circumstances, amount to a limit.

I consider that an evidential burden will not ordinarily give rise to a limit upon the right to be presumed innocent. An evidential burden can be an entirely appropriate way of ensuring that a criminal hearing only deals with issues that are genuinely open on the evidence available. In relation to clause 72 specifically, I note that it does not require an accused to give or call evidence but merely to point to evidence available to the court (whether it forms part of the prosecution or defence case). It also only applies to an exception, exemption, proviso, excuse or qualification, therefore focusing on true defences rather than core elements of an offence, which remain the sole responsibility of the prosecution to prove.

On that basis, if an evidential onus is capable of limiting the presumption of innocence, I am satisfied that clause 72 does not do so.

(2) A person charged with a criminal offence is entitled without discrimination to the following minimum guarantees —

(a) to be informed promptly and in detail of the nature of the charge in a language or, if necessary, a type of communication that he or she speaks or understands.

Under section 25(2)(a) of the charter, a person charged with an offence is entitled to be informed of the nature and cause of the charge in detail and promptly. The purpose of the section is to ensure that the accused is told, in a timely manner, what he or she is charged with and why. This enables the accused to make decisions regarding how to plead, whether to engage a lawyer, to make family and financial arrangements and so on.

The bill ensures that at key points in a criminal proceeding there is an express obligation on the prosecution and the court to provide the details of charges and allegations. Beyond that, the bill also provides for a disclosure regime in contested cases. I have considered the more extensive disclosure regime below in relation to the right to adequate time and facilities, although it is relevant to this right as well.

In relation to an initial charge in the Magistrates Court (and the allegations underlying the charge), clauses 6(3), 13–17, 21, 24 and 32 provide for appropriate levels of information to be given. In relation to indictments for trial, clauses 159(3) and 171 are relevant. The minimum requirements for the detail that must be included in a charge are in schedule 1.

The service provisions in the bill are also designed to ensure that an accused actually receives notice of charges and allegations (clauses 338, 339, 342–347). Underlying those core provisions are well-developed common-law powers to ensure that adequate particulars of charges are given, and a general power to adjourn proceedings (clause 331) which can be used to remedy any lack of information. The bill also creates a new preliminary brief process in summary proceedings, which requires the prosecution to provide a sworn statement of the allegations early in certain summary cases (clauses 35–38).

The bill also includes an absolute requirement in all proceedings where imprisonment is available, for an interpreter if an accused does not have sufficient understanding of the English language to understand the proceedings (clause 335).

There are a number of clauses in the bill that confirm and regulate the power of a court in indictable proceedings (clause 239) and on appeal (clause 277) to convict an accused of an offence other than the offence charged if it is an alternative or lesser included offence. In summary proceedings, this power only extends to an attempt to commit the offence (clause 76).

These provisions raise the accused's right to be informed of the charge in that an accused is at risk of conviction of an offence which is not contained in a charge sheet or indictment. However, the power to convict of alternative offences is a longstanding and important part of the criminal justice system and the courts have always been vigilant to ensure that proper safeguards are in place to protect the interests of the accused. Those common-law safeguards continue to operate and are supplemented by the statutory powers in the bill. The most important safeguard is that an offence must be a true alternative to the offence charged; all of the elements of the alternative offence must also be elements of the charged offence (see e.g. clause 277 which sets out this requirement explicitly). At trial, the court has an express power to prevent a jury from considering an alternative offence if the court considers that the interests of justice require it.

A power to convict for alternative offences is important to the efficient running of the criminal justice system. If it did not exist then, where an alternative offence is clearly appropriate, a charge would need to be relaid and the criminal process started afresh. Alternative offences can also assist an accused, particularly in a jury trial, by allowing for the possibility that a less serious charge will be accepted as appropriate.

Consideration of reasonable limitations — section 7(2)

These provisions raise and, on the face of it, limit an accused's section 25(2)(a) right to be properly informed promptly and in detail of the nature of the charge. However, in my opinion, they represent a justifiable and reasonable limitation in a free and democratic society for the purposes of s 7(2) of the charter having regard to the following factors:

(a) the nature of the right being limited

A person charged with a criminal offence has the right to be informed promptly and in detail of the nature and cause of the charge. The right is directed to ensuring that an accused can make informed decisions with knowledge of the charges faced.

(b) the importance of the purpose of the limitation

The power to convict an accused of a different offence to the one charged is important for the efficient and fair operation of the criminal justice system. Where an alternative offence is appropriate, it avoids a charge having to be relaid and the criminal process started afresh and can assist an accused by allowing a conviction for a less serious charge.

(c) the nature and extent of the limitation

The accused is at risk of a conviction for an offence that is not contained in a charge sheet or indictment. However, the limitation is not significant as the alternative offence must be a lesser included offence or a true alternative offence.

(d) the relationship between the limitation and its purpose

The limitation is rationally connected and proportionate to the purpose of ensuring the efficient and fair operation of the criminal justice system.

(e) any less restrictive means reasonably available to achieve the purpose

There are no less restrictive means of achieving this purpose.

(f) other relevant factors

At trial, the court has an express power to prevent a jury from considering an alternative offence if the interests of justice require it (clause 240). On appeal, the sentence imposed for the alternative offence must be no more severe than the original sentence imposed (clause 277(1)(c)).

(g) conclusion

The limitation is proportionate to the desirability of ensuring the smooth and efficient administration of justice and fairness to the accused.

(b) to have adequate time and facilities to prepare his or her defence and to communicate with a lawyer or adviser chosen by him or her;

The right to adequate time and facilities applies at all stages following the laying of a charge and through until final determination of a charge. The purpose of the section is to enable the accused to have his or her interests properly and adequately represented in order to make informed decisions relating to the preparation of his or her defence.

The principal ways in which the bill impacts on this right are in relation to time limits and disclosure. The bill does not raise any issues specifically relating to the right to communicate with a lawyer or legal adviser, other than in relation to the reduction of limitation periods in the Children's Court where such communication is expressly facilitated (clause 376).

Time limits within which, for example, a trial must be held, can, for obvious reasons, impact on the right to adequate time to prepare. What will be adequate will depend on the circumstances of each case and will vary depending on the stage of the proceedings, the complexity of the case and the accused's access to evidence, his or her lawyer and the time limits prescribed by law.

The bill provides time limits at each stage of the proceeding — from the filing of a charge sheet (clause 7), certain indictments (clause 163 sexual offences), and notice of appeal (clause 255); to the time for a filing hearing (clause 99), committal mention hearing (clause 126), determining certain committal proceedings (clause 99); and for commencing trials (clauses 211 and 212). However, the court retains broad discretions to extend or abridge time limits if the interests of justice require it both by way of a court's inherent power to manage its own proceedings and specifically in the bill (clauses 19, 247 and 313).

Proper disclosure of the prosecution case is important to ensure a fair hearing generally. The bill introduces better and more consistent prosecution disclosure in summary (clauses 35–49), committal (clauses 107–117) and trial proceedings (clauses 185–188). The disclosure provisions are based on three basic principles: that disclosure should be full (comprising all material genuinely relevant to the charges including potentially exculpatory material); timely (to allow the accused to properly prepare); and ongoing (until and during hearing or trial). The bill also ensures that courts have explicit powers to make rulings on disputes about disclosure. The bill now includes explicit statements that disclosure is a continuing obligation. It also now provides an express disclosure obligation in trials.

The bill protects justified restrictions on the accused's access to information in certain circumstances. For instance, clause 48 allows the prosecution to refuse disclosure of information where to do so unreasonably encroaches on the right to privacy of a witness or may jeopardise law enforcement or the safety of relevant others including their family members and clause 363 saves any existing legal justifications for refusing to disclose. All decisions by the prosecution to refuse disclosure are reviewable in court (clauses 46, 125(1)(e) and 181(2)(i)).

This refined approach makes disclosure obligations, rights and remedies clearer and more accessible and as a result promotes the right to adequate time and facilities.

(c) to be tried without unreasonable delay;

The right to be tried without unreasonable delay protected by section 25(2)(c) of the charter reflects the common-law principle that justice delayed is justice denied. The section is intended to protect the right of the accused to examine evidence led against them while the evidence can still be tested and reflects the public interest in having criminal offences heard and determined expeditiously. The bill does not contain any clauses that limit an accused's right to be tried without unreasonable delay. Indeed, the time limits in the bill (discussed in the preceding section of this statement) are aimed at reducing delay and promoting the timely resolution of prosecutions.

In addition, clauses 211 and 212 introduce time limits where the Court of Appeal orders a new trial. A new trial must be commenced within six months of the date of the order and

new trials in relation to sexual offences must be commenced within three months, unless those periods are extended by the court.

Other initiatives in the bill are also designed to help to reduce delay. These include the new notice to appear process in summary proceedings (clauses 21–26) and the introduction of interlocutory appeals (clauses 295–301) which will help in avoiding unnecessary retrials, which cause significant delay. The bill also promotes and encourages the early resolution of issues before trial through clearer pretrial processes and powers (clauses 179–206).

> *(d) to be tried in person, and to defend himself or herself personally or through legal assistance chosen by him or her or, if eligible, through legal aid provided by Victoria Legal Aid under the Legal Aid Act 1978; and*

The charter protects the right of an accused to be tried and to defend himself or herself in person or through legal assistance.

Several clauses in the bill raise and promote the right of an accused to defend himself or herself through legal assistance. For example, clause 33 requires the court to grant an adjournment to allow an unrepresented accused facing a custodial sentence to seek legal advice. As discussed earlier, clause 197 permits the court to order Victoria Legal Aid to provide legal representation for the accused and to adjourn the proceedings until representation is provided, if a fair hearing cannot otherwise be had.

The bill also contains clauses designed to assist an unrepresented accused. In particular, clauses 68 and 228 require the court to inform an unrepresented accused about their options to answer the charge, including remaining silent or giving or calling evidence.

Section 25(2)(d) also entitles an accused to be tried in person. Several clauses in the bill raise an accused's right to be tried in person as they allow summary proceedings to be determined in the accused's absence (e.g. clause 80). Such powers are needed to ensure that less serious charges can be resolved where an accused chooses not to appear, with knowledge of the consequences of not appearing. However, there are strict protections and safeguards to ensure that this step is only taken when appropriate.

Notice of the fact that the court can determine an indictable offence in a corporate accused's absence must be given with a summons (clause 15). Only purely summary offences (not indictable offences) can be determined in a (natural person) accused's absence (clauses 80 and 81). The court retains the option not to determine a charge in the accused's absence (clause 80). There are additional safeguards in the form of the right to apply (and in some cases receive) a rehearing and limitations on the court's ability to impose certain sentencing orders unless the accused is present (clauses 87 and 94).

Clauses 135 and 136 allow a court to continue with a committal hearing if the accused applies to be absent, absconds or has to be removed for disruptive behaviour. However, under clauses 137 and 138 an absent accused cannot be committed for trial. The County and Supreme courts have similar powers at common law, which are exercised rarely and carefully. The bill does not alter those powers.

Consideration of reasonable limitations — section 7(2)

These procedures raise and, on their face, limit the section 25(2)(d) right to be tried in person. However, in my opinion they are a reasonable and justifiable limitation 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

A person charged with a criminal offence has the right to be tried in person and to defend himself or herself either in person or through legal representation. This is an important right.

(b) the importance of the purpose of the limitation

The limitation is important for the efficient operation of the criminal justice system as it allows less serious charges to be resolved where an accused makes an informed choice not to appear and for committal proceedings to continue in an accused's absence. This provides certainty for the community and victims of offences.

(c) the nature and extent of the limitation

The court may hear and determine summary charges where an accused is informed of the consequences and chooses not to attend. Also, committal proceedings may continue where the accused absents himself or herself or has been removed. However, the limitation is relatively minor as it does not prevent an accused from attending, rather allows the accused to choose not to attend and only applies to purely summary (not indictable) offences and committal proceedings (where charges are not finally determined).

(d) the relationship between the limitation and its purpose

The limitation is rationally connected and proportionate to the purpose of ensuring the efficient operation of the criminal justice system.

(e) any less restrictive means reasonably available to achieve the purpose

There are no less restrictive means of achieving this purpose. The provisions incorporate appropriate safeguards to protect the interests of the accused as discussed above.

(f) other relevant factors

The court retains a discretion not to hear a charge in the accused's absence, there is an automatic rehearing right where an accused was not properly served and the court is not permitted to commit an accused for trial or to impose certain sentences in the accused's absence.

(g) conclusion

The limitation is proportionate to the desirability of ensuring the smooth and efficient administration of justice.

> *(e) to be told, if he or she does not have legal assistance, about the right, if eligible, to legal aid under the Legal Aid Act 1978; and*

A number of provisions have been added to the bill to ensure that this informational right is complied with at key points in the criminal process. Those are when a charge is filed

(clause 13), when a person is committed for trial (clauses 110(1)(a)(iv) and 144(2)) and when a direct indictment is served (clause 171(1)). In addition, the requirement applies where an unrepresented accused appears to defend themself against a charge for an offence punishable by imprisonment (clause 33).

(g) to examine, or have examined, witnesses against him or her, unless otherwise provided for by law; and

Section 25(2)(g) effectively creates a presumption of cross-examination, to ensure that the accused has an adequate opportunity to challenge and question a witness who will give or has given evidence against him or her.

The right to cross-examine prosecution witnesses is qualified by the words 'unless otherwise provided by law'. This recognises that there can be good reasons for departing from the general rule but that they must be prescribed by law and be carefully designed to ensure an appropriate balance between competing interests. The restrictions on cross-examination in the bill meet these criteria.

The restrictions on cross-examination relate primarily to committal proceedings. Committal proceedings involve a preliminary examination to assess whether the accused should be committed for trial. Importantly, charges are not finally determined in a committal proceeding.

In relation to witnesses (other than children and cognitively impaired witnesses in sexual cases), the bill provides for no cross-examination in a committal proceeding without leave. Clauses 118–120 re-enact a regime created in Courts Legislation (Jurisdiction) Act 2006. That act reformed committal proceedings so that oral evidence is not given unless it is relevant and justified having regard to the purposes of a committal proceeding (which includes ensuring a fair trial). This was part of overall change to the committals process to focus on achieving outcomes through a cooperative approach. It was aimed at reducing delays and identifying guilty pleas earlier in the process, without compromising fairness or accessibility. It does not restrict the right to cross-examine at trial.

Clause 123 completely prohibits the cross-examination of child complainants and cognitively impaired complainants in sexual offence cases. The vulnerability of such witnesses clearly justifies the absolute rule against cross-examination at committal. Such witnesses can still be cross-examined as part of the trial process through the special hearing procedures outlined in sections 41G and 41H of the Evidence Act 1958.

Clause 232 allows the trial judge to permit a witness to give evidence by audio or audiovisual recording or in any other manner. It is a discretionary and flexible case management tool to ensure that evidence is given in a way which best assists a jury. Subclause (2) ensures that if unanticipated issues arise, the judge can order the witness to attend court. This discretion already exists and will only be exercised in appropriate cases.

(h) to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses for the prosecution; and

An accused's right to obtain the attendance and examination of defence witnesses ensures that the accused and the prosecution are placed on an equal footing with regard to summonsing and examining witnesses. The bill promotes this right, providing that an accused may apply for a witness summons or a subpoena (clause 336) to compel a person to attend to give evidence or produce documents, a broad power to allow evidence to be taken before trial on the application of either party (clause 198) and a power to order that evidence be taken following committal (clauses 149–152).

Clause 104 provides for the Magistrates Court to make an order for a compulsory examination hearing in a committal proceeding if satisfied that it is in the interests of justice to do so. The application can only be made by the prosecution and I have considered its compatibility with this right.

The clause lists a number of factors that the court must consider, including whether the witness has refused to make a statement and whether the witness is or has been a suspect in relation to the matter. These factors highlight the investigative purpose of the process, which is designed to deal with witnesses who will not otherwise provide information. If, after a compulsory examination, the prosecution wishes to rely on the evidence of the witness, the accused can apply to cross-examine the witness at the committal hearing. There are also safeguards in the compulsory examination process itself so that the accused is notified of a hearing and may attend.

Although there is no precisely equivalent process for an accused, the bill provides (as noted above) processes to allow the accused to secure the attendance of witnesses at the key stages of the criminal process on the same basis as the prosecution. The ability to apply for evidence to be taken after committal is in fact only available to the accused (clauses 149–152). On an overall assessment, I do not consider that the accused is disadvantaged by comparison to the prosecution because of a lack of access to the compulsory examination process.

For these reasons, I conclude that the compulsory examination process does not limit the right to obtain the attendance and examination of witnesses under the same conditions as the prosecution. I have based that conclusion on an assessment of all of the accused's opportunities to obtain the evidence of witnesses contained in the bill.

(i) to have the free assistance of an interpreter if he or she cannot understand or speak English; and

The bill includes an absolute requirement in all proceedings where imprisonment is available for an interpreter if an accused does not have sufficient understanding of the English language to understand the proceedings (clause 335). There are no clauses that limit this right.

(k) not to be compelled to testify against himself or herself or to confess guilt.

I have already discussed the relevance of this right in the context of defence disclosure in relation to section 24 (fair hearing). There are no clauses that limit this right but there are three issues that arguably raise it, namely diversion, case conferences and sentence indications.

Clause 59 provides that the Magistrates Court may adjourn a proceeding to allow an accused to undertake a diversion program. This clause applies to less serious driving offences involving alcohol or drugs where the accused acknowledges responsibility for the offence. The requirement to

acknowledge guilt raises the right not to be compelled to confess guilt. However, clause 59(3) provides that this acknowledgement is inadmissible as evidence in a proceeding for that offence. If the accused completes the program and is discharged, subclause (4)(d) confirms that the accused cannot be charged with the offence again.

In light of these safeguards, and the benefits to the accused and the community of a successful diversion process, any limitation of the right not to be compelled to confess guilt would be justified. However, there is no compulsion to plead guilty in this process and the right is not limited as a result.

The bill provides for case conferences to be held in both summary and committal proceedings (clauses 54 and 127). However, in order to ensure that an accused is not at risk of making statements against interest, the bill provides that the content of those conferences are inadmissible in any hearing of the charge (clauses 54(7) and 127(3)). An accused is not compelled to admit guilt or testify, and the risks associated with the process are ameliorated by the evidential protections. As a result, these clauses do not limit the right in section 25(2)(k).

Clauses 60–61 and 207–209 provide for sentence indications. When the Criminal Procedure Legislation Amendment Bill 2007 (which introduced sentence indications) was before Parliament, the Scrutiny of Acts and Regulations Committee raised the issue of whether sentence indications will compel an accused to plead guilty. When considering sentence indications, the Sentencing Advisory Council considered this issue and tailored its recommendations to operate in a way that would not result in any compulsion or improper inducement. Under the bill (which follows the existing legislation), a sentencing indication may only be given where the accused has sought an indication and the accused is free to choose whether to seek an indication. The bill is consistent with the council's recommendations and I remain of the view that in this regard, the bill is compatible with the accused's right not to be compelled to plead guilty.

(4) 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.

The bill provides comprehensive appeal rights to the County Court from the Magistrates Court against conviction and sentence on a de novo basis. The superior court takes a fresh plea and rehears all of the evidence in this process. Clause 283 provides an additional avenue of appeal to the Court of Appeal for a person sentenced to a term of imprisonment on appeal in the County Court (having received a non-custodial sentence in the Magistrates Court). Finally, an accused can choose instead to appeal on a question of law to the Supreme Court from the Magistrates Court (clause 272). This right of appeal provides an avenue for the accused who wishes to have a legal error corrected rather than the case reheard. The County Court has the power to award costs where an appeal is dismissed or struck out and was brought vexatiously, frivolously or in abuse of process (clause 354). I have considered whether this may limit the right to appeal by acting as a disincentive. However, given the restriction to appeals brought vexatiously, frivolously or in abuse of process, it will not have that effect.

The bill also provides comprehensive appeal rights to the Court of Appeal from the County Court or Supreme Court against conviction and sentence. These appeals are conducted on a review basis, focusing on identifying error in the primary proceedings rather than rehearing a case afresh. Clause 3 clarifies the proceedings from which appeals can be taken to the Court of Appeal by adopting a wide and inclusive definition of 'originating court'. This will resolve possible ambiguity in the current law about the availability of appeal rights.

Section 580(2) of the Crimes Act 1958 allows the Court of Appeal to summarily dismiss an appeal against conviction. That power is obsolete and inappropriate in light of the charter and is not re-enacted in the bill.

Leave to appeal provisions

An accused requires leave to appeal to the Court of Appeal against both conviction and sentence. This raises the issue of whether a requirement for leave is compatible with the charter right to review of conviction and sentence. This is a question that needs to be considered in context and will depend on the nature of the leave process and the practices and principles developed by the Court of Appeal. I consider that the requirement to seek leave to appeal does not result in an appeals system that is incompatible with the charter. That is primarily because of the processes that the Court of Appeal has adopted in relation to leave for both conviction and sentence appeals.

For conviction appeals, applications for leave are determined on the basis of the merits of the appeal. There is ordinarily no second hearing if leave is granted. If leave is refused, that is based on a reasoned consideration of the merits. The Human Rights Committee of the United Nations has confirmed that where leave to appeal is determined in this comprehensive manner then a system requiring leave to appeal can be consistent with a right to review. I consider that is the case in Victoria.

For appeals against sentence, the requirement for leave to appeal is also compatible with the charter, but for different reasons. A single judge of appeal ordinarily hears applications for leave to appeal. However, an accused has an absolute right to have a refusal of leave by a single judge referred to the Court of Appeal itself (clause 315(2)). The Court of Appeal has also adopted a practice of full review of the merits when determining applications for leave to appeal against sentence, whether by a single judge or the Court of Appeal itself.

The bill will allow a single judge of appeal to refuse leave to appeal against sentence by an offender if there is no reasonable prospect of the sentence being reduced on appeal (clause 280). This is a sensible case management tool to avoid the time and expense of fruitless appeals. However, any refusal of leave on that basis can be referred by the appellant, as discussed above, to the Court of Appeal under clause 315(2).

Section 17: protection of families and children
Section 23: children in the criminal process
Section 25(3): rights in criminal proceedings (accused children)

Children involved in criminal proceedings are afforded special protections under the charter. To avoid repetition, these are considered together below.

Section 17(2) provides:

> Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

Section 23 provides:

> (1) An accused child who is detained or a child detained without charge must be segregated from all detained adults.
>
> (2) An accused child must be brought to trial as quickly as possible.
>
> (3) A child who has been convicted of an offence must be treated in a way that is appropriate for his or her age.

Section 25(3) provides:

> A child charged with a criminal offence has the right to a procedure that takes account of his or her age and the desirability of promoting the child's rehabilitation.

Children are entitled to special protection because of their vulnerability as minors. The charter recognises two categories of children involved in the criminal process that hold specific rights in addition to the rights which apply to all people. Those are children accused of criminal offences (sections 23 and 25(3)) and children who are witnesses (particularly complainants) in criminal proceedings (section 17(2)). Provisions that raise the rights of accused children and child witnesses are considered in turn below.

Children charged with offences

Victoria has a comprehensive regime to protect the rights of children in the criminal process and a best practice system for the punishment of young offenders, embodied in the Children, Youth and Families Act 2005 (CYFA). Criminal charges against children are primarily dealt with in the Children's Court, which uses its own modified criminal procedure rules.

The bill makes two relevant amendments to the CYFA that engage the rights under the charter discussed above, namely reducing the limitation period for summary offences and providing for joint committals.

Clause 376 inserts new Part 5.1A in the CYFA. The part shortens the time limit for filing charges for summary offences in the Children's Court from 12 to 6 months, with the power to order a six-month extension. This reduction is designed to ensure that children are dealt with as quickly as possible in order to reduce delay-related anxiety and stress. Timely resolution of charges increases the prospects of successfully intervening in offending behaviour. The clause engages and promotes the section 23 right of an accused child to be brought to trial as quickly as possible and the section 25(3) right for special procedures that take account of the child's age and the desirability of promoting the child's rehabilitation.

The court may allow a charge to be filed up to 12 months after the alleged offence if it is justified on the basis of sworn evidence. Mandatory criteria ensure that extensions of time will be granted only when appropriate. The limit can also be extended by consent which can only be given after legal advice is obtained.

Clauses 373 and 377 of the bill amend the CYFA and the Magistrates' Court Act 1989 (MCA) to allow for a joint committal proceeding where a child and an adult are charged in relation to the same offence, in certain limited circumstances. The bill inserts mirror provisions in the CYFA (section 516A) and in the MCA (section 25(3) and (4)) to allow for this procedure. A joint committal raises the accused child's right to be treated in a way that is appropriate for his or her age. Joint committals avoid duplication of proceedings, save witnesses from having to give evidence twice and help to reduce delay.

The procedure is only available where the relevant charges cannot ultimately be determined in the Children's Court, including murder, attempted murder, manslaughter, arson causing death or culpable driving causing death. The child accused must be over 15 years of age and the court must be satisfied that the charges against each accused would ordinarily be tried together in the County Court or the Supreme Court.

Both courts must agree that joint committal proceedings are appropriate in the particular case, having regard to the age and ability of the child, the effect on victims and the estimated duration of the proceedings. There may be other important matters to consider, for example, the availability of appropriate remand facilities for children in the Magistrates Court and the bill includes a broad discretion to have regard to any other relevant matter. Finally, at the committal hearing the provisions of the CYFA apply, as far as practicable, to the child accused.

These safeguards will ensure that joint committals will only be ordered when adequate protections for the child exist in the particular case. Accordingly, I do not consider that the joint committals procedure limits any of the protective rights under the bill.

Child witnesses

The bill provides for differential treatment of children as compared to adults where a child is a witness or a complainant in sexual offence proceedings. The purpose of these provisions is to protect them from unnecessary trauma and delay. These provisions were discussed earlier in the context of the charter section 8 right to equality and protection against discrimination. They promote the rights of children protected in the charter.

Segregation

Finally, clause 333 provides that the Magistrates Court may return a child accused, who is already undergoing a sentence of detention, to a youth justice centre rather than remand them in custody. This engages and promotes the right of accused children to be segregated from detained adults.

Section 26: right not to be tried or punished more than once

This provides that a person must not be tried or punished more than once for an offence in respect of which he or she has already been finally convicted or acquitted in accordance with law.

There are no provisions in the bill that raise this right. The pleas of autrefois convict and autrefois acquit (which are the primary procedural protection of this right) are specifically referred to in clause 220 (although the language has been modernised). The right not to be punished more than once does not apply to prevent prosecution appeals against sentence, or to increase a sentence on an appeal by an accused. That is because an increased sentence on appeal involves substituting one sentence for another, not imposing a second sentence on top of the first. I also consider that, as the Supreme Court of Canada has held in relation to an identical right, this right applies only after appeal proceedings are concluded (*R v. Morgentaler* [1988] SCR 30).

The bill removes consideration of 'double jeopardy' as a factor on DPP appeals against sentence. The DPP has the power to appeal against a sentence. Despite the fact that the DPP may show that a sentence is manifestly inadequate, the appeal court may currently decline to increase the sentence, or reduce the amount of any increase, because of what is described as 'double jeopardy'. The bill removes this as a factor on such appeals in order to ensure that inadequate sentences are corrected. This is different from the principle of double jeopardy protected by the charter and does not raise section 26 issues.

Section 27: retrospective criminal laws

Nothing in the bill raises the right to be protected from retrospective criminal laws. The bill does not currently include transitional provisions as there will be a follow-up bill containing those and consequential amendments. I will include consideration of section 27 at that time to ensure that the transitional provisions are compatible.

ROB HULLS, MP
ATTORNEY-GENERAL

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

The development of Victoria's criminal procedure laws

Victoria's criminal procedure laws are a mix of common law and statute law. At the time our laws were inherited from England, they were predominantly comprised of common law. The first Victorian act concerning criminal procedure was contained in the Criminal Law and Practice Act 1864. These laws did not cover every aspect of criminal procedure. That act complemented the common law and primarily focused on providing legislative solutions to particular problems that had arisen with the operation of the common law.

Statute law has become increasingly important. The key piece of legislation is the Crimes Act 1958; it is closely based on earlier consolidations. Before 1958, there were five consolidations at regular intervals which ensured the principal act remained relatively coherent. The Crimes Act contains provisions dealing with three main areas of law, criminal procedure, investigation powers and offences.

Fifty years and over 1500 amendments later, the Crimes Act is no longer logical or coherent. Many provisions are now obsolete. Others are still relevant, but are incoherent. Successive amendments have made some provisions hard to find and others difficult to understand.

It is time to overhaul and modernise Victoria's criminal procedure laws.

Problems with the current criminal procedure laws

There are a number of other significant problems with criminal procedure laws.

The law is difficult to locate. Appeals to the Court of Appeal are in the Crimes Act but appeals to the County Court are in the Magistrates' Court Act 1989. Within the Crimes Act, between some procedure provisions, there are more than 100 pages of legislation concerning matters such as taking DNA and fingerprints.

Many laws are difficult to understand. Some provisions in the Crimes Act are exactly the same as they were when they were passed in 1864. Some laws were introduced decades ago to address a specific problem but it is no longer apparent what that problem was. This results in uncertainty about the law or new meanings being developed so that the provisions have some meaning.

The law is complex. Because our criminal procedure laws are located in different acts and have been developed and amended separately, similar issues are dealt with differently for no good reason.

Comprehensive review of criminal procedure

In recent decades, criminal procedure has been changing to recognise the needs of victims, reduce delay and use resources more efficiently and effectively.

While expectations and demands upon the criminal justice system have been increasing, the basic tools used by the courts, police and legal practitioners, being criminal procedure laws, are no longer up to the task at hand. Therefore, the justice statement indicated that the Crimes Act and criminal procedure needed to be overhauled and modernised.

This is the first comprehensive review of criminal procedure in Victoria. The bill is the result of a substantial review conducted by the criminal law justice

statement unit in the Department of Justice in consultation with the courts, legal profession and Victoria Police. Throughout the course of the review, the criminal law justice statement advisory group has provided invaluable expert advice concerning problems that need to be addressed and solutions to those problems. I would like to take this opportunity to thank the officers of the Department of Justice and parliamentary counsel responsible for developing and drafting this bill, the members of the advisory group for their contribution and advice and the commitment of all concerned to improving our criminal procedure laws.

Objectives of this bill

Criminal procedure laws should be as clear, simple and accessible as possible.

There should be one integrated set of criminal procedure laws.

Criminal procedure laws need to be fair and effective. In 2006, this government introduced the Charter of Human Rights and Responsibilities. To ensure that criminal procedure laws give effect to, and promote these rights and responsibilities, the bill changes a number of existing laws particularly as they affect victims and the accused. Further, our criminal procedure laws aim to create an environment in which the criminal justice system does not convict the innocent nor acquit the guilty.

Criminal procedure laws must support and promote an efficient criminal justice system. Our courts deal with many cases each year. Case management practices need to create a structure that provides sufficient certainty and consistency to create an efficient system while providing sufficient flexibility to adapt to the individual needs of each case.

Court time is valuable and court appearances can be expensive. Case management processes need to make the most of each court hearing. Early case preparation and discussion between the parties can avoid unnecessary court appearances and ensure that hearings focus on the most important issues.

Apart from being a large system in which offences are prosecuted, criminal procedure laws provide the framework within which important matters are dealt with that can have significant impact on the lives of many people. Going to court can be a major event in a person's life. It is therefore important that criminal procedure laws recognise this impact. This bill minimises the impact of necessary procedures on victims, witnesses, jurors and the accused.

Overview of the bill

There are five key themes to the overhaul of criminal procedure laws in this bill.

First, the bill consolidates existing criminal procedure laws. Instead of being located in three different acts — the Crimes Act, the Magistrates' Court Act and the Crimes (Criminal Trials) Act 1999 — these laws are in one bill.

Second, the bill harmonises criminal procedure laws. Procedures in different jurisdictions should be the same unless there are good reasons why they should be different.

Third, the bill abolishes redundant and obsolete provisions.

Fourth, the bill rationalises the law by replacing multiple provisions with a single provision, such as the power to adjourn a proceeding.

Fifth, the bill modernises criminal procedure laws by:

- using plain English and clear and consistent terminology;
- placing provisions in a chronological order;
- adopting a consistent approach to whether provisions should form part of the body of an act, a schedule to an act or court rules;
- using clearer drafting techniques including headings which describe provisions better and notes to refer to other relevant definitions or provisions.

As the use of plain English and clear and consistent terminology is important in understanding the bill, I shall now discuss a number of these improvements.

Existing laws refer to the 'defendant' in the Magistrates Court and the 'accused' in the County and Supreme courts. The bill refers to the 'accused' irrespective of the jurisdiction. This is consistent with the approach used in the Charter of Human Rights and Responsibilities and removes an unnecessary distinction.

For proceedings in the County and Supreme courts, words such as 'presentment', 'further presentment' and 'counts' have been replaced by 'indictment', 'criminal record' and 'charge' respectively. 'Charge' and 'criminal record' are used in the same way in Magistrates Court proceedings.

The Crimes Act contains Latin and Norman French words. The bill uses modern English words. For instance, the bill replaces 'nolle prosequi' with 'discontinuing a prosecution' and 'autrefois acquit' with 'previously acquitted'.

The bill removes antiquated phrases such as providing that a person who pleads not guilty shall 'be deemed to have put himself upon the country for trial'. When first introduced this provision removed the option of trial by ordeal and made trial by a jury mandatory instead. Despite trial by ordeal never being an option in Victoria, this provision remains on the statute book.

Some existing provisions expressly state that parties have a right to be heard, others do not. The development of principles of procedural fairness means it is not necessary to refer to the right to be heard. For the kinds of procedures and powers provided in this bill, this bill operates in accordance with modern requirements of procedural fairness that a party has a right to be present and make submissions at a court hearing which concerns them.

Structure of the bill

As I indicated earlier, the bill adopts a chronological approach to criminal procedure. I shall refer to the most important aspects of chapters 2 to 6, 8 and 9 in some detail. Chapter 1 deals with a number of preliminary matters, including definitions and the commencement of the bill. Chapter 7 concerns references to the Court of Appeal on a petition for mercy. The clause in chapter 7 does not significantly alter the existing provision in the Crimes Act.

Chapter 2 — Commencing a criminal proceeding

Chapter 2 indicates how a criminal proceeding may be commenced: by filing or signing a charge sheet in the Magistrates Court, filing a direct indictment or a court direction that a person be tried for perjury.

Once a criminal proceeding has commenced, there may be a number of stages in that proceeding. For example, a criminal proceeding may be commenced by filing a charge sheet for an indictable offence in the Magistrates Court, followed by a committal proceeding, followed by a trial and appeal to the Court of Appeal. The bill proceeds on the basis that this is one criminal proceeding, although the jurisdiction of different courts may be enlivened at different stages of the proceeding. The structure of the bill reflects this approach. Chapter 2 deals with the commencement of a criminal proceeding and subsequent chapters in the bill refer to matters that may be relevant to that proceeding at certain times.

When a criminal proceeding commences may be relevant to both time limits and transitional provisions. In *R v. Taylor* [2008] VSCA 57 the Court of Appeal held that existing legislation did not create one continuous criminal proceeding, but a number of criminal proceedings could commence in the prosecution of an accused for an offence.

Because the bill operates on the basis that there is one criminal proceeding, this bill differs from existing provisions in a number of ways. For instance, clause 5 expressly indicates how a criminal proceeding commences. Clause 162 expressly provides that 'the filing of an indictment other than a direct indictment does not commence a new criminal proceeding against the accused'. Clause 164 expressly provides that a fresh indictment does not commence a new proceeding. Clause 179 provides that the trial court may exercise directions hearing powers as soon as the accused has been committed for trial. Clause 177 enables the Director of Public Prosecutions to discontinue a prosecution for an offence where an indictment has not been filed.

Adopting the approach that there is one criminal proceeding creates clarity and certainty.

Chapter 2.2 introduces the notice-to-appear process. Currently, an accused can be required to appear before the Magistrates Court by summons or arrest. The notice to appear process provides a third way.

There are significant delays in the filing of charges in some summary matters. The notice-to-appear process provides a simple and efficient method for requiring a person to attend the Magistrates Court for use in more straightforward cases. The notice will contain basic information including a brief description of the offence, when the person is required to attend court and contact details for the police officer or public official. The notice must be served personally. Within 14 days of issuing the notice, the prosecution must decide whether to file a charge sheet. This provides the prosecution with a short period to decide whether there is any reason not to proceed with the charge. If the prosecution decides not to file a charge sheet, they must notify the person within seven days and the person is not required to attend court.

The notice is not a charge and does not commence a criminal proceeding.

Chapter 3 — Summary procedure

Chapter 3 also provides that certain other matters flow from using the notice to appear. Currently a full brief is requested in many summary cases because:

there is a lack of basic information about a case;

the prosecution and accused do not discuss the case at an early stage;

the accused is seeking a sentence indication.

In some cases a full brief will be essential. For instance, the charges may be contested, the prosecution case may be unclear or obtaining instructions from a client is difficult. By improving the system, a full brief will be required less often.

If a notice to appear is issued and a charge sheet is filed, the bill provides that the prosecution must prepare a preliminary brief and serve this within seven days of filing the charge sheet. This will always be before the first court date. Clause 37 sets out what must be contained in a preliminary brief. This early provision of information will assist in early resolution of cases. A summary case conference must be held where a full brief is sought or the matter is to be listed for contest mention or summary hearing. The conference may identify ways of resolving a case or the narrowing of issues or information sought as part of a preliminary brief.

The benefits of the notice-to-appear process include reducing delay in the commencement of proceedings, requiring personal service of the notice and providing more information to the accused at an earlier stage.

Realising the full benefits of these changes will require cultural change in the prosecution, defence practitioners and the courts. The best ways of operating this system and generating cultural change will be assessed through a pilot program. The pilot program will be in the Magistrates Court. This process will not be used in the Children's Court. A different approach to address delay in the Children's Court, tailored to the needs of children and young persons, will be used which I will discuss later.

To ensure that there is proper disclosure of the prosecution case wherever it is required, the bill replaces the existing incomplete and inconsistent disclosure processes. The bill also introduces consistency in the categories of disclosure between summary, committal and trial proceedings. The idea that disclosure must be full, timely and ongoing underpins the new disclosure processes.

The bill provides better protection for the privacy of victims and witnesses who make statements for the prosecution. The bill also creates simpler mechanisms for dealing with disagreements about whether there has been full disclosure of the prosecution case and clearly sets out the main grounds on which the prosecution may refuse to disclose information.

The harmonisation of disclosure processes, obligations and rights under the bill will make the law less complex, more consistent and fairer. It will also be more efficient for prosecuting agencies in creating systems for disclosure for different types of proceedings.

Chapter 3 makes other improvements to summary proceedings by clearly setting out the procedures to be followed in a summary hearing, including special provisions concerning proceedings conducted in the accused's absence.

Chapter 4 — Committal proceeding

There have been many significant reforms to committal proceedings in the last 25 years. These reforms have included new procedures, new powers and new approaches to deal with new challenges and a changing environment. The Courts Legislation (Jurisdiction) Act 2006 introduced significant changes to committal proceedings. These reforms shifted the focus of committal proceedings from complying with processes to achieving outcomes.

This bill clarifies, reorganises and modernises committal proceeding provisions. Chapter 4 now clearly sets out the different stages in a committal proceeding and how a case may proceed through the committal process.

Clause 145 provides that upon committing an accused for trial, the court must transfer all related summary offences to the court that will deal with the indictable offences. Currently these charges are adjourned to be dealt with later. If the County or Supreme Court is conducting a plea for an indictable offence, the court will also be able to deal with related summary offences at the same time. Further evidence may be called to determine the related summary offences, but if this is not feasible or efficient, the court may remit the summary offences to the Magistrates Court. Clause 145 also provides that where the prosecution and the accused agree, the Magistrates Court may decide not to transfer a related summary offence to the County or Supreme Court.

This new process treats the criminal justice system as one integrated system. It is a flexible and more efficient process and it will often be more appropriate for one court to deal with all related charges.

Chapter 5 — Trial on indictment

As I indicated earlier, many statutory provisions are developed at different times and in different places to address specific problems with the common law. This is particularly the case with trials. The Crimes (Criminal Trials) Act and the Crimes Act both apply to trials but they are not integrated. As a result, the relationship between some provisions is unclear and the governing legislation is complicated.

The bill defines when a trial commences as when 'the accused pleads not guilty on arraignment in the presence of the jury panel'. If an accused is arraigned and pleads guilty to the charge, then there is no trial because the accused has not disputed the prosecution's allegation. With no dispute, there is no issue for the jury to determine.

The bill creates a more clearly defined pretrial regime for making decisions prior to the commencement of the trial and integrates this with the directions hearing process. It removes existing limitations on when such decisions can be made, opening up the whole period between committal and trial for these purposes. Clearer processes and powers will assist the courts in managing cases more effectively and better indicate to practitioners the types of matters that can and should be determined before a trial commences. The bill provides simple, flexible and effective case management powers and procedures.

Chapter 5.5 describes orders and other decisions that a court may make. An order is one type of decision. The word 'decision' is central to the operation of the new interlocutory appeals process, which applies in relation to a 'decision' made by a trial judge. I shall discuss the interlocutory appeals process later. However, it is important to note that the interlocutory appeals process complements the objective of the new pretrial case management regime of encouraging parties to raise issues well before a trial commences.

The bill also provides:

a new process which in certain circumstances will enable an accused to admit in writing that they are guilty of the charges in the indictment;

clear and express powers to support a trial judge in assisting the jury to perform its often difficult task;

a new process to enable a trial judge to accept a plea of guilty after a trial has commenced and to enter a finding that the accused is not guilty of the offence charged following a successful no case submission by the accused at the close of the prosecution case;

a clear process and requirement that where there are two or more accused, if any of the accused wish to make a no case submission, they must do so at the close of the prosecution case; and

that the antiquated mechanism where a person may be indicted to stand trial by a grand jury of 'at least twenty-three men' is abolished.

These reforms to the trial process provide clear, consistent and fair processes that will enable trials to proceed more efficiently.

Chapter 6 — Appeals and cases stated

This bill introduces the first major changes to appeals in Victoria in almost a century. The Criminal Appeals Act 1914 was based on the Criminal Appeal Act 1907 (UK). All jurisdictions in Australia and some common-law countries followed these so-called common form appeal provisions, although the United Kingdom replaced these provisions with new appeal provisions in 1995.

(1) Appeals against conviction to the Court of Appeal

The bill simplifies the grounds of appeal against conviction, from a trial conducted in the County or Supreme Court, to the Court of Appeal.

Section 568 of the Crimes Act provides three grounds of appeal against a conviction. Where a person establishes one of the grounds of appeal, but the prosecution shows that there was no substantial miscarriage of justice, the Court of Appeal may apply a proviso and dismiss the appeal.

The grounds of appeal and the proviso were drafted approximately 100 years ago. The meaning of some words in the provision is unclear and the provision is internally inconsistent. Differing judicial interpretations of section 568 and its counterparts in other jurisdictions have arisen over the years. This occurred in the High Court decision in *Weiss v. R* (2005) 224 CLR 300, which added a level of complexity and uncertainty to the application of the provision.

The provision and recent High Court authority also do not necessarily operate on the presumption that a trial before a judge and jury was conducted fairly and in accordance with law unless the appellant shows that it was not.

The bill addresses the fundamental problems that have plagued this provision. The bill will improve the operation and application of appeals against conviction to the Court of Appeal by:

removing the two-stage test and replacing it with a single stage test;

retaining the 'substantial miscarriage of justice' test for determining whether an appeal should be allowed or refused. This is an appropriate test for determining when an appeal should be allowed; and

requiring the appellant to satisfy the court that the appeal should be allowed.

The new approach will mean that errors or irregularities in the trial will result in appeals being allowed when the problem could have reasonably made a difference to the trial outcome; or if the error or irregularity was of a fundamental kind depriving the appellant of a fair trial. The appeal process will therefore operate to ensure that the accused receives a fair trial. It will also ensure that appeals will not be allowed on technical points that did not affect the outcome of the trial or the fairness of the proceeding.

(2) Appeals against sentence to the Court of Appeal

Clause 280 applies to the determination of an application for leave to appeal against sentence that is determined by a single judge of the Court of Appeal. This clause introduces a new test, which provides that leave to appeal against a sentence 'may be refused if there is no reasonable prospect that the Court of Appeal would impose a less severe sentence'. In *R v. Raad* [2006] VSCA 67 the majority of the Court of Appeal indicated that the court should not refuse leave to appeal if there is a reasonably arguable ground of appeal, even if there was no reasonable prospect of a lesser sentence being imposed. The new approach follows the approach of the minority in that case. It allows the court to apply an appropriate test based on the likelihood of an appeal being successful. This will assist the court in managing its workload. Further, if the appellant disagrees with the determination by the single judge, the person may still appeal to the Court of Appeal.

Section 568 of the Crimes Act also provides that on an appeal against sentence, the Court of Appeal must quash a sentence and substitute a different sentence if 'it thinks that a different sentence should have been passed'. However, it has been clear since the High Court decision in *House v. The Queen* (1936) 55 CLR 499 that the court's power is not unfettered; a sentence may only be set aside if there was an error in the sentencing process, which includes sentences that are manifestly excessive or manifestly inadequate. The bill embeds this error principle, making the law clearer and more accessible.

(3) Prosecution appeals against sentence

The error principle that I have just discussed will also apply to prosecution appeals against sentence in the Court of Appeal.

This bill introduces a further change to prosecution appeals against sentence. The bill provides the DPP with the power to appeal against a sentence. Despite the fact that the DPP may show that a sentence is manifestly inadequate, the appeal court may decline to increase the sentence, or reduce the amount of any increase, because of what is described as 'double jeopardy'. Clause 289 expressly provides that the 'Court of Appeal must not take into account any element of double jeopardy' involved in sentencing an offender again. The bill does not exclude other matters that may be relevant to the Court's determination of the appropriate sentence to impose, such as where the error arises from the prosecution's presentation of the case at the first sentencing hearing.

This is different from the principle of double jeopardy that a person should not be tried twice for the same offence; this bill does not affect that principle. However, because a prosecution appeal against sentence involves sentencing a person for a second time, the reasons against limiting the increase in sentence are described as involving 'double jeopardy'.

This existing common-law consideration can distort sentencing practices because the sentence imposed by the Court of Appeal will not reflect the sentence that it considers should have been imposed in the first place. This can reduce the guidance provided by Court of Appeal sentences to other courts and the effectiveness of DPP appeals against sentence.

Further, this approach does not take into account other relevant and counterbalancing policy considerations, such as the interests of the community and the victim, in the courts sentencing offenders to appropriate sentences.

(4) Interlocutory appeals and cases stated

Interlocutory appeals provide a mechanism for a trial judge's rulings to be tested on appeal before a trial starts or, in limited circumstances, during trial. An interlocutory appeal essentially brings forward an issue that may otherwise become part of a post-conviction appeal or a DPP reference following an acquittal. Typically, it deals with only one issue, unlike an appeal against conviction that may involve many issues. Because appealing after a trial has commenced inevitably interrupts the trial, stronger reasons are required to justify an interlocutory appeal during trial.

As I mentioned earlier in relation to pretrial decisions, an interlocutory appeal may be brought in certain circumstances against a 'decision' of a judge. This broad description avoids technical arguments about the nature or description of the decision in question, for example, whether the decision was a 'judgement' or 'order'. Clause 295 of the bill provides that where a decision concerns the admissibility of evidence, the decision may only be appealed where, if the evidence were ruled inadmissible, it would 'eliminate or substantially weaken the prosecution case'.

An interlocutory appeal may be brought if the judge who made the decision provides the necessary certification and the Court of Appeal provides leave to hear the appeal. The tests for certification and leave encourage the resolution of issues before a trial commences. Good preparation by the parties and case management by the court will identify most interlocutory appeal issues before a trial commences. However, there may be occasions when an issue arises during trial and there are very strong reasons for conducting an interlocutory appeal at that stage of the proceeding.

Because interlocutory appeals deal with issues early in the proceedings that might otherwise result in a successful post-conviction appeal, they can:

prevent guilty people being acquitted;

prevent innocent people from being wrongly convicted; and

prevent retrials because there was an error at the accused's trial.

As a result, interlocutory appeals can be of benefit in reducing the stress and trauma of court proceedings for victims, witnesses and the accused.

(5) Other changes to appeals

Some of the existing laws concerning whether a sentence is or may be stayed when an appeal is brought against either conviction or sentence are confusing, unclear and inaccessible. The bill clearly sets out the relevant laws and adopts different approaches for stays in appeals to the County Court and appeals to the Court of Appeal. This is because appeals to the County Court involve hearing a matter afresh and appeals to the Court of Appeal involve identifying an error.

This is the most comprehensive review of appeal provisions since the introduction of the Criminal Appeals Act 1914. In particular, it provides the Court of Appeal with new powers to utilise in its most important task of explaining the law and providing guidance to courts and the legal profession on legal issues. The bill will also assist the court in delivering justice in individual cases.

Chapter 8 — General

Chapter 8 contains important provisions that will be relevant in many criminal proceedings including when a person is required to appear in a criminal proceeding and the power of the court to adjourn a proceeding.

The bill sets out new service provisions, which provide clear processes for service on an accused and the prosecution. Sometimes personal service is essential to the fair and efficient operation of the criminal justice system. The bill provides a flexible approach to service:

by enabling modern means of electronic communication to be utilised;

by recognising that the parties may agree on other ways of effecting service.

Clause 365 of the bill provides that it is the intention of clauses 61(4) and 209(4) of this bill to alter or vary section 85 of the Constitution Act 1975. I make the following statement under section 85(5) of the Constitution Act 1975 of the reasons why it is the intention of clauses 61(4) and 209(4) of the bill to alter or vary section 85 of the Constitution Act 1975.

Clauses 61 and 209 of the bill provide the Magistrates, Children's, County and Supreme courts with the capacity to provide a sentencing indication to an accused who is considering pleading guilty. In accordance with a recommendation from the Sentencing Advisory Council in its report, *Sentence Indication and Specified Sentence Discounts*, these sections provide that a decision to give or not to give a sentence indication is final and conclusive.

A sentence indication should only be given where it is likely to be of benefit in concluding proceedings. The reason for restricting review and appeal rights against a decision to give or not to give a sentence indication is to ensure that this decision is final and the substantive proceedings, whether a trial or a plea hearing, can proceed without delay. If review and appeal rights were not restricted, they could defeat the purpose for the introduction of this scheme. Importantly, when a sentence is imposed, each party has rights of appeal against the sentence imposed.

Chapter 9 — Repeals and consequential and other amendments

Chapter 9 contains amendments concerning the joint conduct of committals in the Magistrates Court and the Children's Court. Currently, a child and an adult co-accused may be tried together. Because of the special needs of children, this is only likely to occur where the Children's Court does not have jurisdiction to determine the charge summarily. The Children's Court cannot hear and determine certain serious charges such as murder and manslaughter. However, while a child and an adult may be jointly tried, they cannot have joint committal proceedings. This means that victims and witnesses may have to face two committal proceedings instead of one.

The bill provides a new process where, if the Children's Court does not have jurisdiction to hear and determine the charge summarily, the child is aged 15 or above and the Magistrates Court and the Children's Court both consider it appropriate to do so, a joint committal proceeding of a child and adult co-accused may be conducted. If a joint committal proceeding is conducted, the Children Youth and Families Act 2005 continues to apply as far as practicable to the child. This practical solution is fair to victims, witnesses and the child accused.

It is important that the prosecution of a child or young person for a summary offence is commenced as quickly as possible in order to reduce delay-related anxiety and stress. Timely resolution of charges also increases the prospects of successfully intervening in offending behaviour. Clause 376 reduces the period within which the criminal proceeding for a summary offence must commence from 12 months to six months.

There are two exceptions to this reduced time limit. First, the court may allow the prosecution to commence a proceeding between six months and 12 months if it considers it appropriate to do so having regard to matters such as the age of the child, the seriousness of the alleged offence and the reasons why the charge was not filed within six months. Second, after receiving legal advice, a child may consent in writing to the filing of a summary charge at any time.

Chapter 9 of the bill contains consequential amendments where they are intimately involved with other aspects of the bill. However, further consequential provisions will be required and transitional provisions will be necessary. The government will introduce a separate bill to address those matters.

Conclusion

This bill introduces major improvements to Victoria's criminal procedure laws by overhauling existing laws and introducing substantial policy improvements. The new laws are clear, consistent, fair and accessible. The bill builds upon existing systems and introduces new procedures to create clear, efficient and flexible case management processes.

As society and the criminal justice system change, criminal procedure laws must continue to adapt to meet these new challenges. This bill provides the sound platform that we need to do this.

This bill is a major initiative of the government's justice statement to modernise our criminal justice system. It is the most comprehensive and far-reaching reform of criminal procedure in Victoria's history. It will provide Victoria with the best criminal procedure laws in Australia. This bill gives Victoria the criminal procedure laws it needs in the 21st century.

I commend this bill to the house.

Debate adjourned on motion of Mr MULDER (Polwarth).

Debate adjourned until Thursday, 18 December.

WORKPLACE RIGHTS ADVOCATE (REPEAL) BILL

Statement of compatibility

Mr HULLS (Minister for Industrial Relations) 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 Workplace Rights Advocate (Repeal) Bill 2008.

In my opinion, the Workplace Rights Advocate (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 Workplace Rights Advocate Act 2005 (the WRA act), which has been identified as redundant legislation; and

2. to make a consequential amendment to the Victorian Civil and Administrative Tribunal Act 1998 to remove a reference in that act to the workplace rights advocate, a

statutory appointment that has been abolished, and to make a consequential amendment to the definition of workplace rights advocate in section 3(1) of the Public Sector Employment (Award Entitlements) Act 2006 to reflect the repeal of the Workplace Rights Advocate Act.

1.2 Human rights issues

As the bill does not engage any of the rights under the charter, it is not necessary to consider section 7(2) of the charter.

1.3 Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it does not raise a human rights issue.

Rob Hulls, MP
Minister for Industrial Relations

Second reading

Mr HULLS (Minister for Industrial Relations) — I move:

That this bill be now read a second time.

The Workplace Rights Advocate (Repeal) Bill 2008 is straightforward legislation that will repeal the Workplace Rights Advocate Act 2005 and make minor consequential amendments to the Victorian Civil and Administrative Tribunal Act 1998 and the Public Sector Employment (Award Entitlements) Act 2006.

In 2005, in response to the former federal government's draconian WorkChoices legislation, the Victorian Parliament passed legislation to create the Office of the Workplace Rights Advocate (the OWRA) as an independent statutory office.

As members will remember, WorkChoices was designed to move workers off awards and away from collective bargaining in favour of Australian workplace agreements (AWAs) with the potential to reduce the working conditions of many Victorians.

The WRA was conceived largely to provide employees with access to independent information, so that they could find out the consequences of signing an AWA. It was a sad fact that the critical information needed in order to make an informed decision was not available from federal authorities. In the absence of the then federal government fulfilling its responsibilities to vulnerable workers, the Victorian government was forced to step in.

The WRA provided information to employers to help educate them on their rights and responsibilities. The office was also charged with investigating complaints, and determining whether there was unfair or illegal behaviour.

The WRA commenced operating on 1 March 2006. In the time since its creation, the WRA has:

taken around 10 000 inquiries from Victorian employers and employees;

formally investigated 123 complaints from workers and employers;

conducted assessments of 58 proposed public sector agreements to ensure they passed a no-disadvantage test;

conducted hundreds of information sessions, including 53 since July 2008;

produced informational material for employers and workers, including a fair employment guide for small business and a pregnancy discrimination and rights pack for women; and

prepared research reports into the impact of WorkChoices on employees in the hospitality and retail industries.

The political and industrial relations landscape has changed significantly since the WRA commenced operations. The Rudd Labor government elected in November 2007 is in the process of consigning WorkChoices to the bin. Already its Forward with Fairness policy is establishing a new national system to be fully operational in January 2010. Significant elements to the federal reforms are now in place.

Since March 2008 AWAs are no longer available, and all agreements are now subject to a comprehensive no-disadvantage test. These reforms have important implications for the WRA.

In 2006 the Victorian government enacted the Public Sector Employment (Award Entitlements) Act 2006, which provided for the WRA to apply a no-disadvantage test to new public sector agreements. In June 2008 the provision was repealed given the transition act reinstated the no-disadvantage test, rendering the state test redundant.

The OWRA conducted assessments of 58 proposed agreements. Removing this responsibility from the WRA, as well as the likely impact of further federal reforms, led the government to assess the role of the WRA.

Accordingly, Workforce Victoria conducted an assessment of the WRA and its role in providing information to employers and workers. The assessment took into account the changing workplace environment

and the need to ensure that services are delivered by the appropriate agency, be it federal or state.

The assessment concluded that there was a real demand for the services provided by the WRA when it was created, but as a result of the federal reforms, those services can be more appropriately provided by agencies such as Business Victoria as well as federal agencies.

We are encouraged by reports from stakeholders that federal agencies such as the federal Ombudsman have improved their service delivery since the election of the Rudd government, and are now more actively investigating complaints by workers.

Following consideration of the assessment, the government determined to close the WRA, effective 31 December 2008. The workplace rights information line, to which employers and workers can ring for assistance, remains in operation for the time being, with Job Watch, a community legal service funded by the Victorian government, answering inquiries.

As the WRA will shortly cease operating, it is appropriate that the legislation creating that office be repealed.

As a consequence of repealing this act, an amendment to the Victorian Civil and Administrative Tribunal Act 1998 is required. Section 73(2C) of that act provides that the workplace rights advocate may intervene in a proceeding before the Victorian Civil and Administrative Tribunal.

A second minor consequential amendment will be made to the definition of workplace rights advocate in section 3(1) of the Public Sector Employment (Award Entitlements) Act 2006. The amendment will reflect the repeal of the Workplace Rights Advocate Act.

In conclusion, I would like to thank all those who have worked for the WRA over the years, in particular Mr Brian Corney, whom I appointed as acting advocate in 2006, and Mr Tony Lawrence, the advocate since May 2006. The advocate and staff have performed admirably in difficult circumstances and have helped thousands of Victorian workers and employers navigate their way through a federal regime that was anything but user friendly.

I commend the bill to the house.

Debate adjourned on motion of Dr NAPTHINE (South-West Coast).

Debate adjourned until Thursday, 18 December.

EQUAL OPPORTUNITY AMENDMENT (GOVERNANCE) 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 Equal Opportunity Amendment (Governance) Bill 2008 ('bill').

In my opinion, the bill 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 governance bill will amend the Equal Opportunity Act 1995 ('EO act') to create a new governance structure for the Victorian Equal Opportunity and Human Rights Commission ('commission').

In summary, the bill will:

create a new full-time position of commissioner appointed by the Governor in Council for a renewable term of five years;

provide that the commissioner will have control of the day-to-day administration of the affairs of the commission in accordance with the policies, priorities and strategies determined by the board;

provide that the commissioner will chair a board with between five and seven members;

provide that board members will be appointed on a part-time basis by the Governor in Council on recommendation of the minister with a renewable term of five years;

give the board a clear strategic oversight function and the power to make strategic decisions and to set the organisation's strategic direction;

consistent with the board's new strategic functions, remove the board members' complaint-handling functions and powers completely, and allocate complaint-handling powers and functions to the commissioner who can then delegate to appropriately skilled staff; and

abolish the current chief conciliator/chief executive officer position.

Human rights issues

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

Right to privacy and freedom of expression

Section 15(2) of the charter provides that every person has the right to freedom of expression, which includes freedom to

seek, receive and impart information and ideas of all kinds whether within or outside Victoria and in any medium. Section 15(3) provides that special duties and responsibilities attach to the right of freedom of expression under section 15 of the charter and the right may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons, or for the protection of national security, public order, public health or public morality.

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 and not to have his or her reputation unlawfully attacked.

Section 192 of the EO act requires certain people (e.g. members of the commission, the chief conciliator, a member of staff of the commission and any other person acting under the commission's authority) to keep information secret where that information concerns the affairs of any person that has been obtained in the course of performing functions or duties or exercising powers under the EO act.

Section 192 protects the right to privacy of people making and responding to complaints of discrimination, vilification, sexual harassment and victimisation, by preventing the release of information concerning the affairs of any person in the course of (or as a result of) performing functions or duties or exercising powers under the EO act. Information concerning the affairs of any person that has been obtained in the course of the commission's education and research and other functions is protected in the same way.

Clause 5 of the governance bill inserts a new section 177 into the EO act. New section 177 re-enacts section 192 with the consequential amendments required to give effect to the creation of the commissioner position and abolition of the chief conciliator/chief executive officer position by this bill.

New section 177 does not prevent the parties themselves from disclosing information. The clause prevents the recording, disclosure or communication of personal information by the commissioner, board members and staff of the commission (and other specified people) unless it is necessary to do so for the purpose of, or in connection with, the performance of a function or duty or the exercise of a power under the EO act.

New section 177 engages the right to freedom of expression including the freedom to seek, receive and impart information and ideas of all kinds (section 15(2) charter) by making it an offence for specified people to make a record of, disclose or communicate certain information.

However, the new section will be a lawful restriction reasonably necessary to respect the rights and reputation of other persons, in accordance with section 15(3)(a) for the following reasons:

> The restriction will be lawful because it will be contained in the Equal Opportunity Act 1995 as amended.
>
> The restriction protects the right to privacy and reputation in section 13 of the charter by restricting the disclosure of personal affairs where it is unnecessary to disclose that information.
>
> The restriction is reasonably necessary because new section 177 provides that the information may be recorded, disclosed or communicated if it is necessary to do so for the purposes of or in connection with the performance of a function or duty or the exercise of a power under the act.

Conclusion

I consider that the bill is compatible with the charter because although the bill engages the right to freedom of expression, that right is subject to a lawful restriction.

HON. ROB HULLS, MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

The Victorian Equal Opportunity and Human Rights Commission (the commission) is the statutory body that administers the Equal Opportunity Act 1995 and has functions under the Racial and Religious Tolerance Act 2001 and the Charter of Human Rights and Responsibilities Act 2006.

The first iteration of the commission was created in 1977 by the Equal Opportunity Act 1977 which created the Equal Opportunity Board and the Office of the Equal Opportunity Commissioner. The Equal Opportunity (Amendment) Act 1993 made a number of structural and operational changes to the equal opportunity framework including replacing the Equal Opportunity Commissioner with a five-member Equal Opportunity Commission.

In June 2008, the former Public Advocate, Mr Julian Gardner, completed an independent review of many aspects of the Equal Opportunity Act 1995 and issued his report: *An Equality Act for a Fairer Victoria*. This report will inform a major overhaul of Victoria's equal opportunity law and the commission's role over the next five years.

This government has committed to acting on the *An Equality Act for a Fairer Victoria* report to strengthen Victoria's laws against discrimination and the capacity of the commission to take action against systemic discrimination. In particular, this government has announced that it is considering implementing a range of reforms recommended in the report, including transforming the commission from a complaints-handling body to one that acts on systemic discrimination, researches, educates and actively helps people to resolve discrimination disputes and to comply with the law; replacing the slow-moving paper-based complaints system with early and flexible alternative dispute resolution to be provided by the commission; giving victims of discrimination a new choice to go

straight to the Victorian Civil and Administrative Tribunal (VCAT) supported by external legal advice and assistance; creating a duty not to discriminate even in the absence of a complaint; providing protection from discrimination for the homeless, volunteers and people with an irrelevant criminal record; and specifically requiring people to make reasonable adjustments for those with disabilities.

In February 2008, the government announced that it would develop legislation to amend the Equal Opportunity Act 1995 in a staged approach to the implementation of the government's response to the recommendations arising from the Equal Opportunity Act review.

The introduction of the Equal Opportunity Amendment (Governance) Bill 2008 gives effect to this commitment by implementing those recommendations in the report that relate to the governance of the commission. This bill will create a more efficient and effective governance structure for the commission and provide clearer lines of responsibility and accountability.

Since 2006 the Charter of Human Rights and Responsibilities has provided the commission with a new mandate in relation to a broad range of human rights matters, but the governance of the commission has not been amended to reflect these additional responsibilities. The commission's current governance structure is ill-equipped to manage the functions of a commission with a broader focus on human rights and systemic discrimination as foreshadowed by the justice statement 2. This bill will increase the size of the board membership so that it has increased capacity to perform its functions under the charter and to manage a broader focus on human rights and systemic discrimination.

The act does not currently clearly state the roles and responsibilities of the part-time chairperson of the board of the commission and the full-time chief conciliator and chief executive officer. The act is ambiguous around whether commission members operate as a board of governance or an advisory board. This bill will clearly state the roles and responsibilities of members and the commissioner.

I would now like to provide an overview of the main features of the bill.

The commissioner

This bill will create a new full-time position of commissioner appointed by the Governor in Council for a renewable term of five years. This position will replace the current chief conciliator/chief executive officer position although the functions of the two positions will be different. The bill provides that the commissioner will have control of the day-to-day administration of the affairs of the commission in accordance with the policies, priorities and strategies determined by the board. The bill also provides that the commissioner will chair the board of the commission. The current chief conciliator/chief executive officer does not chair the board; the chair is one of the part-time members of the board.

A Governor in Council order will also be made to coincide with commencement of this bill so that the commissioner is a public service body head for the purposes of section 16 of the Public Administration Act 2004. This means that the commissioner may directly employ commission staff. The bill provides that commission staff will remain public sector employees under part 3 of the Public Administration Act 2004.

The board of the commission

The bill also reforms the board of the commission. The bill will increase the size of the board from five members to between five and seven members (including the commissioner who will chair the board). This increase in the board's size is warranted by the commission's recent increase in functions under the Charter of Human Rights and Responsibilities and the breadth of human rights and equal opportunity issues within its mandate.

Members of the board of the commission will continue to be appointed on a part-time basis by the Governor in Council on the recommendation of the minister with a renewable term of five years.

The bill gives the board the power to determine the commission's strategic direction and the general nature of activities to be undertaken by the commission in performing its functions. The board will also set policies, priorities and strategies for the commission in performing its functions.

Consistent with the board's new strategic functions, this bill removes the board members' complaint-handling functions and powers completely, and allocates complaint-handling powers and functions to the commissioner who can then delegate to appropriately skilled staff as required.

Improved transparency and accountability

The bill strengthens the independence of the commissioner and the board of the commission by including specific criteria for the removal from office of the commissioner and members of the board of the commission.

Rather than the Governor in Council being able to remove appointees from office 'at any time' as is currently the case, new criteria for removal from office will apply. For example, conviction for an indictable offence and insolvency will result in the commissioner or member automatically ceasing to hold office. The Governor in Council will have the discretion to remove the commissioner or a member of the board of the commission from office for unexplained absence from three consecutive meetings, misconduct, being incapable of carrying out the duties of office or personally committing a significant breach of an Australian equal opportunity or antidiscrimination law. These criteria are intended to support security of tenure while ensuring the flexibility for removal of the commissioner or a member of the board of the commission for prescribed reasons.

A Governor in Council order will also be made to coincide with commencement of this bill so that part 5 division 2 of the Public Administration Act 2004 (entitled 'Governance Principles') will apply to the commission. This will ensure that the standard governance principles such as directors' duties and accountability provisions that apply to other public entities will also apply to the commission and provide a sound governance and accountability framework for the commission.

The bill will commence on a date to be proclaimed, but no later than 1 October 2009.

Section 85 statement

I wish to make a statement under section 85(5) of the Constitution Act 1975 on the reasons for altering or varying that section by this bill.

Section 211 of the Equal Opportunity Act 1995 alters or varies section 85 of the Constitution Act 1975 to the extent necessary to prevent the bringing before the Supreme Court of any action in relation to a complaint dismissed by the commission under sections 108, 110, 113, 117 or 123 of the Equal Opportunity Act 1995.

The effect of section 211 is to limit a complainant's right to pursue further legal action once the commission has dismissed a complaint where the complainant has failed to request a referral to VCAT within 60 days of being advised by the commission of his or her rights of referral. The 60-day time limit provides a complainant with sufficient time to consider his or her options and to seek legal advice if necessary. It would create uncertainty and place an unfair burden on respondents if matters that have been dismissed by the commission could be relitigated.

The bill inserts new section 211(2) into the Equal Opportunity Act 1995 so that decisions of the commissioner pursuant to sections 108, 110, 113, 117 or 123 of the Equal Opportunity Act 1995 may not be brought before the Supreme Court. This is required because complaints will no longer be dismissed by the 'commission' under the Equal Opportunity Act 1995; all complaint handling functions will rest with the commissioner.

Section 211(c) of the Equal Opportunity Act 1995 alters or varies section 85 of the Constitution Act 1975 to the extent necessary to prevent the bringing before the Supreme Court of any action in relation to a complaint where a person has chosen another avenue under section 103 of the Public Sector Management Act 1992 in relation to the same subject matter. It is appropriate that this bill repeals section 211(c) because the reference to the Public Sector Management Act 1992 and section 103 of that act is obsolete; the Public Sector Management Act 1992 has been repealed.

This government has committed to strengthening Victoria's equal opportunity framework and addressing systemic barriers to equality. This commitment has been made in several Victorian government policies in recent years, including *Growing Victoria Together 2*, *A Fairer Victoria* and both the 2004 and 2008 justice statements.

This bill creates a governance structure for the commission that reflects the breadth of the commission's responsibilities under the Equal Opportunity Act 1995, the Charter of Human Rights and Responsibilities Act 2006 and the Racial and Religious Tolerance Act 2001. The bill also resolves some of the operational challenges posed by the commission's current structure and means that the commission will be well-placed to implement the second stage of reforms arising from the *An Equality Act for a Fairer Victoria Report* over the coming years.

I commend the bill to the house.

Debate adjourned on motion of Mr MULDER (Polwarth).

Debate adjourned until Thursday, 18 December.

RESOURCES INDUSTRY LEGISLATION AMENDMENT BILL

Statement of compatibility

Mr BATCHELOR (Minister for Energy and Resources) 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 Resources Industry Legislation Amendment Bill 2008 (the amendment bill).

In my opinion, the amendment bill 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 amendment bill

Victoria's extractive industries are currently regulated under the Extractive Industries Development Act 1995 (EIDA) and through a range of planning, environment and occupational health and safety laws.

The amendment bill will implement certain recommendations from the review of the efficient regulation of Victoria's extractive industries, concluded in March 2008. In particular, it will repeal the EIDA and provide for regulation of the extractive industries through an amended Mineral Resources (Sustainable Development) Act 1990 (MRSDA).

The merger of the extractive industry regulation into the MRSDA will allow for some streamlining of regulation of the two sectors and will facilitate further reforms in the future.

The main elements of the amendment bill are:

partially deregulate work plan requirements for small quarries;

modernise the regulation of the extractive industries to include provisions that already apply to the regulation of the mineral resources sector under the MRSDA, such as:

applying the principles of sustainable development to regulatory decision making;

introducing a duty to consult with community; and

providing some additional flexibility that is already available to the mineral sector including removing the requirement to apply for a planning permit where an environment effects statement is required;

introduce other streamlining or reforms to reduce red tape for the sector. For example, providing a head of power to make codes of practice that would be used to regulate certain low-risk activities in place of current work-plan requirements; and

remove unnecessary or redundant provisions.

Human rights issues

Human rights that are protected by the charter are unlikely to be affected by the amendment bill as the licensees under the MRSDA are likely to be corporations rather than individuals. The charter provides that only persons have human rights.

However, the amendment bill technically engages a number of human rights in that licensees may be individuals, or that individuals are directors or principals of licensees that are corporations.

Section 13 — Right to privacy

The amendment bill ensures that persons that apply for an extractive industries work authority have to provide certain information as set out in the new secttion 77I.

Section 13(a) of the charter relevantly protects a person's right 'not to have his or her privacy, family, home or correspondence from being unlawfully or arbitrarily interfered with'. While the information collected in the application process may contain personal information, the information is required to enable a decision to grant an authority to be made. Accordingly, any interference with the privacy of personal information through the collection of information cannot be seen as being arbitrary or unlawful so as to be incompatible with section 13(a) of the charter.

Clause 18 inserts a new section 77S which provides that a person who applies to a responsible authority for a permit under the Planning and Environment Act 1987 to carry out an extractive industry on land that is covered by another licence under the MRSDA must give notice to the department and the holder of that licence. Whilst it is unlikely that the planning permit contains personal information any interference with personal privacy would not be unlawful and not arbitrary because it allows for the proper administration of the MRSDA.

Clause 9 of the amendment bill inserts a new section 8AA which makes it an offence to search for stone without the owner's consent. If the owner of private land does not consent then the minister under the new section 77C may consent to the survey or search for stone for the department.
Section 13(a) of the charter relevantly protects a person's right not to have his or her family and home from being unlawfully or arbitrarily interfered with. A person entering land would interfere with the owner's family and home by searching for stone or carrying out any survey et cetera without authority. However, as long as the minister provides his consent, the interference is not unlawful. It would not be arbitrary because in providing authority the minister would have to take into account not only the owner's human rights but also the purposes of the MRSDA. Further, pursuant to the new section 89AB, the Crown has to compensate the owner or occupier of any land in which an authority was granted under section 77C for damage sustained by the owner or occupier to crops or improvements. As there is a compensation section, any interference cannot be said to be arbitrary.

Section 20 — Property rights

A number of clauses deal with operation of licences or consents; the power of the minister to cancel or suspend consent to search for stone (clause 18, new section 77F), the cancellation of a work authority (new section 77O) and the power to order that work cease (clause 32).

Section 20 of the charter provides that 'a person must not be deprived of his or her property other than in accordance with law'. Although 'property' is not defined in the act it clearly would extend to a work authority to undertake extractive industries and would probably extend to consent to search for stone on Crown land (new section 77A).

In most cases, the provisions are likely to be enforced against corporations rather than individuals. However, if the licensees are individuals then this right is engaged. However, all the provisions are compatible with the right because any deprivation that occurs is in 'accordance with the law', the deprivation is neither arbitrary nor unreasonable, it is clearly prescribed in the provisions, for example, there must be a contravention of the act or any condition, limitation or restriction on the licence. Further, there is a right to appeal any decision under the new section 77O to the Victorian Civil and Administrative Tribunal.

Conclusion

I consider that the amendment bill is compatible with the charter because to the extent that some provisions engage human rights, those human rights are not limited.

Peter Batchelor, MP
Minister for Energy and Resources

Second reading

Mr BATCHELOR (Minister for Energy and Resources) — I move:

That this bill be now read a second time.

The Brumby government is committed to supporting the development of viable and responsible extractives, minerals and petroleum industries. The bill will modernise and streamline regulation of the extractive industries sector in Victoria.

It will do this by repealing the Extractive Industries Development Act 1995 and providing for regulation of extractive industries through an amended Mineral Resources (Sustainable Development) Act 1990.

This will deliver consistency with other jurisdictions (which largely regulate extractive industries through mining legislation) and some streamlining and consistency between the mining and extractive sectors. This approach will also facilitate the establishment of a consolidated framework through which further changes and reductions in regulatory burden can be implemented as opportunities arise over time.

The bill will provide for the development of codes of practice for extractive industries. A provision to make a code of practice already exists in the Mineral Resources (Sustainable Development) Act 1990 and will be extended to extractive industries.

The bill will also partially deregulate work plan requirements. Amendments will be made to exempt operators of sites up to five hectares in area and five metres in depth (where no clearing of native vegetation or use of explosives is required) from current work plan requirements. Operators of these sites will instead be required to comply with a code of practice that contains a set of standard work conditions.

Activities that are currently exempt from the Extractive Industries Development Act will continue to be exempt from the Mineral Resources (Sustainable Development) Act. In addition, the exemption for areas of up to 2000 square metres and 2 metres in depth will be extended to areas up to 1 hectare and 2 metres in depth. This separate reform complements the partial deregulation of work plan requirements contained in this bill.

Current work authority holders will have the option of continuing to work in accordance with their work plan for a period of up to five years, or opt out of working in accordance with a work plan and be subject to a code of practice. However, if existing work authority holders wished to vary their work plans within this five-year period, at that point, they would be required to opt out of the work plan and work according to the code of practice. This will ensure that current operators are not at a competitive disadvantage compared to new entrants.

The bill will also establish a duty to consult with the community. This will complement the government's community building initiative, which aims to develop cohesive and sustainable communities, and is in line with the principles for engagement with communities and stakeholders endorsed by the ministerial council on minerals and petroleum resources.

As well, the bill will provide for the removal of the requirement to apply for a planning permit where an environment effects statement is required. This will align with the current environment effects statement process for mining and will streamline the system for the major industry stakeholders without impacting on smaller scale proponents. It will also deliver savings in costs and time for large-scale operators.

Finally, the bill will remove other requirements that are considered to be unnecessary or redundant.

I commend the bill to the house.

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

Debate adjourned until Thursday, 18 December.

FAIR TRADING AND OTHER ACTS AMENDMENT BILL

Statement of compatibility

Mr BATCHELOR (Minister for Community Development) 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 Fair Trading and Other Acts Amendment Bill 2008.

In my opinion, the Fair Trading and Other Acts 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 bill

The bill furthers the government's commitment to improve the operation of markets by ensuring that Victorian consumers are well informed and protected through:

(a) amendments to strengthen enforcement capacity under, and amend certain definitions in, the Fair Trading Act 1999 and to apply Part 2B of the Fair Trading Act to credit contracts; and

(b) amendments to strengthen the Residential Tenancies Act 1997 to ensure that prior to entering into an agreement to formally affiliate a residential premises under section 21 of the act (thereby exempting that premises from the operation of the act) a school or educational institution must consider prescribed criteria; to provide that a notice of exemption be prominently displayed in a public or common area; and to establish offences relating to false representations or engaging in misleading conduct relating to formal affiliation.

The bill also amends the Consumer Credit (Victoria) and Other Acts Amendment Act 2008 to halt the default commencement of provisions introducing an enhanced credit provider registration scheme, while ensuring that related amendments introducing EDR requirements can proceed.

Human rights issues

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

The relevant rights under the Charter of Human Rights and Responsibilities Act ('the charter') which the bill may engage are:

Section 13: privacy and reputation

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 and the right not to have his or her reputation unlawfully attacked.

Clauses 11 and 12 of the bill may engage section 13 of the charter by amending existing section 153 of the Fair Trading Act to refer only to (non-punitive) corrective advertising orders and inserting new section 153A to deal with (punitive) adverse publicity orders.

The power to make a corrective advertising order is available on the application of the director, and requires a person to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to. The order may alternatively require the person to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order. The power to make an adverse publicity order is couched in the same terms.

Clauses 11 and 12 may engage section 13 of the charter by enabling a court to require that certain information be disclosed. However, these clauses do not limit section 13 as orders under the clauses may only be made in specific, defined circumstances (that is, on the application of the director and where a court is satisfied that there has been a contravention of particular parts of the act). The power would therefore be exercised on a non-arbitrary basis by a court, according to law.

Accordingly, clauses 11 and 12 of the bill are compatible with section 13 of the charter.

Section 15: freedom of expression

Section 15 of the charter protects a person's freedom of expression, including the freedom to seek, receive and impart information and ideas. Section 15(3) of the charter qualifies the right of freedom of expression and provides that special duties and responsibilities attach to this right. The right may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons or for the protection of national security, public order, public health or public morality.

Clause 20 of the bill may engage section 15 of the charter as it compels owners or operators of residential premises that are exempt from the operation of the Residential Tenancies Act by reason of formal affiliation under section 21(1) of the act to display a notice of that exemption, in the prescribed form, in a public or common area. A failure to comply with this requirement attracts a maximum penalty of 10 penalty units.

Although clause 20 requires the display of certain information in the prescribed form, it does not limit the right of freedom of expression. The requirement simply ensures that persons are aware of the legitimate exemption of the residential premises to which it applies from the operation of the Residential Tenancies Act.

Clause 19 of the bill may also engage section 15 of the charter by establishing certain offences relating to false representations or misleading conduct. Clause 19 provides that the owner or operator of a residential premises, or a person acting on their behalf, must not represent that the residential premises has formal affiliation with a school or institution if it does not have that affiliation. Clause 19 also prohibits an owner or operator of a residential premises, or someone acting on their behalf, from engaging in conduct that is liable to mislead the public about the formal affiliation status of the premises.

Although clause 19 prohibits a person from making representations or engaging in certain conduct, the

prohibitions are limited to false representations and engaging in misleading conduct.

In practice, the offences introduced by clause 19 are most likely to affect commercial student accommodation providers who falsely represent that they are exempt from the operation of the Residential Tenancies Act by virtue of section 21 of that act, or who engage in misleading conduct to this effect. The offences therefore only adversely impact people who abuse the right of freedom of expression. Therefore, clause 19 would arguably qualify as a specific limitation under s 15(3) of the charter.

Therefore, clause 19 does not limit the right to freedom of expression provided for in the charter.

Section 20: property rights

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law. Clauses 4 and 16 of the bill may engage this section of the charter.

Clause 4 substitutes existing section 32V of the Fair Trading Act and in doing so removes an existing exemption for credit contracts from the operation of Part 2B of that act, thereby applying the unfair contract terms scheme set out in Part 2B to consumer credit contracts. New clause 14(1) in schedule 3 to the Fair Trading Act, inserted by clause 16 of the bill, limits the operation of clause 4 by providing that contractual terms contained in credit contracts entered into prior to the commencement of clause 4 are not subject to part 2B, unless a term of the contract is varied after the commencement of clause 4, at which point the varied term will become subject to part 2B.

Clauses 4 and 16 do not limit section 20 of the charter. Contractual terms in credit contracts entered into prior to the commencement of clause 4 will not be subject to part 2B of the act. Therefore, the contractual rights and obligations of the parties to these contracts will be unaffected by the application of part 2B to credit contracts. The only exception will be where the terms of credit contracts entered into prior to the commencement of clause 4 are varied after the commencement of clause 4: clause 16 provides that these varied terms will be subject to part 2B. Applying part 2B to these terms will offer parties to contracts entered into prior to the commencement of clause 4 protection from variations that may potentially create an unfair contract term.

Clause 9 of the bill will insert a new subsection (4) into section 32ZC of the Fair Trading Act and this may engage the property rights protected by section 20 of the charter. Section 32ZC(4) will enable the County or Supreme courts, or the Victorian Civil and Administrative Tribunal, to make various remedial orders after having declared a term in a consumer contract to be an unfair term or a term in a standard form contract to be a prescribed unfair term. In particular, the remedial orders available include orders for a refund or the transfer of property.

It should be noted that, in the vast majority of cases, an order that a refund be paid or that property be transferred would be made against a corporation, to which the charter does not apply. Furthermore, in the unlikely event that a remedial order was made against a natural person, the order would be in the nature of restitution and only available where there has been a prior declaration that either a term is unfair, or that a term is a prescribed unfair term. In any event, the order would be made by a judicial entity and in accordance with law. For these reasons, clause 9 does not limit the rights under section 20 of the charter.

Finally, clause 13 of the bill may engage section 20 of the charter. Clause 13 inserts new subsection 154(1)(ab) into the Fair Trading Act, to provide that a court may make an order prohibiting a person subject to litigation under the act from divesting their money or other assets. In enabling the court to make such an order, clause 13 may operate to restrict the way in which a person deals with their property.

Clause 13 does not, however, unlawfully or arbitrarily interfere with the property rights protected by section 20 of the charter. Clause 13 is lawful, being provided for under the act. Further, the order can only be made by the court in defined and specific proceedings, and would be used by the court to preserve the assets of a person against whom certain proceedings have been taken, in order to ensure that the court's judgement is not frustrated by the dissipation of those assets.

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 7 and clause 9, subsections (1)–(3) may engage this right, as they amend sections 32ZA and 32ZC of the Fair Trading Act to give the Director of Consumer Affairs Victoria the ability to apply to either the Victorian Civil and Administrative Tribunal or the County or Supreme courts for an injunction under section 32ZA or a declaration under section 32ZC. In making these amendments, clauses 7 and 9 give the County and Supreme courts jurisdiction under Part 2B of the act which was formerly restricted to the tribunal.

These clauses are not considered to restrict section 24, as they simply give the Director of Consumer Affairs Victoria access to apply for a declaration or injunction under Part 2B in an alternative forum.

Section 24 may also be engaged by clause 14 of the bill, which amends section 157 of the act to provide that a finding of fact by a court under sections 153 and 153A (i.e. in non-punitive corrective advertising orders or punitive adverse publicity orders) is evidence of the same fact in proceedings under sections 158 or 159 (that is, for remedies such as court orders or damages).

Section 157 is essentially a means of avoiding procedural duplication. The right to a fair hearing is not affected by an arbitrary or unlawful presumption because the conclusion being made in relation to a particular fact will already have been proven in previous court proceedings. The conduct or contravention assumed is the same in both proceedings — only the remedies sought will differ. Further, a person may avoid a presumption of fact under section 157 by appealing the earlier finding. Therefore, clause 14 does not limit the charter.

Section 25: rights in criminal proceedings

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. Section 25(2) of the charter provides for minimum guarantees in criminal proceedings.

Section 25 of the charter may be engaged by clause 10 of the bill, which inserts new section 32ZDA into the Fair Trading Act. New section 32ZDA(1) introduces a presumption that, if it is alleged in any proceeding under part 2B or in any other proceeding in respect of a matter arising under that part that a contract is a consumer contract or a standard form contract to which the part applies, it is to be presumed, unless the contrary is established, that the part applies to the contract. New section 32ZDA(2) limits the application of this presumption by providing that the presumption under subsection (1) does not apply in respect of criminal proceedings against a natural person.

Although clause 10 does impose a legal burden of proof on a person against whom proceedings may be taken under part 2B, the clause does not limit section 25 of the charter because it does not apply in respect of criminal proceedings against a natural person. The presumption in clause 10 may, however, operate to place a legal burden of proof in criminal proceedings against a corporation. As the charter does not apply to corporations, section 25 of the charter is not limited by the operation of this clause.

Section 27: retrospective criminal laws

Section 27(2) of the charter provides that a penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed.

Clause 15 of the bill engages this right by amending section 160 of the Fair Trading Act to increase the compensation a court can make an order for under section 160 of the act from $1000 to $10 000.

However, section 27(2) of the charter is not limited by clause 15, because clause 16 of the bill, which inserts new transitional clauses 14(5) and 14(6) into schedule 3 to the Fair Trading Act, provides that the increased compensation available under section 160 as a result of clause 15 will only apply in relation to an offence committed on or after the commencement of the clause. Clause 16 further provides that if an offence is alleged to have been committed between two dates and clause 15 commences on a date between those two dates, the offence will be taken to have been committed before the commencement of that clause.

2. Consideration of reasonable limitations — section 7(2)

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

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because although it raises human rights issues it does not limit human rights.

Hon. Tony Robinson, MP
Minister for Consumer Affairs

Second reading

Mr BATCHELOR (Minister for Community Development) — I move:

That this bill be now read a second time.

Improving the operation of markets by ensuring that Victorian consumers are well informed and protected is a key priority of the Brumby government.

This bill acts on that priority through amendments to three acts: the Fair Trading Act 1999; the Residential Tenancies Act 1997 and the Consumer Credit (Victoria) and Other Acts Amendment Act 2008.

The Fair Trading Act is Victoria's primary consumer protection legislation. It is important that it contains appropriate tools to enable regulators and courts to effectively administer and enforce the act. This bill strengthens enforcement capacity under the act by increasing the suite of tools available to Consumer Affairs Victoria and the courts.

For example, the bill provides Victorian courts with the same capacity as courts under the Trade Practices Act 1974 to make non-punitive orders requiring corrective advertising to be undertaken.

The bill also enables a court to make an order prohibiting a person subject to litigation under the Fair Trading Act from divesting their assets in an attempt to defeat a potential judgement of the court, and increases the current limit on compensation for humiliation or distress under section 160 of the act from $1000 to $10 000, to better reflect the gravity of such conduct, and its potential consequences, particularly for vulnerable consumers.

Minor amendments will be made to the definitions of 'officer' and 'trade and commerce' in the act, to bring them into line with other jurisdictions.

The bill also amends part 2B of the Fair Trading Act, which establishes Victoria's unfair contract terms scheme, to improve and strengthen its operation. The bill ensures that the director of Consumer Affairs Victoria can choose between applying for a declaration or injunction from either the Victorian Civil and Administrative Tribunal or the County or Supreme courts.

The tribunal and the courts will be provided with the capacity to make remedial orders under part 2B — for example, an order that a refund be given. The bill also amends the definition of 'unfair contract term' by removing the element of 'good faith' following the

comments of then Justice Morris, in his capacity as president of VCAT, in *Director of Consumer Affairs v. AAPT Ltd*, that this requirement is adjectival and not an element that needs to be proved separately to show that a term is unfair. In October 2008, the Council of Australian Governments agreed to a single national consumer law, including a provision regulating unfair contract terms, which is being developed, and the Ministerial Council on Consumer Affairs has recommended a definition of unfair contract term that does not include a 'good faith' requirement.

A new presumptive provision provides that if it is alleged in any proceeding under part 2B that a contract is a consumer contract or standard form contract to which part 2B applies, it is to be presumed (unless the contrary is established) that part 2B applies to the contract.

The bill also extends the operation of part 2B of the Fair Trading Act to credit contracts. These contracts are currently the only consumer contracts not subject to unfair contract terms provisions in part 2B. The bill will rectify this by ensuring that parties to credit contracts entered into after the commencement of the bill will enjoy protection from unfair contract terms. This amendment implements a recommendation of the report of the consumer credit review. However, it should be noted that part 2B will not apply to contractual terms contained in a credit contract that was entered into before the commencement of the amendments, unless the terms of those contracts are lawfully varied. In these situations, part 2B will apply to the varied term or terms.

In the 2008 annual statement of government intentions, the government flagged its intention to enhance protection for students living in commercial student housing accommodation. This bill implements that intention by strengthening section 21 of the Residential Tenancies Act, under which residential premises can be formally affiliated with a school or educational institution and thereby exempt from the operation of the act. The bill introduces new requirements that prescribed criteria be considered by a school or educational institution prior to entering into an agreement to formally affiliate a residential premises, and that where a residential premises is exempt from the operation of the Residential Tenancies Act by virtue of formal affiliation, notice of that exemption be prominently displayed in a public or common area. Offences relating to misrepresentations or engaging in misleading conduct in relation to formal affiliation have been introduced, attracting a maximum penalty of 300 penalty units.

Finally, the bill amends several unproclaimed provisions of the Consumer Credit (Victoria) and Other Acts Amendment Act. The bill ensures that provisions in the act that introduce an enhanced credit provider registration scheme do not commence by default on 1 July 2009. The commencement of these provisions is no longer necessary, as a comprehensive national credit provider and finance broker licensing scheme announced earlier this year by the Council of Australian Governments is being developed by the commonwealth government for introduction in mid-2009. The bill also makes technical amendments to ensure that related provisions introducing external dispute resolution requirements can come into operation on 1 July 2009, if not proclaimed to come into operation earlier.

The 2008 annual statement of government intentions noted that the Fair Trading Act would be amended to introduce a lemon law to cover motor vehicle purchases in Victoria, and during late 2007, Ms Janice Munt MP, member for Mordialloc, led a consultation process to this end. Since then there have been significant national developments in the consumer protection area. As noted previously, the Council of Australian Governments has agreed to a single national consumer law.

This significant national initiative impacts on the development of a Victorian motor vehicle lemon law. Given the timing of the new law, any state-based stand-alone initiative would be quickly superseded unless it received substantial support from all jurisdictions.

Additionally, in August 2008, the Ministerial Council on Consumer Affairs agreed that the implied terms regime in various state fair trading laws requires review. This review will be led by the commonwealth government and will include consideration of lemon laws. Consequently, the bill does not address the issue of motor vehicle lemon laws. The government will use Ms Munt's report on the motor vehicle lemon law consultations to assist in developing enhanced protection for consumers through the implied terms review and the new national law.

I commend the bill to the house.

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

Debate adjourned until Thursday, 18 December.

LIQUOR CONTROL REFORM AMENDMENT (ENFORCEMENT) BILL

Statement of compatibility

Mr ROBINSON (Minister for Consumer Affairs) 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 Liquor Control Reform Amendment (Enforcement) Bill 2008.

In my opinion, the Liquor Control Reform Amendment (Enforcement) 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 will amend the Liquor Control Reform Act 1998 (the act) to strengthen enforcement powers, clarify the director's powers to impose conditions in relation to security cameras, require associates of licensees to be declared, and to make other miscellaneous amendments.

Human rights issues

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

1. Right to privacy and reputation — section 13

Section 13 of the charter provides that every person has the right not to have his or her privacy, family, home or correspondence unlawfully interfered with.

Clause 8 of the bill substitutes section 18B of the act to enable the director to impose a condition on a licence requiring the licensee to fit security cameras on the licensed premises, any authorised premises, or any other premises, land, fixtures or objects that are under the control of the licensee. This section will, for the purposes of protecting public safety, ensure that areas in and around licensed premises are subject to the operation of security cameras.

As this provision enables security cameras to be installed in, or on, premises, land and fixtures controlled by the licensee as a condition on the licensee's licence, where the licensee is not a corporation, this may interfere with the licensee's privacy. However, as the licensee voluntarily became subject to this condition through obtaining his or her licence, this condition does not engage the licensee's right to privacy and reputation under section 13 of the charter.

Clause 8 of the bill may also interfere with the privacy of patrons of licensed premises and potentially members of the public, if patrons and members of the public had a reasonable expectation of privacy in an area in which a security camera was operating. It is unlikely that patrons and members of the public would have a reasonable expectation of privacy in relation to the majority of the areas in which security cameras may potentially be installed and operate. However, even if patrons or members of the public did have a reasonable expectation of privacy in relation to certain areas, and the operation of security cameras in those areas did constitute an interference with the right to privacy of those patrons and members of the public, such interference would be reasonable and justified, as the security cameras would operate to protect the safety of patrons and members of the public. Further, any interference would be lawful and not arbitrary.

Clause 9 of the bill amends section 28 of the act to require an applicant for a licence or BYO permit to list the names, dates of birth and addresses of the associates of the applicant. This requirement may interfere with any associates' right to privacy. 'Associate' is defined in section 3AC of the act as a person who holds a relevant financial interest in any business of the applicant involving the sale of liquor. Accordingly, any associates would most likely consent to this information being provided. Further, as the information would be provided in the context of the operation of the regulatory scheme, it would not be unlawful or arbitrary.

Clause 19 of the bill substitutes section 129 of the act, to provide that an authorised person may enter and remain on any licensed premises for the purposes of exercising his or her functions under the act. In relation to a licensee or permittee, an authorised person must not enter a room in a licensed premises which is occupied by or set apart for the private use of the licensee or permittee, unless the person has first given notice of his or her intent to do so or has obtained the consent of the licensee or permittee to enter the room. In relation to a resident, an authorised person must not enter a room in a licensed premise which is occupied by or set apart for the private use of a resident unless the person has obtained the consent of the resident to enter the room.

In relation to a licensee or permittee, this provision would not engage such a person's right to privacy and reputation under section 13 of the charter, as the licensee and permittee voluntarily became subject to this occurrence through obtaining his or her licence or permit. This would also not engage this privacy right of a resident, as an authorised person cannot enter the room occupied or set aside for the resident unless the resident provides consent.

Clause 19 will also insert a new section 130 into the act. Section 130 provides that an authorised person may require any persons in possession of, or having control of, any document, equipment or other thing relating to an activity regulated by this act to produce the document, equipment or the thing for inspection and to answer questions or provide information in relation to the document, equipment or thing. It also requires licensees or their employees, or any other person associated with operations or their management in the premises that the authorised person is authorised to enter, to answer questions or to provide information.

This provision potentially interferes with the privacy of persons in possession of, or having control of, any document, equipment or other thing relating to activity regulated by this act by requiring such persons to produce the document, equipment or the thing for inspection and to answer questions or provide information in relation to the document, equipment or thing.

Where the person in possession or control of the document or other object is a licensee who is not a corporation, this provision would not engage the licensee's right to privacy and reputation under section 13 of the charter, as the licensee voluntarily became subject to this occurrence through obtaining his or her licence.

This provision also potentially interferes with the privacy of licensees (where a licensee is not a corporation) by requiring them to answer questions or to provide information. As the licensee voluntarily became subject to this occurrence through obtaining his or her licence, this does not engage the licensee's right to privacy and reputation under section 13 of the charter.

Clause 19 will also insert section 130A, which provides that an authorised person, who exercises a right of entry to premises under section 130 or under a search warrant, may require a person on the premises to state the person's full name and residential address. An authorised person is not authorised to require a person to state his or her name or address unless the authorised person suspects on reasonable grounds that the person has committed an offence and has informed the person at the time of stating the requirement that it is an offence to fail to comply with the requirement. There is a penalty of 20 penalty units for failing to comply with the section.

This provision interferes with a person's privacy by requiring him or her to provide his name and address. However, the interference is lawful and would not be arbitrary, given that an authorised person can only require a person to state his or her name or address if the authorised person suspects on reasonable grounds that the person has committed an offence. Further protections are included in the bill under the new section 130F, which provides that self-incrimination is a reasonable excuse for failing to answer questions, and that, if a person claims, before producing a document, equipment or thing that its production would incriminate the person, the document, equipment or thing is not admissible against the person in criminal proceedings.

Clause 19 of the bill will also insert section 130B into the act, which provides that an authorised person may apply to a magistrate for the issue of a search warrant in relation to particular premises.

To the extent that this provision relates to private information and permits access to residences, any interference would only occur in controlled and prescribed circumstances set out in the bill and would thus be lawful. Procedural safeguards and oversight have been included in the bill in relation to the exercise of these powers, including the fact that a search warrant must be granted by a magistrate. Further, the magistrate must be satisfied that there are reasonable grounds for suspecting the unlicensed supply of liquor on the premises, or, in respect of a club, the unlicensed supply or keeping of liquor or that there is on the premises any document, equipment or other thing relating to, or that may be evidence of, an offence under the act or regulations. Consequently, this provision is also not arbitrary.

Clause 26 of the bill will insert new sections 172A, 172B, 172C and 172D into the act which relate to the appointment of compliance inspectors.

In order to be appointed as a compliance inspector, a person must consent to having his or her photograph and fingerprints taken, which would engage the person's right to privacy. However, any interference with privacy will not be unlawful as the requirement is limited to those applying for appointment as compliance inspectors, and there are checks and balances in place to limit access to, and use of, the information, such as requiring destruction of the material collected after a certain time period, and notifying the relevant person that the material has been destroyed.

Further, any limitation on the right to privacy would not be arbitrary, as it only relates to potential compliance inspectors, and it is important to ensure that such persons are of good character.

2. Property rights — section 20

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law.

Under clause 12 of the bill, section 96B will be inserted into the act to provide that the director may suspend a licensee's licence for a period not exceeding five days.

A licensee whose licence is suspended by the director may suffer a loss of revenue.

Section 20 of the charter would not apply to licensees that are corporations rather than natural persons. Further, where a liquor licence is affected or divested in the manner provided for in a statutory scheme that creates or sustains it, no deprivation of property will occur, as the licensee would have a reasonable expectation of this occurring. However, even if a deprivation of property did occur, the deprivation would occur in accordance with law and would not be arbitrary given that it would occur in the context of the regulatory scheme in a clearly specified manner.

Accordingly, clause 12 is compatible with section 20 of the charter.

Clause 19 will also insert a new section 130 into the act, which provides that, amongst other things, if an authorised person considers it necessary for the purpose of obtaining evidence of the commission of an offence, they can seize a document, equipment or other thing. If an authorised person does seize such an object, it may be retained until the completion of any proceedings in which it may be evidence, but only, if the object was a document, the person from whom it was seized is provided with a copy of the document certified by an authorised person as a true copy.

If the object seized was owned by a corporation, section 20 of the charter would not apply. However, even if the deprivation of property from a natural person did occur, the deprivation would occur in accordance with law and would not be arbitrary, given that it would occur in the context of the regulatory scheme in a clearly specified manner.

3. Right to be presumed innocent — section 25(1)

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 19 will also insert a new section 130E into the act, which provides that a person must not, without reasonable excuse, fail to produce for inspection any document, equipment or other thing in the possession or under the control of the person when required to do so by an authorised person in the performance of his or her functions under this act, or fail to attend before an authorised person and answer questions or supply information when required to do so by an authorised person. The penalty for these offences is 60 penalty units.

It is a defence to these offences if a person has a 'reasonable excuse'. An example of a reasonable excuse is provided in section 130F, which provides that it is a reasonable excuse for a person to refuse or fail to answer questions or provide information if the answering of the question or the provision of information would tend to incriminate the person.

By requiring a person to provide a reasonable excuse in order to escape liability, section 130E creates a burden on such a person.

By placing a burden of proof on such a person, this provision potentially limits the right to be presumed innocent in section 25(1) of the charter, in circumstances where the relevant person is not a corporation. However, any limit upon the right would be 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:

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 the offence is of a regulatory nature.

The importance of the purpose of the limitation

The purpose of the defence in section 130E is to enable a person to escape liability where the person is able to establish that he or she had a reasonable excuse.

The purpose of imposing a burden is to ensure that offences against authorised persons can be effectively prosecuted. It would be difficult and onerous for the Crown to investigate and prove beyond reasonable doubt that a person did not have a reasonable excuse.

The nature and extent of the limitation

The burden of proof is imposed in respect of affirmative defences only, and does not apply to essential elements of the offences.

Further, the defence relates to matters that are principally within the knowledge and/or control of the relevant person.

The relationship between the limitation and its purpose

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

Less restrictive means reasonably available to achieve the purpose

Removing the defences altogether would not infringe the right to be presumed innocent. However, this would not achieve the purpose of enabling a person to escape liability where he or she has a reasonable excuse.

Other relevant factors

The prescribed penalty is a fine.

Consequently, if the defence does amount to a limitation, it is reasonably justified under section 7(2) of the charter.

4. Right to freedom of movement — section 12

Section 12 of the charter includes the right to move freely within Victoria.

Clause 19 will insert a new section 130 into the act which provides that authorised persons may, by written notice, require the holder of a licence or BYO permit or other authorisation under this act; or an employee of such a person; or any other person associated with the operations or their management in premises the authorised person is authorised to enter, to attend before the authorised person at a specified time or place.

If section 12 of the charter is engaged by the temporary restriction on movement authorised under this section, any limit imposed is reasonable and justifiable, as the powers are predictable and reasonable, the questioning must be related to an activity regulated by the act and notice for attendance must be provided in writing.

Conclusion

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

TONY ROBINSON, MP
Minister for Consumer Affairs

Second reading

Mr ROBINSON (Minister for Consumer Affairs) — I move:

That this bill be now read a second time.

The bill will strengthen enforcement powers under the Liquor Control Reform Act 1998 and make other amendments to improve the operation and effectiveness of the act.

The bill fulfils the Premier's 2008 annual statement of government intentions commitment to bring forward a bill in 2008 that will enhance enforcement and licensing and improve responses to alcohol-fuelled violence.

The bill also supports the government's commitment, as articulated in *Restoring the Balance — Victoria's Alcohol Action Plan 2008–2013*, to enhance the operation of the act through monitoring and enforcement to ensure that licensees meet their obligations and responsibilities in creating a culture that supports appropriate and responsible alcohol use.

In late 2007 the Liquor Control Reform Amendment Act 2007 introduced a range of reforms that have been instrumental in addressing significant community concern about alcohol-related violence and disorder, particularly in and around licensed venues. This bill

builds upon those reforms and will be complemented in 2009 by a further bill that will amend the act to implement the comprehensive review of liquor licence categories and conditions that is currently being undertaken.

These legislative measures are, however, one aspect of a suite of measures that the government has put in place, and will continue to develop, to promote the appropriate and responsible service and consumption of alcohol and to reduce the negative consequences of excessive alcohol use.

The measures contained in this bill will strengthen regulation of the liquor industry and enhance the community's safety and amenity.

Civilian compliance directorate

The bill establishes a new civilian compliance directorate within the Department of Justice. The civilian directorate will complement those existing enforcement bodies under the act, being in addition to the powers currently exercised by the director of liquor licensing and Victoria Police. In particular, members of the police force will have all the powers of inspectors as well as retaining their existing powers under the act.

The new compliance inspectors will be appointed by the Secretary to the Department of Justice. To appoint a person as an inspector, the secretary must be satisfied that the person is competent to perform their functions and is of good repute, having regard to the character, honesty and integrity of the person. Inspectors will be subject to criminal record checks. To carry out functions under the act, an inspector must possess an identity card in a form approved by the secretary.

The bill empowers compliance inspectors to enter licensed premises for the purpose of exercising their functions under the act. Inspectors will be able to enter premises at any time when the premises are open to the public or at any other time, with the consent of the occupier or where the authorised person reasonably suspects that the business of supplying liquor to the public is being carried on. Specific restrictions will apply in relation to entry to private rooms on the premises.

Compliance inspectors will have the power to require the production of documents and other things and to require licensees, permittees, employees and persons associated with the operation or management of a premise to answer questions. Inspectors will have the power to examine and test equipment, inspect registers and plans of licensed premises, and powers of inspection and seizure. They will be able to seize liquor and sell forfeited liquor in the same way as the police under the act. The bill provides protection against self-incrimination in relation to the power of inspectors to require the production of documents or other things and to require questions to be answered.

Inspectors will, subject to certain requirements, be able to require a person on the premises to state their name and address when the person is suspected of having committed an offence. The bill will also allow compliance inspectors, with the consent of the director, to apply for a warrant when the unlicensed supply of alcohol is suspected or there are documents or other things or evidence in relation to the commission of an offence under the act or regulations suspected to be on the premises.

Inspectors will also have the capacity to initiate proceedings, with the prior approval of the director, for offences against the act. Inspectors will also be able to serve infringement notices for offences. Unlike the police, who already have the power to serve infringement notices, inspectors will not have the power to issue notices for the offences of contravening a banning notice or exclusion order or of failing to comply with police directions made in relation to such a notice or order.

Finally, compliance inspectors will be empowered to demand proof of age from a person, seize evidence of age and seize liquor from a minor. However, unlike police, inspectors will not be empowered to arrest under-age persons.

The new compliance directorate is expected to be fully operational by mid-2009. The introduction of civilian inspectors represents an important enhancement to enforcement and compliance under the act.

Powers of the director of liquor licensing

The Liquor Control Reform Amendment Act 2007 introduced two new enforcement and compliance tools to facilitate a timely response to issues of public safety related to the conduct of licensees. That act empowered senior police members to immediately suspend a licensee's licence for up to 24 hours in particular circumstances. It also empowered the director to serve a breach notice with a response period of not less than 14 days after which time the director can vary or suspend a licensee's licence if no response, or an inadequate response, is provided by the licensee.

The bill establishes a new power for the director to suspend a licensee's licence for up to five days if the director believes on reasonable grounds that the licensee has engaged in conduct that would constitute

grounds for a VCAT inquiry and there is a danger that, unless the licence is suspended, a person may suffer substantial harm, loss or damage as a result of that conduct.

At least 48 hours before serving a suspension notice under these new provisions, the director must serve a notice of intention to suspend the licence, specifying the conduct that the licensee is believed to have engaged in and providing a specific time frame for the licensee to respond. The director must consider any response provided by the licensee within the specified time frame before the director can proceed with the suspension.

The exercise of the new suspension power will not preclude the director from pursuing an application for a VCAT inquiry under section 90 of the act, nor will it preclude an application for the cancellation or suspension of a licence under section 94 or 95 of the act. The power may also be used when a breach notice has already been served.

It is anticipated that this new power of the director will be used where circumstances are not sufficiently serious to justify an immediate police suspension but where the situation is serious enough to warrant a swift response from the director.

The bill improves the operation of the director's breach notice power by removing the requirement that the director must believe that the licensee will continue to engage in conduct that would constitute grounds for a VCAT inquiry before issuing a breach notice. It will be sufficient for the director to believe that licensee has engaged in such conduct. Further, any variation to licence conditions which follows from a breach notice process will continue to operate on an ongoing basis. At present, a variation ceases to have effect seven days after coming into operation. This change will lessen the need to pursue a separate variation process under the act.

Under section 154 of the act, the director is empowered to investigate any matter relevant to the operation of the act, including the conduct and practices of any licensee or permittee. The bill preserves this existing power and augments the director's investigatory role by enabling the director to undertake a broadbased inquiry into any matter relevant to the operation of the act, including an inquiry into activities regulated by the act in any area or locality of the state.

If an inquiry is conducted into one into activities in an area or locality, the director must publish notice of the inquiry in the *Government Gazette* and in the local newspaper of the area or locality that is the subject of the inquiry and the notice must invite submissions. The director may call for submissions from interested organisations and the general public and may consult with, and seek submissions from, other persons or bodies as appropriate. The director must consider any submissions that are made before concluding an inquiry.

The broadbased inquiry power will be a valuable tool in circumstances where widespread breaches or complaints have arisen in an area or where a particular event area may require specific additional conditions to operate safely.

Other amendments to the act

The bill makes a number of miscellaneous amendments to the act to improve its operation and to enhance enforcement.

At present, under section 96A of the act, a senior police member may suspend a licensees' licence for a period not exceeding 24 hours if the member reasonably believes that the licensee has engaged in conduct that would constitute grounds for a VCAT inquiry under section 90, that it is likely that the licensee will continue to engage in that conduct and that, if the licence is not suspended, there is a danger that a person may suffer substantial harm, loss or damage as a result of that conduct. To ensure that the threshold test does not unnecessarily limit the effective application of the power, the bill removes the requirement of a belief that the licensee is likely to continue to engage in the conduct.

The bill amends section 18B of the act to clarify that the director may impose licence conditions requiring security cameras to be affixed to authorised premises, other premises, land, fixtures or other objects that are under the control of the licensee and not just to the licensed premise itself. The amendment will improve safety around licensed premises, including in such areas as a car park that is under a licensees' control.

The bill tightens the defence that is available for licensees or permittees who are charged with the offence of permitting drunken or disorderly persons to be on licensed or authorised premises. To rely upon the defence, a licensee or permittee will need to demonstrate that he or she did not know that drunken or disorderly persons were on the premises and that they had taken reasonable steps to ensure that such persons were not on the premises. Under the current provisions, a licensee or permittee need only satisfy one of the

limbs of the test, rendering the offence difficult to successfully prosecute.

The bill enhances the director's power to conduct an appropriate probity check on a body corporate that is applying for a licence or for the transfer of a licence by requiring the body corporate to supply the names, addresses and dates of birth of its associates to the director. Further, the bill will require all licensees and permittees to provide written notice to the director in the event of a person becoming an associate or ceasing to be an associate of the licensee or permittee.

Finally, the bill amends the act to expressly include the voluntary deregistration or winding-up of a company as a ground for any licence or BYO permit held by the company to cease to have effect unless the licence or permit is endorsed under part 4 of the act.

The bill delivers on the key commitments of government to improve the operation of the act through enhanced monitoring and enforcement. The important legislative initiatives contained in the bill represent one aspect of the government's wide ranging suite of measures to reduce the negative impact of alcohol abuse in our society and to improve the community's safe enjoyment of Victoria's entertainment precincts.

I commend the bill to the house.

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

Debate adjourned until Thursday, 18 December.

ASSOCIATIONS INCORPORATION AMENDMENT BILL

Statement of compatibility

Mr ROBINSON (Minister for Consumer Affairs) 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 Associations Incorporation Amendment Bill 2008.

In my opinion, the Associations Incorporation 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 introduces a range of amendments to the act that will:

enhance the rights of members of incorporated associations;

improve the internal governance arrangements for associations;

enhance the supervisory role of the registrar of incorporated associations;

improve provisions relating to the winding up and administration of incorporated associations; and

introduce a number of minor administrative amendments.

In particular, the bill will:

merge the roles of public officer and secretary of an incorporated association;

amend the schedule to the act to include additional mandatory rules providing for proper keeping of minutes of meetings and for member access to minutes and to financial records and statements;

provide that members of an incorporated association must confirm termination of appointment of an auditor;

clarify the circumstances in which an office-holder, former office-holder or member of an incorporated association must return to the incorporated association any documents of the association in their possession;

provide that a notice of a proposed special resolution must set out full details of the proposed resolution;

provide that the statement of purpose of an incorporated association is to be enforceable by application to the Magistrates Court by a member or by the registrar of incorporated associations;

allow a member or former member of an incorporated association to seek an order from the Magistrates Court to remedy the effects of 'oppressive conduct' by an association;

provide a general power for the Magistrate's Court when considering an application made under the act to refer a matter to the Supreme Court if it raises a complex question or matter of general importance or to reserve a question of law for the Supreme Court;

provide additional power for the registrar to clarify the validity of lodged documents;

clarify that when assessing proposed rules or amended rules, the registrar may accept some proposed changes and refuse others;

provide a power for the registrar to ask the Magistrates Court to appoint a temporary statutory manager when this is in the public interest;

allow small incorporated associations with less than $10 000 in surplus assets to apply for voluntary cancellation of registration;

clearly prohibit distribution of surplus assets to members, except in certain circumstances;

provide for voluntary administration of incorporated associations by applying part 5.3A of the Corporations Act 2001 (Commonwealth);

establish the registrar as a body corporate;

prevent claims against or by an incorporated association in certain circumstances;

provide qualified privilege for a statutory manager, administrator or auditor of an incorporated association.

Human rights issues

The registrar's power of inquiry, as provided by section 36EB(1), potentially engages the section 13 charter right to privacy where information relates to natural persons. This power of inquiry has, therefore, been specifically prescribed to ensure the registrar may only make inquiries which are relevant to the information provided in the section 36EA(5) declaration. The proposed power of inquiry is both provided for by law and proportionate to achieve the aims of the act and is, therefore, compatible with the section 13 charter right to privacy.

Otherwise, the provisions in this bill do not raise any human rights issues.

Consideration of reasonable limitations — section 7(2)

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

Conclusion

For the reasons outlined above, I consider that the bill is compatible with the Charter of Human Rights and Responsibilities.

Hon. Tony Robinson, MP
Minister for Consumer Affairs

Second reading

Mr ROBINSON (Minister for Consumer Affairs) — I move:

That this bill be now read a second time.

The Associations Incorporation Act 1981 was established to provide a simple and inexpensive means by which unincorporated non-profit associations could obtain corporate status. The act, which essentially regulates the creation, operation and dissolution of incorporated associations, is the most popular vehicle for the incorporation of community and non-profit groups in Victoria. At 30 June 2008, there were 34 385 incorporated associations on the register of incorporated associations.

This bill introduces a range of amendments to the act that will:

enhance the rights of members of incorporated associations;

improve the internal governance arrangements for incorporated associations;

enhance the supervisory role of the registrar of incorporated associations;

improve provisions relating to the voluntary winding up and external administration of incorporated associations; and

introduce a number of minor administrative amendments.

The reforms implemented by this bill have been the subject of wide consultation and detailed analysis. A review of the Associations Incorporation Act in 2004–2005 identified a number of proposals for reform. Those proposals were subject to further consideration during the 2007 State Services Authority Review of Not-for-Profit Regulation, and in April of this year, the Premier launched the Victorian Government Action Plan: Strengthening Community and Not-for-Profit Organisations.

The action plan responds to the State Services Authority Review and to the Stronger Community Organisations project and outlines a number of proposed actions designed to simplify and update legislation, improve support for the operation of the community and not-for-profit sector and relieve the burdens of regulatory compliance and reporting. Those actions include a range of reforms to the Associations Incorporation Act.

The government has adopted a two-staged approach to implementing reform of the act, of which this bill is stage one. The action plan identified a number of issues that required further consideration and consultation with stakeholders including revised financial and annual reporting requirements, appropriate thresholds for audit requirements and external dispute resolution mechanisms.

Those matters have not been addressed in the current bill and will be the subject of further consideration by government and consultation with stakeholders in 2009. This will also allow the government the opportunity to take into account any proposals for greater national harmonisation of not-for-profit regulation that may flow from the current senate committee inquiry into the

regulation of charities and from the commonwealth government's social inclusion agenda.

I now turn to the specific reforms contained within the bill.

The bill contains a range of amendments directed towards improving the internal governance arrangements of incorporated associations and enhancing the rights of members of incorporated associations.

The bill will merge the role of public officer and secretary of an incorporated association. The public officer is responsible for lodgement of relevant documents with the registrar and acts as the primary contact point for the incorporated association. However, in many instances public officers fail to notify a change of their address or newly appointed public officers fail to notify the registrar that they have taken on this role. This creates difficulties for the registrar when the association needs to be advised of matters such as changes to the law, changes to procedures for lodgement of documents, or a reminder to lodge financial statements.

To address these issues, the amendments will repeal references to the position of public officer and provide that the secretary of an incorporated association will assume all roles currently undertaken by the public officer.

For many incorporated associations the secretary of the committee is responsible on a day-to-day basis for the paperwork of the association and is a member of the management committee of the association, and it is sensible to combine this role with that of the public officer for the purposes of the act. Where an incorporated association does not have a secretary, the act continues to require that they have a public officer — that position will now be described as the 'secretary' for the purposes of the act.

This amendment should result in improved communications between the registrar and incorporated associations and the inclusion of accurate and up-to-date contact information in the register of incorporated associations.

The bill will improve the rights of members to access information about their incorporated association and its operations. Currently, many incorporated associations do not keep accurate minutes of meetings, nor provide access to them for members. Requiring the rules of an incorporated association to set out a clear statement of members' rights of access to accurate minutes of meetings should enhance member control and participation in their association and will assist in reducing disputes.

Similarly, while the act currently requires that an incorporated association maintain adequate and accurate accounting records of financial transactions, members of incorporated associations may experience difficulty in accessing or inspecting their association's financial accounts. An express right of access for members to the accounts of an incorporated association will assist in reducing disputes and promote transparency and accountability by the management committee towards members.

The bill will amend the schedule to the act to provide that the rules of an incorporated association must provide for the preparation and retention of accurate minutes of general meetings of the association and of meetings of the committee or other body of management of the incorporated association.

In addition, the rules will be required to specify the rights and procedures for members to examine or obtain copies of minutes of meetings and of the accounting records and financial statements of the incorporated association.

Currently the committee of an incorporated association is able to terminate the engagement of an association's auditor without first seeking the approval of the members. This effectively reduces the level of protection for members provided by an auditor ensuring that proper accounts are maintained and proper procedures followed.

The bill will amend the act so that an auditor of an incorporated association can only be removed from office by resolution at a general meeting of the association. Appropriate notice of the proposed removal of an auditor will be required to be given to all members and to the auditor prior to the general meeting at which the matter is to be considered.

This is consistent with the rights of shareholders under the Corporations Act 2001, where a company auditor can only be removed by a resolution of the company passed at a general meeting.

The bill includes a provision granting qualified privilege to statutory managers, administrators and auditors appointed in accordance with the act. Qualified privilege provides a statutory defence in circumstances where a statement whether written or oral may otherwise be perceived as defamatory. The provision is consistent with qualified privilege under equivalent Corporations Act provisions and will ensure that those persons can provide frank and fearless advice to the

committee and members of an incorporated association and to the registrar of incorporated associations. This will also complement new provisions that require member authorisation for removal of an auditor. Those provisions include the right for an auditor to make a submission to and to address a meeting called to consider a special resolution for removal of an auditor.

The 2004–05 review of the act noted that outgoing office-holders of an incorporated association may fail to return documents or records of the association that they have in their possession. This may make it difficult for an incorporated association to prepare the following year's annual statements or may lead to a loss of continuity in the association's operations.

The bill will amend the act to provide that when a member or committee member resigns or otherwise ceases to hold office, that member must return to the secretary of the incorporated association, any documents that they possessed by virtue of being a member or committee member. The documents must be returned within 28 days of their resignation or of their ceasing to be a member.

If the documents are not returned within that period, the bill provides that an incorporated association may apply to the Magistrate's Court for an order directing a person to return documents to the association.

This amendment will reduce the likelihood of disputation around the retrieval of documents that belong to the incorporated association and will enhance the continuity of operation of an association when changes take place in the make-up of its management committee.

The bill provides for improved notice to be given to members of important proposals that need to be considered by a general meeting of the association. A frequent source of complaint to the registrar from members of incorporated associations is that notice given to them of a proposed special resolution of the association does not provide any detail of the content of the resolution.

The bill will amend the act to provide that notice to members of a proposed special resolution must set out the resolution in full and clearly state that it is proposed as a special resolution.

The bill will clarify that an incorporated association must not act outside of the powers provided by its rules and must not act outside the scope of its statement of purposes.

The statement of purpose of an incorporated association is highly significant to the nature and activities of the association. People (including government agencies) are likely to choose to join, contribute to, or deal with an association on the understanding that it operates for particular purposes.

The statement of the purpose of an incorporated association can be of especial importance in the case of a charitable association that solicits and receive donations from the public. The statement of purpose is also relevant to an association's eligibility to become, and remain, incorporated. This provides strong justification for allowing a statement of purpose to be enforceable

The bill will amend the act to provide that if an incorporated association acts outside its statement of purpose, a member of the association or the registrar may bring proceedings in the Magistrate's Court to restrain the incorporated association from doing so.

The bill will introduce new provisions into the act that will enable a member or former member of an incorporated association to apply to the Magistrates Court to seek an order in circumstances where it is alleged that the association has engaged or proposes to engage in conduct that is oppressive. These provisions draw upon the best features of equivalent provisions in the Corporations Act and in the South Australian Associations Incorporation Act.

Oppressive conduct is defined in the bill to include circumstances where an incorporated association has engaged or proposes to engage in conduct that would be oppressive, unfairly prejudicial or unfairly discriminatory towards a member or that would be contrary to the interests of the members as a whole.

Upon hearing such an application, the Magistrates Court will be able to make a range of orders including an order restraining or requiring a person to do a specific thing or an order to reinstate a member. The bill also includes a provision allowing the Magistrates Court to refer proceedings to the Supreme Court if they raise a complex question or matter of general importance, a question of law or if it appears that an incorporated association may need to be wound up.

The bill includes a number of amendments that will clarify and enhance the role of the registrar of incorporated associations. Firstly, the bill provides that the registrar will be a body corporate with perpetual succession under the name of registrar of incorporated associations.

The Associations Incorporation Act provides that if the incorporation of an association is cancelled, the property of that association vests in the registrar. Currently, the registrar is an individual person. This has led to difficulties in relation to the disposition of property, and in particular land. The bill will resolve this by creating the office of registrar as a statutory body corporate.

The bill will also provide the registrar with additional power to clarify the validity of lodged documents. From time to time, incorporated associations may become fragmented into blocs or rival factions as members disagree. This can mean that an incorporated association has two committees with two public officers, both asserting that they are legitimate.

Both committees may seek to lodge documents with the registrar, asserting that they are the official version. The registrar may accept one set of documents, such as amended rules, so that they form part of the register, and then receive a second but different set, often from another person claiming to be the public officer. Under the current provisions of the act the registrar's capacity to question whether documents presented are valid is limited.

These amendments will allow the registrar to refuse to accept documents lodged under the act if the registrar is of the opinion that they may not be valid. The incorporated association will be entitled to provide the registrar with minutes of meetings and any other documents or information necessary to support the validity of documents that have been lodged.

If the registrar still declines to accept the documents, an incorporated association will be able to request that the registrar refer the matter to the Magistrates Court for a declaration regarding their validity.

A related problem frequently encountered by the registrar is that incorporated associations will pass a special resolution approving a number of changes to their rules and forward the resolution and changes for approval. However, while some of the alterations will be valid, there may be one or more that contravene the act or regulations, or that is illegal in some other way.

Because the alterations are covered by one special resolution, under the existing provisions of the act the registrar is unable to reject those alterations which are illegal (effectively severing them), without interfering with the entire special resolution. Incorporated associations are therefore required to hold another meeting and pass another special resolution to approve an amended set of alterations.

The amendment will clarify that the registrar can accept some alterations and reject others, even if they have been the subject of the same special resolution.

One of the most significant innovations contained in this bill are new provisions that will enable the registrar to seek the appointment of a temporary statutory manager to manage the affairs of an incorporated association in circumstances where there is evidence of serious dysfunction in the operations of an association. This is a less severe alternative than seeking to have the incorporated association wound up.

Instances where this may assist include where an incorporated association has ceased to function due to internal disputation over election results or between competing committees. The assets of an incorporated association may be put in jeopardy or there may be significant non-compliance with key agreements such as government funding contracts. These may all be circumstances where the appointment of a manager may be necessary in the public interest.

The amendments provide that the registrar may apply to have a statutory manager appointed by the Magistrates Court. In order to make an application, the registrar will need to certify to the court that following an investigation into the affairs of the incorporated association, the appointment will be in the interests of the members of the association, its creditors or the public.

The statutory manager will be required to report to the registrar at the end of their appointment and at any time as requested by the registrar. The intent is that the incorporated association will be returned to the control of its members once necessary corrective action has been completed by the administrator.

The expenses of the statutory management are to be paid from the funds of the incorporated association.

The bill will introduce new provisions that will enable small incorporated associations with surplus assets of less than $10 000 to apply to the registrar for voluntary cancellation of their incorporation, thereby removing the need (and saving the cost) for these associations to appoint a liquidator.

Currently, small incorporated associations with few remaining assets often cannot afford the cost of engaging a liquidator to wind up. This means that instead of winding up and advising the registrar that its registration should be cancelled, the register continues to record the association's existence, although in fact it has ceased to operate.

The registrar will have the ability to make any inquiry he or she sees fit to establish the validity of the information provided in a declaration by the incorporated association, including requiring further information or copies of documents as necessary in relation to the application. The registrar may also make any other inquiries necessary to establish that the members of the incorporated association agree to deregistration.

The bill will also introduce the ability for incorporated associations to apply for voluntary administration by applying the relevant provisions of the commonwealth Corporations Act with appropriate modifications. This initiative is consistent with the approach in corresponding legislation in both South Australia and in Tasmania.

The 2004 review of the act observed that the Associations Incorporation Act was intended to facilitate the effective operation of not-for-profit groups and that the distribution of assets to members on winding up is contrary to the spirit of the act.

Currently, the act does not address the distribution of surplus assets where an incorporated association is being compulsorily wound up. In the case of a voluntary winding up, the act generally prevents the distribution of assets to members.

The bill provides that generally, when an incorporated association is wound up, voluntarily or otherwise, the surplus assets of the association cannot be distributed to a member, a former member or to any person who would hold the assets on trust for a member or former member.

The amendments include the following exceptions:

surplus assets may be distributed to a member or former member that is a body corporate or that is an association (whether incorporated or unincorporated) if that member or former member is prevented by its rules from distributing surplus to its members;

surplus assets may be distributed to a member or former member that is an individual member only in their capacity as trustee for a trust that by its trust deed, prohibits distributions of profit or surplus other than for a charitable purpose;

if assets are contributed to an incorporated association subject to a trust, the trust will regulate their disposition on a winding up. Effectively therefore, particular assets can be given to an incorporated association subject to a trust requiring their return on winding up;

incorporated associations that currently specify in their rules that assets may be distributed to members will continue to be allowed to retain that arrangement; and

a person aggrieved by this prohibition may apply to the Supreme Court for an order permitting distribution in a way contrary to the incorporated association's rules.

The bill also provides that if an asset or part of an asset consists of property supplied by a government department or public authority (whether state, commonwealth or local government) that property must be returned to the department or authority that supplied it or to a body nominated by that department or authority. This will include items such as the unexpended portion of a government grant.

The bill also contains a number of other administrative amendments, transitional provisions and consequent amendments.

This bill forms an important part of the Victorian government's commitment to developing and supporting our community, voluntary and not-for-profit organisations.

I commend the bill to the house.

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

Debate adjourned until Thursday, 18 December.

MELBOURNE CRICKET GROUND BILL

Statement of compatibility

Mr MERLINO (Minister for Sport, Recreation and Youth Affairs) 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 Melbourne Cricket Ground Bill 2008.

In my opinion, the Melbourne Cricket Ground 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 re-enacts and further provides for the law relating to the Melbourne Cricket Ground and repeals seven existing acts relating to the MCG. It provides for a further function of the Melbourne Cricket Ground Trust ('the trust'), modifies the provisions relating to the floodlights at the MCG, introduces

an offence for unauthorised commercial exploitation of the MCG's name and makes a number of other changes to refine and update the legislation.

Human rights issues

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

The rights under the Charter of Human Rights and Responsibilities Act 2006 upon which the bill would have an impact are identified as follows:

Section 20 of the charter: property rights

A person must not be deprived of his or her property other than in accordance with law.

This right is potentially engaged because clause 34 of the bill repeals a number of acts including the Melbourne Cricket Ground Act 1933 ('the 1933 act'). Section 7B of the 1933 Act provides for the trust to grant leases and licences. The repeal of this provision could be perceived to take away proprietary interests which would amount to a deprivation of property in contravention of section 20 of the charter. However, there will not be any deprivation of property as a result of the repeal because clause 33(7) saves any existing leases and licences. Clause 33(7) provides that the repeal of section 7B of the 1933 act is not taken to affect any lease or licence granted under that section as in force immediately before that repeal and any lease or licence is to be taken to continue in force as if made under clause 16 of the bill.

For these reasons, it is not expected that this bill will deprive any person of property. Accordingly, there will not be any limitation of the property rights protected under section 20 of the charter.

Section 12: freedom of movement

Every person lawfully in Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

This right would be limited because clauses 32(2)(a) and (b) of the bill provide for the trust, with the approval of the Governor in Council, to make regulations in relation to:

the admission of the public to the whole or any part of the ground; and

the collection of entrance fees or other charges for entering upon the whole or any part of the ground.

The right is also limited by clause 33(12) of the bill which preserves the existing regulations made by the trust which include provisions related to admission to the whole or any part of the ground and admission charges.

(a) The nature of the right being limited

The right to freedom of movement is an important right in international law. It includes freedom from physical barriers and procedural impediments. It can be engaged by proposals that limit the ability of individuals to move through, remain in, or enter or depart from areas of public space.

(b) The importance of the purpose of the limitation

The purpose of the limitation on freedom of movement is of critical importance to the efficient operation of the Melbourne Cricket Ground. It is necessary to control entry to the ground in order to protect the playing area and other facilities, for public safety and to facilitate proper site management.

(c) The nature and extent of the limitation

The nature of the limitation is that the trust is able to control admission to the whole or any part of the ground and to require the payment of admission charges to enter the ground.

(d) The relationship between the limitation and its purpose

There is a rational and proportionate relationship between the limitation imposed by the bill and the purposes of the limitation. The limitation on freedom of movement is directed towards the important purpose of protecting the playing area and other facilities, promoting public safety and facilitating proper site management.

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

There are no practicable less restrictive means available that would achieve the purpose of the limitation on freedom of movement.

For these reasons this limitation is considered reasonable and, therefore, compatible with the charter.

Section 15: freedom of expression

Every person has the right to hold an opinion without interference. Every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria and whether orally, in writing, in print, by way of art or in another medium chosen by him or her.

This right is engaged by clause 26 of the proposed bill insofar as persons will be prevented from assigning the name 'Melbourne Cricket Ground' or the initials 'MCG' to a place that is not the ground, in the course of a trade or business, without authorisation by the trust. This interferes with the freedom to impart information of all kinds.

(a) The nature of the right

The right to freedom of expression is an important right and is an essential foundation of a democratic society. It may be engaged when a restriction is imposed on what a person may say, write or communicate or when a person requires prior approval before expression may lawfully occur. This list is not exhaustive.

(b) The importance of the purpose of the limitation

The purpose of the limitation of the freedom of expression is vital in order to properly safeguard the reputation and goodwill associated with the name 'Melbourne Cricket Ground' and the initials 'MCG'.

(c) The nature and extent of the limitation

The nature of the limitation is that no person, in the course of conducting a trade or business, may assign the name 'Melbourne Cricket Ground' or the initials 'MCG' as the name, or part of the name, of any place that is not the ground, or part of the ground, unless authorised by the trust. There is no restriction on the use of the name or initials by any person other than when used in the course of a trade or business.

(d) The relationship between the limitation and its purpose

There is a rational and proportionate relationship between the limitation imposed by the bill and the purposes of the limitation. The limitation on freedom of expression is specifically and precisely directed towards protecting the reputation and goodwill associated with the Melbourne Cricket Ground.

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

There are no practicable less restrictive means available in order to achieve the desired purpose.

For these reasons this limitation is considered reasonable and, therefore, compatible with the charter.

Conclusion

I consider that the Melbourne Cricket Ground Bill 2008 is compatible with the Charter of Human Rights and Responsibilities because it does limit, restrict or interfere with human rights, being the right to freedom of movement under section 12 of the charter and the right to freedom of expression under section 15, but the limitations are reasonable and proportionate. This is in view of the objectives of the bill in relation to providing for regulations that allow the trust to protect the playing area and other facilities, promote public safety and facilitate proper site management and the objective to protect the reputation and goodwill of the MCG.

JAMES MERLINO, MP
Minister for Sport, Recreation and Youth Affairs

Second reading

Mr MERLINO (Minister for Sport, Recreation and Youth Affairs) — I move:

That this bill be now read a second time.

The Melbourne Cricket Ground is a defining part of Melbourne and a key place in the lives of many Victorians.

Many great sporting events have taken place at the MCG. Most importantly it is the home of cricket and Australian football, but it has also hosted major events in other sports including football (soccer) and Rugby Union. It was the magnificent centrepiece of the Melbourne Olympics in 1956 and the Commonwealth Games in 2006.

The MCG has hosted many important non-sporting events, including a Billy Graham crusade in 1959 which drew an estimated 130 000 people, a mass conducted by Pope John Paul II in 1986 and concerts by a number of the world's most popular performers.

Successive governments since 1861 have taken a close interest in the MCG because of the importance of the events staged there. Governments have provided land and funding to ensure that the MCG continues to meet the needs of Victorians and helps Victoria to attract and host major events. As a result the MCG is one of the very best stadiums in the world.

The preamble to the bill provides a window to the history of the MCG including relevant legislation.

There are currently seven acts relating to the MCG on the statute books dating from 1933 to 1989: the Melbourne Cricket Ground Act 1933, the Melbourne Cricket Ground Act 1951, the Melbourne Cricket Ground (Trustees) Act 1957, the Melbourne Cricket Ground Act 1983, the Melbourne Cricket Ground Act 1984, the Melbourne Cricket Ground (Guarantees) Act 1984 and the Melbourne Cricket Ground Trust Act 1989.

The seven acts contain many redundant provisions, and it is inefficient and complicated to clearly identify all the active provisions.

The government's reform legislation policy seeks to reduce the number of acts on the statute book. This bill puts that policy into practice by reducing the number of acts that relate to the MCG from seven to one.

The bill repeals the seven existing acts while ensuring that arrangements put in place under those acts are preserved in the bill. It consolidates the existing provisions of the MCG legislation that are required into the future, with only limited changes. It contains provisions very similar to the current legislation in relation to:

definitions;

the establishment, constitution and procedure of the trust;

the vesting of the ground in the trust;

appointments, pecuniary interests and meetings;

the power of the minister to give direction;

delegation;

tendering for management contracts;

leases and licences;

business plan and annual report;

the appointment of the Melbourne Cricket Club (MCC) as ground manager;

authorisation for the Melbourne Cricket Club to receive fees and charges;

the non-applicability of the Planning and Environment Act 1987 or any planning scheme to the development and use of the spectator stands at the MCG;

determinations made by the minister to authorise use of the floodlights; and

regulations.

There are three key areas of change to existing provisions.

The first is the provision of an additional function for the trust which is to provide the minister, on request, with advice about matters related to the construction and management of major sports facilities, such as stadiums, and the management of major events. This function recognises the expertise of the trust and the MCC on these matters and will give the minister and the trust more flexibility to use the trust's expertise as needed. It also reflects the fact that a wide range of issues affects the MCG and will enable such issues to be addressed more easily. The existing functions of the trust are unchanged.

The second key area of change relates to unauthorised commercial exploitation of the MCG's name. Section 8A of the Melbourne Cricket Ground Act 1933 prohibits a person, in conducting a trade or business, from using the name 'Melbourne Cricket Ground' or the initials 'MCG' to describe a place that is not the MCG, without authorisation by the trust. Section 8A does not, however, include a penalty for breach of this provision. The bill provides a penalty of 100 penalty units for a natural person and 600 penalty units for a body corporate that will make it easier for the trust to protect the MCG's name from commercial exploitation.

The other key area of change relates to the floodlight towers and floodlights at the MCG. The bill updates the provisions of the Melbourne Cricket Ground Act 1984 relating to the floodlights at the MCG to reflect current and possible future needs. The legislation no longer needs to authorise construction of the towers. The bill updates this with a provision that authorises the trust to replace, remove, refurbish or upgrade the floodlight towers. This is subject to approval by the ministers administering the Crown Land (Reserves) Act 1978 and the Planning and Environment Act 1987 as in the existing provisions related to construction.

In addition, the bill updates the protection from legal action in relation to the floodlights that is provided by section 4 of the Melbourne Cricket Ground Act 1984. This measure allows the trust to carry out its responsibilities in relation to the floodlights without the disruption and distraction caused by legal challenges to these operations, provided they are carried out in accordance with the act. This protection only restricts legal action that would otherwise be taken merely because a person replaces, removes, refurbishes or upgrades the floodlight towers or operates the floodlights in accordance with the act.

The bill introduces a number of other relatively minor changes to improve the operation of the legislation including:

specification of circumstances in which trustees can be removed; and

adjustment of the provisions in relation to the trust's annual report.

The bill will give the legislative framework for the MCG a fresh start and will support the continued high performance of this wonderful iconic Melbourne landmark.

I commend the bill to the house.

Debate adjourned on motion of Mr DELAHUNTY (Lowan).

Debate adjourned until Thursday, 18 December.

TRANSPORT LEGISLATION MISCELLANEOUS AMENDMENTS 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 Act 2006 (the charter), I make this statement of compatibility with respect to the Transport Legislation Miscellaneous Amendments Bill 2008.

In my opinion, the bill 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 purpose of the bill is to amend a range of transport-related legislation in support of key government transport policies. The bill also proposes numerous amendments to transport legislation of a more minor, miscellaneous and technical nature.

The bill makes amendments to the Marine Act 1988, the Port Services Act 1995, the Road Management Act 2004 and the Southern and Eastern Integrated Transport Authority Act 2003.

For the purpose of ensuring high transport safety standards, the bill also amends the Transport Act 1983 in relation to the powers of the chief investigator, transport and marine safety investigations, to obtain information.

Human rights issues

Marine Act 1988

Amendments to the Australian builders plate standard

Section 13: right to privacy

Part 2 of the bill makes amendments to the Marine Act 1988. Clause 3 amends the Marine Act to support the introduction of the Australian Builders Plate Standard (APB Standard) in Victoria and the monitoring of vessels for compliance. The APB Standard is a national standard for recreational boats approved by the national Marine Safety Committee. With the purpose of enhancing boat safety, it requires a fixed plate to be attached to recreational vessels specifying uniform safety, design and construction information. Marine Safety Victoria will be responsible for monitoring vessels for compliance and be authorised to audit and collect information for the purpose of checking compliance with Victoria's Fair Trading (Safety Standard) Regulations.

Section 13(a) of the charter relevantly protects a person's right not to have his or her privacy, family, home or correspondence from being unlawfully or arbitrarily interfered with. The bill allows for the disclosure or use of the information collected in the monitoring process by Consumer Affairs Victoria to assist with monitoring compliance with the APB Standard and to bring proceedings for an offence under the Fair Trading Act 1999. The amendments to the scheme do not provide for disclosure or use of information in any other circumstance. Accordingly, any interference with personal information privacy through the collection of information is neither arbitrary nor unlawful and is compatible with section 13(a) of the charter.

In the instance that corporations are affected by the APB Standard, section 13(a) and other provisions of the charter are not relevant, as section 6(1) of the charter provides that only persons, and not corporations, have human rights.

Sanctions for breach of marine safety provisions

Section 20: property rights

Clause 4 of the bill amends the Marine Act to provide for the director of marine safety or an inspector to serve improvement notices and prohibition notices on a person if that person is contravening or has contravened a relevant marine safety law. Among other things, improvement notices may require a person who owns or controls a structure or premise associated with a vessel, such as a mooring vessel, to be closed, or for a vessel to cease operating. Prohibition notices may prohibit the carrying out of certain unsafe activities on premises associated with a vessel, or on a vessel itself.

Section 20 of the charter provides that 'a person must not be deprived of his or her property other than in accordance with law'. Although 'property' is not defined in the charter, it is likely that the term would extend to premises associated with vessels and, potentially, to the control and enjoyment of such premises. It is also possible that the requirements in these notices, for example the closure of a mooring vessel, might amount to a 'deprivation' of that property. However, the provisions are compatible with section 20 of the charter because any deprivation that occurs in 'accordance with the law': the deprivation is neither arbitrary nor unreasonable; it is clearly prescribed in the provisions; and the director or inspector must believe 'on reasonable grounds' that the person is contravening or has contravened the safety provisions. All issued notices must include these specifics. Relevantly, division 6 provides that decisions relating to improvement and prohibition notices are reviewable by the safety director and subsequently by VCAT. Enforceable sanctions for breaches of safety standards are reasonable, in that the limitation on the use of property through the sanction has a rational connection to the important purpose of preventing marine accidents and possible injuries or deaths. It also brings marine safety standards into line with those currently included in the Transport Act and Road Safety Act, which is part of an important purpose of putting into place an integrated transport regime.

It is relevant also to note that although provisions amending the Marine Act refers to 'persons', in most cases the provisions are likely to be enforced against corporations rather than individuals. As above, in the instance that corporations are affected by the law, the charter is not relevant, as section 6(1) of the charter provides that only persons, and not corporations, have human rights.

Section 27(2): retrospective criminal penalties

Clause 4 also inserts division 7 into the Marine Act. Division 7 provides for sentencing orders in relation to marine safety laws. The amendment makes the Marine Act consistent with the sentencing order provisions contained in division 6 of part 7 of the Transport Act and part 11 of the Road Safety Act, which relate to relevant transport and road safety laws. Where a person is found guilty of an offence against a relevant marine safety law, the court, on application of the marine safety director or prosecutor, may make one of the following orders: a commercial benefits penalty order requiring the person to pay a fine of up to three times the estimated gross commercial benefit that was obtained or obtainable from the commission of the offence; a supervisory intervention order requiring the person to take certain steps to improve marine safety; or an exclusion order prohibiting the person from involvement in marine activities.

Section 27(2) of the charter provides that 'a penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed'. The penalties in division 7 will not apply to offences committed before the provisions come into operation on 1 July 2009, and accordingly the division is compatible with section 27(2).

As above, the rights in the charter do not apply to corporations that may be affected by the bill (section 6(1) of the charter).

Transport Act 1983

Questioning powers of the chief investigator

Part 6 of the bill makes amendments to the Transport Act 1983. Clause 28 inserts section 84AB into the Transport Act. It will empower the chief investigator of transport and marine safety to make a request in writing requiring persons to attend before him or her and answer questions if it is necessary for the purpose of a transport safety investigation or marine safety investigation, with the intent that safety issues are able to be remedied as soon as possible. While compulsory questioning powers potentially engage a number of rights, I consider that all safeguards necessary to protect those rights are included in the provision. Further, any limitation on rights is reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter having regard to the purpose of the chief investigator to improve public safety through independent investigations and the following factors in respect of each right:

Section 12: freedom of movement

The right to freedom of movement in section 12 of the charter includes the right to move freely within Victoria and has been interpreted in other jurisdictions as including the freedom to go where one pleases without interference. If section 12 is engaged by the temporary restriction on movement authorised pursuant to the questioning powers, it is clear that any limit imposed by subdivision 5 is reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter having regard to: the nature of the right being limited; the importance of the purpose of the limitation; the nature and extent of the limitation; the relationship between the limitation and its purpose and whether there are any less restrictive means reasonably available to achieve its purpose.

Article 12 of the International Covenant on Civil and Political Rights, upon which section 12 of the charter is modelled, expressly recognises that the right to freedom of movement may be subject to restrictions that are necessary to protect public order, public health or morals or the rights and freedoms of others. The chief investigator's powers in relation to the investigation, and the procedures to be followed, are predictable and reasonable, in that the questioning must be relevant to the investigation, notice for attendance must be provided in writing and must specify a reasonable time, and the chief investigator must inform the person of his or her rights before questioning. Accordingly, the limits on the right to freedom of movement are reasonable and justifiable.

Section 21: right to liberty and security of the person

Similarly, section 84AB is compatible with the right to liberty and security of the person in that the power to require attendance is neither arbitrary nor unreasonable, and the grounds on which a person may be temporarily deprived of their liberty for questioning are in accordance with predictable and reasonable procedures established by law.

Section 25(2)(k): right not to be compelled to testify against oneself or to confess guilt

Section 25(2) sets out the minimum guarantees to which a person is entitled without discrimination. Paragraph (k) is the right not to be compelled to testify against oneself or to confess guilt. The right will only apply in respect of this provision if the person called by the chief examiner for questioning is a person charged with a criminal offence.

The right has been interpreted in comparative jurisdictions not to preclude compulsory questioning of a person charged with an offence, provided there is an immunity protecting against the use of those statements against the accused in subsequent proceedings against them. This 'use immunity' ensures that the accused is not indirectly made a witness against him or herself in any subsequent proceeding.

While section 84AB requires a person to attend, take oath and not refuse or fail to answer a question, the provision safeguards the right in section 25(2)(k) by ensuring that an answer given to a question will not be admissible against the person in a criminal proceeding or a proceeding for the imposition of a penalty (other than contempt or perjury committed under this provision). Accordingly, there is no limitation on the right, and the questioning power provisions are compatible with section 25(2)(k).

Section 24: right to a fair hearing

The right to a fair hearing — to have a charge or proceeding decided by a competent, independent and impartial tribunal after a fair and public hearing — is not engaged by the questioning provisions because, as above, the provision restricts the use of answers in 'any civil or criminal proceeding' against them (other than contempt or perjury committed under the provision).

Reports not admissible in evidence

Clause 29 of the bill inserts section 85DA into the Transport Act and provides that reports in relation to a public transport safety or marine safety matter, be they final, draft or any document that is incidental to a final or draft report, will not be admissible in evidence in any civil or criminal proceeding. This inadmissibility will not apply to a final report required for a coronial inquiry or where a failure to admit a report in a criminal proceeding will prejudice the fair trial of the accused. While restricting the admissibility of reports in evidence has the potential to engage the fair hearing right and the right to life, I consider that the amendments are compatible with those rights for the following reasons:

Section 24: right to a fair hearing

A prima facie limitation on the admissibility of reports in evidence serves an important purpose, as the restriction of access to and use of their reports is essential so that frank, thorough and effective investigations into public transport accidents can take place. The provision is compatible with the right to a fair hearing as it includes an express exception whereby reports will be admissible in a criminal proceeding if the court considers that a failure to admit a report into evidence could prejudice the fair trial of the accused.

Section 9: right to Life

Clause 29 is compatible with the right to life in section 9 of the charter because it contains an exception for the admissibility of a final report in evidence in a coronial inquiry. The right to life includes an obligation on behalf of government to conduct effective investigations into deaths of persons which may have involved the arbitrary deprivation of life and the conduct of a public authority might be implicated.

The exemption in section 85DA is important in providing no limitation on the right to life by ensuring that the coroner is given access to information. In fact, the role and function of the chief investigator under the Transport Act in ensuring a prompt, independent examination, gives greater effect to the right to life in section 9 of the charter.

Conclusion

I consider that the bill is compatible with the charter because to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

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 introduces a number of important amendments to existing transport legislation.

The amendments affect a wide range of transport modes: road, heavy rail, light rail, bus, freight, cycling and marine transportation.

Many of the changes lend significant practical support to the government's vision to build the integrated and sustainable transport network that Victoria needs in the 21st century.

The bill is part of the government's wider program of transport legislation reform — the most extensive overhaul of Victoria's transport legislation in 25 years.

It complements the forthcoming Transport Integration Act, which will bring together all elements of the transport portfolio under one overarching statute for the first time.

The changes reflect a number of important objectives that the government has identified for an integrated and sustainable transport network: efficiency, coordination, reliability, environmental sustainability, land use integration, and safety.

In practical terms, many of these amendments will support the government's comprehensive action plan to tackle major challenges facing the transport system such as congestion and climate change.

Priority of transport modes on the road network

The bill implements some landmark amendments to the Road Management Act targeted at ensuring that road-based transport operates in the most integrated and efficient manner possible.

A number of transport modes often share, or compete for, the same road space:

private cars and motor cycles;

public transport vehicles;

freight vehicles;

bicycles; and

pedestrians.

With an increasing population adding to existing congestion on our roads, managing the road network in the most optimal way is one of the most important challenges facing the state's road managers.

Unconstrained growth in private car use is simply unworkable, and increased use of more sustainable and mass transit forms of passenger transport is critical to easing road congestion.

This shift will happen provided that such forms of transport operate reliably and efficiently. One means of facilitating this is to manage the road network so that certain modes of transport have priority passage on designated key routes. In the public transport sphere, installation of tram lanes and bus lanes, along with installation of traffic signal priority systems for buses and trams, are examples of this concept in action.

In the same way, giving freight traffic priority on designated routes has the effect of drawing freight vehicles away from commuter traffic routes, thereby encouraging better flows for both commuter and freight vehicles.

The principal Act governing road management and use in Victoria is the Road Management Act. The bill amends that Act to require that the road network be managed to reflect different modal priorities on specified roads. This is achieved by giving relevant Ministers the power to specify certain roads or parts of roads as priority roads for trams, buses, bicycles, pedestrians and freight.

A requirement for road managers to manage specified roads to reflect priorities will be set out prominently in the Road Management Act, and framed so as to operate to the extent reasonably practicable. It is a high-level directional statement of principle, rather than a repository of specific obligations, and in this regard the principle has flow-down effects throughout the Act.

These are significant reforms which will help to ensure that notions of priority — and hence greater efficiency — are foremost in road managers' minds when they make decisions.

Status of public transport in roads legislation

Around 80 per cent of all kilometres travelled on public transport journeys occur on roads.

Measures which encourage integration between private road vehicles and public transport operations can significantly relieve traffic congestion. Accordingly, it is important that public transport has adequate levels of facilitation in legislation governing road management and use. Priority for public transport on specified roads which I have just spoken about is significant, but so is ensuring that road managers are always mindful of the importance of public transport, whether on priority routes or not.

Presently, public transport has no separate recognition in the Road Management Act. It is classified as a 'utility' alongside more traditional utilities such as entities that provide water, sewerage, drainage, gas, electricity, telephone and telecommunication services. This fails to reflect the importance of roads to public transport operations, and vice versa.

The bill amends the Road Management Act to give providers of public transport separate and distinct recognition. This will increase awareness of the needs of public transport and enable flexibility in dealing with matters specific to public transport in the future.

The Utilities' Infrastructure Reference Panel (the UIRP) provides advice to government on the effective use of road reserves by utilities. The UIRP is made up of 15 individuals representing traditional utility service providers and other parties. Public transport is represented by a single member, representing the interests of rail operations only. Bus operations are not represented, despite the fundamental interaction between buses and road reserves. Accordingly, the bill amends the Road Management Act to expand membership of the UIRP to include a member representing the interests of bus operations.

Safety at road/rail interface points

The government is committed to improving safety at road-rail interfaces such as level crossings. One example of this commitment is the development of safety interface agreements under the Rail Safety Act, and the bill takes important further steps in this regard.

Across the Victorian rail network there are over 1800 at-grade public road level crossings and around 1300 private crossings. Thousands of kilometres of property in Victoria fall immediately adjacent to rail land. Each point of interface, and each metre of land falling adjacent to a rail corridor, carries the potential for a catastrophic event.

The Road Management Act contains a specific division devoted to safety duties where road reserves fall close to rail infrastructure and rolling stock. The duties generally require a relevant person to notify appropriate parties of potential works in advance, and to ensure safety 'so far as is reasonably practicable'.

Some issues have been identified with the existing provisions. The bill addresses these issues with various amendments to the Road Management Act:

the bill amends the act to expand the coverage of safety duties to ensure that all appropriate parties are subject to the duties and to ensure there are no 'gaps' in the legislation;

the act is also amended to replicate safety duties presently applying to road authorities to rail operators working near road infrastructure;

a further amendment sets benchmarks as to what it actually means to ensure safety 'so far as is reasonably practicable' — the more guidance available on this matter, the better. The benchmark is based on equivalent provisions in the Rail Safety Act and the Occupational Health and Safety Act, and therefore the bill brings the Road Management Act into line with the industry standard; and

The bill also amends the Road Management Act to establish parameters on how notification of works must be given to appropriate persons — specifically, what form notification must take and how far in advance it must be given.

Bus and tram stop infrastructure

The bill implements important changes to give the Department of Transport a greater say in relation to bus stops.

Bus stops are critical components of the wider public transport network. They are the physical interface between bus users and the commencement and end of their journeys.

The design and location of bus stops also has significant safety implications due to the risks associated with boarding and alighting from a bus, and

in crossing nearby roads, especially for children and young persons. This issue was identified in the *Improving Bus Safety in Victoria* discussion paper, released in May 2008 by the Department of Transport as part of the development of a bus safety bill. The paper found that movements around buses at bus stops are the most hazardous part of bus journeys.

Given that bus routes usually cross multiple municipalities and different classifications of road, there are often multiple parties — for example, VicRoads and a number of municipal councils — that share responsibility under the Road Management Act for bus stop infrastructure for particular routes.

A statewide approach to bus stops and bus stop infrastructure is necessary to ensure consistency. Commuters in one municipality should be treated the same as commuters in the next.

The Department of Transport has oversight and overall responsibility for the transport network, and it is appropriate that the department have greater responsibility and input in relation to bus stops.

This is facilitated by amending the Road Management Act to give the secretary of the department the power to install, remove and relocate bus stops and bus stop infrastructure. The bill also empowers the secretary to prevent others from removing infrastructure installed by the department, and prevents people from moving the location of bus stops without the secretary's consent.

Further, the secretary is given the ability to develop guidelines for bus stops in consultation with VicRoads, municipal councils and other interested parties such as bus operators. While disparate guidelines have been produced by a range of organisations in the past, these will be able to be consolidated from a holistic, network-wide safety and operational viewpoint.

The guidelines may incorporate matters pertaining to passenger safety, amenity and convenience, and the appearance of bus infrastructure.

The amendments also allow better monitoring of bus stop infrastructure across the network by obliging councils to notify the secretary when a significant item such as a shelter or seat is installed, removed or relocated. This information will be used by Metlink to ensure travellers are provided with the most up-to-date information on their local bus stop.

Marine safety

Tragic incidents such as the fatal refuelling explosion on the Yarra River in 2008 highlight the importance of stringent and immediately enforceable sanctions for breaches of marine safety standards. The growing status of Melbourne as a waterfront city, together with hundreds of waterside attractions in regional Victoria, further underscores the importance of ensuring that marine safety regulation meets contemporary needs.

Marine Safety Victoria is headed by the director of marine safety. The director is given powers under the Marine Act to develop, oversee and enforce marine safety standards. The oversight and enforcement task is a significant one, given the sheer number of vessels in our state and the wide variation in class of vessel.

It is critical that the director has access to a full range of substantive, readily accessible and proportionate options to require compliance by vessel operators with safety standards.

The bill amends the Marine Act to extend the range of sanctions available to the director of marine safety in the event of an actual or anticipated safety breach, primarily in the commercial boating and shipping area. Specifically, the director and his or her inspectors are given the ability to issue improvement notices and prohibition notices.

Improvement notices require a person to remedy a contravention or likely contravention of a marine safety law within a specified period. Prohibition notices require a person to cease an activity which is considered to pose an immediate risk to the safety of a person until a clearance certificate is given.

These notices are geared around ensuring immediate compliance with safety standards. They fall between the current options to either issue a warning or cancel a licence, introducing much-needed new flexibility into marine safety enforcement options. It will be an offence to fail to comply with an improvement or prohibition notice.

The bill also expands the range of sanctions available to courts in relation to convictions for breaches of marine safety laws. The additional court sanctions, like the improvement and prohibition notices, align with powers that already exist in relation to breaches of public transport and road safety laws.

Specifically, a court will be entitled to make three new categories of order:

a commercial benefits penalty order, requiring a person to pay a fine where they have benefited financially from their commission of a marine safety offence;

a supervisory intervention order, imposing conditions on a person's ongoing activities, in order to improve their safety compliance; and

an exclusion order, banning persons for a certain period from carrying out marine operations.

Enforcement of new marine safety standard

If people are to operate marine vessels safely, it is important they have an understanding of exactly what it is they are operating, and have certainty from manufacturers about compliance with standards. Changes made by the bill will see Marine Safety Victoria working closely with Consumer Affairs Victoria to deliver greater levels of information to operators of recreational vessels about the characteristics of the vessel.

The bill amends the Marine Act to give Marine Safety Victoria power to collect and disclose information for the purpose of assisting Consumer Affairs Victoria with the enforcement of a national marine safety standard developed by the National Marine Safety Committee. This standard is known as the Australian builders plate standard.

Proposed regulations under the Fair Trading Act 1999 will require an 'Australian builders plate' to be affixed to most recreational vessels. This is a steel plate bearing information about the vessel. It acts as a declaration by a manufacturer or importer of a vessel that the vessel meets the requirements of relevant national standards and informs purchasers of the safe operating capacities of the vessel.

Port services provisions

In February 2006, COAG (Council of Australian Governments) signed the competition and infrastructure reform agreement. This agreement required each state to undertake a transparent public review of the impact of port regulation on competition. In Victoria's case, it was agreed that the review would focus on the relationship between port planning frameworks and competition in stevedoring.

The Essential Services Commission was asked to conduct the review in Victoria. The ESC made three specific recommendations, all of which the government has accepted. Two of these involved legislative amendments, which the bill implements by amending the Port Services Act to ensure two things:

when carrying out their functions, port corporations are required to have appropriate regard to the benefits of competition among port service providers; and

relevant long-term port development strategies are prepared and maintained for each commercial trading port.

Chief investigator, transport and marine safety investigations

Victoria has a dedicated safety investigator, public transport and marine safety investigations, who is independent from government.

The transport safety investigations regime is substantively aligned with national investigation requirements. One difference, however, is the absence of a power to enable the chief investigator to require persons to attend and answer questions during the investigation of a public transport or marine safety matter.

By contrast, relevant commonwealth legislation explicitly enables the Australian Transport Safety Bureau to require persons to attend and answer questions in order to facilitate the speedy investigation of a public transport or marine incident. The bill provides the chief investigator with this power. However, answers to questions posed by the chief investigator are not admissible in evidence against the person in a criminal proceeding.

The primary focus of an investigation conducted by the chief investigator is to determine the factors that caused the incident and to quickly identify the safety issues that may require review, monitoring or further consideration. An investigation of this type does not apportion blame.

Disclosure of information gathered in reports could compromise a trial or unfairly prejudice an accused in a criminal trial. Further, admissibility can have the effect of delaying final reports. Constraints or delays in determining the cause of an incident run counter to the purpose of establishing the office of the chief investigator. Accordingly, the bill provides that an investigation report of the chief investigator is not admissible as evidence in any civil or criminal trial unless the court directs that it be admissible or if it applies to a coronial inquest.

Expansion of the role of SEITA

The bill amends the Southern and Eastern Integrated Transport Authority Act to enable SEITA, which was originally set up to facilitate the development and delivery of the EastLink project, to facilitate other road transport related projects.

Other amendments

Finally, the bill makes some minor, miscellaneous and machinery amendments to the Road Management Act. These amendments:

recognise that as rail operations are subject to franchise arrangements, the Director of Public Transport and VicTrack are not directly involved in the day-to-day operations of the network and therefore should not be subject to a number of duties in the Road Management Act that may otherwise apply;

clarify that for the purposes of the Road Management Act there may be more than one responsible minister, given the different road classifications under that act; and

make a technical amendment to the Road Management Act to enable regulations made under the act to cover a broader range of matters.

I commend the bill to the house.

Debate adjourned on motion of Mr MULDER (Polwarth).

Debate adjourned until Thursday, 18 December.

TRANSPORT LEGISLATION GENERAL AMENDMENTS BILL

Statement of compatibility

Ms KOSKY (Minister for Public Transport) 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 Act 2006 (the charter), I make this statement of compatibility with respect to the Transport Legislation General Amendments Bill 2008 (bill).

In my opinion, the bill 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

The purpose of the bill is to amend the Rail Corporations Act 1996 in relation to:

the abolition of the Southern Cross Station Authority;

the pricing principles order; and

the ability of the state to enforce penalties against parties who disrupt rail operations.

The bill also amends the Rail Safety Act 2006 in relation to safe arrangements for the conduct of works on rail land.

Other minor amendments are made to the Children, Youth and Families Act 2005 in relation to CAYPINS (children's and young persons' infringement notice system), and the Transport Act 1983 in relation to regulations for taxicab equipment, the transfer of commercial passenger vehicle licences and the renewal and cancellation of authorised officers' authorisations.

Human rights issues

Abolition of Southern Cross Station Authority

The bill effects a change to the Rail Corporations Act 1996 to abolish the Southern Cross Station Authority. The Secretary of the Department of Transport, on behalf of the Crown, will carry out the Southern Cross Station Authority's remaining functions and succeed to all its property, rights and liabilities. Staff will transfer to the Department of Transport.

I do not consider that this proposal presents any charter incompatibility issues.

Pricing principles order

This bill makes some technical amendments to the Rail Corporations Act 1996 in relation to the pricing principles order. The changes deal with principles for the calculation of prices that access providers may charge for access onto the rail network.

I do not consider that this proposal presents any charter incompatibility issues.

Civil penalty provisions

The bill makes amendments to the Rail Corporations Act 1996 to ensure that the state is able to enforce financial penalties against parties with whom it contracts, where those parties cause disruptions to public transport services. Almost certainly, such contracts would be between the state and corporations. The charter provides that only persons, and not corporations, have human rights.

In any event, I do not consider that this proposal presents any charter issues.

Safe arrangements for the conduct of works on rail land

The bill also amends the Rail Safety Act 2006 to enable the director, public transport safety, to intervene and issue directions where the director considers that access to the rail reserve is being unreasonably withheld for the purposes of roadworks, on the grounds of purported safety concerns.

The arrangements are framed to only apply to road authorities, VicTrack and rail operators. The charter provides that only persons, and not corporations, have human rights. Accordingly, I do not consider that this proposal presents any charter incompatibility issues.

Other amendments

Other proposals within the bill relate to:

a regulation-making power in the Transport Act 1983 for obtaining information derived from equipment installed in taxis;

the circumstances in which commercial passenger vehicle licences may be transferred;

the administration of renewals and cancellations of authorised officers operating in the rail, tram and bus sectors; and

the ability of Children's Court registrars who deal with unpaid fine offences to refer child offenders to attend an approved program.

I do not consider that any of these proposals present charter incompatibility issues.

Conclusion

I consider that the bill is compatible with the charter.

Lynne Kosky, MP
Minister for Public Transport

Second reading

Ms KOSKY (Minister for Public Transport) — I move:

That this bill be now read a second time.

This bill makes a number of important amendments to transport legislation. The amendments have a particular focus on public transport operations, and are designed to aid in the safe, smooth and efficient delivery of rail, tram and bus services to Victorians.

Fare enough!

The Transport Act was amended in 2006 to allow a court to order a person charged with a transport ticket or conduct offence to attend an approved education program. The Fare Enough! course was developed by the Department of Transport for this purpose and is operating successfully in the Magistrates Court as an alternative to fines and other sanctions.

Children who commit transport offences are generally dealt with under a special infringement penalty process called CAYPINS (children and young persons' infringement notice system).

Unpaid fines issued to children are considered by a registrar of the Children's Court. Unlike magistrates, however, registrars currently do not have power to refer a young person to attend an approved program.

The bill provides this power to registrars so that the course can be used as an alternative sentencing arrangement for child offenders if the court considers it appropriate.

Authorised officer renewals

The bill also amends the Transport Act to improve the administrative process for renewing the authorisation of enforcement officers in the rail, tram and bus sectors.

The amendment requires the director of public transport to consider the probity criteria which apply to initial authorisations when considering whether to renew an authorisation or to carry out an inquiry into an authorisation. The criteria cover issues of competence and character.

Safety direction power

The number of interfaces between road and rail infrastructure often lead to road managers needing access to rail land. A common example is VicRoads needing access to the rail corridor to carry out preventive maintenance on overhead road bridges.

Rail operators are entitled to refuse access for works, or require works to cease, where they consider the works present safety issues. Rightly so, as safety is absolutely paramount.

However, it is also important that rail infrastructure managers do not misuse their powers to improperly limit access to rail land due to mere inconvenience, using safety grounds as an excuse.

Road contract works may be delayed and the agency procuring the works is likely to be exposed to delay claims. In these circumstances, the agency currently has no way of verifying or testing the validity of the safety grounds on which the rail infrastructure manager denies or withdraws access.

The bill amends the Rail Safety Act to enable the director, public transport safety, to intervene and assess the safety environment in these situations and potentially issue directions on safe arrangements. The safety director will essentially be undertaking a deadlock resolution role.

Civil penalty provisions

The government is committed to ensuring that journeys on public transport are as uninterrupted as possible.

In an age of ever-increasing infrastructure development, the reality is that construction works often need to be carried out on and in the vicinity of heavy rail corridors, tram tracks and bus lanes. Those who carry out works must be encouraged to do so at times when public transport is not operating or, where that is not feasible, by minimising impacts on services.

Such works include:

projects undertaken adjacent to rail corridors which require access to the corridor to ascertain the location of existing utility infrastructure; and

building structural decks over rail corridors.

Monetary liability for affecting public transport reliability is well accepted in Victorian transport operations. As we all know, rail franchisees and bus operators are levied penalties for late and non-running trains, trams and buses.

Amendments to the Rail Corporations Act will give the government flexibility by enabling state parties to include in contracts with third parties, such as property developers, provisions requiring the third party to pay penalties if their works disrupt rail operations. This sends an important message to those working near public transport operations — interruptions to public transport services are not to be taken lightly.

Southern Cross Station Authority

The bill also provides for the abolition of the Southern Cross Station Authority, which was established to manage the now completed redevelopment of the former Spencer Street station.

The Secretary of the Department of Transport, on behalf of the Crown, will carry out the authority's remaining functions and succeed to all its property, rights and liabilities. The bill provides for the initial transfer of staff to the Department of Transport. Appropriate arrangements for the location of staff and functions of the authority in the long term will be the subject of continuing discussions between all parties concerned, prior to the provisions coming into effect.

Other amendments

Finally, the bill makes a number of minor, miscellaneous and machinery amendments to the Transport Act and the Rail Corporations Act.

These include:

minor amendments to the Rail Corporations Act to reflect new arrangements flowing from the buyback of the country below-rail network in 2007;

clarification of the circumstances in which commercial passenger vehicle licences may be transferred; and

clarification of a regulation-making power for obtaining information derived from equipment installed in taxis.

I commend the bill to the house.

Debate adjourned on motion of Mr MULDER (Polwarth).

Debate adjourned until Thursday, 18 December.

BUS SAFETY BILL

Statement of compatibility

Ms KOSKY (Minister for Public Transport) 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 Bus Safety Bill 2008 (bill).

In my opinion, 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.

Overview of the bill

The bill provides for the safe operation of bus services in Victoria. Its objects are to promote:

the safety of bus services;

the effective management of safety risks in bus services;

continuous improvement in bus safety management;

public confidence in the safety of the transport of passengers by bus;

the involvement of relevant stakeholders in the industry; and

a safety culture among persons who participate in the provision of bus services.

Human rights issues

The bill raises a number of human rights issues.

Production of information and notification obligations

A number of provisions in the bill require the production of information. Clauses 22, 25 and 40 provide for the supply of information to the safety director relevant to applications for registration, accreditation, and variation or surrender of accreditation. Clauses 22(6)(c), 33(3), 41(1), 46 and 65 set out the notification obligations of operators of registered and accredited bus services. Clause 41(5) includes a requirement that a responsible person must provide any information reasonably required by the safety director to decide whether the relevant accredited bus operator remains suitable to be accredited following a relevant change in circumstances.

Furthermore, accredited or registered bus operators must comply with a request by the safety director for information relating to the safety of the bus service under clause 54. Finally, clause 72(1)(c) provides the Governor in Council with the power to make regulations (to which the charter will apply) for the collection, provision, transfer, disclosure or use of information for the purposes of the bill.

These provisions raise the right to privacy and the right to be presumed innocent. However, in applying for and accepting accreditation or registration, the operator is presumed to know and to have accepted the terms and conditions associated with participation in this industry, including the provision of information to assess and monitor compliance with the bill.

Privacy

To the extent that this information relates to the personal information of individuals, the right to privacy is raised. 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. For the purposes of the charter, an unlawful and arbitrary interference with a right is one not prescribed by a law which is appropriately circumscribed, reasonable and fair. The information required by these provisions is for the purposes of properly assessing the merit of applications for accreditation and registration and the ongoing monitoring of the safety of bus operations. The clauses are not unlawful or arbitrary, and accordingly I consider that they are compatible with section 13 of the charter.

The right to be presumed innocent

Clause 66 makes it an offence for a person to deliberately or recklessly provide false or misleading information. However, with reference to documents, a person will not be liable if they took all reasonable steps to produce correct information or identified the misinformation at the time of production. Section 25(1) of the charter provides that a person has the right to be presumed innocent until proven guilty according to law. The right applies in criminal proceedings with the effect that the prosecution is required to prove all elements of the offence beyond a reasonable doubt.

In relation to this offence, section 130 of the Magistrates Court Act would apply so that the burden would be on the accused to point to sufficient evidence suggesting a reasonable possibility that the exception in clause 66 applies. As the provision imposes an evidential burden only, the presumption of innocence is not limited.

Refusal of an application for accreditation; variation, revocation, suspension and cancellation of accreditation

An application for accreditation must be refused in the circumstances described in clause 27, including where the safety director believes on reasonable grounds that the applicant or a responsible person has been found guilty of a tier 1 offence, or where the applicant or responsible person is subject to reporting obligations or an order pursuant to the Working with Children Act 2005. Similarly, under clause 28 of the bill, the safety director must refuse accreditation if he or she believes on reasonable grounds that the applicant or responsible person has been found guilty of a tier 2 offence and is unable to demonstrate that accreditation would be appropriate. The safety director has discretion to refuse accreditation where he or she believes on reasonable grounds that the applicant or responsible person has been found guilty of a tier 3 offence or has previously contravened a condition of accreditation. An applicant who has been refused accreditation may be disqualified from further applying for up to five years pursuant to clause 30.

Furthermore, the safety director may, on his or her own initiative, vary, revoke or impose new conditions on an accreditation under clause 42. An accreditation can be suspended when necessary under clause 48. Clause 49 requires that an accreditation must be cancelled where an operator has been found guilty of a tier 1 offence or becomes subject to reporting obligations under clause 27(a)(ii). Clause 50 provides that an inquiry may be held to determine whether proper cause exists for taking disciplinary action. The other forms of disciplinary action available to the safety director are set out at clause 50(3) and include the ability to: reprimand the bus operator; impose or vary an expiry date of the accreditation; vary the scope of accreditation; and disqualify the operator from applying accreditation. Where the disciplinary action relates to a conviction on a tier 2 offence by the bus operator or responsible person, clause 50(4) stipulates that the bus operator must show cause why the accreditation should not be cancelled.

The right not to be tried or punished more than once

Section 26 of the charter provides that a person must not be tried or punished more than once for an offence in respect of which he or she has already been finally convicted or acquitted in accordance with law. The refusal of an application on the basis that a person has been convicted of an offence and punished accordingly by a court raises the issue of double jeopardy in relation to whether a person is being punished twice for the same offence. Further, where disciplinary action follows a conviction, a question arises as to whether a disciplinary response under the bill constitutes punishment for the purpose of this right.

The answer is that the right in section 26 does not preclude the imposition of civil sanctions designed to protect the public and which do not have punishment as their purpose. The purpose of refusing accreditation or taking disciplinary action is not to punish but to manage risk to the safety of bus operations and maintain public confidence in bus safety management. Its function is supervisory and protective and any such action under the bill does not amount to a finding of criminal guilt. Accordingly, I consider that the provisions do not engage the right against double jeopardy and are compatible with the charter.

Right to equality

The definition of a person who has been found guilty of an offence in clause 3(3) of the bill includes those: found not guilty because of mental impairment under section 17(1)(b) of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 or equivalent laws in other jurisdictions (CMIUT Act); not guilty because of mental impairment under the CMIUT Act; and those found to have committed the offence under section 17(1)(c) of the CMIUT Act.

The provisions in the bill limiting the potential of such people to being granted and keeping accreditation and their exposure to disciplinary action raises the right to recognition and equality before the law protected by section 8 of the charter. Section 3 of the charter incorporates the meaning of discrimination from the Equal Opportunity Act. An impairment is an attribute for the purpose of that act.

In my view, the provisions do not amount to disability discrimination. This is because the accreditation decision or disciplinary action is not made on the basis of the person's mental impairment. Rather, the action is taken because of the fact of the person having committed the actus reus of the offence, and in the interest of public care and safety. It is important in this context to have regard to the purpose of the accreditation scheme introduced by the bill: to attest that a person who operates a commercial bus service or local bus service can continue to demonstrate that they have competence and capacity to manage risks to safety associated with operating these services.

Further, only those found guilty of the serious offences described in the bill as tier 1 offences are excluded from accreditation or suspended on a mandatory basis. Tier 2 and 3 offences trigger discretion on the part of the safety director, which must be exercised compatibly with the charter. Furthermore, a person may apply to VCAT for review of accreditation and certain disciplinary decisions by the safety director. In particular, in relation to the mandatory accreditation provisions in clauses 27 and 49, VCAT may consider in detail the disqualifying offence that required the safety director to make the decision being reviewed and vary, uphold or dismiss the decision. Accordingly, I consider that the provisions are compatible with the charter.

Right to property

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law. Rights created under legislation, such as an accreditation to operate a bus service, may be property covered by section 20 of the charter. However, to the extent that an accreditation under the bill is an individual's property right, where it is affected or divested in the manner provided for in the statutory scheme that creates and sustains it, no deprivation will occur because the operator does not have a reasonable and legitimate expectation as to the lasting nature of an accreditation under the bill.

In any event, under the bill, variation, suspension or revocation occur in accordance with the law in the interests of public safety. Where an accreditation is varied, revoked or subject to new conditions under clause 42, notice and reasons must be provided to the operator unless immediate action is necessary in the interest of public safety. An inquiry to determine whether disciplinary action should be taken against an accredited bus operator under clause 50 of bill is subject to procedural safeguards. Further, variation, suspension and disqualification of an accreditation (in addition to a decision to refuse accreditation) are subject to review by VCAT (clause 58). Accordingly, these provisions are compatible with section 20 of the charter.

Inquiry to determine whether proper cause exists for taking disciplinary action

Under clause 51 of the bill, when conducting an inquiry the safety director has some of the same powers conferred on a properly appointed board of inquiry by the Evidence Act 1958, including immunity and the ability to summons people and documents, and to compel the giving and production of evidence under oath.

Free expression

To the extent that these provisions engage the right to free expression which may include a right not to impart information, they come within the limitation in section 15(3) of the charter because they are reasonably necessary for public health. Accordingly, I consider that these provisions are compatible with section 15 of the charter.

Freedom of movement

To the extent that a person is required to appear before the safety director, that person's freedom of movement is limited. I consider that the limitation is reasonably justified under section 7(2) of the charter, having regard to the following factors:

The nature of the right being limited

Every person lawfully within Victoria has the right to move freely within the state; to enter and leave it; and the freedom to choose where to live. The exercise of this right is not dependent on any particular purpose or reason. It encompasses a right not to be forced to move to or from a particular location.

The importance of the purpose of the limitation

The limitation is important because it permits the safety director to obtain the information necessary to determine whether disciplinary action is required as part of the regulation of the safe operation of buses.

The nature and extent of the limitation

These provisions allow the limitation of a person's freedom of movement only to the extent that the person is compelled to be physically present before the safety director for the purpose of providing evidence.

The relationship between the limitation and its purpose

The limitation is directly and rationally connected to its purpose: to determine whether there has been non-compliance with the bill and to manage any non-compliance by responding with appropriate disciplinary action so as to maintain and promote bus safety.

Less restrictive means reasonably available to achieve the purpose

There are no less restrictive means of achieving this purpose.

Accordingly I consider that these provisions are compatible with section 12 of the charter.

Drug and alcohol testing

Clause 56 requires a bus operator to develop, maintain and implement a drug and alcohol policy. Clause 57(2) sets out what must be included in an alcohol and drug management policy in which a bus operator opts to make provision for alcohol and/or drug testing.

The requirement that the written policy must specify that a driver of a bus must not have alcohol or drugs present in his or her blood or breath immediately before, or while, driving a bus engages the right to privacy. A drug is one declared to be such for the purpose of the bill under clause 8, as in the Rail Safety Act 2006. Alcohol and drug testing can affect the rights of individuals, including the right not to be subjected to medical treatment without consent (section 10), the right to freedom of movement; and the right to privacy (section 13).

However, restrictions on alcohol and drug consumption and testing are a reasonable restriction of the rights of individuals in safety-sensitive positions when conducted for and connected to the purpose of public safety. Under the bill, testing provisions included in a policy are restricted to bus safety workers employed or contracted by the bus operator an hour before they carry out bus safety work or where there is a reasonable ground for tests at another time. The policy must address the issues specified in the bill including the purpose, circumstances and procedures of testing and ensure the confidentiality of results. Further, the safety director also has a role in this context through the ability to issue guidelines, to which the charter will apply, regarding the form and content of the drug and alcohol policies developed by accredited bus operators. Therefore, the right to privacy is not limited because the circumstances in which alcohol and drug intake must be zero and testing must occur cannot be regarded as unlawful or arbitrary.

To the extent that the right to freedom of movement and the right not to be subjected to medical treatment without full, free and informed consent, are limited by these provisions, I consider that the bill represents an appropriate balance between competing rights and any limitation upon the rights of individual officers is reasonable and justifiable under section 7(2) of the charter.

The nature of the right being limited

The right to freedom of movement has been described above. Section 10(c) of the charter protects the right not to be subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent.

The importance of the purpose of the limitation

Enabling alcohol and drug testing of persons involved in bus operations, whose conduct can directly affect the safety of themselves, others, and the environment, is an important aspect of the safety purpose of the bill and the regulation of appropriate safety standards throughout the industry. Such standards are essential to maintaining public confidence in bus operations.

The nature and extent of the limitation

A person's right to freedom of movement may be limited by requiring attendance for the purpose of drug and alcohol testing. The right not to be subjected to medical procedures without full, free and informed consent may also be limited when a sample is taken.

Although a bus safety worker can refuse to comply with testing requirements and under the bill the policy is required to be developed in consultation with those affected by its provisions, because such a refusal could have implications for his or her continued employment, consent cannot be regarded as truly free.

The relationship between the limitation and its purpose

The limitation is directly and rationally connected to its purposes. The application of testing for the purpose of promoting, monitoring and maintaining bus safety permitted under a policy is limited to people whose position has a direct safety outcome.

Less restrictive means reasonably available to achieve the purpose

There are no less restrictive means of achieving this purpose.

Accordingly, I consider that these provisions are compatible with the charter.

Power of entry

Clause 97 amends section 228Z of the Transport Act 1983, which provides transport safety officers with a power to enter railway premises at any time and residential premises. The amendment will extend the application of this provision to public transport premises. Only public transport premises can be accessed at any time without consent. Access to private residences is permitted only with the consent of the occupier or under the authority of a search warrant. Clause 98 extends the formal requirements of obtaining consent to enter public transport premises.

To the extent that the exercise of this authority permits access to private information or access to residences, the right to privacy is engaged. However, these powers arise in the controlled and prescribed circumstances set out in the bill for the purpose of promoting and protecting public safety and are lawful. Consequently, I do not consider that these provisions can be described as arbitrary. Accordingly, this provision is compatible with the right to privacy under section 13 of the charter.

Conclusion

I consider that the bill is compatible with the charter because, to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

Lynne Kosky, MP
Minister for Public Transport

Second reading

Ms KOSKY (Minister for Public Transport) — I move:

That this bill be now read a second time.

This bill provides a new 'best practice' safety regulation regime for Victoria's growing bus industry.

It is a major step in the modernisation of transport safety regulation that began with the Rail Safety Act 2006 and will be completed with the forthcoming review of marine safety regulation.

It is also a critical component of the government's wider program of transport legislation reform, which represents the most extensive overhaul of Victoria's transport legislation in 25 years.

Foreshadowed earlier this year in the Premier's annual statement of government intentions, the introduction of this bill is timely, as it coincides with the largest expansion of the bus network in decades and significant patronage growth on both metropolitan and regional buses.

The bill is by no means a response to failure in the safety performance of Victoria's bus sector — the industry in fact compares well with Australian and international trends. But serious incidents, while rare, do occur. Members might recall the dreadful 1989 Kempsey bus crash when two full tourist coaches, each travelling at 100 km/h, collided head-on near Kempsey, New South Wales, claiming 35 lives and injuring 41 others.

Closer to home, in July this year, 17 people were injured in a collision between a bus and a truck in Traralgon.

We must do all we can to avoid these sorts of tragedies and this bill aims to ensure that the bus industry's good safety record in this state is maintained and improved into the future.

Why is a new Bus Safety Act needed?

According to BusVic analysis of census data, 80 per cent of people in metropolitan Melbourne live more than 400 metres from a train or tram line. As public transport use grows, many of these people will rely more and more on their local bus network to transport them within and across suburbs and towns.

The Brumby government's growth of bus services across Victoria and the new performance regime in the recently renegotiated bus service contracts will inevitably result in busier and more complex operational settings for the bus industry.

These changes and the increase in services and kilometres travelled will raise the safety risk profile of the bus sector generally.

A more contemporary regulatory framework will assist the bus industry to adapt to these changing safety requirements.

The existing safety regime is no longer appropriate, and falls short of regulatory best practice.

More than 40 per cent of the bus fleet is currently unregulated for safety. The existing scheme is poorly focused and not designed to encourage general safety awareness.

Clearly, change is required in an industry where incidents have the potential for serious consequences.

We need best practice regulation that facilitates better hazard identification and better risk management — activities aimed at preventing incidents, and mitigating their consequences.

This bill is the first dedicated bus safety statute in the state's history. It adopts a best practice scheme that will enhance safety at affordable cost.

Public consultation

In May this year, the Department of Transport released for stakeholder and public consultation a major discussion paper entitled *Improving Bus Safety in Victoria*.

The department received and considered a total of 37 submissions, most from bus operators.

Policy context

Victoria's transport policy direction is clear. We are continuing to develop an integrated and sustainable transport system drawing on best practice principles, with safety as one of the key overarching objectives.

The government has been introducing best practice measures for safety in the transport system for some years, notably through the introduction of the Rail Safety Act 2006 which establishes a best practice safety framework for the rail sector.

Transport legislation review

The Bus Safety Bill has not been developed in isolation. It is a crucial part of broader transport policy and legislative reform.

The government is taking action to improve the transport system for all Victorians and all sectors of the state economy. While many of the notable elements of the government's transport platform are centred on new

projects and transport infrastructure, there is also a clear focus on improving regulation and legislation.

Victoria will benefit from strong, integrated transport policy and legislation covering-road, rail and port networks, public transport, private motorised transport, freight transport, commercial shipping and recreational boating, cycling, walking and any other modes of transport.

Contemporary best practice safety regulation in transport focuses on the identification and mitigation of risks. In short, this bill will do for the bus sector what the groundbreaking Rail Safety Act did for the rail sector — maintain Victoria's position as national leader in transport policy and legislative reform.

Purposes of the bill

The purpose of the new act is simply to provide for the safe operation of bus services. In particular:

effective management of safety risks in bus operations;

continuous improvement in safety management;

public confidence in the safety of bus services;

involvement of relevant stakeholders;

a safety culture among persons who participate in providing bus services.

Once a safety culture is established in the bus industry, operators, along with other parties in what is called the 'bus safety chain of responsibility', will be engaged in safety decisions and share safety accountability.

The current scheme

Bus safety is currently regulated by an operator accreditation scheme in the Public Transport Competition Act 1995 and by miscellaneous prescriptive offences in the Transport (Passenger Vehicles) Regulations 2005. Compared with best practice regimes, the existing scheme is outmoded and inadequate:

first, it focuses almost solely on the bus operator and ignores the safety role of other key industry participants who can affect safety outcomes;

second, bus accreditation focuses on the ability to operate rather than on safety outcomes more generally;

third, conditions of accreditation and the passenger vehicles regulations are prescriptive rather than performance based, and do not result in the general safety awareness and proactive risk management required to develop a safety culture;

fourth, the regulator has limited sanctions available when safety breaches occur and is often forced to choose between sanctions that are either too strong or too weak;

fifth, the scheme does not apply to all 'buses'. The current definition of 'bus' is a passenger vehicle with more than 12 seating positions, including the driver. This misses minibuses and is inconsistent, not only with the requirements in most Australian jurisdictions, but also with the relevant Australian design rules.

Main characteristics of the new scheme

Extend definition of 'bus'

This bill now extends the definition of 'bus' in line with the Australian design rules, which define a bus as a passenger vehicle with 10 or more seating positions including the driver.

The definition refers to buses 'as built'. This means that if a vehicle is built as a bus, subsequent modifications, including reducing the number of seats, will not alter its status under the scheme. So, a bus built with 10 seats remains a bus even if some of those seats are removed. This is important to ensure that safety regulation is not avoided by making alterations to the vehicle.

Some flexibility is provided by allowing for vehicles and services to be opted in or out of the definition. For example, a vehicle that would otherwise be a bus, but is licensed as a taxicab, is excluded so that the operator is not subject to double regulation.

Safety duties

In order to foster more proactive risk management, the bill imposes performance-based duties of care on all industry participants who are in a position to influence the safety of the operation — what is called the 'chain of responsibility'.

Safety duties apply to all bus services, both commercial and non-commercial, and to all buses regardless of seating capacity.

The primary duty holder is the operator of the bus service, as the person who has effective responsibility and control over the whole operation.

Duties are also imposed on a range of other people including —

bus safety workers: including drivers, schedulers who set bus timetables, and mechanics and testers who repair or assess vehicle safety;

people who procure the service, known as the customer in the commercial charter sector;

people with responsibility for bus stops, including people who design, build or maintain the stop and who decide on its location. This is a response to research showing that the most serious hazard associated with bus travel occurs when passengers, especially children, are crossing the road after alighting from the bus. The location and layout of a bus stop is a factor in the level of risk.

All of these persons can clearly affect bus safety. They are required to ensure that, in carrying out their activities, they eliminate risks to health and safety if 'practicable' — or work to reduce those risks 'so far as is reasonably practicable'. This familiar practicability formula is borrowed from the Rail Safety Act and the Occupational Health and Safety Act 2004.

Duties of this kind are a key aspect of modern safety regulation and tend to create a shared safety awareness, a proactive approach to safety management and adaptability to new circumstances — in other words, a safety culture.

Penalties for a breach of safety duties are potentially high, with maximum penalties reflecting those that can be imposed on duty holders in the rail sector and in the OH and S Act.

The general approach taken in this bill — to encourage a safety culture by imposing safety duties and risk management obligations on persons in a chain of responsibility — is strongly supported by the report on transport safety regulation released in October 2008 by the NSW Efficient Transportation Marketplace Working Group.

This report effectively endorses Victoria's and the nation's rail safety regime directions and suggests that a similar approach be taken with all road transport.

Less reliance on accreditation

In addition to safety duties, the requirement to be accredited continues for operators of commercial services that use medium to large buses, as well as local councils which use medium to large buses to provide a service that is available to the general public.

The accreditation scheme will be streamlined and strengthened to focus totally on safety. It will no longer focus on business competence, and it will reduce the regulatory burden by relieving accredited operators of the need to obtain periodic renewal of their accreditation.

New probity standards will also be introduced, with the inclusion of disqualification offences — essentially past criminal convictions which, depending on their seriousness, may disqualify an applicant from obtaining accreditation.

Additional effort required in demonstrating safety competence to the regulator, and the additional regulator vigilance involved in accreditation, are reasonably required for commercial and local services that include medium to large buses — those services that are the most visible are spending the most time on the road, carrying the largest number of passengers and usually serving the general public.

These services intrinsically have a higher risk. Therefore it is important that the new scheme promotes and maintains public confidence in these services.

Significantly, the bill makes it clear that the concept of 'commercial' includes so-called 'courtesy services' — that is, where the passenger is carried free because they have paid for a service to which the transport is ancillary — with hotel shuttles the most familiar example.

It has been decided not to require accreditation for operators of non-commercial services, or services that rely exclusively on minibuses — buses with 10–12 seats. These services are, of course, subject to the same range of safety duties as applies to other bus services. They also have to be registered, enabling the regulator to take proactive compliance steps or responsive action as necessary. In addition, the specific guidance contained in codes of practice can enhance compliance by operators of these services.

The bill strikes a careful balance between the need to ensure that non-commercial bus services are operated safely without requiring onerous requirements and therefore threatening the viability of vital community services, such as buses provided by local councils, clubs or community organisations.

Drugs and alcohol

It is not proposed to compel bus operators to impose drug and alcohol testing on drivers or other relevant employees. Instead, the bill requires the operator to

develop a drug and alcohol policy in consultation with employees.

Bus safety regulator

A safety regulation framework is not effective unless it is administered by an independent and accountable regulator. One of the key initiatives of the Rail Safety Act was the establishment of an independent office of the director, public transport safety, within the then Department of Infrastructure. The safety director has established a record of independence and competence, and will continue to regulate safety in the bus sector under the new Bus Safety Act.

Enforcement powers and sanctions

The bill enables the safety director to apply to the bus sector the wide array of enforcement powers and sanctions that are available in the rail sector. These sanctions are not new to much of the bus industry as they already apply under the heavy vehicle provisions of the Road Safety Act 1986 in relation to mass, dimension and fatigue breaches.

These provisions give the safety director regulatory tools including improvement notices (which require a duty holder to remedy a safety breach) and, in more critical circumstances, prohibition notices (which enable the safety director to prohibit the duty holder from carrying out an unsafe activity until the situation is remedied). In each case, failure to comply with the notice is an offence.

The Rail Safety Act and Road Safety Act give courts a wide range of sentencing options after a finding of guilt is made in relation to a safety offence. These, too, will now be available in relation to bus safety offences.

The government has taken particular care with the design of the bill to avoid unnecessary burdens on industry and has considered the cost benefit of decisions which have the potential for significant cost.

Key elements of the bill

Parts 1 and 2 of the bill set out preliminary matters, including definitions and a set of overarching bus safety policy principles.

Part 3 establishes performance-based duties for key parties with risk management responsibilities as part of the chain of responsibility for bus safety.

Part 4 sets out the framework for the accreditation scheme, including provisions for applications, assessment criteria (including disqualifying offences), conditions and variations of accreditation and disciplinary action.

Part 5 requires operators to develop a drug and alcohol policy in consultation with employees.

Part 6 provides for persons affected by certain decisions of the safety director to seek review by the Victorian Civil and Administrative Tribunal.

Part 7 makes provision for the development, approval and availability of codes of practice — which would provide practical guidance to bus operators and other persons with duties under the bill.

Part 8 includes general provisions for offences by bodies corporate, partnerships and unincorporated bodies or associations and their officers.

Part 9 makes consequential amendments to other acts. The Public Transport Competition Act 1995 is renamed the Bus Services Act, as the subject of safety is addressed by the new Bus Safety Act. The Road Safety Act 1986 is amended to clarify provisions addressing the management of fatigue in drivers of heavy vehicles.

Amendments are also made to the Transport Act 1983, including by extending to the bus sector the enforcement and sanction provisions available in rail safety, and by making the driver accreditation scheme consistent with the new Bus Safety Act.

Implementation of the new bus safety framework

The new act comes into operation on a date to be proclaimed, with 31 December 2010 targeted as the default commencement date. This will allow time for the industry and the regulator to adapt to the new requirements, and for certain operators and services using minibuses to transition from hire car and special purpose vehicle licensing schemes to the new bus scheme.

Subordinate instruments necessary for the operation of the new scheme will be developed during 2009 and 2010. These will include regulations, a code or codes of practice, and a compliance and enforcement policy. Each will involve further consultation with industry and other stakeholders.

Relationship of the bill with national trends

Victoria has been advised by the National Transport Commission that there is no intention at this stage to develop national model legislation for bus safety regulation.

The Bus Safety Bill follows the same best practice paths taken by the Rail Safety Act and places Victoria in a leading position. If bus safety eventually becomes the focus of a national project, as occurred in rail safety, other jurisdictions may be encouraged to take similar steps as Victoria in relation to reform of their regulatory frameworks for bus safety.

Conclusion

In conclusion, the Bus Safety Bill introduces contemporary performance-based safety regulation to Victoria's bus industry.

At a time when bus services are expanding to meet the changing needs of a modern transport system, this best practice safety scheme will reinforce public confidence in our bus industry.

The bill is another major step in the largest program of transport policy and legislative reform in a generation. An enhanced bus safety regime will make an important contribution to the government's plan for an integrated and sustainable transport system.

I commend the bill to the house.

Debate adjourned on motion of Mr MULDER (Polwarth).

Debate adjourned until Thursday, 18 December.

DUTIES AMENDMENT BILL

Statement of compatibility

Mr HOLDING (Minister for Finance, WorkCover and the Transport Accident Commission) 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 (the charter), I make this statement of compatibility with respect to the Duties Amendment Bill 2008.

In my opinion, the Duties 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 bill

The *Duties Act 2000* (the Duties Act) charges duty on dutiable transactions, such as the transfer of land. The purpose of the Duties Amendment Bill 2008 is to amend that act to ensure that duty is payable where effective control or ownership of real property is obtained, irrespective of the form of transaction.

In particular, the bill brings to duty certain long-term lease arrangements used to avoid duty, and clarifies when duty is payable in relation to changes in beneficial ownership. The bill also reduces the period for the payment of duty to 14 days after the settlement of a dutiable transaction.

Human rights issues

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

The bill does not raise any human rights issues.

2. Consideration of reasonable limitations

As the bill does not raise human rights issues, it does not limit any human right and therefore it is not necessary to consider section 7(2) of the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it does not raise any human rights issues.

TIM HOLDING, MP
Minister for Finance, WorkCover
and the Transport Accident Commission.

Second reading

Mr HOLDING (Minister for Finance, WorkCover and the Transport Accident Commission) — I move:

That this bill be now read a second time.

The bill amends the Duties Act 2000.

There are three major components of the bill. The first two may be characterised as anti-avoidance whereas the third is designed to ensure that revenue due the state is remitted in a timely fashion, more in line with the practices of other jurisdictions.

The broad policy underlying the provisions of the Duties Act 2000 (the act) is that they should be wide enough so that where effective control or ownership of real property is obtained a liability to stamp duty will arise.

In the Supreme Court decision *Trust Company of Australia Ltd (atf the Clayton 3 Trust) v. Commissioner of State Revenue* [2007] VSC 451 (Trust Company case) the court pointed to the difficulty in identifying the relevant beneficial owner in certain transactions. This included, for example, those involving discretionary trusts or unit trusts where the units are not held absolutely. This may have an effect on certain important provisions of the act which seek to capture such transactions for stamp duty purposes.

The bill seeks to overcome these doubts. It is important to note that the wording of the relevant provisions of

the old Stamps Act 1958 (replaced by the Duties Act 2000) demonstrates that it was always contemplated that the provisions should have this breadth. Other jurisdictions also intend that such transactions involving an effective change in ownership would be brought to duty.

The State Revenue Office has signalled that it was considering a legislative response to this situation. Practitioners should not be surprised by the decision of this government to clarify the act and remove the potential for revenue avoidance.

This government abolished a range of taxes following the intergovernmental agreement on the reform of commonwealth-state financial relations (the IGA). This included abolishing commercial lease duty in 2001, well ahead of the agreed abolition period. Since that time and more so over the last few years the State Revenue Office has been monitoring the use of leases, particularly long-term leases.

It has become apparent that the practice has evolved where the benefits associated with effective ownership are being transferred between parties by the use of particular leases. This has the obvious benefit of being stamp-duty free.

The increase in the use of such transactions has the ability to erode the duty base and also to undermine the integrity of the tax. The measures are generally occurring in very large transactions. For instance, the State Revenue Office has identified a range of transactions of CBD properties for leases of up to 125 years. These often involve a very small annual rental but a very large premium payment payable up-front. Lessees in these cases take all the usual benefits associated with ownership. Had this transfer of effective economic ownership been conducted by more standard arrangements, the stamp duty payable in these samples alone would amount to tens of millions of dollars.

Victoria is exposed to this manipulation more so than other jurisdictions. This is because other jurisdictions reformed their leasehold duty provisions in a more limited manner than Victoria. In moving to comply with the IGA so early Victoria unintentionally became exposed to this manipulation. The sample transactions identified by the State Revenue Office are likely to have attracted duty in other jurisdictions.

It is important that these two anti-avoidance aspects of the bill are made together. Introducing the provisions around leases requires clarification of the beneficial ownership provisions to operate effectively. These anti-avoidance measures are to apply from the date of public announcement — 21 November 2008. Transactions of this kind entered into should be brought to duty. The vast majority of Victorians must and do pay stamp duty when they take effective ownership of real property. There is no reason large corporations and others, who take advantage of these schemes, should pay no duty in such circumstances.

The third component of this bill is an administrative measure designed to ensure stamp duty is remitted to government more quickly. Currently the act allows three months for payment of duty after the dutiable transaction has taken place. The bill reduces this to 14 days. This does not affect the amount of duty payable, simply the time allowed for it to be paid to government.

Most stamp duty is remitted well within the current 90-day allowable period. Almost two-thirds of duty paid is already remitted within the new required period of 14 days. Stamp duty is an expected, calculable cost of purchasing property. In the vast majority of transactions purchasers will have access to funds for stamp duty at settlement, which is the time of the dutiable transaction. Currently there is no legislative requirement for liable parties, or in most instances their financiers, to pass that revenue on to government at settlement. Rather they have 90 days to do so. This measure means that in the vast majority of cases funds that have already been allocated will be forwarded to the government more promptly.

This measure will align Victoria more closely to other jurisdictions where generally stamp duty is remitted much earlier. In other jurisdictions the dutiable transaction can be when a written agreement is entered into. The effect of this is that liability runs from the date of the contract, not the date of the settlement. With long settlement periods stamp duty may become due even before the property settlement transaction takes place.

These measures will take effect from the date of royal assent. As this bill is being introduced in these 2008 sittings but will not be considered by either house before 2009 there will be a period of some months for parties to prepare for these changes. Financial institutions and other professional parties who play a role in dutiable transactions will have this period to implement administrative and other necessary changes to be compliant with the reduced payment period. The State Revenue Office will also need to ensure it is able to manage the increased level of more timely payments, whether made via document registration system authorised agents or directly over its counter.

The bill reflects the government's willingness to take appropriate measures to protect the revenue and to maintain the integrity of the stamp duty tax base. The anti-avoidance measures will not bring any transaction to duty where there is no clear policy intent that duty should be payable. The transactions that may be affected do transfer effective economic ownership and should be dutiable. Applying the measures from the day of announcement is reasonable given the risk to the revenue base.

The administrative changes to the period allowed for payment should not prove too onerous. It can be expected that an allowance for stamp duty is generally made at the time of settlement. The reform still allows 14 days from that date for payment to be remitted. Other jurisdictions may receive stamp duty at an earlier point. It is not unreasonable that the government receive due revenue in a timely manner.

I commend the bill to the house.

Debate adjourned on motion of member of Mr WELLS (Scoresby).

Debate adjourned until Thursday, 18 December.

CORONERS BILL

Council's amendments

Returned from Council with message relating to amendments.

Ordered to be considered later this day.

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT (EMPLOYEE PROTECTION) BILL

Statement of compatibility

Mr HOLDING (Minister for Finance, WorkCover and the Transport Accident Commission) 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 Occupational Health and Safety Amendment (Employee Protection) Bill 2008.

In my opinion, the Occupational Health and Safety Amendment (Employee Protection) 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 Occupational Health and Safety Amendment (Employee Protection) Bill 2008 (the bill) extends to individuals who have allegedly suffered from discrimination (defined using the same criteria as contained in section 76 of the Occupational Health and Safety Act 2004) (the OHS Act), a right to apply to the Industrial Division of the Magistrates Court for civil remedies, including remedies of a kind provided for under section 78.

The bill also:

provides that applications to the Magistrates Court must be made within one year of the plaintiff becoming aware of the alleged discriminatory conduct;

makes explicit a civil defence where an employer engages in conduct for the purpose of complying with the requirements of the OHS Act or the Accident Compensation Act;

includes as protected conduct an employee or prospective employee having assisted or raised a health and safety issue with an authorised representative of a registered employee organisation;

provides a right to seek an injunction restraining proscribed discrimination;

extends civil antidiscrimination protection to employees of independent contractors; and

removes the prison penalty in relation to criminal proceedings under section 76(4)(a) of the OHS Act.

Human rights issues

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

Sections of the charter relevant to the bill are outlined below.

Section 8: recognition and equality before the law

Section 8(3) of the charter provides that every person is equal before the law, is entitled to equal protection of the law without discrimination, and has the right to equal and effective protection against discrimination. Discrimination, in relation to a person, means discrimination within the meaning of part 2 of the Equal Opportunity Act 1995 on the basis of an attribute set out in section 6 of that act. The bill increases individuals' protection from discrimination for raising a health and safety issue by providing for a civil remedy under the OHS Act for individual employees who have suffered discrimination. Further, the coverage of new civil antidiscrimination protections will cover employees of independent contractors. The bill therefore increases the protection against discrimination of employees who raise health and safety issues and is consistent with the right in the charter.

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

Section 25(1) of the charter provides that a person has the right to be presumed innocent until proven guilty according to law. The right principally applies in criminal proceedings with the effect that the prosecution is required to prove all elements of the offence beyond a reasonable doubt. The bill

retains the onus of proof set out in section 77 of the OHS Act. The bill provides that if all facts constituting the claim other than the reason for the conduct are proved, then the burden of proof lies on the defendant to prove that the charge was not a substantial reason for engaging in the conduct. However, ascribing the onus of proof to the defendant for a civil, not a criminal, action does not engage or limit the human right protected by section 25 of the charter. The reverse onus of proof applies in this case, as the employer is in a clear position to explain their motivation for undertaking the conduct. This is more appropriate than requiring the claimant to prove the employer's motivation.

No other human rights protected by the charter are relevant to or engaged by the bill.

2. Consideration of reasonable limitations — section 7(2)

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

Conclusion

I consider that the bill is compatible with the charter as it does not engage or limit any human rights and is broadly consistent with the intent of the charter to provide for protection against discrimination.

TIM HOLDING, MP
Minister for Finance, WorkCover
and the Transport Accident Commission.

Second reading

Mr HOLDING (Minister for Finance, WorkCover and the Transport Accident Commission) — I move:

That this bill be now read a second time.

Victoria has been at the fore in both the development of best practice health and safety legislation and in positive enforcement by our health and safety regulator, WorkSafe Victoria. We have subjected our legislation to the highest levels of scrutiny, with extensive reviews undertaken over the past five years by Mr Chris Maxwell, QC, and Mr Bob Stensholt, MP. I take this opportunity to acknowledge the contribution made by stakeholders to these review processes. Such efforts have contributed to Victoria's improved workplace health and safety.

However, the nature and consequences of workplace health and safety are such that we should never allow ourselves to become complacent. So far this year in Victoria seventeen people have died as a result of incidents at work. And this is to say nothing of the thousands of people who have suffered workplace injuries or illnesses. As a community, we must continue to strive to do better.

The bill I am introducing today gives effect to a commitment by this government to enhance protections to employees who are proactive about workplace health and safety or who raise health and safety issues and who suffer discrimination as a result. The bill does this by establishing an individual right of action for employees for instances of alleged OHS discrimination. It is accepted that workplace health and safety relies on everyone — employers and workers — playing a proactive role. This system is not premised on having WorkSafe inspectors on hand at every workplace, 24 hours a day. Nor can employees be proactive about workplace health and safety in an environment where they risk any disadvantage for acting as or assisting employee representatives, for aiding or providing information to a WorkSafe inspector, or for speaking out about their OHS concerns.

I will now move on to discuss key elements of this bill.

Individual right of action

In addition to the existing criminal provisions for OHS discrimination, the bill provides for an individual employee who has allegedly suffered discrimination to apply to the industrial division of the Magistrates Court for a civil remedy. As with the existing criminal provisions in the OHS act for OHS discrimination, the onus of proof in such cases will be on the defendant employer. However, a 'substantial reason' test will apply under the new civil arrangements rather than the stronger 'dominant reason' test for criminal cases. There is also provision for an individual to seek an injunction from the court to restrain proscribed conduct.

The bill also makes it clear that a civil defence is available where the employer's conduct was reasonable in the circumstances and undertaken to comply with other provisions of the OHS act or the Accident Compensation Act.

The Magistrates Court has powers to make orders, including for damages and reinstatement. It can also direct matters to alternative dispute resolution which, in appropriate circumstances, can facilitate speedy outcomes and truncate formal court proceedings.

Removal of prison sentence

The prison penalty for criminal breaches of section 76 of the OHS act will be removed, bringing Victoria more into line with other jurisdictions.

Employees of independent contractors

The coverage of the new civil antidiscrimination provisions in the OHS act will also apply to third-party discrimination against employees of independent contractors. The practical effect of this amendment will

be to ensure that this category of workers is afforded the benefit of broader protection under the antidiscrimination provisions.

Protection to employees assisting or consulting authorised representatives of registered employee organisations

The identified activities in the act to which protection from discrimination is provided will be expanded to include where employees assist or raise safety issues with authorised representatives of registered employee organisations. This reflects the important role such representatives play in workplace health and safety and should enhance the overall efficacy of Victoria's OHS regime, which is reliant on all workplace parties playing an active role in speaking out on OHS issues.

These new arrangements will come into effect on 1 July 2009. This provides a sufficient transitional period, during which the government, WorkSafe and the Magistrates Court will consult further with stakeholders on operational issues.

This bill reaffirms the government's ongoing commitment to and leadership in the development of progressive and effective health and safety legislation.

I commend the bill to the house.

Debate adjourned on motion of Mr WELLS (Scoresby).

Debate adjourned until Thursday, 18 December.

CORONERS BILL

Council's amendments

Message from Council relating to following amendments considered:

1. Clause 3, page 5, after line 8 insert —

   "***immediate family"*** in relation to a deceased person, means spouse, domestic partner, son, daughter, parent, sibling, executor, personal representative or a person determined to be the senior next of kin under subsection (3);".

2. Clause 8, line l6, omit "where practicable" and insert "as far as possible in the circumstances,".

3. Clause 12, line 7, before "A person" insert "(1)".

4. Clause 12, after line 11 insert —

   "(2) A member of the immediate family of a deceased person may report the death to the coroner if the person was a person discharged from an approved mental health service within the meaning of the **Mental Health Act 1986** within 3 months immediately before the person's death.".

5. Clause 14, after line 7 insert —

   "() A coroner may investigate a death reported to the coroner under section 12(2).".

6. Clause 72, after line 17 insert —

   "() If a public statutory authority or entity receives recommendations made by the coroner under subsection (2), the public statutory authority or entity must provide a written response, not later than 3 months after the date of receipt of the recommendations, in accordance with subsection (4).

   () A written response to the coroner by a public statutory authority or entity must specify a statement of action (if any) that has, is or will be taken in relation to the recommendations made by the coroner.

   () The coroner must —

   (a) publish the response of a public authority or entity on the Internet; and

   (b) provide a copy of the response to any person —

   (i) who has advised the principal registrar that they have an interest in the subject of the recommendations; and

   (ii) who the principal registrar considers to have a sufficient interest in the subject of the recommendations.".

Mr HULLS (Attorney-General) — I move:

That the amendments be agreed to.

In so doing I am very pleased to speak to the Coroners Bill which, as we know, is groundbreaking reform in this state. It is a fundamental reform to coronial law in Victoria. As we know, the Coroners Bill was passed by the Legislative Assembly on 13 November 2008. This afternoon the Legislative Council passed the bill with amendments to clauses 3, 8, 12, 14 and 72. We believe the bill passed by this place was an excellent piece of legislation and substantial reform after a long process of inquiry that was headed up by my colleague the honourable member for Bentleigh, who made recommendations to the government. As a result legislation was presented to this place.

There are some amendments that we are prepared to agree to and we do so because we think it is very important that these significant measures in the bill come into effect. The prompt passage of this legislation will certainly assist in its effective implementation and

will provide real certainty for the Coroners Court and for other affected stakeholders who need certainty in order to prepare for the implementation of producing the rules, practice notes and guidelines in relation to this legislation.

The amendments relate to three issues, and I will address each of them in turn. Firstly, the amendments to clauses 3, 12 and 14 allow immediate family members of a deceased person to report to the coroner the death of a person discharged from an approved mental health service within three months of the death. The definition of 'immediate family' has been inserted into clause 3(1) as has a new clause 12(2), which provides for immediate family members to report the death to the coroner. The amendment to clause 14 enables the coroner to investigate that death.

Those who know how the Coroner's Court operates will know that these amendments are unlikely to have more than a minimal impact. That is not to take away from the underlying cause of the amendments, but the types of deaths which would be of concern to a family are already likely to be reportable. For example, families would be concerned about a person committing suicide shortly after being discharged from a mental health service, but unexpected deaths or deaths due to injury or accident are already reported to the coroner.

Further under the amendments, the coroner is not required to investigate the death, so the investigation is likely to be dealt with expeditiously unless it is otherwise reportable. So we do not think that the amendment will adversely affect or hold up any inquiries the coroner would normally undertake, because we believe the deaths that are referred to would in all likelihood be reportable in any event. Nonetheless, we understand the reason why the amendments have been made, and we are happy to support such amendments.

The second issue that is addressed by the amendments is clause 8, which relates to matters that people exercising functions under the bill should have regard to. Clause 8 currently provides that a person should have regard where practicable to the matters specified in clause 8. The amendment replaces the words 'where practicable' with the words 'as far as possible in the circumstances'. Given that the provision uses the phrase 'behaviour should occur', we believe the amendment will have very little significant impact upon the provision, and indeed we are happy to support it.

The third amendment relates to recommendations, and it requires public statutory authorities and entities to respond to recommendations made by a coroner who investigated a death. The response must be made within three months of the authority or entity receiving the recommendation. The written response must specify a statement of action, if any, that has been or will be taken in relation to the recommendations made by the coroner. The coroner must publish the response of the authority or entity on the internet. The coroner must also provide a copy of the response to any person who has advised the principal registrar that they have an interest in the subject of the recommendations and who the principal registrar considers to have sufficient interest in the subject of the recommendations.

This amendment seeks to support the prevention focus of the Coroner's Court, and on that basis we are prepared to support it. What normally happens now is that the coroner will make recommendations, and they are forwarded to me as Attorney-General. If they are in relation to a particular department, I will then forward the recommendations on to ministers responsible for those departments, and action will either be taken or not taken depending on what the recommendations entail. What is required here is a slight difference to current practice whereby whatever action is or is not taken ought be published.

The government is very proud of the focus this bill places on prevention. Prevention is emphasised in the preamble, in the purposes, in the objects, in the creation of the coronial council and in the ability of the coroner to make recommendations to any entity. The government is also very proud of the other reforms that are being implemented to improve the prevention focus of the Coroner's Court, including the creation of the prevention unit within the court and the funding for the Judicial College of Victoria to train coroners in relation to the drafting of recommendations. Thus in order to ensure these important reforms become law, I certainly commend the amended bill to the house.

Mr CLARK (Box Hill) — The coalition is pleased to support the motion to accept the amendments of the Legislative Council. A number of these amendments reflect concerns that were raised by us in the course of the debate in the Assembly, in terms particularly of ensuring there was adequate follow-through on recommendations of the coroner rather than have them disappear into a void. This is something that was also identified as an issue by the parliamentary Law Reform Committee in its report on the coroner's legislation, and it made recommendations to that effect.

The Attorney-General referred to the purpose of prevention within the bill, but unfortunately as it came to this house the bill did not adequately provide for

follow-through on that topic. As I said, this issue was raised by us in the debate in this place, and in the other place Ms Pennicuik put forward the amendment to clause 72, which has been agreed to by the Legislative Council and which the coalition was pleased to support in that house.

That will mean there will have to be some follow-through of recommendations made by the coroner, because if a public statutory authority or entity receives recommendations made by the coroner, that public statutory authority or entity must provide a written response within three months and must include in that a statement of action, if any, that has been or will be taken in relation to the recommendations made by the coroner. That response is to be published on the internet, and a copy is to be provided to any person who has advised the principal registrar of an interest in the subject and whom the principal registrar considers to have a sufficient interest.

In other words, it makes sure that there is a response from the public statutory authority or from the entity that receives the recommendations; and that that response goes on the public record. The recipient is not under any obligation necessarily to accept the recommendations of the coroner or to take any particular action in response to those recommendations, but the entity must at least respond. We think that is a worthwhile improvement on the situation of the bill as it was introduced into the house. It was carried in the other place on the vote of the minor parties and the coalition, notwithstanding the fact that the government voted against it.

The other amendments made by the Legislative Council have been accurately described by the Attorney-General. While they are probably relatively limited in their scope, for the reasons referred to by the Attorney-General, we concluded, having considered the amendments put forward by Ms Pennicuik, that they were worthwhile improvements.

One requires that as far as possible, in the circumstances, when a person is exercising a function under the act they should have regard to matters such as: the distress that the death of a family member, friend or community member can have and the need for a referral for professional or other support; that unnecessarily lengthy or protracted coronial investigations may exacerbate distress; that different cultures have different beliefs and practices surrounding death that should be, where appropriate, respected; that family members affected by a death being investigated should, where appropriate, be kept informed of the particulars and progress of the investigation; and that there is a need to balance the public interest in protecting a living or deceased person's personal health or personal health information with the public interest in the legitimate use of that information.

The amendment gives a slight increase in emphasis, that these matters are to be had regard to as far as possible in the circumstances rather than simply where practicable.

The final area of amendment deals with the situation of persons who die within three months of having been discharged from an approved mental health service. There is a real concern, and I think a real problem, in the community about people who are discharged perhaps prematurely from mental health services when their mental health situation has not been properly stabilised, perhaps due in part to the pressures on the mental health system in this state, and accordingly people in those circumstances may well be at heightened risk and tragically there may be suicides or other deaths of persons within a period after they have been discharged.

The Attorney-General rightly said that it is highly likely that when a death occurs in those circumstances, it will come to the coroner's attention for investigation in any event. But this amendment, as we understand Ms Pennicuik's rationale and certainly as it seems to us, is to make sure that when someone dies in the tragic circumstance of having been discharged within the last three months from a mental health service, if someone in the immediate family believes there might be a link to the way they have been treated or that they did not receive appropriate or adequate treatment in the mental health service, they can raise that matter with the coroner and specifically draw it to the coroner's attention, whether or not it fits within the definition of 'reportable death', and that the coroner then has a discretion to investigate a death that has been reported in that way. That seems a worthwhile reinforcement of the situation.

As far as they go, we are pleased to support the amendments made by the Legislative Council. I should express some disappointment that the Council did not see fit to support the amendments that the coalition parties moved to allow, in particular and carefully specified circumstances, for the mother of a child who dies by stillbirth to report that death to the coroner and for the coroner to have a discretion to investigate the death.

We still feel very strongly that the coroner is best placed when there is a need for a detailed investigation of such a tragic stillbirth, particularly of a child post-32

weeks gestation as specified in the amendment, which is highly likely to be a circumstance where a mother has gone into hospital expecting to give birth to a healthy child but through some tragedy the child is never born. Obviously honourable members can imagine the grief and distress in those circumstances.

At present there is no opportunity for adequate investigation of a death that occurs in this way. It is not something that the consultative council is able to investigate in detail, and certainly not in the way the coroner can. It is not something that the health services commissioner or other bodies will investigate. So there remains a gap, which unfortunately has not been filled by this legislation. We certainly very much hope that when the review of the Consultative Council on Obstetric and Paediatric Mortality and Morbidity takes place, as was referred to in the debate in the Legislative Council, that this issue of how stillbirths can best be investigated is considered.

The proposal that the coroner have the capacity to investigate stillbirths is one that has the strong support of a number of members of the consultative council, of organisations such as SIDS and Kids and of many paediatricians and others involved in child health. Regrettably that gap in the legislation remains unfinished business, and I hope the government will take that matter on board and look at it very closely — and, I hope, favourably — in the course of consideration of the review of the council and the operation of the whole area of investigation of neonatal death that the government is undertaking.

As I say, the amendments that have been made by the Legislative Council are welcome ones. The government did not support them in the other place, but I am very pleased that the Attorney-General, on reflection, has decided to support them here. They make worthwhile improvements to the legislation.

Mr HUDSON (Bentleigh) — I rise to speak in support of the amendments to the Coroners Bill 2008. These recommendations will allow the bill to become law and give effect to what is landmark reform of the Coroners Act and the coronial system here in Victoria. I am particularly pleased to see that occur, because, having chaired the Victorian parliamentary Law Reform Committee that worked on the Coroners Act and made sweeping recommendations for reform, it is pleasing to see many of those recommendations being picked up and incorporated in the new legislation.

I want to focus for a moment on the amendments in relation to requiring a public statutory authority or entity to respond in writing to coronial recommendations, because I believe this will significantly strengthen the preventive role of the coroner. It will require those bodies to respond to a coronial recommendation within three months, and the coroner will then publish that response on the internet and make it available to any interested party, which would presumably include a family member who was keen to know what had happened to that recommendation.

There are a number of important benefits of this amendment. The first one is that it will make public authorities and agencies more accountable for their responses to coronial recommendations. That is crucial, because the coroner makes recommendations and they are sent to the agency, but at the moment there is no systemic way of knowing what the response to those recommendations has been. It will ensure that the heads of those agencies or government departments, knowing that a public response is going to be published on the internet, will ensure that it is followed through the various levels of the organisation and that a response is prepared by that agency to be sent back to the coroner. Therefore departmental heads are much more likely to use their authority and their position within the organisation to ensure that those recommendations are properly examined and acted upon.

It does not mean necessarily that all or any of the coroner's recommendations will be accepted. This provision will not be a requirement to act on the recommendations; it will be a requirement to respond to the recommendations. I well recall the recommendation made by the coroner in an investigation he conducted into the death of a young P-plate driver who was driving with a raft of young people in the car. The coroner found that contributing to the death of that driver and a large number of the passengers was the fact that there were a lot of people in the car; there was a lot of distraction. Since that time there has been a focus on trying to reduce the number of deaths of young drivers.

The coroner recommended that all P-plate drivers should only drive in a car on their own. That was an understandable recommendation: he was responding to the fact that we know young drivers have a higher rate of collision and consequently a higher rate of deaths and injuries; he knew that driver distraction was a contributing factor to those deaths. Unfortunately that recommendation was not practical, because some P-plate drivers are sole parents and they have to drive their children around, and some P-plate drivers are the only driver in their family and they have to ferry family members around. The government introduced a different set of reforms for P-plate drivers that took

those factors into account. The point here is that the government or the agency does not have to accept the recommendation, but it has to respond to it and indicate what action it is taking in response to that recommendation.

This leads to the other significant benefit of this amendment — that is, this process will ensure that coroners themselves become more professional in their recommendations, because the recommendations are going to be in the public domain and the response from government and its agencies is going to be in the public domain. That will ensure that coroners think about the relevance and the practicality of implementing the recommendations they have made. In the past when they made the recommendations, they tended to be sent off into the ether. In the future coroners will know there will be a published response. That is why I support the government's decision to establish a coronial council, which will assist in making those recommendations more professional. Also the judicial college will improve the training of coroners in undertaking their role as coroners, remembering that apart from the state coroner and our limited number of coroners, most coroners are magistrates who undertake their coronial work in a part-time capacity in regional areas. That training will certainly assist. It will help develop more effective coronial recommendations.

It will also help the coroner and the government to make a good assessment of the implementation rates and therefore the effectiveness of the coroner in preventing future deaths, and that is important because we need some way of measuring what has happened to coronial recommendations and whether or not they are being implemented. This will assist in that regard.

However, the most important aspect of this change is what it means for families, because it is the families who are left behind grieving for their loved one. The most important thing for family members is that they do not want the death of their loved one to have been in vain. They want to know that action is being taken to prevent deaths similar to that of their loved one. They want to know that a death — which perhaps with the benefit of 20/20 hindsight we could say was preventable — could be prevented in the future with better systems or procedures in place, with occupational health and safety measures or with changes in the design of equipment used by workers or others. They want to know that the agency has taken the death sufficiently seriously to respond formally to the recommendation that was made by the coroner and acted to prevent similar deaths in the future. That amendment will strengthen the preventive role of the coroner with the setting up of the preventive unit within the Coroners Court, and it is a sensible amendment.

The other amendments relate to families having the capacity to report a death to the coroner where they have concerns about it. As a committee we took a significant amount of evidence from families in cases where their loved one had been discharged from a mental health facility and died an unnatural or violent death shortly after discharge. Those concerns were brought very much to our attention. This amendment will give families the opportunity to raise directly with the coroner any concerns they might have about that death. That may include the expression of concern about the level of care provided by that facility, or it could be that they are concerned about the level of inappropriate or premature discharge by that facility.

A lot of these deaths are already going to be reportable to the coroner if they involve suicide or an unnatural or violent death. This amendment will give families comfort. If a death has not been reported and is not the subject of investigation, they can bring the matter to the coroner and request that an investigation be undertaken. The families who raised the issue with us spoke in a very heartfelt and emotional way about what had happened to their loved ones and the anguish the families felt. Their sense was that they wanted to see improvements to the mental health system to prevent such deaths in the future. This amendment will help. I commend the amendments to the house.

Mrs MADDIGAN (Essendon) — It is a pleasure to speak on the Coroners Bill and the Council amendments that have been brought before the house. It is not often that one gets to speak on the same bill twice, unless of course one is the member for Melton, but in this case the amendments that have been sent down from the Legislative Council are significant in relation to the families of people who might have a relative or friend who has been the subject of a coronial inquest rather than the operation of the coroner's activities.

These amendments are understandable, particularly nos. 3, 12 and 14, which relate to the same area — that is, the definition of 'immediate family', which is broader than what one might normally think of as immediate family. It gives some rights to people who might be friends or have another relationship with a person who has died.

The Council's fourth amendment provides that a member of the immediate family of a deceased person may report the death to the coroner if the person was a person discharged from an approved mental health

facility, with the possibility that the coroner may investigate that death.

It is very easy to understand why these clauses would bring a significant amount of comfort to people who may know someone who has died after leaving a mental institution, but particularly if their death has been the result of suicide. For anyone who has had either a friend or family member die by suicide there is always a significant feeling of guilt and some concern about whether anything could have been done to prevent that suicide.

Particularly if someone has been under treatment for a mental health problem, you can understand the concerns of families that perhaps the treatment was not concluded or that the person was released too early from that facility. Allowing this amendment to pass will give the family or friend — not only the 'immediate family' as defined in clause 3 — the opportunity to investigate that further and in some ways to be reassured that everything had been done to assist the person who was the subject of the coronial inquiry.

The original bill makes significant changes to the Coroners Court in trying to prevent deaths in terms of recommendations it can make in relation to preventive measures for the future. That would be warmly welcomed throughout the community as well.

The second amendment relates to a change of wording in clause 8, where 'where practicable' is changed to 'as far as possible in the circumstances'. That makes very little difference to the practical application of the legislation.

The first amendment relates to responses to recommendations. Again I can understand how, if you have a family member or a friend who has died and recommendations are made either to change the work practices or change circumstances so that deaths do not occur again, you would want to know that those changes have been made and that those recommendations have been followed through.

Nothing would be more frustrating than having to wait for a very long period of time before that response is made. Having a three-month limit on it will enable family and friends to get some closure on the events that would have occurred and would make them feel much more comfortable about it. Whilst it does extend the responsibility of the Coroners Court, I understand that Judge Coate has indicated it is not beyond the capacity of the Coroners Court to do it and that it would be quite happy to assist with that. A prevention unit has been established by the government to assist the coroner with the prevention role, and that unit will be able to support this function.

These recommendations do not significantly alter the bill. From the point of view of family or friends, I can see that they give a certain amount of comfort and enable family and friends to feel not only that the death has been properly investigated but that any recommendations that may have been made to prevent similar deaths in the future will be carried out and will be reported on. I am happy to support the recommendations and the amendments, and the original bill, and trust it has a speedy passage through the house tonight.

Ms BEATTIE (Yuroke) — Just as it gave me great pleasure to be involved in the Law Reform Committee that inquired into the Coroners Act and just as it gave me a great deal of pleasure to speak on the bill when it came to the house, so I rise to support the amendments to the bill that have been put to us by the Legislative Council. I do not believe that the amendments actually improve the bill, but I do not think they detract from it at all.

The speedy passage of this bill will assist in its effective implementation and provide certainty not only to the Coroners Court but to other affected stakeholders, like the families who need certainty in order to prepare for the implementation of the legislation.

I want to touch on the issue of families, especially in relation to clauses 3, 12 and 14, which allow the immediate family members of a deceased person to report the death of a person discharged from an approved mental health service within three months of their death. In practice these amendments will probably have very little impact, because the types of death which would be of concern to families are already likely to be reportable.

Surely all of us can understand the concerns of family members of a person who committed suicide shortly after being discharged from a mental health service if that had something to do with the care that had been provided in the mental health service. However, having said that, unexpected deaths or deaths due to injury or accident are already reported to the coroner. Under the amendment the coroner is not required to investigate the death, so the investigation is very likely to be dealt with expeditiously unless it is otherwise reportable.

The second issue that I want to touch on particularly is the recommendations that require public statutory authorities and entities to respond to recommendations that are made by a coroner who has investigated a death

and requires that a response be given within three months. Members will know that the coroner has made many recommendations which have been taken up in legislation, such as fencing around swimming pools and roll cages on tractors, and those measures have been instrumental in preventing many deaths.

Sadly, we still hear of a number of young children falling into swimming pools or dams and drowning. Just because the recommendation has been made does not mean that there will not be any more deaths of that kind. The erection of fences around swimming pools has certainly reduced the number of deaths that have occurred. The fitting of roll cages on tractors would have a similar effect on reducing the number of farm deaths. We all know a large number of people are killed by rolling tractors out on farms, and I am sure The Nationals are more than aware of that. It is quite a big issue, and I know WorkSafe does many investigations in that area.

The government is really proud of this bill. The former chair of the Law Reform Committee, the member for Bentleigh, has spoken on it. The member sitting next to me at the moment, the member for Prahran, was also on the committee, as were some opposition members, some of whom are no longer with us in this chamber. The former member for Rodney, who was the deputy chair, made quite a significant contribution to the bill that came before the house, and I place on record my thanks to him.

Although these amendments are minor in nature the government really does not have any problem in supporting the Council's amendments, particularly as they expedite the passage of the bill, and the sooner this bill can be passed the better it will be, so far as I am concerned.

I know other members want to speak on the bill but, as I said, the government is very proud of the focus that this bill places, particularly on prevention. If you look at the preamble to the bill you will see that prevention is very much emphasised there, as are the purposes, the objects, the creation of the Coronial Council of Victoria, and the ability to make recommendations to any entity.

The Brumby government is also proud of the other reforms that are being implemented to improve the focus of the Coroners Court, including that preventive unit within the court, and of course, as recommended, the funding for the Judicial College of Victoria to train coroners. I just spoke about the former member for Rodney. One focus that he brought to the original inquiry was the utmost importance of training coroners. In country areas where sometimes the magistrate is appointed as a coroner, it is particularly important that coroners be trained to the same standards as the coroners in the city are trained, so that when a death occurs in the country the deceased's loved ones can feel secure in the knowledge that no matter where the person was deceased, their death will be handled with the same level of expertise as a death in the city would be handled. That is a really important aspect. The more training our coroners can get, the better.

In the short time I have left to speak in this debate I just want to focus on the families that came originally to the inquiry and gave evidence. Some of it was particularly hard for them to give, but they wanted to know that the death of their loved one had been investigated properly and to ensure that what had happened to their loved one would not happen to somebody else. The enhanced training of coroners would be of some comfort to those families who, very courageously, I might say, came and gave evidence to the committee.

This is groundbreaking legislation. Its passage needs to be expedited as much as possible. Therefore the government will not be opposing the amendments, as the Attorney-General said. I am happy to support the amendments as they are presented before the Assembly by the Legislative Council.

Dr HARKNESS (Frankston) — I rise to speak on the amendments to the Coroners Bill 2008 which were made by the Legislative Council yesterday and today. As I said when I spoke in the second-reading debate on the bill in this house last month, it is fortunate that most Victorians will never have to come into any sort of contact with the Coroners Court. However, for those people who do, it is a very sad and often extraordinarily tragic time. As I said, it is fortunate that many people avoid having to have any contact with the Coroners Court.

But when tragedy does strike, as it often does, unfortunately, and people are somehow connected with a sudden or unexplained death, the Coroners Court provides a vital service for families who have lost a loved one in such circumstances. The absolute least we can do for the family and friends of a deceased person is to spend some time working out how that death was caused and whether anything can be done to prevent similar deaths in the future.

While nothing can be done to reverse the loss of a loved one, a coronial investigation certainly recognises the dignity of the deceased. In most circumstances it can also provide some comfort to the family members. Importantly, this bill requires the coroner to do a range

of things, including conducting inquests with as little formality and technicality as possible. I know this will be a very welcome reform for family members of deceased people. Reducing the formality and technical jargon in courtrooms is a change that this government has sought to implement broadly and advocated very strongly, and I am pleased to note this is extending to the Coroners Court.

I, too, would like to take the opportunity to commend the member for Bentleigh in his former capacity as the chair of the committee, which spent so much time, energy and effort investigating these important issues and which has led to us debating the bill now before the house. The amendments which have been proposed by the Legislative Council are relatively minor in nature and certainly do not detract from the bill. The government and I are quite happy to support the amendments before us tonight, because it is vital that we pass this legislation and thus provide certainty to not only the Coroners Court and the coroner herself but also to the family members of the deceased, friends and all those people who are associated, as I said at the outset, with the tragic circumstances of a sudden and unexplained death. It is absolutely vital that we provide that certainty as quickly as we possibly can.

I would like just briefly to touch on the amendment relating to people who were discharged from an approved mental health service. This amendment broadens the category of deaths that a coroner may investigate to include deaths which occur within three months after discharge from a mental health service. In practice, this is likely to have only a very minimal impact. The types of deaths, for instance, that would be of concern to a family are already likely to be reportable — for example, a suicide which occurred shortly after a person was discharged from a mental health service.

Further, under this amendment the coroner is not required to investigate the death, so the investigation is likely to be dealt with very expeditiously, unless otherwise reportable; therefore the proposal will have no significant impact on the operation of the coronial jurisdiction. We are certainly happy to support this amendment as a way of making sure this bill progresses as speedily as possible.

A number of other amendments have been proposed, including responses to recommendations, and the member for Bentleigh very thoroughly and eloquently went through the detail of those amendments. I do not wish to repeat the level of detail he provided to the house only a short time ago, but this is an amendment which makes it mandatory for a public statutory authority or entity to respond to prevention recommendations no later than three months from the date of receipt.

Responses would then be provided to the coroner, and they must specify a statement of action, if any, that can and will be undertaken. The responses will then be published on the internet and provided to those with an interest in the subject of the recommendation. Again, this is another way of providing some certainty for family members. As I said earlier, it does not detract from the bill whatsoever and it is important to ensure that we progress this bill is quickly as we possibly can.

As I also said last month, it is appropriate to acknowledge the excellent work which has been done by the current state coroner, Judge Jennifer Coate, a person who I know will oversee these changes with diligence and aplomb. She will do a fantastic job of making sure this legislation is enacted to provide certainty to people who unfortunately and sadly have to deal with the loss of a loved one in tragic circumstances. Our legal system is only as good as the people who administer it, so it is very reassuring to see such a dedicated judge in charge of the Coroners Court. I know Judge Coates will do a fantastic job into the future as she has done in the past and is doing currently. She certainly deserves our congratulations, and I wish her well in the future.

This bill is a welcome reform to one of Victoria's most important institutions. This legislation is groundbreaking, and it is vital that we pass it as speedily as we possibly can. I commend it to the house and wish it a speedy passage with these amendments.

Mr LUPTON (Prahran) — I am pleased to be able to make a contribution on the Coroners Bill and in particular in relation to some amendments that the house is now dealing with as a consequence of changes that were made to the bill in the Legislative Council. As has been said previously, the government proposes to accept the amendments that were made in the Legislative Council and to support the bill in this chamber with those amendments attached. I am going to deal consequentially with a number of the amendments that have been proposed, but I want to put my remarks about these amendments into the broader context of the bill and the history of its development over recent years.

Coronial services are a vital part of the justice system in Victoria, but also in a broader sense they are a very important part of the health system in this state and they provide important services for the care and comfort of people in very distressing circumstances. When we are

dealing with matters pertaining to coroners, it is important to understand and to bear in mind that we are dealing with a broad range of issues where a great amount of sensitivity and understanding is necessary. We need to also bear in mind that the coroner and the Coroners Court need to operate in a professional and a well-resourced manner and in a way that is suitably adapted to the times and to the sorts of cases that come before them and need to be dealt with.

I had the privilege for a period of time during my service in this Parliament to be a member of the parliamentary Law Reform Committee. During my service on that committee one of the references the committee dealt with from the Attorney-General was a review of the operation of the Coroners Act and the Coroner's Court. The Law Reform Committee undertook a very wide-ranging and in-depth review of Coroners Court practices and procedures in Victoria and delivered what I think is — and has been commented by numerous people to be — a very positive and comprehensive report.

That report made numerous recommendations on ways in which the Coroners Court could be updated and its practices and procedures improved so that those who have dealings with that court are treated with respect and dignity and the investigations carried out by our coronial service are carried out not only in a sympathetic way but also in a way that leads to the resolution of issues and gives us a greater understanding of why unexpected deaths have occurred. The Coroners Court is a very important part of our administrative system here in Victoria and one that all honourable members would agree needs to be treated in that way.

As a result of the recommendations made by the Law Reform Committee the government considered those matters carefully and brought a comprehensive reform bill before Parliament in the form of the Coroners Bill we are now dealing with. The Legislative Council, after the bill's unamended passage through the Legislative Assembly, made some amendments to the bill and it has been returned to the Legislative Assembly for those amendments to be dealt with. We do not believe these amendments are of particular significance or that they detract in any meaningful way from the bill, and we are therefore not opposing those amendments. We will vote for them so that the bill can be passed and these very important reforms to our coronial system here in Victoria can be implemented.

I will take the opportunity to refer to a number of the amendments that have been passed by the Legislative Council and which in particular we are concerned to deal with and clarify this evening. One of those amendments dealt with people who are discharged from an approved mental health service. The Legislative Council saw fit to make an amendment introducing a definition of 'immediate family' into clause 3(1). The effect of that amendment is to allow this defined class of persons to report to the coroner the death of a person discharged from an approved mental health service within three months of the death and that, once reported, the coroner may investigate that death.

The effect of this amendment is in general terms fairly minimal. In fact any person may already report this type of death to the coroner; the proposal contained in the amendment will not really have any significant impact on the operation of the coronial jurisdiction. As a consequence, we do not really see that, while there is a limited amount of usefulness in the amendment on the one hand, there is not on the other hand any particular reason not to support it.

Another amendment that has been inserted in the bill is to provide that when exercising a function under the legislation a person should have regard, as far as possible in the circumstances, to a list of criteria. Those words 'as far as possible in the circumstances' replace words that were in the original bill, which were 'should have regard where practicable' to the list of criteria that followed.

As can be immediately understood from noting those words, there is really very little, if any, distinction to be drawn between 'as far as possible in the circumstances' and 'where practicable', but nonetheless and in the same vein as the earlier amendment I spoke of, while we do not see any particular benefit in the amended words, neither do we see any particular disadvantage such that we should be opposing the amendment. In those circumstances, we are happy for the amendment to proceed.

One final amendment that I will refer to relates to responses to recommendations, and the amendment that has been placed into the bill by the Legislative Council makes it mandatory for a public statutory authority or entity to respond to prevention recommendations made by a coroner no later than three months from the date of receipt of those recommendations. Responses are to be provided to the coroner and must specify a statement of action, if any, that will be taken; such responses are to be published on the internet and provided to those with an interest in the subject of the recommendation.

We have had advice from the Coroners Court that the court does not believe this amendment will cause the court any particular difficulties. While it does create a

responsibility for the court to manage the administration of the responses, the amendment creates a statutory obligation to respond to a recommendation, but it does not require any specific action other than for the recommendation to be addressed in that way.

This was a matter that was subject, I must say, to some debate before the Law Reform Committee when we were dealing with that reference that I mentioned earlier, and I think there is a range of views about this, but we see in the circumstances that there again was no particular or special reason not to accept the amendment that has been made to that clause by the Legislative Council, so in those circumstances we are happy to accept that amendment and, as a consequence, the amendments that we have been referring to will no doubt be accepted by parties in this house. As a consequence, the Coroners Bill will pass through Parliament, and I commend it to the house.

Mr FOLEY (Albert Park) — It is with great pleasure that I rise to comment briefly on those aspects of the Coroners Bill 2008 arising from the amendments that were made by the Legislative Council in recent times. Given the quality of some of the contributions that have been made so far, I think they bear repetition, and I might just do that.

As we all know, the bill that has been amended by the other place in its deliberations is a good piece of legislation. There were a number of amendments, totalling some six, that the Attorney-General has indicated the government does not oppose. We have learnt that the other side also supports them.

The bill happens to come along on the 20th anniversary of the coronial services centre in Victoria, which I note operates in the district of Albert Park and which I have had the pleasure of visiting on more than one occasion as a diligent local member. That is a facility welcomed in the support that it gets from the Brumby Labor government as in fact do all the judicial services that operate so effectively and efficiently in Victoria.

The bill as a whole gives broader powers to the coroner and the Coroners Court not only to investigate deaths but also to prevent deaths in Victoria through recommending changes in regard to any Victorian person or body that operates within its jurisdiction, not just government ministers and their various public authorities. The whole aim of the bill, as supplemented by these acceptable amendments, is to make Victoria a safer place.

As we have heard, the bill has been influenced by a former member of the Law Reform Committee, the member for Prahran, who has in turn been strongly influenced by the good work done by the Victorian Parliament's all-party Law Reform Committee. It found there was a need for support for grieving families, recognising that the different aspects of their culture and their beliefs being appropriately and sympathetically dealt with were important factors that went towards the making of the number of sensible changes in the main part of the bill that has been returned to this house.

We all know, as we have heard from the Attorney-General most recently in the justice statement 2 that the Victorian government is committed to modernising our justice system and our courts by making them relevant, accessible and accountable. Whilst it is a sometimes sad and difficult role that the Coroners Court has in this regard, it forms an important plank in that armoury of modernising and delivering on that system. Of course that brings into the Coroners Court those same principles of integrated modern governance and delivery based around the needs of those people who, sadly, find themselves dealing with the death of a loved one or someone else known to them.

Against that background, our friends in the other place made a number of changes which my friend the Attorney-General has outlined and which — —

Ms Asher interjected.

Mr FOLEY — I note the interjection from the member for Brighton. She must have the wrong person. I do not know what she could possibly mean.

Honourable members interjecting.

Mr FOLEY — We will ignore those ill-informed interjections.

The DEPUTY SPEAKER — Order! The member for Albert Park knows to ignore interjections.

Mr FOLEY — If they were worth responding to, we would, but such poor quality interjections do not bear commenting on.

We are happy with regard to the amendments moved in the other place by Ms Pennicuik and supported by the Liberal Party, because we are sensible, pragmatic people, and we will incorporate the changes.

Before I was so rudely interrupted I was about to outline some of the amendments that the other place has made. The first of those is an insertion into line 8 of clause 3. Some minor changes have been made to the

definition of 'immediate family' in relation to a deceased person, meaning in this particular case spouse, domestic partner, son, daughter, parent, sibling, executor, personal representative or a person determined to be senior next of kin under proposed subsection (3). Of course that is a very sensible and not impractical amendment that, as the Attorney-General has indicated on behalf of the government, we are happy to support.

The other changes are fairly straightforward. I might just comment in regard to the fourth of those, which is an amendment to clause 12 and inserts after line 11:

> " (2) A member of the immediate family of a deceased person may report the death to the coroner if the person was a person discharged from an approved mental health service within the meaning of the Mental Health Act 1986 within 3 months immediately before the person's death.".

Currently, through the department, the Minister for Mental Health is conducting a significant review of the mental health services. I have in fact made a submission to that review. I doubt very much that the member for Brighton would have made any submission to the review — she is probably too busy thinking of poor, one-line jokes that fall flat. I would have thought that would be a better use of her time rather than arguing about principles — even though she might have been correct on that particular point. I actually support her on that — —

Honourable members interjecting.

The DEPUTY SPEAKER — Order! I ask the member for Albert Park to concentrate on the motion to hand, which is that the Council's amendments be agreed to.

Mr FOLEY — I have addressed some of these very issues in a submission I made in consultation with a number of health providers that operate in my electorate. This is a real issue. The number of homeless people and the number of people with substance abuse problems who, as a result, then develop mental health problems is high. As a report by the Homeground organisation based in St Kilda points out, in most cases substance abuse and homelessness beget the mental illness.

Many people die on as a result of homelessness, mental health problems or substance abuse problems, and this is a regular and very real occurrence. I understand the Coroners Court has said this particular power would assist it in many respects. I believe from my brief analysis of the issue that many people who currently have the misfortune of dying in such circumstances, at least in my electorate, have previously found themselves before the police. Sadly, all too often they die in circumstances that are very tragic and very public. This means they find themselves before the authorities, and in many cases before the coronial system.

In that regard the bill gives form and substance to what the legislature already provides. If it can be done in such a way so as to shine further light on the link between mental health, homelessness and issues that sadly end people's lives prematurely, that can only be a good thing. With those few brief comments I happily support these amendments and wish them a successful passage through this house.

Mr MULDER (Polwarth) — I will make a brief comment in relation to the amendment to clause 72 in that it relates to clause 30:

> (1) The Country Fire Authority or Metropolitan Fire and Emergency Services Board may request a coroner to investigate a fire.
>
> (2) A coroner must investigate a fire after receiving a request under subsection (1) unless the coroner determines that the investigation is not in the public interest.

I must inform the house that I have been successful in the past in contacting the coroner's office on behalf of constituents of mine who had a property that adjoined the Australian Rail Track Corporation) rail track that runs out from Geelong through farming property in my electorate. A train that passed along that track dropped hot metal and started a number of fires along the track. After a request from my constituents who had gone down the pathway of obtaining legal advice and legal representation, and who seemed to have hit a brick wall in trying to determine who started the fire, I wrote to the coroner and pleaded with him on behalf of my constituents because I believed the coroner's office was their last avenue to try to get some resolution to the problem.

The coroner took up the cause and carried out a comprehensive investigation on behalf of my constituents, and I understand that matter is very close to being resolved. The issue that suggested we should get the coroner involved was the fact that had that fire escaped from the fire zone, it could have ended up going right across the Princes Highway into the Otway Ranges and creating a horrific event in terms of significant loss of life and property. The issue really was the potential for loss of life.

As much as this clause deals with the fact that the authorities may direct or request the coroner to

investigate, there is obviously also an opportunity for individuals to have the coroner investigate a fire on their behalf. You can understand the difficulty and the awkwardness that my constituents faced in trying to identify under a very complex set of arrangements who the actual owner of the train was — the owner of the rolling stock that failed — and trying to get an admission from the parties involved. As I said, the coroner took up their cause and conducted a very professional investigation, and we will look to see that that matter is resolved in the near future in favour of the constituents who brought the matter to my attention.

Mr CAMERON (Minister for Corrections) — The government thanks honourable members for their contributions and now wishes the bill a speedy dispatch.

Motion agreed to.

PRIMARY INDUSTRIES LEGISLATION AMENDMENT BILL

Council's amendments

Returned from Council with message relating to amendments.

Ordered to be considered on Thursday, 11 December.

ASSISTED REPRODUCTIVE TREATMENT BILL

Council's amendments

Returned from Council with message relating to following amendments:

1. Clause 40, after line 24, insert —

   "(ab) that the surrogate mother's oocyte will not be used in the conception of the child;

   (ac) that the surrogate mother has previously carried a pregnancy and given birth to a live child;".

2. Clause 40, page 33, line 7, omit all words and expressions on that line and insert the following —

   "with the parties' intentions, including —

   (i) the consequences if the commissioning parent decides not to accept the child once born; and

   (ii) the consequences if the surrogate mother refuses to relinquish the child to the commissioning parent.".

3. Clause 43, lines 27 and 28, omit "if the surrogate mother's oocyte is to be used in the conception of the child,".

4. Clause 53, after line 23 insert —

   "(ab) for each donor, the number of persons born as a result of a treatment procedure or artificial insemination using that donor's gametes; and".

5. Clause heading to clause 153, omit this heading and insert —

   "New sections 17A and 17B".

6. Clause 153, page 125, line 13, omit 'pregnancy.".' and insert "pregnancy.".

7. Clause 153, page 125, after line 13 insert —

   '17B Birth registration of child conceived by a treatment procedure

   (1) If a birth registration statement specifies the child was conceived by a donor treatment procedure, the Registrar must mark the words "donor conceived" against the entry about the child's birth in the Register.

   (2) Subject to subsection (3), when the Registrar issues a certificate certifying particulars contained in an entry about the birth of a person conceived by a donor treatment procedure, the Registrar must attach an addendum to the certificate stating that further information is available about the entry.

   (3) The Registrar must not issue the addendum referred to in (2) to any person other than the person conceived by a donor treatment procedure named in the entry.

   (4) In this section ***donor treatment procedure*** means a donor treatment procedure within the meaning of the **Assisted Reproductive Treatment Act 2008**.".'.

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

That the amendments be taken into consideration immediately.

Mr CLARK (Box Hill) — On the question, I want to speak against the proposition that these amendments be taken into consideration forthwith. I had the dubious privilege of listening to some of the debate in the upper house and saw the way the government representatives in that place conducted the debate. I considered that the way the government vacillated on what it was going to do, the various amendments and proposals that were put on the table and taken off the table in relation to this bill and the form in which it now reaches this place meant that it is neither appropriate nor desirable for this house to consider the message from the Legislative Council forthwith.

If we have a government that claims to be open and accountable and claims to provide the opportunity for detailed and careful consideration of matters such as this — and in particular when we have a free vote where all members of this house, as has been agreed by all parties, have the opportunity to vote in accordance with their own judgement — it is quite inappropriate to have this package of amendments, put together by the upper house with the latest of the amendments that were agreed to being made public at only 8.15 p.m. this evening, as I understand it, considered forthwith in this house. It is not only impossible for members of this house to reflect upon and take and consider advice and external input on these amendments; it also leaves the public effectively no time in which to make comments on the amendments, at least one substantial item of which first saw the light of day at about 8.15 p.m. this evening.

Accordingly, I do not believe that we should be rushing this legislation through on the last day of sitting. The chances are that there are things that will be wrong with the package that was cobbled together at such short notice. These are very serious matters. As honourable members in the upper house observed, the bill involves matters of living human beings, matters of the creation of life and fundamental matters that go to the essence of people's understanding of who they are. We should not be rushing amendments of that consequence through this house on the last day of the parliamentary sittings at 9.40 p.m. and on such short notice.

One need only look back at the way this debate has evolved to see the chaotic way it has been handled by the government. When the bill was originally brought to this house members had been told it had been carefully considered, that there had been extensive public input, that everything had been worked out, that it was well-balanced, that the Law Reform Commission had conducted an extensive public inquiry, that everyone's views had been given due consideration and that the government had got it 100 per cent right and was not minded to accept any amendments at all. Of course a large range of matters were raised in this house about issues and those were pursued in the other place. The government resisted them for a long time and then produced its own amendments and proposed to send the matter to the Law Reform Committee — I do not know if that is still the case — and a further amendment was produced at the last minute.

It is inappropriate that we should be rushing to deal with this matter now, and accordingly I move:

That the motion be amended by deleting the word 'immediately' and inserting in its place the words '3 February 2009'.

Mr CAMERON (Minister for Police and Emergency Services) — The issue relating to this bill has exercised the consciences of all members. The debate was conducted in a very mature way in this house and has been before the other place for quite some time and has been discharged. It is fair to say that all people who have a substantial interest in this bill have followed its passage during the course of the debate in the other place and it is totally appropriate that the debate be dealt with now.

Mr THOMPSON (Sandringham) — There are very important matters involved in the debate that affect the lives of children and some of the questions that we are deliberating upon now will not come to the fore for 10, 20 or 30 years. As with the current debate, when the IVF (in-vitro fertilisation) legislation was first being debated in the early 1980s there was a period of operation during which there was an unregulated IVF process. Medical practitioners such as Gab Kovacs believed they were acting in the best interests of future generations of children by the method of treatment they applied regarding documentation in records. The issue we confront at the end of a long sitting week is that the legislation has just been brought into the house. To my knowledge the amendments have not made their way to the backbench members at this stage. We are about to commence debate on the Council's amendments to the bill and as one of 88 members of the house, I am not aware of what those amendments are. The question of time is therefore an important issue in allowing members to reflect upon these matters in a measured, respectful and responsible way.

The amendments came from the other place just a matter of minutes ago. The government has indicated that it is open, honest and accountable. From my point of view this is the last poor example of what full accountability might be as we as legislators debate this matter. There are very strong views in this debate. There are earnest life stories of adoptees. Children who were conceived by artificial insemination by donor have contacted my office in recent times and expressed the pain and the anguish of their life circumstances.

The DEPUTY SPEAKER — Order! The member should speak on the procedural motion.

Mr THOMPSON — There are very sensitive and important matters that we need to consider in debating the procedural motion because the house has not had a chance to properly and adequately review the

amendments that are about to be dealt with. I support the position taken by the member for Box Hill.

Mr HULLS (Attorney-General) — I agree with the motion that this matter be dealt with forthwith. People have had not just extensive consultation but also extensive opportunities to express their views in relation to this matter. I believe it is appropriate that we deal with this matter forthwith.

Mr WALSH (Swan Hill) — I rise to support the motion moved by the member for Box Hill and the comments made by the member for Sandringham that this bill should lay over until 3 February 2009. We have had a very hectic week. We have had a huge debate in the upper house on this bill and unless people have been following the debate properly in the other place they will not know what we are talking about tonight. For the sake of making sure that we make good and considered decisions in this place, and because this government was elected on a mantra of being open and transparent and making sure good community decisions are made on pieces of legislation, I think it is very important that this house support the motion moved by the member for Box Hill. We must make sure that we have the opportunity to consider the amendments made by the upper house very closely.

A lot of people are thinking about getting home tonight and about Christmas and finishing this parliamentary session, but this issue deserves more than a rushed debate at this hour of night on the last day of the sitting of this Parliament for 2008. It is not going to be the end of the world if these amendments are not discussed until next year, when there would be an opportunity for all of us to talk to people in our electorates and have people come to us to present their views. That would enable us to come back to this place much better informed about the amendments moved by the upper house and to make a right and proper decision rather than rushing just for the sake of finishing tonight at the end of the parliamentary year.

Mr WYNNE (Minister for Housing) — This bill was introduced in the Parliament on 10 September and subsequently lay over for a couple of weeks, which is the normal practice of the house, while the opposition parties had the opportunity to assess it. It was subsequently debated extensively in this house for a period of time and in a spirit and manner that was a credit to the ability of this house to listen to the views of all members, because there were deeply held views on both sides of the house in relation to this bill.

Indeed the bill was subsequently passed by this house and has been debated in the upper house. It has come back to us with a couple of amendments. It would be fair to say that the provisions in this bill have been extensively canvassed, both in this house and in the upper house. Those who have taken a particular interest in it would have been in a position to listen to the debate in the upper house — as in fact I and many members did — and I think it is appropriate that we bring on the bill, as amended, for debate this evening.

House divided on omission (members in favour vote no):

Ayes, 52

Allan, Ms	Kairouz, Ms
Andrews, Mr	Kosky, Ms
Barker, Ms	Langdon, Mr
Batchelor, Mr	Languiller, Mr
Beattie, Ms	Lim, Mr
Brooks, Mr	Lobato, Ms
Brumby, Mr	Lupton, Mr
Cameron, Mr	Maddigan, Mrs
Campbell, Ms	Marshall, Ms
Carli, Mr	Merlino, Mr
Crutchfield, Mr	Morand, Ms
D'Ambrosio, Ms	Munt, Ms
Donnellan, Mr	Nardella, Mr
Duncan, Ms (*Teller*)	Neville, Ms
Eren, Mr	Noonan, Mr
Foley, Mr	Pallas, Mr
Graley, Ms	Pandazopoulos, Mr
Green, Ms	Perera, Mr
Hardman, Mr	Pike, Ms
Harkness, Dr	Richardson, Ms
Helper, Mr	Robinson, Mr
Herbert, Mr (*Teller*)	Scott, Mr
Holding, Mr	Stensholt, Mr
Howard, Mr	Thomson, Ms
Hudson, Mr	Trezise, Mr
Hulls, Mr	Wynne, Mr

Noes, 32

Asher, Ms	Northe, Mr (*Teller*)
Baillieu, Mr	O'Brien, Mr
Blackwood, Mr	Powell, Mrs
Burgess, Mr	Ryan, Mr
Clark, Mr	Shardey, Mrs
Delahunty, Mr	Smith, Mr K.
Dixon, Mr	Smith, Mr R.
Fyffe, Mrs	Sykes, Dr
Hodgett, Mr	Thompson, Mr
Ingram, Mr	Tilley, Mr
Jasper, Mr	Victoria, Mrs (*Teller*)
Kotsiras, Mr	Wakeling, Mr
McIntosh, Mr	Walsh, Mr
Morris, Mr	Weller, Mr
Mulder, Mr	Wells, Mr
Napthine, Dr	Wooldridge, Ms

Amendment defeated.

Motion agreed to.

Business interrupted pursuant to standing orders.

Sitting continued on motion of Mr BATCHELOR (Minister for Community Development).

Mr HULLS (Attorney-General) — I move:

That the amendments be agreed to.

I am pleased to move that the Assisted Reproductive Treatment Bill (ART bill), as amended in another place, be accepted by this chamber. Amendments have been made to the bill to introduce some additional safeguards and protections in relation to surrogacy arrangements, and I will deal with the amendments as a package.

The first amendment deals with the additional requirements for women acting as surrogates. The ART bill, as members would recall, provides that an ART provider can carry out a treatment procedure in a surrogacy arrangement only with the approval of the expert patient review panel. The patient review panel must be satisfied of the matters in clause 40 before it can approve the surrogacy arrangement. Amendment 1 adds two further requirements to clause 40, and amendment 3 is consequential upon this amendment.

The patient review panel will also need to be satisfied, firstly, that the surrogate mother's egg will not be used in the conception of the child and that the surrogate mother has previously carried a pregnancy and given birth to a live child. I support this amendment. It reflects the concerns raised by several stakeholders about the issues that may arise if a surrogate mother gives birth to a child to whom she is genetically related. The amendment provides an additional safeguard for the parties to a surrogacy arrangement. It is designed to protect the interests of the surrogate mother, the commissioning parents and the child born through surrogacy arrangements and will give the patient review panel clear guidance about the matters that it must consider in determining whether a surrogacy arrangement should be approved.

The second amendment deals with clarification of matters to be covered in counselling about surrogacy arrangements. Clause 40(1)(e) currently provides that the patient review panel must be satisfied that the parties to the surrogacy arrangement are prepared for the consequences if the arrangement does not proceed in accordance with the parties' intentions. Amendment 2 clarifies that the patient review panel must be satisfied that the parties are prepared for these consequences in two specific situations. These are: if the commissioning parents decide not to accept the child once he or she is born; and the consequences if the surrogates mother refuses to relinquish the child to the commissioning parents. I support this amendment. I see it as an important clarification of the existing provisions in the ART bill. The amendment is designed to protect the best interests of the surrogate mother, the commissioning parents and the child born as a result of the arrangement. It will ensure that all parties are fully aware of the nature of these arrangements that they are entering into and the issues they may face if the arrangement does not proceed as first planned.

There are a further two amendments in relation to access to information for people born as a result of donor treatment procedures. Two amendments were made in relation to the regime for collecting and disclosing information about a donor-conceived person's genetic origins. Amendment 4 requires a central register of donor information to specify the number of children born using the gametes from a single donor. This will provide an additional enhancement to the existing donor registers, which contain a broad range of information about donors. It will also assist in ensuring that the donor family limit set out in the bill is observed.

Finally, amendments 5, 6 and 7 provide that if the registrar of births, deaths and marriages is informed that a child whose birth is to be registered is donor conceived, the registrar will make a note on the register of that fact, and when that person applies for a birth certificate the registrar will attach an addendum to the birth certificate indicating that further information is available about that person. Importantly, I might say, that addendum will only be provided to the donor-conceived person applying for a birth certificate and not to any third party. I have to say this was raised when the debate took place in this house, and I had some significant concerns about the proposal when it was first mooted in this house. I had concerns about whether or not it was treating donor-conceived people differently to other people whose births are registered at the registry. However, I have spoken to the registrar of births, deaths and marriages who assures me that she will deal with the implementation of this provision with sensitivity and caution.

I conclude by saying that this is groundbreaking legislation which was always, in my view, about the kids and about ensuring that children born into same-sex families or children born as a result of surrogacy arrangements are not discriminated against. In my view it is crucial to extend legal protections to kids born to same-sex couples and through surrogacy arrangements by giving legal recognition to their parents. This groundbreaking legislation ensures that we are in step with other jurisdictions. We know that families come in all shapes and sizes; it is absolutely crucial we do what we can to ensure that kids are not discriminated against regardless of the family

arrangements in which they find themselves. It is groundbreaking legislation that I am very proud of, and I certainly support the legislation with the amendments.

Mr CLARK (Box Hill) — This package of amendments that has been rushed into this place this evening from the Legislative Council makes alterations to a limited number of problems within the bill. The alterations that it makes, in my assessment, as far as they go are improvements in limited areas to the original legislation, but the major failing of the package of measures is that it leaves the fundamental flaws of the legislation untouched. It leaves untouched the basic reason that I and, I expect, many other members in this place who voted against the original bill chose to do so.

Most grave of all the remaining flaws in the bill is that this reflects a social policy of deliberately setting out to allow children to be brought into this world to be brought up without a mother or to be brought up without a father. When that happens unintendedly as a result of various tragedies, we regard that as a tragedy and we all seek to overcome it in the best possible way. However, it is a far cry from that to be adopting, as a matter of public policy enshrined in legislation, the endorsement of deliberately setting out on that path to bring children into the world with such a fundamental disadvantage. That flaw in the legislation is certainly not dealt with by this package that comes from the other place.

The package also does not deal with the problem of a lack of regard in practice to the best interests of the child in the bill, despite the lip-service paid to that concept in the preamble and a few other places; it does not deal with the problem that by the time a court is asked to consider the best interests of a child in the case of a surrogacy it is far too late because the child has been brought into the world and the court has no practical choice in the matter.

The package that comes from the other place does not deal with the issue of how children brought into the world under various circumstances provided for in this legislation will have their parentage designated on the birth certificate — an issue that was not addressed in this place, and as far as I am aware was not addressed in the other place.

The package from the other place does not deal with the issue of the risk of children entering into relationships unknowingly with people who happen to be their genetic siblings or half-siblings because of the number of families that can be created from the gametes of one individual.

It does not deal with the issue of what costs of surrogacy can be reimbursed. It does not deal with the issue of the membership of the patient review panels or hearings by the patient review panels or the fact that appeals against patient review panel decisions are all stacked against the child. There is no-one present in the hearings at the patient review panel to stand up for the interests of the child proposed to be created. There is also no capacity for anybody to appeal against decisions of the patient review panel on behalf of the child to be created.

This package from the other place does not deal with the issue of the dismantling of the counselling service run by the Infertility Treatment Authority, which is held in high regard and in respect of which there has been no account of the government's intention given to this place, to the Legislation Committee of the other place, or to the other place itself.

There is no remedy in this package for the issue of what happens when a substitute parentage order is revoked and where it seems that a child who has been brought into this world by a surrogate mother may many years down the track revert to the legal responsibility of a surrogate mother who has all those years earlier surrendered that child to the so-called commissioning parent. None of those flaws in the original legislation are addressed in this hastily cobbled-together package that has been sent to us from the Legislative Council.

I turn to the particular amendments included in the package. Amendment 1 to clause 40 states:

> that the surrogate mother's oocyte will not be used in the conception of the child;

That is a technical way of saying that what is generally known as partial surrogacy will not be permitted. Partial surrogacy is where the surrogate mother's egg is used in the conception of the child and therefore where the child concerned is the biological child of the surrogate mother. That will not be permitted under the amendment. It will also be required that a surrogate mother has previously carried a pregnancy and given birth to a live child. As I understand it, the rationale behind that amendment is that a surrogate mother needs to fully understand the implications of having to surrender a child, to have been through the process of previously carrying a child to term and given birth to a live child and that social problems and individual problems that would be highly likely to arise will be reduced by means of this amendment.

To some extent that may be correct. The member for Bentleigh in particular pursued that issue in this place. At the time the government rejected those arguments,

but this change has now been made. It only goes part of the way towards dealing with the problem, because it is likely that in many instances where a surrogate mother has previously carried a pregnancy and given birth to a live child, it will still prove more traumatic and more stressful than the surrogate mother concerned expected when she has had to give up the child she has borne at the end of the pregnancy.

As I have previously indicated, that matter is not addressed by requiring a patient review panel to consider the best interests of the child. You could be in a situation where a surrogate mother has changed her mind and a child has been brought into the world, and by that time it is too late. While this amendment is some improvement, it by no means overcomes a significant aspect of the range of concerns that many people have about the whole concept of statutorily endorsed and facilitated surrogacy.

The second amendment spells out in somewhat more detail some aspects of the intentions of the parties that a patient review panel would need to have considered before deciding whether or not to approve a surrogacy arrangement. At the moment the provision simply says the panel has to be satisfied that the parties are prepared for the consequences if the arrangement does not proceed in accordance with the parties' intentions.

This goes on to spell out reference to the consequence if the commissioning parent decides not to accept the child once born and the consequences of the surrogate refusing to relinquish the child to the commissioning parent. Those certainly are serious potential consequences. The fact of spelling them out in the legislation simply highlights the gravity of the decision in the first place. Clearly it is better that there is some greater attempt to ensure that people have turned their minds to this issue before they decide to go ahead with the surrogacy.

The third amendment amends clause 43 to omit reference to the surrogate mother's oocyte being used in the conception of a child and is consequential on the previous amendments.

Amendment 4, to clause 53, deals with a different subject — that is, to require the registrar to keep in the way the registrar decides a central register containing for each donor the number of persons born as a result of a treatment procedure or artificial insemination using that donor's gametes. That information requirement is added to the requirement already in the bill that the registrar must keep in the central register the information given under the division and the prescribed information. This is probably a useful amendment to keep track of the number of persons born as a result of a treatment procedure or artificial insemination. It is a record-keeping measure and does not go to the fundamental problems of the bill.

Amendments 5 and 6 are preparatory for amendment 7, which is the final substantive amendment. That deals with the issue of the birth registration of a child conceived by a treatment procedure. The objective of that amendment is a worthwhile one. It is intended to overcome a matter that was again debated at considerable length in this place and strenuously resisted by the government in the course of the debate in this place — that is, where a child is born as a result of an artificial reproductive treatment procedure, that child ought to be able to find out their genetic identity and to invoke the procedures that are put in place for them to seek contact with their biological parent.

The problem that existed, and which was hammered time and again in this place and rejected in this place as a problem by the government, was that a child could only access those procedures if they were told in some way in the first place that there might be something about their birth other than the fact that the persons recorded on the birth certificate were their biological parents. Unless that fact was drawn to their attention in the first place, having all the theoretical rights about accessing information about their genetic background was token and ineffectual, because they did not know that they fell into that situation in the first place.

The member for Derrimut in particular put forward the proposition that there could be an addendum or something similar to a birth certificate that would at least flag that matter to the person concerned. As I said, that proposition was rejected by the government in this place, but the amendment at least attempts to give effect to that as a matter of policy and specifies that the registrar must attach an addendum to a birth certificate stating that further information is available about the entry to that addendum only to be attached when the person conceived seeks the issue of a birth certificate and not when someone else seeks the issue of that birth certificate.

That is the intention of the amendment, but it is this amendment that I referred to earlier that saw the light of day and was distributed in the other place at about 8.15 p.m. this evening. As far as I am aware it was not known to anybody outside the government until that point in time. In particular it is this very important amendment that needs and deserves intensive scrutiny as to whether or not it is going to operate as it is supposed to operate. It was certainly something the Legislative Council had little opportunity to consider,

and unfortunately it is a matter that this house will have limited opportunity to consider. Members will have to assess it on the fly, most members having only seen it half an hour ago.

There is another aspect of this amendment that still needs to be addressed and responded to by the government. Unless I failed to hear something the Attorney-General said, he did not address it in his remarks — that is, what has happened to the proposition that the government announced in the Legislative Council about the issue of access to information by persons conceived through assisted reproductive treatment that this question would be referred to the Law Reform Committee of the Parliament for consideration and report?

That was a gesture — a proposition — that was put forward by the government in the other place in the middle of the afternoon. It immediately made clear to many members in the other house the fact that the government had not carefully considered what was happening with this legislation and indeed was changing its mind and its public presentation of it as it went along. It caused considerable ire in the other place because the government had only just announced this proposed reference to the Law Reform Committee and therefore flagged that it did not really know what ought to be in its own legislation after the other house had agreed to the amendments that have been incorporated and now come before us via clause 40.

These amendments were moved by in the Council Mr Tee, a member for Eastern Metropolitan Region. In other words, the government went to the other place, had Mr Tee put forward some amendments, had those amendments agreed to in the other place and then said, 'By the way, there is this huge other area of the legislation where we do not know what we are doing and we are going to send it off to the Law Reform Committee'. Someone may well have said, 'If you are going to send that aspect to the Law Reform Committee, why was the other aspect not to be sent to the Law Reform Committee as well?'.

Now, after dinner, we have had the additional amendment produced, and goodness knows what the fate of the proposed reference to the Law Reform Committee is. I look forward to a minister or other spokesperson on behalf of the government in the course of the debate telling this house and indeed telling the world what the government's intention now is.

It is worth making the point that this amendment deals with only one of two main parts of the concerns which donor-conceived persons have and which they have been arguing for very strongly to many members in this house and in the Legislative Council. While this amendment will deal with the situation of children who are not told of their genetic origins, it does not deal with the problem of many of the people who have been conceived, particularly through donor sperm, in past years and still cannot get access to information about their biological father. This is a matter that is contained in clause 59 of the bill. It was debated very extensively in this place and in the Legislative Council.

An amendment was moved to delete the restriction on access to information about biological parentage by people who were born in past times, but that amendment was defeated. That aspect of the very strong case that the progeny of donor conception are putting has not been resolved. These people have argued very passionately that this whole regime in the past and even more so in the future has been all about the adults, and the interests of the kids have come a very poor second.

These very intelligent, very articulate and very reasonable young adults are saying, 'I am being denied access to information about my biological parents by virtue of decisions that were made by others back in the past without any say by me'. Those arguments remain valid, and they remain unaddressed by this amendment. This house needs to know what, if anything, the government proposes to do about their situation.

I expect that, with very good reason, they are not going to give up on their cause because it is a very just and fair cause — because not knowing some of the fundamental aspects of their identity not only causes them enormous distress but it also raises issues about their genetic health, their genetic background, the implications that the fact that they are not the biological descendants of their social parents might have in regard to their predisposition to genetic disorders or certain diseases and the preventive health measures they ought to take as a consequence. All of that information continues to be denied to them.

That leads on to an issue that needs to be addressed in relation to the Council's amendment 7. It has been drawn in a way that says only the person conceived by donor treatment can obtain access to the addendum. One can certainly understand the policy reason behind that, but it may well be that in its haste to put this amendment together, the government has not considered the situation of people who might be the children or possibly siblings of the donor-conceived person who cannot get access to that information.

The amendment has not addressed the situation if the donor-conceived person dies; then their descendants, who may go to the registry to obtain a birth certificate, will find out nothing about the biological history and origins of their own parents. They will still be deprived of access to information that is very important to them, certainly potentially for health reasons and also in terms of having a better understanding of their ancestry. That is one aspect of the amendment that I fear will not be addressed, given the haste in which it is being dealt with in this house.

Another aspect of the amendment that I certainly would like to have further explanation of involves the opening words of proposed section 17B(1), which states:

> If a birth registration statement specifies the child was conceived by a donor treatment procedure, the Registrar must mark the words "donor conceived" against the entry about the child's birth in the Register.

What I do not know and have not been able to ascertain from the bill or anywhere else on such short notice is the exact circumstances in which a birth registration statement will specify that the child was conceived by a donor treatment procedure. It is only if that precondition is satisfied that some of the other aspects of the amendment flow.

It may be that there is not a problem there, but does it cover, for example, the issue where a child is conceived by artificial insemination? Does it cover artificial insemination which takes place outside of an ART clinic, but in another medical facility? How does it apply in circumstances where there is self-administered artificial insemination? As I say, this may not be a problem, but it is something that needs to be addressed.

In just the short time since this amendment became public someone who has considerable experience in this area has written me a series of notes about some of the issues that arise from it. Again, I have not had time to consider them fully, but there are issues about consistency or inconsistency between clause 153 and clause 56 — issues about whether a central register is the same as the register, and how they are dealt with in different clauses; about how the relevant information will be collected and recorded in the registration system so that it will be available under this system; about clause 49 and whether or not it applies where the child is created outside a registered ART provider; about clauses 52 and 54 and the role and responsibilities of private practitioners and the timing of their responsibilities to provide information to the central register and how it will be recorded. There are a wide range of other issues, including about access to the central register under clause 56 in comparison to what is allowed under clause 153.

These are issues that arise, and they ought to be resolved properly because this is something that goes to the fundamental aspects of people's existence and identity. It should not be something that is cobbled together at the last minute, put out in the public arena, voted upon probably within the hour in one place and needing to be voted upon again later that evening in this place. All of this process gives the lie to what the government has claimed about the careful and extensive consideration it has given to the bill and about the proper process and the opportunity for public input that has been provided. The public has had no chance of a decent input into this package of measures that has come from the other place.

I conclude by reiterating that above and beyond all of these particular matters, the fundamental failing of the package that has come from the other place is that it does nothing to deal with the terrible travesty of our adopting as a matter of public policy that we will facilitate and legalise and provide for the deliberate creation and bringing into the world of children who are to be brought up without a biological mother or without a biological father taking care of them. This is something we are deliberately inflicting on children.

My view and the view of many other members of this place and many people in the community is that if at all possible it is best for children to be brought up with their biological father and their biological mother. Where that cannot happen due to circumstances beyond people's control through a tragedy, people strive to overcome it, in many cases with considerable success. But it is not something that should be endorsed as a matter of public policy and legislated for and facilitated under this legislation. It is a great shame and appalling public policy that this is what this Parliament is doing.

Mr HUDSON (Bentleigh) — I rise to speak in support of the amendments to the Assisted Reproductive Treatment Bill. When I made my contribution to the second-reading debate on this bill I indicated that I had several concerns with it, namely the provisions in relation to surrogacy, particularly partial surrogacy, where a woman could use her own eggs to conceive a child for a commissioning parent and then give that child away. I also indicated my concern with the provisions in relation to access to information for donor-conceived children. During that debate I moved amendments in relation to both of those issues.

My concerns went to two central issues. Firstly, I firmly believe that we should be acting in the best interests of

the child and that those interests include the right to know your identity as well as the identity of both your biological mother and biological father. Secondly, I was concerned about the importance of us learning lessons from the past, particularly the lessons we can learn from the history of adoption where relinquishment caused enormous pain and considerable damage to relinquishing mothers; and the problems with secrecy, which inflicted damage on many adopted children at the time.

I am pleased that the government has acted on those concerns by introducing amendments in the upper house that go to the core of the concerns that I had. Amendments that provide that a woman cannot use her own eggs in a surrogacy arrangement and the restrictions on other forms of surrogacy, requiring a woman not only to be at least 25 years of age but also to have previously given birth to a child, are sensible; they mirror the amendments that I sought to move in this house, and I am pleased that they have been adopted.

I want to make clear from my perspective that I have never regarded as progressive social policy the idea that in a surrogacy arrangement a woman would conceive a child to give it away to another family, particularly where she is using her own eggs. Personally I would like to see a ban on all surrogacy arrangements, but having said that I applaud the fact that these amendments severely restrict surrogacy arrangements that can be facilitated through IVF, and I will support them.

I also support the amendments in relation to birth certificates, which will give donor-conceived children access to information about their origins. This is an incredibly important clause. I note that there is a caveat in new section 17B which is that if a birth registration statement specifies the child was conceived by a donor treatment procedure, then the register will be marked in that manner.

I understand the limitations that we confront. We are in a situation where that information will not always be forthcoming. But I would say to the Parliament that I believe we have a responsibility and an obligation to pursue on behalf of donor-conceived children that right to know. I believe it is an absolute right and one that all children have — certainly once they become adults — to know what their genetic identity is, what their origins are and who their biological mother and father are.

It is ironic in terms of this bill that the people who are in same-sex relationships have been tremendously good at this, because they have made very clear to their children, from a very early age, the nature of their origins. That is something that the heterosexual community can learn from and that we can pursue with some vigour. I therefore welcome the Attorney-General's assurances that we will address what remains as one of the major anomalies in this bill, which is that children born prior to 1 January 1988 are still not able to have access to information about their origins unless their donors have placed their names on a register, and they agree to that information being made available. That is an anomaly, because we have created two classes of children. I am pleased that the Attorney-General has agreed that that anomaly should be looked at and addressed. I look forward to amendments coming back before the house that give effect to that so that we can treat all children, irrespective of when they were born, in exactly the same way. That is what we owe the children of Victoria.

In concluding I would like to express my thanks to the Association of Relinquishing Mothers for bringing the issue of surrogacy and relinquishment to the attention of members of Parliament. These are women whose voices are not often heard loudly in these debates. But it is important that we learn from the lessons of history, and in particular from the considerable experience of people involved and the research that has been done on the adoption experience, where often women have relinquished their children in a way they thought would be something that would at least partly remedy the fact that they got pregnant as teenagers — by giving the child to a family.

It was seen as an altruistic act, but in fact it deepened the pain, it deepened the grief, and those women in many instances have been damaged for life. I would like, if the house would allow me the indulgence, to acknowledge the courage of my wife in talking about those issues in public for a long time as a founding member of the Association of Relinquishing Mothers and bringing those issues to the attention of the public.

I would also like to thank in the other place Mr Jennings, Mr Tee, Ms Mikakos and Mr Atkinson for facilitating these amendments there. I believe they are an improvement to the bill. I believe they have strengthened the safeguards in the bill and taken us further down the track of making sure that there is an absolute right of access to information for donor-conceived children. I support the amendments, and I wish them a speedy passage in this house.

Mr BURGESS (Hastings) — While these amendments are good and I support them, it is really like putting a new steering wheel cover on a wreck.

This Parliament has seen many great governments over a very long period of time from both sides of politics and, while there are frequently policy decisions and matters that come before this Parliament that good people can have starkly different points of view on, I know of very few decisions that have the capacity for such massive destruction and disastrous consequences as this bill. Unfortunately, the consequences of this bill will fall mainly on our most vulnerable — our children.

Tonight it will be made law in Victoria to allow a single man or a single woman to 'commission' a child — yes, 'commission' a child! It is a cold, hard term to replace the term that we have known throughout our existence as 'conceive'. That, tonight, will change forever — that is, a single man or a single woman can potentially, under this bill, pay a woman to accept donated sperm and egg, then carry and give birth to a child that the commissioning person then gets to keep.

The commissioned child will never have a biological mother or father as we have always known that — a situation that I fully believe would shock most Victorians if they knew and understood it.

I look up in the gallery and I see good people with good intentions, but it is my belief that we all make decisions and have circumstances that carry with them consequences and responsibilities, and it is my belief that a consequence of being human and of our human society is that all children should have a mother and a father, and in the end it is the good of the child that should always remain our focus. It is my great concern that that is not the case here tonight.

The world has been engulfed trying to solve a financial meltdown. Our economic systems are basically in meltdown and that can be a catastrophe.

The SPEAKER — Order! I bring the member for Hastings back to the amendments.

Mr BURGESS — But, Speaker, that is a relatively minor problem compared to what we are facing tonight. On the other hand, the Brumby government has been working away in the shadows, undermining the very core of our society and of our community, of our families and, most of all and most unforgivably, of our children. The proponents of this bill have abandoned the children that will be brought into this world through the system introduced here tonight.

The SPEAKER — Order! I remind the member for Hastings that we are talking not on the bill but on the amendments before the house. I ask the member for Hastings to address his comments to the amendments.

Mr BURGESS — I am addressing the amendments. This is about passing this bill with these amendments.

The SPEAKER — Order! I ask the member for Hastings to make his comments on the amendments, not on the generalities of the bill. It is the amendments before the house that are under question at this moment.

Mr BURGESS — And it is the amendments to that bill which I am speaking about. I find it impossible to believe that anyone, having read and understood the bill that these amendments apply to, could in honesty say that the legislation in any way contemplates, let alone protects, the interests of the child. This bill makes that statement, but it is a lie.

Tonight each member who votes on this bill will be remembered for this one act. Governments become the custodian of the good of the people and take on the responsibility of doing all they can to preserve all that is good about community and removing all that is not. This government and all who voted for it have failed in that most basic duty.

While we are considering these amendments it is worth contemplating the devastating irony that will exist. As a Parliament we are now unable to make a comparatively small change to the upper house of this Parliament without putting a referendum to the people of Victoria. Why is it then that those who have voted for this bill tonight can make such a catastrophic change to the very core of our society without properly informing the Victorian people, let alone asking them if they wanted it or not — —

The SPEAKER — Order! I ask the member for Hastings to come back to the amendments before house.

Mr BURGESS — I implore members of this house to think again. I ask them to think about what we are doing here tonight and the implications of that for children who will come into this world through this process. I ask members to take this last opportunity to reject this legislation.

Mr MERLINO (Minister for Sport, Recreation and Youth Affairs) — I rise to speak briefly on the amendments to the bill. To my mind the amendments passed by the Legislative Council make this a better bill. Whilst I continue my opposition to the bill as a whole and cannot support it at the third-reading stage, I want to put on the record my support for these amendments: the amendments to clause 40, the banning of partial surrogacy, making it not possible for a surrogate mother to relinquish her own genetic child, and the changes that mean that a surrogate mother is

not just to be over 25 years of age but must have previously carried a pregnancy and given birth to a live child.

In the second-reading debate I spoke at length about the rights of children to know the truth of their genetic heritage. They have the right to answers to questions such as 'Who is my father?', 'Who is my mother?' and 'Where are my genetic roots?'. It is a truth that goes to the core of who we are as human beings. The failure of the original bill to address this injustice for donor children was of great concern to me. The amended bill deals in part with this issue by allowing donor children born after the passage of this bill to have access to the truth of their heritage. The bill does not deal with donor conceived children born prior to 1998, but as the member for Bentleigh has said, the Attorney-General has given an undertaking that, in conjunction with the Minister for Health, he will address this issue. I look forward to the minister addressing this issue and the subsequent amendments to this legislation. Again, I cannot support the bill as a whole, but I want to put on the record my strong support for the amendments that have come from the Legislative Council.

Mr THOMPSON (Sandringham) — The bill and the amendments seek to redefine what it is to be a parent and what it is to be a child. The bill proposes conflicts between traditional religious precepts and trends of contemporary society. The question is how we as legislators should respond. One could follow the approach of saying, 'The people are over there; I am their leader, and I must follow them'. Alternatively, perhaps there is a more strongly anchored approach as to how we deal with these issues by building upon principles that reflect Judaeo-Christian tradition going back centuries. Nations which prospered tended to agree on common goals. A few weeks ago I spoke at the launch of a concise book of 28 pages written by a Greek lady — —

The SPEAKER — Order! The member for Sandringham will address his comments to the amendments before the house.

Mr THOMPSON — The book to which I refer gives the context of family and community. In this particular case I am drawing a contrast between the family structure that exists in a Greek village and the family circumstances that will be the product of the legislation before the house. A sociologist named Christopher Dawson maintained, rightly in my view, that Judaeo-Christian values have been the heart and soul of Western civilisation and that a society that has lost its religious impulse becomes sooner or later a society which has lost its essential culture. An American adviser to President Nixon, Charles Colson — —

The SPEAKER — Order! Again I ask the member for Sandringham to address the amendments before the house.

Mr THOMPSON — The amendments define and redefine family structure in a way that we have not seen before. What I am doing through my comments is pointing out that essentially all law, the amendments included, implicitly involves morality. The popular idea that we cannot legislate morality — paraphrasing Colson — is a myth. It is legislated every day from the vantage point of one value system or another.

The question is not whether we legislate for morality, but rather whose morality we legislate. Some thinkers who look at the family context hold the view that there is a transcendent value system. Another writer, C. S. Lewis, noted that there is no neutral ground in a moral universe.

I have often had occasion to reflect upon the words of Solzhenitsyn, the great Russian writer, who argued that the strength of a society does not depend upon its market economy or its degree of industrialisation but rather upon the spiritual life of its people. I have benefited from the writings of Solzhenitsyn, Lincoln and Luther King and their view of the context of family and community. The writers had an underpinning drive within their own lives, a transcendent sense of purpose.

In the case of all of us, we may not have lived a perfectly moral life throughout all our lives, yet in the case of some there was a revelation, an experience or a sense of purpose at a point of their lives. This has given them the consistent, strong and purposeful moral focus which is a necessary ingredient of political leadership.

The SPEAKER — Order! I ask the member for Sandringham to address the amendments before the house.

Mr THOMPSON — In looking at the amendments, amendment 1 is to clause 40 and it proposes inserting:

> (ab) that the surrogate mother's oocyte will not be used in the conception of the child;
>
> (ac) that the surrogate mother has previously carried a pregnancy and given birth to a live child.

Amendment 2 proposes omitting words in line 7 at page 33 of clause 40 and that the following be inserted:

> with the parties' intentions, including —

(i) the consequences if the commissioning parent decides not to accept the child once born; and

(ii) the consequences if the surrogate mother refuses to relinquish the child to the commissioning parent.

These were some of the provisions that were foreshadowed in the original debate as being complex and perhaps giving rise to uncertainty. Those provisions passed this chamber the first time around. Within the space of weeks the bill has been returned to this chamber with amendments to provisions that this chamber initially passed.

A further amendment is proposed to be made to clause 53:

> … for each donor, the number of persons born as a result of a treatment procedure or artificial insemination using that donor's gametes …

I have referred to one of the clauses that does not provide for an accurate number and a smaller number of progeny from the one person. Ultimately it would be a case of mathematical probability as to at what point people who are genetically born would at some stage produce their own child. There is an example from yesteryear of one particular doctor who fathered 100 children through artificial insemination. There are consequences through the practice of genetics and the relationship between people of a common genetic inheritance that lead to other difficulties.

The proposed amendment to clause 153 is regarding the birth registration of a child conceived by a treatment procedure and the importance of marking 'donor conceived' against the entry of the child's birth in the register.

In the adoption literature and the IVF (in-vitro fertilisation) debates one of the fundamental aspirations of people is to have some knowledge or some understanding of their genetic inheritance. I could refer to my contribution to the second-reading debate on this. Throughout the realms of English literature people have had a desperate desire to know their genetic inheritance and who their relatives are.

Since that debate a number of people have written to me. One piece of correspondence came from a person who was donor-conceived prior to the 1984 act which regulated the practice of IVF in Victoria. They were greatly distressed as a result of the denial of what they described as:

> … the fundamental right to know the truth as to our identity and parentage.

Another person who wrote was a donor-conceived individual. They spoke of 'what has been deprived of us' in terms of their right to know their inheritance. Another person, Roger Marks, wrote to me. He says:

> The bottom line is that the government's determination to allow children into this world without a father is legalised child abuse. I know, I was one of them.

There is a breadth of life experience, but these are the documented stories of people who were donor conceived or, in the case of this last person, who did not have a father as they grew up.

Another person who wrote to me sought to advance the human rights of people created through donor conception practices. The bill, with these amendments, may serve to advance that, with the knowledge of what will be entered on the register, but the legislation affects the lives of many people and will do so through countless generations, according to one person whose circumstances arose as a result of adoption.

In my view the bill undermines a child's right to have both a mother and a father. Even though same-sex couples — —

The SPEAKER — Order! I ask the member for Sandringham not to speak on the bill but to speak on the amendments before the house.

Mr THOMPSON — Combined with the amendments, the bill undermines a child's right to have both a mother and a father. Even though same-sex couples may feel they can give children unconditional love, they cannot ignore a child's inbuilt need and desire for affinity with both biological parents. To deprive children of this possibility before birth is, in my view, an injustice to them.

The legislation will allow same-gender couples and single men and single women to commission a surrogate mother to bear a child who is then reared as their own. Birth certificates will not record a child as having a mother and a father. While there are very important issues requiring sensitivity, the best interests of the child remain not always protected. It is my view that the Brumby government is paving the way — —

The SPEAKER — Order! I suggest to the member for Sandringham that I have been very lenient with his contribution, but I ask him to address the amendments.

Mr THOMPSON — Thank you, Speaker, and I respect your leniency in allowing me to express a number of thoughts. I remain of the view that the amendments to the bill still result in the Brumby

government paving the way for an IVF stolen generation.

Mr WELLS (Scoresby) — I will make just a very short contribution relating to clause 40. When I first spoke on this issue on 7 October I put to the Attorney-General four scenarios. Scenario 1 was a surrogate mother giving birth to a child but for some reason the commissioning parents refusing to accept the newborn. Scenario 2 was during pregnancy it being discovered that the unborn baby has a severe disability and the commissioning parents wanting the surrogate mother to abort. Scenario 3 was the surrogate mother refusing to hand over the child at birth. Scenario 4 was, in the case of a divorce or a separation or a death in the partnership, the commissioning parents refusing to accept the child at birth for that reason.

The Attorney-General was in the chamber when I put those four scenarios. He gave me an assurance that he would provide answers in writing to those scenarios. Two months later we still do not have those answers. It is an unfortunate situation as we had genuine concerns about those four scenarios. I believe one or two of them have been addressed but only in part, and the majority have not been addressed. We are now agreeing to these amendments without any written instructions or directives from the Attorney-General after being given an assurance.

Mr HULLS (Attorney-General) — In summing up, I thank members for their contributions to debate on the legislation when it came before the house and on the amendments. It appears that most, if not all, members of this place support the amendments and have indicated that they believe the amendments make for a better bill.

I remind the house that what really matters in relation to kids and their welfare is whether they are being brought up in a loving, caring family, regardless of the make-up or nature of that family. Whether they are loved is what is absolutely crucial, and love is not exclusive to heterosexual, married couples. It comes in many forms, and it is absolutely crucial that kids who are born into loving, caring relationships are not discriminated against because of the nature of the family that they are born into.

That is what this legislation is about: protecting kids. It is about bringing our legislation into the 21st century. It is about acknowledging that families come in all shapes and sizes. Kids are born into families of all shapes and sizes, but we have got to protect those kids, and that is why this is important legislation. That is why these amendments are important, and that is why I support the legislation and the amendments.

Motion agreed to.

ANNUAL STATEMENT OF GOVERNMENT INTENTIONS

Debate resumed from 10 April.

The SPEAKER — Order! As no further members are seeking the call, I declare responses to the statement to have been completed.

BUSINESS OF THE HOUSE

Adjournment

Mr BATCHELOR (Minister for Community Development) — I move:

> That the house, at its rising, adjourn to a date and hour to be fixed by the Speaker, which time of meeting shall be notified in writing to each member of the house.

Motion agreed to.

Remaining business postponed on motion of Mr BATCHELOR (Minister for Community Development).

CLERK OF THE LEGISLATIVE ASSEMBLY

Mr BAILLIEU (Leader of the Opposition) (*By leave*) — With the generous assistance of the government, which has provided me with the opportunity to take a lead in this contribution, and given that the minister is, I am sure, rushing to the chamber, I want to take this opportunity to acknowledge a certain person's anniversary in the gig — in the job. On Monday, our Clerk, Ray Purdey, will have racked up 10 years in the job. Those of us who joined this house in 1999 have been here for a little over nine years, and Ray has been here all that time. Members may not have always agreed, but we always knew that Ray was right. And he has always given great assistance to members on both sides of the chamber and has earnt the respect of both sides of the house.

Ten years in this chamber is an extraordinary achievement: it is equivalent to 200 games of Australian Football League footy; it is 5000 runs or a couple of hundred wickets in cricket ; it is probably 10 000 points on the basketball court. You could not

ask for much more, and I want to take this opportunity to extend the best wishes of this side of the house for our Clerk's first 10 years of his 50 years in the job!

Mr BATCHELOR (Minister for Community Development) (*By leave*) — I would like to join with the Leader of the Opposition and on behalf of the government members here also thank Ray Purdey as our Clerk for the wonderful contribution he has made over 10 years. Ten years in this Parliament is quite an achievement in any circumstance, but to do it as the Clerk is a terrific effort. That is why tonight we have been topsy-turvy in providing the order of the contributions; we thought it was appropriate to do that as a mark of our recognition of the wonderful job that Ray Purdey has done.

I think about the long hours and difficult times that this house has provided to the Clerk. He has had to keep the Parliament moving through those extended hours and deal with the difficult and complex matters which have been experienced, particularly over recent times, and I think he has done a fantastic job. In speaking on behalf of all members of Parliament I want to thank Ray for the past 10 years and wish him all the best for the next 10 years or so. There will be many people, including the member for Keilor, who will be here to see him through the next decade.

Ms ASHER (Brighton) (*By leave*) — I also wish to congratulate the Clerk on 10 years of service. It is a long time in a very onerous job. I want to suggest that as members of Parliament perhaps we could make his job slightly more humane by looking at sittings such as this. But again in the broad we wish to congratulate Ray on the superb job he has done of providing advice constantly to all members of Parliament. We thank him for the unbelievable patience he has shown as he has dealt with all of us when we have become fractious — something he never does, particularly during late night sittings. Again, congratulations. I think 10 years in any job is exemplary. I wish to add my congratulations on behalf of my party as well.

Mr BRUMBY (Premier) (*By leave*) — I will keep my remarks very short. I want to add my comments about Ray Purdey after all of these years. We were just trying to work out Ray's age — where it starts and where it ends. I think it is somewhere in the 50s. If you start in the early 20s and add 30 years, it has to be somewhere in the early to mid-50s.

Ray has done a fantastic job as Clerk over the last 10 years here. It has been an exciting period — a period of action, of course, and the Clerk has seen that. Ray became aware tonight that a few people might make some complimentary remarks about his service, and he was a bit anxious about that because this is not a retirement speech; indeed there are many more years to come. Ray, we thank you for your great service — for your impartial service to the Parliament. I am delighted to record our thanks for that period of distinguished service, and we look forward to many years in the future.

Mr RYAN (Leader of The Nationals) (*By leave*) — On behalf of The Nationals it is my great pleasure to join in this celebration of a period of service. One of the great things about the Clerk of the Parliaments is that you can always go to him and receive advice that is completely objective, utterly clinical and related to the issues of the day. We have always appreciated that.

On behalf of The Nationals I congratulate Ray on his period of service thus far. It is only 10 with another 10 to go, no doubt. We thank Ray for what he has done and what he continues to do. He plays an important and critical role in the way in which this Parliament functions, and we are most appreciative of that.

The SPEAKER — Order! I would also like to acknowledge the particularly generous support and wise counsel that Ray has given me in the time of my Speakership. It is very much appreciated on a personal level, but all members appreciate his dedication to the Assembly and to the Parliament of Victoria. I would particularly like to thank him on behalf of all members for his efforts over the last decade, during most of which he has been the Clerk of the Parliaments, but also as a stalwart of the Parliament for the last 34 years. Congratulations, Ray.

ADJOURNMENT

The SPEAKER — Order! The question is:

That the house do now adjourn.

Small business: regulation

Ms ASHER (Brighton) — The issue I have is for the Minister for Small Business. I ask that he issue a comprehensive regular report on the progress of his program Reducing the Regulatory Burden, including a full assessment of the status of regulation in 2006, which is when the program was first announced, and what is happening year by year or ideally even within a shorter period of time.

The Labor Party in its election campaigns of 1999, 2002 and 2006 promised to reduce regulation. That is a commendable aim and one that we also embraced. In

August 2006 the government issued a policy called *Time to Thrive — Supporting the Changing Face of Victorian Small Businesses*. It is in essence the government's small business policy. That policy read at page 14:

> The Victorian government will continue to work on ways to reduce the impact of regulation on small businesses and has provided $42 million over four years to reduce regulatory burden.

It goes on to say:

> To reduce the burden we will:
>
> > cut the existing administrative burden of regulation by 15 per cent over three years, with a target of cutting 25 per cent over the next five years …

Last month this policy was reannounced in *Building Our Industries for the Future — Action Plans for Victorian Industry and Manufacturing*. As I said, the policy was reiterated with exactly those same targets. The Treasurer released a report indicating that Victorian businesses saved more than $160 million as a result of changes in 2007–08.

However, the Victorian Competition and Efficiency Commission has found that there are:

> predicted costs of around $708 million for new regulations and costs of over $1.95 billion for amended and sunsetting regulations.

The commission also identified that:

> The 69 regulators identified in this report employ over 7800 staff, administer over 2.3 million licences and have annual expenditure of over $1.6 billion.

We see here a very heavy cost of the burden of regulation by the government.

I call on the minister to issue a full report, not just spin and rhetoric about targets but an actual report on what the government has achieved.

Cardinia: Beaconsfield sports facility

Ms LOBATO (Gembrook) — I raise a matter for the Minister for Sport, Recreation and Youth Affairs, and the action I seek is for the minister to favourably consider an application made by Cardinia Shire Council for a grant of $500 000 to assist with development of a sporting precinct in Beaconsfield.

Cardinia Shire Council is to be congratulated for this project that will see 12 hectares of land on the corner of Beaconsfield-Emerald Road and Holm Park Road transformed into a massive sports facility. The precinct will include 12 football and cricket ovals, 6 soccer pitches, 12 netball courts, 1 synthetic athletics track, 2 rugby fields and 1 lawn bowls facility.

The lack of sports facilities in the south-east growth corridor has been a major concern for councils and for me for a long time. It was the practice of councils to develop one or two football areas, thinking that would be sufficient for an area, and with the rapid and massive population growth additional facilities were required instantly. We have many sporting clubs throughout Casey and Cardinia that have had to put caps on their memberships and come to some very creative sharing arrangements. Vacant land has had to be used as temporary football and cricket ovals.

A couple of years ago Casey council constructed Casey Fields in recognition of the population growth and the increased take-up rate of sport. Casey Fields is a one-stop shop for lovers of sport, and I believe Cardinia's Holm Park Road facility will be very similar. Not surprisingly, this project has received enormous support from the community. Most families throughout Cardinia play some form of sport, thankfully, and parents have become increasingly frustrated by the lack of facilities and the requirement for them to travel far away from the area to participate.

Some of the local clubs eagerly awaiting the construction of this project are the Beaconsfield Junior Football Club, which has 14 teams with over 300 children and a player waiting list; the Beaconsfield Netball Club, with 95 participants but only one court; the Beaconsfield Senior Football Club, which has 6 teams and 132 participants; the Beaconsfield Cricket Club juniors, which have 11 teams and have had to cap the number of teams; and the Beaconsfield Cricket Club seniors, which have 6 teams. Of course a whole range of new sporting clubs, including one for soccer — which has seen an unprecedented level of participation — are also looking forward to this project.

Proudly, the Brumby government and the Minister for Sport, Recreation and Youth Affairs have been major supporters of increased sporting participation and investing in required infrastructure. Recently the minister opened the expansion of Cardinia Life, which consists of an indoor swimming pool, basketball courts and a gym. This government was a major and proud contributor to this facility, along with Cardinia.

I wish to congratulate Garry McQuillan, Fiona Hodges, Jim Davine, Cr Brett Owen and former councillor Bill Ronald for their commitment and dedication to the Holm Park Road project. In conclusion, I reiterate my strong support for this much-needed community project

and request that the minister support the council's application.

Water: Campaspe irrigators

Mr WELLER (Rodney) — I wish to raise a matter for the attention of the Minister for Water regarding the grim situation facing irrigators on the Campaspe system. The action I seek from the minister is to guarantee water supplies for the essential domestic and stock needs of irrigators.

The irrigators on the Campaspe system are on zero water allocation, and this is the fifth year in a row of zero or very low water allocations. Without decent in-flows, water for essential needs will run out by March next year.

There are two options available to the minister to guarantee essential water supplies for irrigators. The first is for environmental water reserved in Lake Eppalock to be diverted down the Campaspe River to the irrigators. The second is that the environmental water reserved in Eildon — to which the people of Bendigo have been allowed access — be made available to the irrigators on the Campaspe system for essential needs.

The government could pump the water from the Waranga Western Channel at Colbinabbin into Lake Eppalock and then run it down the Campaspe River — and given that irrigators on the Campaspe system have already paid for 50 per cent of their water and received nothing, the government should pick up the bill for pumping it.

As I said, if we do not receive decent inflows by March, irrigators on the Campaspe will be in very serious trouble in relation to water for essential needs. Those in this area believe the government has ignored them. For five years they have been looking for assistance. Until there were problems with other systems, there was no assistance for the Campaspe irrigators.

The government should take action now and assure the people on the Campaspe system that there will be water for essential needs after March. The government should commit to pumping the water from Waranga Western Channel to Lake Eppalock and running it down the Campaspe so that the essential needs of the people of the Campaspe system will be met. The minister must take action immediately to guarantee water supplies and ensure this potential disaster is averted.

Uniting Aged Care: Coburg development

Ms CAMPBELL (Pascoe Vale) — I raise a matter for the attention of the Minister for Senior Victorians. I call on the minister to ensure that the Department of Human Services follows up with Uniting Aged Care on its proposed development as part of the state government's exciting land bank proposal in Coburg.

Members may recall that as part of A Fairer Victoria in 2005, the state Labor government recognised that high land prices can be a barrier to the establishment of aged-care residential facilities and services in areas of high need, especially in middle and inner metropolitan areas.

The Public Accounts and Estimates Committee, of which I was a member, put a good recommendation to the government, which it accepted, that consideration be given to the establishment of a land bank. I applaud the fact that the government has done that. The statement I raise tonight concerns the commitment to explore options to improve access to land for aged-care services. I am looking forward to the government and the minister, through the department, following up with Uniting Aged Care, to make sure that in my local area of Pascoe Vale more places are available.

The most recent commonwealth figures indicate that as at 30 June 2007 the Moreland local government area had an operational deficit of 154 high-care places and 52 low-care places, a total of 206. To address this demand the government has been working with Uniting Aged Care to provide a 90-bed aged-care facility in Coburg. The land in question is the former Newlands Secondary College site. The sooner the development comes to fruition the sooner we will be able to meet the demands for aged-care services in our area.

EastLink: tolls

Mr DIXON (Nepean) — I wish to raise a matter with the Minister for Roads and Ports regarding an EastLink tollway charge that a constituent received and to ascertain whether the charge is justified.

My constituent was travelling north along the Mornington Peninsula Freeway north of Frankston, and when she arrived at the intersection where EastLink commences she found she was in the wrong lane. Because she did not want to go up the tollway but wanted to continue along the Mornington Peninsula Freeway she pulled up on the V-intersection where there is a striped painted traffic island and did not enter the tollway. She parked there and waited until the traffic on the Mornington Peninsula Freeway was light

enough to allow her to move back onto the freeway and continue north on her journey. She did not actually enter the tollway.

The ticket she received from Breeze says that her time of travel was from 1:59 p.m. to 2.07 p.m. She did not travel along the tollway, for a start, and she certainly did not spend 8 minutes on it. She did not spend 8 minutes parked on the intersection waiting to go back onto the Mornington Peninsula Freeway. In fact, the ticket also says that the starting point was Frankston Freeway–Thompson Road, which to me is not a start because it is an intersection, an entrance to the tollway, and the finish was Princes Highway-Monash Freeway. Again, they are two separate entrances to the freeway. My constituent was charged $2.76 for parking on the side of the road. There was a toll invoice fee of $4.08, a VicRoads lookup fee of $1.40 and GST of $0.83, coming to a total of $9.07. She would have been better continuing up the freeway, parking there and then getting off at the first intersection.

I questioned my constituent again yesterday, and she assured me that this was not a trip on EastLink. She told me she has made only one trip on EastLink, which she prepurchased and had a trip to Police Road and back.

My constituent's action was not a trip on EastLink. I ask the minister to discuss the matter with EastLink to see whether the charge can be rescinded.

Corio Community Sporting Club: lighting upgrade

Mr EREN (Lara) — I raise a matter for the Minister for Sport, Recreation and Youth Affairs in relation to the Corio Community Sporting Club in my electorate. The club currently has substandard lighting for its football oval and no existing lighting for the netball court for its netball teams. This situation that the club finds itself in is not acceptable. It is often the case during night training that someone will kick the football into the forward pocket and it will not be seen again until the following morning, because it is so dark.

The action I seek from the minister is to allocate state funding towards this important upgrade in order for this club to continue and to expand the great service it provides to the wider community. Sporting clubs in my electorate play an important role in our community, particularly with youth, and in fighting the obesity problem prevalent in our society.

The capacity of this particular sporting club is minimal due to the limited size of the reserve and the fact it has only a single oval and one netball court. Coupled with a lack of decent lighting, training opportunities are limited to the extent that the netball section of the club has to train offsite. Essentially an upgrade to lighting would allow both the football and netball teams to double their training capacity and train together at the same time on the same facility, in the true spirit of the intended policy of joint football and netball teams.

The sporting club community has raised an impressive amount towards the upgrade and has secured a substantial commitment from the City of Greater Geelong towards the improvements. The Corio Community Sporting Club is going through a revival, with a new executive team pumping vibrancy and enthusiasm into the sporting community. The assistance from the state government would further boost the efforts of the club, which is providing an essential service to the broader Corio community. Therefore I seek the minister's support and action in allocating state funds towards this vital upgrade to this very important sporting club in my electorate.

Victoria Racing Club: water recycling

Dr NAPTHINE (South-West Coast) — The matter I wish to raise is for the attention of the Minister for Water, and the action I seek is for the minister to provide funding assistance to the Victoria Racing Club to help it develop a source of recycled water for use on its Flemington Racecourse and surrounds.

The VRC is Victoria's leading racing club and its track at Flemington is known around the world as a magnificent race track and the home of the fantastic Spring Racing Carnival and Melbourne Cup. Maintaining the track and its surrounds in top condition requires large amounts of water. The VRC uses about 500 megalitres of water a year. Recently the minister granted the VRC a further exemption to allow it to continue to use fresh, potable drinking water — thus reducing Melbourne's supply — on the Flemington track and surrounds.

I agree with that decision, because Flemington is vital for the Victorian economy and for Victorian racing; it is vital the track is maintained in tiptop and safe condition. But the Melbourne community was shocked and disappointed to learn that the VRC has been seeking government assistance for more than two years to develop a project to deliver and use recycled water at Flemington. The VRC was granted $5 million for this project by the previous federal government, under John Howard, only to have it withdrawn by the federal finance minister Lindsay Tanner and the Rudd Labor government without a whimper from the Victorian Minister for Racing or Minister for Water.

I now call on the Minister for Water to support with funding and assistance this innovative project, which proposes to take water from the western trunk sewer, through a sewer mining process and treat it to class A standard so it can be used on the track. This water could also be used for greater community benefit on the nearby Footscray Park — just across the Maribyrnong River on Riverside Park, which is part of the new Kensington development there — and on the Newells Paddock wetlands. This project could save 350 megalitres of water a year — that is, 350 megalitres of precious Melbourne drinking water, which is enough for 1700 average Melbourne households.

This project is a potential win-win-win project — it would be a win for the VRC at Flemington to use recycled water and maintain its track and surrounds in top condition, it would be a win for the Melbourne water supply and the Melbourne community because it would save 350 megalitres a year, and it would be a win for the surrounding parklands. The parklands would also have access to the water recycling project through the sewer mining reverse osmosis treatment of that water to class A standard. There would be better parklands and better grass at Flemington with the use of recycled water, and it would save precious Melbourne water. I urge the minister to come on board with this project, which has so many benefits.

Housing: Footscray electorate

Ms THOMSON (Footscray) — I wish to raise a matter for the attention of the Minister for Housing. I refer to the national affordable housing agreement reached at the weekend meeting of the Council of Australian Governments, and I ask that the minister take action to ensure that the Brumby government continues to grow the supply of affordable and accessible housing in my electorate in Footscray.

This week we have also had an announcement by the Premier and the Minister for Planning that will see Footscray elevated to a central activity district as part of the *Melbourne @ 5 Million* planning update. This is obviously a necessary approach to developing Melbourne to ensure that we have multicentre city structures that acknowledge the need for a better distribution of jobs and activities so that Melburnians can work closer to where they live.

The demand for affordable housing in my seat becomes even more crucial as we move into a central activity district to ensure that we do not alienate and push out the community that currently resides in Footscray, the members of which need support services, need to be close to friends and family and need other services, including transport.

I know the minister and the government take seriously their commitment to ensuring that we do not push people out to the urban fringes just because they cannot afford to live in the inner cities because of higher rentals. A lot of action has been taken to date to recognise that need. I have spent time on a number of occasions with the minister — for instance, at the opening of the Barkly Hotel redevelopment, which is now occurring. There has also been the Lynch Street rooming house development and larger style accommodation housing for African families, not to mention the refurbishment of the exterior of the Gordon Street high-rise that is occurring in Footscray.

This is only the tip of the iceberg as far as need is concerned. With the new announcement of $6.2 billion for affordable housing in the agreement that has been reached — which I must acknowledge was driven by the Victorian state government and the Premier — I ask that when Victoria gets its share the minister work to ensure that Footscray gets its fair share of the Victorian allocation.

The innovative housing packages we have seen in Footscray to date are commendable, and I commend the minister for the way in which he is addressing the multiple needs of people in Footscray.

Kimberley Drive–Fletcher Road–Maroondah Highway, Chirnside Park: traffic lights

Mrs FYFFE (Evelyn) — My request for action is for the attention of the Minister for Roads and Ports. There is an urgent need for a right-turn arrow to be installed at the traffic lights where Kimberley Drive and Fletcher Road intersect with the Maroondah Highway in Chirnside Park. Back in 2006 Mr Kevin Dixon wrote a letter to the editor of the *Lilydale and Yarra Valley Leader* newspaper saying:

> It is a very brave and foolish person who tries during the weekend to do a right-hand turn out of Maroondah Highway into Fletcher Road from the city … The same can apply to motorists doing a right hand turn out of Kimberley Drive.

In May this year I received a reply from the Minister for Roads and Ports in response to a letter I wrote on behalf of another constituent who had complained about the intersection. I was told that VicRoads had investigated the operation of the intersection and found that the current traffic signal timings provided an appropriate balance between the high-volume of traffic on the Maroondah Highway and the lower volume of traffic on Kimberley Dive and Fletcher Road. The

residents of Chirnside Park would beg to differ. After surveying 1500 households in the streets surrounding the intersection, I received a response of 728 letters, all asking for a right-turn filter arrow.

At peak periods the traffic becomes incredibly heavy, providing few opportunities for motorists to make a right-hand turn safely onto Maroondah Highway safely. Motorists are becoming increasingly frustrated. Several motorists reported having to wait for the lights to change two to three times before they could safely make the turn at peak times. I am concerned that the mounting aggravation over the inadequacy of the existing traffic lights will result in motorists taking unnecessary risks, which could cause some very serious accidents. We do not want to see a repeat of the tragic accidents we have already had at this intersection. By making a slight modification to the existing lights, by adding a right-turn arrow, traffic management and safety could be vastly improved. I ask the minister to treat this as a matter of urgency and to instruct VicRoads to install the right-turn arrow for motorists turning from Kimberley Drive into Maroondah Highway.

Road safety: Traffic Accident Commission campaigns

Ms GREEN (Yan Yean) — I raise a matter for the attention of the Minister for Finance, WorkCover and the Transport Accident Commission, and the action I seek is for the minister to do all in his power to keep the road toll low over the festive season.

The Transport Accident Commission campaigns have targeted drivers under the influence of drugs and alcohol as well as those exceeding the speed limit. The Transport Accident Commission has also run very good campaigns to educate drivers about the importance of wearing seat belts, about the issues of driver fatigue and about the need to reduce the incidence of young drivers being involved in crashes. As the parent of a couple of young drivers, I also note that the TAC has recently announced a partnership involving PlayStation 3 to promote messages to young drivers about drink driving, speed and motorcycles to commence in January 2009. This is commendable.

Since 1989 the Victorian road toll has more than halved, and serious injuries have fallen by 19 per cent in this period. If current projections continue, Victoria is on track to have the lowest road toll on record. However, every road death and every injury is an unnecessary tragedy. Tragically the festive season is statistically the worst for transport accidents and fatalities. Victorian drivers need to be vigilant and need to understand that Victoria Police are running tough campaigns to deal with recalcitrant drivers who take risks over this period, whether they relate to drinking, drugs or fatigue over the festive period. Victoria Police are running tough campaigns and will be vigilant. The drivers who take those risks need to understand that the likelihood of being caught is extremely high.

I urge the minister to do all in his power to ensure that Victorian drivers are aware of the need to adhere to road laws and be safe over the festive period, because what we as legislators and as a government want is for the maximum number of families in Victoria to spend a wonderful and safe festive season without the distress of road fatality or injury to interrupt what should be a wonderful family period.

Responses

Mr WYNNE (Minister for Housing) — I thank the member for Footscray for her continuing advocacy for affordable housing in the western suburbs of Melbourne. As members of the house will recall, I spoke earlier this week in question time about the historic agreement which was reached last weekend at the Council of Australian Governments (COAG) meeting — that is, the conclusion of the national affordable housing agreement (NAHA), which is a successor to the previous commonwealth-state housing agreement which has served Victoria well for over 50 years.

The housing agreement reached last weekend really was one of the key ingredients of the broader agreement between the Prime Minister and premiers. The principles committed to at all levels of government at the COAG meeting, and of course the major investments that will back them up, will get us started on the really big issues of housing affordability across the system.

For decades the commonwealth and the states have been in complex negotiations over individual funding agreements that would only affect one aspect of the housing market. Victoria has long argued that this was inefficient and ineffective in delivering assistance. On Saturday Victoria's work paid off. We now have an agreement that governs all forms of housing assistance, and we have the right framework to get started on delivering assistance to people, whatever their housing needs.

As I indicated, the NAHA reached last weekend sets a roadmap for cutting homelessness and housing stress. As I also indicated, frankly it would not have been possible without the leadership of Victoria — and our

Premier, who made a significant effort — to get the commonwealth to address what was clearly a very inadequate first offer to the states last Friday of $46 million across Australia for housing outcomes.

The additional commitments of COAG are important because they include a commitment to take specific steps in the area of tackling homelessness, constructing new social housing and helping more indigenous people into mainstream housing. All up, these commitments will be in excess of $10 billion in new money on the table to improve housing affordability and taking steps to eradicate the blight of homelessness. I think both sides of the house would agree this is a significant step forward.

As the member for Footscray has pointed out, it is really only because of the actions we have taken that we are well placed to bring forward investments and the injection of further funding into public and social housing. I very much look forward to working with the member for Footscray and other members of this house in a bipartisan way in putting further activity on the ground as a result of this investment.

The member is correct in pointing out the exciting opportunities that this funding presents to complement the government's very detailed planning announcement *Melbourne @ 5 Million* which is an excellent planning document released by the Premier and the Minister for Planning earlier this week. It is further evidence of the government's commitment to ensure that we have safe, affordable and secure housing which, critically, is linked to transport nodes and jobs.

The member for Footscray should have no doubt that whether through the funding that has been secured at COAG, through our record investment of $500 million in public and social housing, which this government announced in 2007–08, or through the National Rental Affordability Scheme, the first tranche of which I believe is likely to be announced tomorrow by the federal government, there will be further significant investment in affordable housing particularly in the inner west.

The member for Brighton raised a matter for the Minister for Small Business seeking a detailed report on reducing the regulatory burden for small business, and I will direct that matter to the minister's attention.

The member for Gembrook raised a matter for the Minister for Sport, Recreation and Youth Affairs seeking support for a grant application by Cardinia council for a major sports complex, and I will pass that on to the minister.

The member for Rodney raised a matter for the Minister for Water seeking a guarantee of water allocations in the Campaspe water system, and I will ensure that the minister is aware of that matter.

The member for Pascoe Vale raised a matter for the Minister for Senior Victorians seeking advocacy in relation to the Uniting Aged Care land bank proposal for Coburg on the old Newlands Secondary College site, and I will ensure the minister is aware of that.

The member for Nepean raised a matter for the Minister for Roads and Ports seeking the minister's intervention in relation to an EastLink tollway charge for one of his constituents, which he states was wrongly charged to her, and I will make sure the minister takes that matter up.

The member for Lara raised a matter for the Minister for Sport, Recreation and Youth Affairs seeking his support for the Corio football and netball club's lighting project within the precincts of the Corio Community Sporting Club. I will make sure the minister is aware of that.

The member for South-West Coast raised an interesting matter for the Minister for Water seeking financial support for the Victoria Racing Club proposal for a water recycling project primarily at Flemington Racecourse but with potential for application at other open space areas around the precincts of the racecourse, potentially saving significant amounts of potable water. I will make sure the minister is aware of that.

The member for Evelyn raised a matter for the Minister for Roads and Ports seeking his support and funding, I assume, for a right-turn arrow at the Maroondah Highway–Fletcher Road–Kimberley Drive intersection in Chirnside Park, and I will make sure the minister is aware of that.

Finally, the member for Yan Yean raised a very timely matter for the Minister for Finance, WorkCover and the Transport Accident Commission seeking his support and strong advocacy to keep the road toll as low as possible over the festive season.

Finally, Speaker, can I say good wishes to you, the Clerk and all the staff of the Parliament and, echoing the member Yan Yean's comments, wish a safe Christmas to all members of the house.

The SPEAKER — Order! The house is now adjourned.

House adjourned 11.45 p.m.