PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 10 December 2009

(Extract from book 16)

Internet: www.parliament.vic.gov.au/downloadhansard

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 and Minister for Racing	The Hon. R. J. Hulls, MP
Treasurer, Minister for Information and Communication Technology, and Minister for Financial Services	The Hon. J. Lenders, MLC
Minister for Regional and Rural Development, and Minister for Skills and Workforce Participation	The Hon. J. M. Allan, MP
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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 Industry and Trade, and Minister for Industrial Relations	The Hon. M. P. Pakula, MLC
Minister for Roads and Ports, and Minister for Major Projects	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 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 Lupton, Mr McIntosh and Mr Walsh. (*Council*): Mr D. 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, Mr Lim and Ms Thomson. (*Council*): Mr Atkinson, Mr D. Davis and Mr Tee.

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*): Ms Kairouz, Mr Noonan, Mr Perera, Mrs Powell and Ms Wooldridge. (*Council*): Mr Finn and Mr Scheffer.

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, Mr Foley and Mrs Victoria. (*Council*): Mrs Kronberg 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 Dalla-Riva, Ms Huppert. Ms Pennicuik and Mr Rich-Phillips.

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

Rural and Regional Committee — (*Assembly*): Mr Nardella 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 Burgess, Mr Carli, Mr Jasper and Mr Languiller. (*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

Deputy Leader of the Parliamentary Labor Party and Deputy Premier:
The Hon. R. J. HULLS

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

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THURSDAY, 10 DECEMBER 2009

Thursday, 10 December 2009

The SPEAKER (Hon. Jenny Lindell) took the chair at 9.33 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 80 to 82, 192 and 250 to 271 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

Mr CAMERON having given notice of motion:

Mr McIntosh — On a point of order Speaker, on the matter that the Minister for Police and Emergency Services has just referred to, as I understand it, the debate has not concluded in the upper house. Therefore this motion is out of order.

The SPEAKER — Order! I do not uphold the point of order. This is a notice of motion. The test of whether the motion is competent comes when the motion is moved, but as a notice of motion the Speaker checks its language and whether it is possible to debate such a motion. There is no point of order.

Mr McIntosh — On a further point of order, Speaker, the argument of the opposition is that this is an incompetent motion. It cannot come before the house; there is no basis for it. The fact that the minister is moving the motion means it must have some substance to it, and there is no substance to it because the bill is still before the upper house.

The SPEAKER — Order! I do not uphold the point of order. It is a notice of motion, it is not a motion before the house.

Dr Napthine — On a further point of order, Speaker, in relation to the same issue, the notice of motion presumes the outcome of deliberations in the other house. I put it to you, Speaker, that it is absolutely out of order even in the terms of a notice of motion to anticipate the outcome of debate in the upper house. Therefore I would suggest that as a notice of motion this is inappropriate; it is outside the standing orders and should be rejected. Otherwise we will potentially have members giving notice of motions with regard to referring matters to the Dispute Resolution Committee before those matters are debated in either this house or the other house.

Potentially every time there is a bill members will be moving notices of motion referring it to the Dispute Resolution Committee before it has been debated in the lower house, the upper house — or even before it goes to cabinet. That is how ludicrous the process would be if this notice of motion were allowed, because the notice of motion is anticipating an outcome in the upper house that is yet to be achieved. The debate is still continuing there, Speaker, and therefore I suggest that this notice of motion should not be accepted in any way, shape or form.

The SPEAKER — Order! Notices of motion have been a very contentious issue — more so for the Chair than for any other member in the chamber — for some considerable time. There have been many occasions on which I have asked a member not to give a notice of motion and have been ignored. Notices of motion have ranged from the ludicrous to the bizarre, yet none of them has been disallowed, and I will not disallow this notice of motion in that it is notice of a motion, not a motion. There is no point of order.

Further notices of motion given.

PETITIONS

Following petitions presented to house:

Mental health: Bass Coast housing

To the Legislative Assembly of Victoria:

Bass Coast has an approximate population of 30 000, the region has no affordable one-bedroom units, particularly in the town of Wonthaggi, for single people with a chronic mental illness under the age of 55.

We, the undersigned concerned citizens of Victoria, ask the Victorian Parliament, the Minister for Housing and the Minister for Community Services to support our petition and act immediately to provide long-term housing for single people with a chronic mental illness.

By Mr K. SMITH (Bass) (42 signatures).

Leongatha Hospital: funding

To the Legislative Assembly of Victoria:

The petition of the citizens of Leongatha and South Gippsland generally draws to the attention of the house the serious state of disrepair of the Leongatha Hospital and the consequent threat to the provision of health services in the region.

The petitioners therefore request that the Legislative Assembly of Victoria calls upon the Brumby Labor government to fund the development of a new hospital at Leongatha and to do so as a matter of urgency.

By Mr RYAN (Gippsland South) (3326 signatures).

Rail: Mildura line

To the Legislative Assembly of Victoria:

This petition of residents of Victoria draws to the attention of the house the reinstatement of the Mildura–Melbourne passenger train.

The petitioners register their request that the passenger service be suitable for the long-distance needs of the aged and disabled who need to travel for medical treatment, for whom travelling by coach or car is not a comfort option, and for whom flying is financially and logistically prohibitive.

The petitioners therefore request that the Legislative Assembly of Victoria reinstate the passenger train to service the needs of residents in the state's far north who are disadvantaged by distance.

By Mr CRISP (Mildura) (49 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) (40 signatures).

Rail: Warragul park-and-ride facilities

To the Legislative Assembly of Victoria:

The petition of the undersigned residents of Narracan draws to the attention of the house concerns held over the lack of development taking place at Warragul railway station to provide park-and-ride facilities for commuters.

In particular, concern surrounds the requirement that Baw Baw Shire now develop a master plan for parking within the Warragul CBD together with the Warragul railway park-and-ride upgrade creating added cost and further delays in the completion of the project.

The petition therefore requests the Legislative Assembly of Victoria to direct the government to take immediate action on its previous commitment to establish park-and-ride facilities at the Warragul railway station.

By Mr BLACKWOOD (Narracan) (263 signatures).

Ombudsman: powers

To the Legislative Assembly of Victoria:

The petition of Mr Hugh Doherty, resident of the Oakleigh electorate in Victoria, draws to the attention of the house:

In his 2008 annual report to the Victorian Parliament, the Victorian state Ombudsman, Mr George Brouwer, made the following unequivocal claim, 'I am able to independently investigate, review and resolve complaints concerning the administrative actions of:', he then lists a number of government/private entities under his jurisdiction.

Mr Brouwer also stated, 'We will provide:

> an independent, impartial and effective complaints management system
>
> accessible, flexible and responsive services'.

Also according to:

> *Unreasonable Complainant Conduct: Interim Practice Manual* August 2007;
>
> a joint project of the Australian parliamentary ombudsman;
>
> 'Part C: 3.1
>
> every complainant deserves to be treated with respect
>
> no complainant, regardless of how much time and effort is taken up in responding to their complaint, should be unconditionally deprived of having their complaint properly and appropriately considered'.

I made a very serious complaint to Mr Brouwer concerning the totally unacceptable practices and processes of the Department of Human Services and also, the most serious unprofessional misconduct of a number of senior public servants of the Department of Human Services.

In a response to my complaint to Mr Brouwer, I received a letter from Mr Dallas Mischkulnig, director, legislative compliance. He stated, 'In conclusion, I appreciate your concerns as detailed in your correspondence. However, this office does not propose to make any inquiries regarding the issues raised'.

In a further response, from Mr Ian Killey, PSM general counsel, he stated, 'I do not believe, therefore, that this office can be of any further assistance to you and this matter will be concluded and further correspondence on these issues will be noted but not responded to'.

This seriously questions the credibility, integrity, impartiality, respect for individuals' rights and independence of the Ombudsman Victoria office. As the Ombudsman and officers of the Ombudsman are exempt from the Freedom of Information Act 1982 this allows them to evade transparency, accountability and scrutiny.

My complaint was neither investigated or resolved; furthermore, this seriously questions how many more complainants receive these totally unacceptable responses to justifiable complaints.

The Attorney-General, Mr Rob Hulls, MP, has stated, 'that anybody who has a public role be held to account'. He also stated, 'all members of the Brumby government are of the view that accountability is paramount and we are held to account for the actions that we undertake on a daily basis'.

The decision of the Ombudsman Victoria office not to investigate my legitimate complaint is contrary to both Mr Brouwer's and Mr Hulls's rhetoric. It amounts to an unjustified denial of due process and natural justice. It is contrary to the Brumby Labor government's commitment of open, transparent and fair government. It also contravenes the Charter of Human Rights and Responsibilities Act 2006.

The government's response to these issues, 'that the Ombudsman is an independent officer of the Parliament. It is not appropriate or within the power of the Premier to intervene in a decision taken by the Ombudsman in regard to his assessment of whether he will investigate a complaint, in this instance your complaint', is totally unacceptable.

For the Ombudsman and officers of the Ombudsman to be exempt from the Freedom of Information Act 1982 and to be protected by section 29 of the Ombudsman Act 1973 is unconstitutional.

I therefore request that the Legislative Assembly act now, to establish an open, transparent and fair complaints resolution management process and to protect the public from the appalling practices and processes of the Ombudsman Victoria office.

By Ms BARKER (Oakleigh) (1 signature).

Tabled.

Ordered that petition presented by honourable member for Bass be considered next day on motion of Mr K. SMITH (Bass).

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

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 Narracan be considered next day on motion of Mr BLACKWOOD (Narracan).

STANDING ORDERS COMMITTEE

Petitions, the opening of Parliament and the passage of legislation

Ms BARKER (Oakleigh) presented report, together with appendices.

Tabled.

Ordered that report and appendices be printed.

DOCUMENTS

Tabled by Clerk:

Forensic Leave Panel — Report 2008

Freedom of Information Act 1982 — Report 2008–09 of the Attorney-General on the operation of the Act

Ombudsman — *Whistleblowers Protection Act 2001*: Investigation into the handling of drugs exhibits at the Victoria Police Forensic Services Centre — Ordered to be printed

Police Integrity, Office of:

Report 2008–09 under s 30L of the *Surveillance Devices Act 1999*

Report 2008–09 under s 31 of the *Crimes (Assumed Identities) Act 2004*

Statutory Rules under the following Acts:

Electricity Safety Act 1998 — SR 151

Environment Protection Act 1970 — SR 152

Fair Trading Act 1999 — SR 148

Greenhouse Gas Geological Sequestration Act 2008 — SRs 149, 150

Travel Agents Act 1986 — SR 147

Subordinate Legislation Act 1994:

Ministers' exemption certificates in relation to Statutory Rules 147, 148, 152

Minister's infringements offence consultation certificate in relation to Statutory Rule 151

Terrorism (Community Protection) Act 2003 — Reports 2008–09 under ss 13 and 13ZR.

Mr McIntosh — On a point of order, Speaker, I note the motion from the Leader of the House regarding the sitting of the house was skipped over. I was just wondering what happened to that particular matter on the agenda before us.

The SPEAKER — Order! The Leader of the House is not in the chamber, and there is no motion.

Mr McIntosh — Perhaps the Speaker could explain to the house exactly what are the implications of that failure to move the motion.

The SPEAKER — Order! The sitting of the house motion can be done at any time in a break of business.

MEMBERS STATEMENTS

Schools: Catholic sector

Mr DIXON (Nepean) — The house would be aware that the government recently announced a commitment to increase funding for non-government schools. Once again we have seen the Brumby government following the coalition's educational leadership. I along with other members of the coalition was pleased to receive letters from a number of Catholic schools. I would like to quote the following letter to the house:

> As you would be aware the state government recently announced a new funding deal for Catholic schools in Victoria. Given this announcement, I thought it timely to thank you and your party for your commitment announced last year, to funding Catholic education at 25 per cent of the cost of educating a Victorian government school student.
>
> Our funding goal remains 25 per cent of the cost of education in a Victorian government school. Your commitment to this goal continues to be appreciated by the Catholic school community.
>
> Thank you again for the Liberal-Nationals coalition support of Catholic education and your commitment to the principle of parental choice in the education of their children.

I urge the Brumby government to fully initiate the coalition policy and provide ongoing certainty to Victoria's non-government schools by funding non-government schools to 25 per cent of the cost of educating a child in a Victorian government school.

Vocational education and training: independent watchdog

Mr DIXON — On another matter, I note that Victoria has decided not to sign up to the plan from the Council of Australian Governments to set up an independent national watchdog for vocational education and training. The Brumby government is hardly in a position to go it alone given its appalling record in monitoring and prosecuting rogue colleges here in Victoria. A national approach would surely protect Victorian students better than the current arrangements.

Racing: jumps events

Mr HULLS (Attorney-General) — Yesterday in this place the member for South-West Coast made an allegation that I threatened to abolish Racing Victoria Ltd if it did not ban jumps racing. He said he had been told by independent sources that I threatened to abolish RVL and replace it with a racing commission covering all three codes unless RVL banned jumps racing. An article setting out this allegation appears in one of today's newspapers. The allegation made by the member for South-West Coast is incorrect, untrue and false. But worse than that, the member knew it to be false.

Australian Jumps Racing Association president, Rodney Rae, has stated that if the shadow minister's allegations are correct, I should resign. Mr Rae, to be consistent, should have said that if they are not correct and the shadow minister has told untruths, then the shadow minister ought resign or be sacked. However, it appears Mr Rae does not have the guts to do that, as he was riding side-saddle with the shadow minister on a horse called Falsehood. All he can do is run spurious innuendos against my wife, of all people, without any eye to actual facts.

RVL is an independent body supported by the opposition to make decisions for and on behalf of the broad racing industry. I fully understand people's emotions and differing views about decisions that RVL may make from time to time, and in particular this recent decision about jumps racing. However, it is important that these arguments are based on facts rather than fiction.

I trust that the member for South-West Coast will now come into this place, if he has the guts, and apologise for his outrageous contribution and the lies he told in this place yesterday.

Swan Hill electorate: shop local campaigns

Mr WALSH (Swan Hill) — I have been supporting communities throughout my electorate with their shop local for Christmas campaigns. Putting local businesses first is an excellent initiative, because the money stays in those towns, creates jobs in those local communities and there is usually better service within a local community if you later need to follow up some issues with your purchases. Putting local businesses first is also important because they support our sporting clubs and our community clubs through sponsorship. It is all very well for people to want a prize at the end of the cricket season or the end of the football season, but if they have not shopped in those towns, then those

businesses will not have the money to support those clubs.

Quite a few communities in my electorate have prizes with the names of people who shop locally going into a draw. The St Arnaud community has a $5000 prize, as does the Charlton community. Donald has a $10 000 prize, and Donald was also one of the first communities to start this particular program a number of years ago. Warracknabeal has a $7500 prize for those who shop locally.

I congratulate the local businesses in those communities for this excellent initiative. By ensuring that people shop locally, money stays in local towns and jobs are created in those towns.

Norris Bank Primary School, Bundoora: centenary

Mr BROOKS (Bundoora) — In May this year Norris Bank Primary School in Bundoora celebrated its centenary with a range of activities, including an open day. Norris Bank Primary School is an excellent local school in my electorate served by dedicated teaching staff, volunteers and parents. Over its 100 years it has grown from a small rural school to a thriving suburban centre of education and community activity. Major building work is currently under way at the school as a new library and learning spaces are being constructed thanks to a $2 million allocation as part of the federal government's Building the Education Revolution program.

While the federal government's funding was certainly much needed and a welcome injection of funds, I did raise in this house in September this year the fact that further funding would help to upgrade the rest of the school's buildings. I am delighted that this week the Minister for Education has allocated $500 000 to Norris Bank Primary School for this purpose. The school is now looking forward to working with the Brumby government, through the Department of Education and Early Childhood Development, to utilise the funding for maximum benefit.

I would like to thank the minister for considering the issues that I raised and for helping to ensure that this great school and its student body of over 200 children are provided with the very best facilities in which to learn and develop. This is another example of the stark contrast between Labor governments which invest in education and rebuild schools and Liberal governments which close them down and sell them off. The fact that the Liberal Party opposed federal funding for schools like Norris Bank Primary School is yet another reminder of that party's callousness.

I congratulate Norris Bank Primary School on the work it does in the local community and for its commitment to providing quality education. I commend the minister and the Brumby government for investing this funding in this great local school.

Liquor: licences

Mr O'BRIEN (Malvern) — Liquor licensing policies highlight the difference between the tired, old, failed approach of the Brumby government and the innovative, practical ideas of the coalition. Labor is raising liquor licence fees by $20 million dollars next year on top of a $5 million increase this year. This massive tax grab is hitting small businesses and community groups across the state, costing jobs and cutting sponsorship of local events. But Labor does not care about the impact of this tax grab, even claiming:

> The proposed renewal fees are not considered a burden on business.

Labor expects the responsible licensees in Victoria's towns and regions to pay for this government's failure to clean up King Street.

By way of contrast, the coalition has announced two new policies on liquor licensing. The first is a 5-star rating system which will offer discounts on liquor licence fees for those venues with good track records. Under the coalition, the better your record, the bigger your discount. We will reward those licensees who act responsibly.

We will also introduce a driver demerit points-style system for liquor licences. Once specified infringements are admitted or proven, demerit points are incurred. If sufficient points are accrued, a venue will have its liquor licence suspended automatically — no appeal, no excuses. That is the choice Victorians have when it comes to dealing with rogue bars and clubs — a Liberal-Nationals coalition that will shut them down automatically or a failed Labor approach that keeps them open indefinitely.

Oakleigh Cannons Junior Football Club: Smartplay program

Ms BARKER (Oakleigh) — Congratulations to the Oakleigh Cannons Junior Football Club for again being recognised as one of the most safety oriented clubs in Victoria. In November 2008 an article in the *Australian* featured the work of the club in ensuring that safety for

children and young adults in sport is of the highest priority.

Smartplay, which is Sports Medicine Australia's sport injury prevention program funded by VicHealth and Sport and Recreation Victoria, has now produced a fact sheet using the Oakleigh Cannons junior sport safety program and promotes this case study as an example of how a club can achieve sport safety and how safety can contribute to overall club success and how a safety program can be implemented within any sports club.

The very hardworking and dedicated junior committee and coaches have taken a strategic approach to the provision of opportunity for boys and girls. It includes the introduction of a volunteer management system called the team support system, practising injury prevention particularly through first aid training and support for every team and appointing qualified coaches.

The Oakleigh Cannons Junior Football Club includes over 460 players across 35 teams, from under-5s to under-18s, with close to 60 sports first aiders. I thank in particular John Kostopoulos, Christine Agapitos, Karen Prokopiou, Chris Prokopiou, Helen Kraloglou and Helen Skouteris for their dedication to so many children and young people in the community and their hard work to ensure that children and young people participate in sport and other physical activities in a safe and non-discriminatory environment.

As Smartplay indicates in the fact sheet:

> Oakleigh Cannons Junior Football Club has worked hard to implement strong practices in sports safety.

Hospitals: waiting lists

Mrs SHARDEY (Caulfield) — I raise the issue of the disgraceful treatment of David Traynor, a man who suffers a debilitating illness called torticollis. This illness causes frequent painful spasms of the neck, making it difficult for him to walk or even eat.

He was placed on the elective surgery waiting list at the Monash Medical Centre in August 2008 as a category 2 patient for a neurosurgical procedure to relieve his condition. Unbeknown to him, in February 2009, without further surgical assessment, he was changed to a category 3 patient and the waiting clock was restarted from that time. This was confirmed in October and November this year, some eight months later, when he was finally told of his category change and that he would have to wait until February next year for his operation. That will be one and a half years after he was first placed on the waiting list. David has now given up and removed himself from the Monash waiting list.

This is yet another manipulation of the waiting list by the Brumby government. If patients cannot be hidden on the not-ready-for-care waiting list, under this Labor government patients' surgical urgency categories are simply changed without their knowledge or agreement. What a disgrace!

Bushfires: preparedness

Ms D'AMBROSIO (Mill Park) — I wish to report to the house progress on the Melbourne bushfire protection program (MBPP) as it relates to the Plenty Gorge in my electorate. In July this year the Minister for Environment and Climate Change announced a $21 million package over the next four years to improve public land around the outer metropolitan fringes and make them fire ready.

The Plenty Gorge parkland includes 1250 hectares of beautiful landscape. It is one of Melbourne's most significant protected landscapes for threatened and significant species, including the endangered growling grass frog. As part of our enhanced strategy to prepare for fires, an autumn burn and two spring burns have been completed this year, and another autumn burn is planned for next year.

Planned burns for fuel reduction, fuel clearing and slashing and the construction of fuel breaks, together with improved access for rapid emergency response, are key elements of the MBPP. Further, two additional slip-on vehicles have been allocated to the Plenty Gorge area and firefighting capacity has been increased with additional staff. Nearby residents have been advised through community information sessions about how to prepare themselves for ember attack, and I am very pleased to note that the Department of Sustainability and Environment's Plenty Gorge staff and the local South Morang Country Fire Authority brigade are locked in with community consultation to have everyone fire ready.

Southern Grampians Adult Education: graduation event

Mr DELAHUNTY (Lowan) — On Friday, 27 November my wife, Judie, and I were honoured to be part of a youth graduation and presentation night in Hamilton. This was a celebration of achievements for 19 young students in youth education and Victorian certificate of applied learning programs who have been disengaged from mainstream schooling. It was the most memorable and special event.

I congratulate the students, their families and friends who put in a great effort for this presentation night and those who made speeches highlighting their achievements for the year. Congratulations also to the committee and staff of Southern Grampians Adult Education for conducting these programs to help our disengaged youth.

Ambulance Victoria: vacuum immobilisation mattresses

Mr DELAHUNTY — On another matter, my thanks go to the western Victorian Harley-Davidson owners group for its generous donation of a vacuum immobilisation mattress for use by Ambulance Victoria in western Victoria. This equipment is used for the immobilisation and safe transport of patients who have suffered spinal injuries and fractures. I was proud to be involved in the presentation of this new equipment at Old Dadswells Town last Sunday. It will be located at Horsham. Other vacuum mattresses have been purchased by community groups and are located at Nhill and Edenhope.

This item of emergency equipment is not only of great benefit to patients but also to the occupational health and safety of staff when lifting or transporting patients. I am informed this important equipment, costing about $1300, is standard issue for ambulance services in other states. However, it is not here in Victoria. This is not good enough and I call on the government to get behind this important program and provide vacuum immobilisation mattresses to Ambulance Victoria.

Disability services: national insurance

Mr LIM (Clayton) — I would like to express my support for a Medicare-style national insurance scheme for Australians with serious disabilities as proposed by the federal government. One of the options is a no-fault insurance scheme which would provide lifetime care for people with disabilities. So far thousands of families in Australia with disabilities are not able to receive adequate care and medical support. The population of people who have disabilities is growing very fast. There are 1.5 million Australians at the moment, and it will be 2.3 million in 2030. Therefore we should increase awareness in our community about the uncertainties of our current insurance system. Under the current system people are covered only when they are injured in the workplace or when they are involved in a motor accident, but if they acquire a disability, are born with a disability or have a child with a disability then there is no entitlement. The goal of the scheme would be to provide lifetime care for the disabled which would relieve pressure on families and charities. This scheme would be funded by a levy across our population. Every Australian should support and pay for it as it will create a safety net for everyone in the country to live with pride and dignity and to have a good quality of life.

Public transport: myki ticketing system

Mr THOMPSON (Sandringham) — A constituent from Beaumaris recently wrote to me using the following terms:

> I have recently trialled myki and can assure that it is —

I will take out an Australian vernacular description he used and say ‘not working very well’. The letter continues:

> I today got on the train at Brighton Beach, myki worked fine, but could not get off the Flinders Street station without attendant assistance.
>
> To be brief, the system works when you get on the train, but not when you get off!
>
> As an adult, I have been using public transport since 1974, and have used very many different types of ticketing. This one is by far the worst.
>
> The myki system is —

I will again replace the Australian vernacular he uses, this time with the words ‘not working very well’. He then said:

> It just does not work.
>
> Whatever was wrong the previous system, and why ever have taxpayers paid —

I will correct the figure he uses; it is $1.3 billion —

> … to fix a problem which did not exist?
>
> I don’t need to tell you that, on the basis of this issue alone, I won’t be voting Labor next election.

He then goes on to note:

> Feel free to quote me in Parliament.
>
> It is sad that so much money has been wasted, which could have been better spent on our third-rate public education system.

In his correspondence indirect reference is made to another matter — that is, the rip-off of Victorian working families regarding the traffic lights operating on the corner of Nepean Highway and Bay Road, Cheltenham, which has taken $4 million to $5 million from the local community and which is a continuing major concern to Victorian electors.

John Forbes

Mr NOONAN (Williamstown) — I rise to congratulate John Forbes, who recently announced his retirement as chairman of the Victoria Police Blue Ribbon Foundation after more than 20 years of service. John's involvement with the foundation began in 1988, after the tragic murders of constables Steven Tynan and Damien Eyre in South Yarra, when a small group was formed to ensure that the two officers would never be forgotten. Since then the foundation has extended its reach across the Victorian community, raising more than $5 million to fund trauma facilities at public hospitals in the names of police killed in the line of duty.

As a result of the foundation's work, hospitals in Melbourne, Bendigo and Shepparton all have facilities that bear the names of Steven Tynan and Damien Eyre. This work is replicated in the many public hospitals across the state, ensuring that Victorians never forget the price some police pay when serving our community. Through all of this, John Forbes has been at the helm, serving with the committed board of community leaders and a small staff led by Neil Soullier.

On Australia Day 2001 John's contribution was appropriately recognised when he was awarded the medal of the Order of Australia for his service to the community and the Victoria Police Blue Ribbon Foundation. John's contribution reminds us all that there can be no greater reward in life than to serve your community. I wish John and Fay Forbes many more happy times together on their farm Prairie Park at Mitiamo.

Christmas felicitations

Mrs FYFFE (Evelyn) — I wish every member of our police force, Metropolitan Fire Brigade, Country Fire Authority, State Emergency Service, the Red Cross, the Country Women's Association, all hospital staff and the vast army of Victoria's volunteers a very happy Christmas and new year. I pray the holiday season is quiet, uneventful and peaceful. I thank them from the bottom of my heart for the service they gave during the horrific bushfires.

Coldstream Primary School: funding

Mrs FYFFE — The Coldstream Primary School community is outraged. The school received $850 000 as part of a federal government program designed to stimulate the economy. Construction was suspended until further notice after it was discovered that three new classrooms and a common area could not be built for $850 000.

I call on the Minister for Education to show support for Coldstream Primary School to prevent a likely downgrade in the plans for the school, which is in desperate need of more space for pupils. They have been left with a hole in the ground. It is a school that has a close community, one that has difficult needs at times. The staff members work very hard, and they are now being placed in an impossible situation.

Agriculture: farmers rights

Mrs FYFFE — Under section 71 of the Shire of Yarra Ranges draft Electronic Bird Deterrent Local Law 2009 a farmer must not use an electronic bird deterrent where it makes sound for more than 35 per cent of the time, or all of the time during a 10-minute period. I call on the government to do as it promised several years ago and to introduce rights for farmers in these areas.

Students: *Switched on to Learning* booklet

Ms RICHARDSON (Northcote) — On Monday, 30 December at my electorate office enthusiastic years 4, 5 and 6 students from the Penders Grove and Preston South primary schools presented *Switched on to Learning* — a fabulous booklet put together by students as the culmination of a three-year project to understand what it is that engages students at school.

The students, members of the student action teams at the two schools, included Chris, Crystle, Douha, Ibrahim, Afua, Jacob, Liam, Matty, Rennea, Sarah, Shai and Shkita from Penders Grove Primary School, along with MuAad, Jakob, Nathan, Josh, Tania, Anh, Caroline, Sharna, Claire, Yermurraki, Aleks and Mikayla from Preston South Primary School. Their commitment and drive is an inspiration for all of us. Teachers Jeff Jackson and Sam Ross along with principals Glendy Jakober and Therese West provided enthusiastic encouragement and support.

The students explained to me why they believed engagement is important, what factors affected student engagement and what could be done to improve it. I also learnt about the forums, surveys and teacher activities the student action teams had undertaken to get a handle on these concepts and to help other students to become engaged.

The project is part of the Student Initiatives in School Engagement with funding from the CASS Foundation Ltd. Valuable assistance was given by Roger

Holdsworth from the Australian Youth Research Centre at the University of Melbourne.

The booklet — the work of the students themselves — is a fantastic demonstration of their commitment and effort. I have no doubt that their fellow students will find their schooling environment enhanced by this project, and the wider school communities will benefit greatly as a consequence.

Bushfires: fuel reduction

Mr WAKELING (Ferntree Gully) — I wish to raise concerns about the problems faced by Rowville residents of Jubilee Drive and Monbulk Crescent who are having great difficulty in requiring Melbourne Water to clear undergrowth along the Monbulk Creek in the Koolamara Waters wetlands reserve.

Residents have been unable to convince Melbourne Water to clear this parkland and have resorted to taking up their issue in the local newspaper. I call upon the Brumby government to ensure that this land is adequately maintained to ensure that the concerns of neighbouring residents are allayed in the lead-up to this year's bushfire season.

The fear of a potential bushfire is of great concern to many residents in my electorate. I have been recently contacted by concerned residents about the build-up of fallen trees along the road reserves on Kelletts and Wellington roads, Lysterfield. The sections of both roads are located close to the Lysterfield State Park.

Many Lysterfield residents recently attended a Country Fire Authority meeting regarding the need to prepare for the upcoming bushfire season. Residents were advised to maintain their properties to reduce fuel loads; however, equally the state government needs to ensure that it is undertaking its own heavy lifting to reduce the fuel loads on its reserves. Accordingly, I call upon VicRoads to work with Knox council to reduce the level of roadside fuel loads on both of these major arterials in Lysterfield.

Schools: chaplaincy program

Mr WAKELING — On another matter, I wish to raise concerns about the future of the school chaplaincy program. This is a wonderful program that operates within many schools in my electorate, and I trust that the government will work with the federal government to ensure that this program continues.

Limbs 4 Life: activities

Mr PERERA (Cranbourne) — It is with a great honour that I rise to speak about an organisation that is doing so much in supporting amputees, not only in Victoria but also across Australia. I had the pleasure recently of taking part in a fundraiser at the Sandhurst club and attending a dinner supporting this great cause. Unfortunately, due to the increase in diabetic and vascular disease-related amputations, no less than 4200 amputations are performed nationally each year.

While Limbs 4 Life began as a Victorian operation, in four years the organisation has fast become the peak body for amputees throughout Australia. There is no other organisation which provides support services to this community who seek access to peer-to-peer assistance and information.

I, too, believe that no-one should go through the trauma of limb loss alone and that access to programs provided through Limbs 4 Life provide a positive vehicle for every individual's personal empowerment and rehabilitation.

I take my hat off to Melissa Noonan, executive officer of Limbs 4 Life, for her commitment and passion to making a difference, and also to Ron Smith, media director of the Sandhurst Club, for playing an integral part in the recent events I attended in support of Limbs 4 Life.

Kidney Health Australia

Mr PERERA — Recently I also had the pleasure of joining other members of Parliament in the parliamentary gardens to help Kidney Health Australia — —

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

Small business: government charges

Mr NORTHE (Morwell) — Regional businesses continue to struggle under the Brumby government's ever increasing fees, such as the fire services levy (FSL) and liquor licence fees, which are making it extremely difficult for many businesses to remain financially viable. For example, in 2006 a $1000 basic insurance premium for regional businesses incurred an FSL fee of $220, yet this figure is now $840 — equating to an increase of 281 per cent. Of course stamp duty and GST are included on top of the FSL, so a $1000 basic insurance premium including associated fees now costs businesses $2226.40. In 2007 general liquor license renewal fees were $166.10, but as of

2010 this figure will rise to $795.00, which equates to an increase of 378 per cent.

The Brumby government's formula that applies to new liquor licence fees has created much consternation for many businesses and not-for-profit organisations that have been caught up in this mess. It is little wonder that such significant cost imposts have forced the Brumby government to introduce a liquor licence fee hardship policy, given the huge community backlash.

The double whammy of the substantial cost increases of both FSL and liquor licence fees threatens the future viability of many country pubs and businesses — for example, an irate publican advised me recently that he is reconsidering his future in the industry, given these cost imposts. In relation to the new liquor licence fees, the Brumby government has previously stated that 'the proposed risk-based renewal fees are not considered a burden on businesses'. I can inform the Brumby government that it is wrong, wrong and wrong.

Global Alliance for Vaccines and Immunisation

Mr PANDAZOPOULOS (Dandenong) — I rise to recognise and support the work of the Global Alliance for Vaccines and Immunisation (GAVI), which recently had its once every four years forum in Hanoi. For the first time ever it invited parliamentarians from Europe and from the Asian Forum of Parliamentarians on Population and Development, which has a chapter in Canberra that I participate in. The Global Alliance for Vaccines and Immunisation is a private-public global health partnership committed to saving children's lives and protecting their health by increasing access to immunisation in poor countries.

We have a fantastic maternal and child health system. From birth to their early years, kids receive regular vaccinations and immunisations, and we have eliminated a whole lot of basic diseases that are still prevalent around the world. The work of GAVI is about bringing together the United Nations Children's Fund, the World Health Organisation, the World Bank, donor countries like Australia, donor receiving developing countries, global non-government organisations, the pharmaceutical industry and philanthropists to make a joint collaborative effort to ensure that vaccines and immunisation are advanced around the world and to ensure that prices come down through this, and I am pleased that Australia is a big contributor to these programs.

Unfortunately, however, there are still many millions of kids around the world who do not receive the basic vaccinations we take for granted in places like Australia. Hundreds of thousands of children die every year. That is why organisations like GAVI, which was started after Davos in 1999 by Bill and Melinda Gates, is such a wonderful organisation of global cooperation that we should continue to participate in.

Bushfires: neighbourhood safer places

Mr TILLEY (Benambra) — As we come to the end of 2009, one of the enduring images which will be associated with this year in history is that of the Black Saturday fires. There has been a royal commission into the matter, which has provided two interim reports. The first lists some 51 recommendations to improve the public's safety during times of major fire. The Premier, upon the release of the first interim report, faithfully promised Victorians that his government would implement all of these recommendations immediately. It came as no shock when the Premier did not live up to his word on bushfire safety, as Labor has not done so 25 times before over its 10 long years in government.

Labor has failed north-eastern Victorians on neighbourhood safer places. It promised to deliver them, and it has failed. Labor dumped its duty on underprepared and underresourced local governments. Of the nearly 300 possible sites for neighbourhood safer places, 88 have not been assessed. All possible neighbourhood safer places sites in north-eastern Victoria will form part of the 88 not yet assessed. This means that of the 104 neighbourhood safer places sites designated for this fire season, not one of them will be in north-eastern Victoria. It is a disgrace. Under Labor north-eastern Victorians do not count, notwithstanding the hard work and efforts of both career and volunteer firefighters.

Verchovyna Ukrainian dance ensemble

Mrs MADDIGAN (Essendon) — On 29 November I had the great pleasure to attend a performance — *The Art of Dance Concert* — put on by the Verchovyna Ukrainian dance ensemble in Essendon. This dance ensemble has reached a very high level of performance. It was established in 1966 and has been very significant in ensuring that Ukrainian dance forms are still performed in Australia and are recognised.

The concert featured dances from many regional areas of Ukraine, and the dancers performed at an exceptionally high level. They started off with some very young dancers — the youngest would have been 3 or 4 years of age — up to quite experienced dancers, and the school now has well over 100 students. I congratulate the Ukrainian community on its efforts to

maintain the Ukrainian culture while becoming part of the broader Australian culture.

I particularly acknowledge the Moravski family for their work in the dance ensemble area, as well as a lot of other areas relating to Ukrainian activities. They have worked tirelessly over at least two generations to ensure that they can assist young people to have the great experience of dance. It was a great concert and I know that everyone in the packed Ukrainian hall in Russell Street, Essendon, very much enjoyed it.

Narre Warren South electorate: carols by candlelight

Ms GRALEY (Narre Warren South) — Hark the herald angels sing! Last Saturday over 2000 people gathered for the annual carols by candlelight in the parkland surrounding Oakgrove Community House. Hosted by the Metro Church, it was a terrific family event — just how Christmas should be. A big thank you to Julie Kelly from the church who worked tirelessly to make this event such a success but above all to ensure it is a real community event. Julie, you are an angel. Many thanks to the general sponsors, especially FoodWorks, Marino and Gabrielle Biviano, Paul Jones from Bendigo Bank, and Carol Bosward and Sandra Rotunno from Contours. They are all terrific supporters of the Narre Warren South community.

CONSUMER AFFAIRS LEGISLATION AMENDMENT BILL

Second reading

Debate resumed from 26 November; motion of Mr ROBINSON (Minister for Consumer Affairs).

Government amendments circulated by Mr ROBINSON (Minister for Consumer Affairs) pursuant to standing orders.

Mr O'BRIEN (Malvern) — The opposition will not be opposing this bill which seeks to amend the Prostitution Control Act 1994 and consolidate, modernise or repeal many consumer acts under the consumer affairs legislation modernisation project.

As this is a fairly comprehensive bill dealing with many different types of consumer affairs legislation, by necessity I will not be able to go through it in a clause by clause sense, but in the time available to me I will deal with as many of the substantive issues as I can.

Firstly I would like to take the house to the amendments provided in the bill in relation to the Prostitution Control Act, which under the provisions in part 7 of the bill will be renamed. The government has decided its policy on prostitution is to get rid of the word 'prostitution', and it will now call it 'sex work'. This is not something that the opposition opposes, so the Prostitution Control Act 1994 will become the Sex Work Act 1994 and all references to 'prostitution' in that legislation will be replaced with references to 'sex work.'

There are some very positive measures in part 7 of the bill. Doubling the penalties for operating an unlicensed brothel to 1200 penalty units is something this side of the house certainly supports. We think it is entirely appropriate that those people who run unlicensed brothels are hit, and hit hard. Not only are they doing something illegal but quite often unlicensed brothels do not meet the health standards that are required of licensed brothels, and there are concerns about evasion of taxation, sexual trafficking and sex slavery. People who run unlicensed brothels are demonstrating a disrespect for the law, and it is not unreasonable to think that may well flow over into other forms of illegal activity. We think having suitably tough penalties for operating unlicensed brothels is appropriate.

Other measures in part 7 are cause for some level of concern for the opposition. I will put those on record, and I hope that at the appropriate time the government will respond to them. The first of these relates to the decision to remove the requirement for monthly swab tests for sex workers. That is to be replaced by a provision authorising the Minister for Health to determine the times at which swabs are taken. We would be very concerned if the Minister for Health were to impose a requirement that is less onerous than that set out in the current legislation. The health of sex workers and their clients is one of the paramount considerations in the regulation of the Victorian sex industry by this Parliament. For quite some time we have had a requirement in the Prostitution Control Act for monthly tests to be undertaken, and for good reason — because it is necessary that people who engage in work of that nature be required to ensure that their health is up to standard and is not presenting a risk to themselves or to their clients.

In the briefing session I was advised that the government wanted to remove the requirement for monthly tests and replace it with a requirement that tests be undertaken at the intervals determined by the Minister for Health to provide more flexibility. What was never explained was what extra flexibility is required and why it is required. Is it because the government believes monthly tests are not sufficient and there should be a move to having tests every two or

three weeks? Or does the government believe that monthly tests are too onerous and it should move to having tests every two or six months? We do not have an answer on that.

We have not had any indication of what the government intends to do. We have been told it wants to have more flexibility, but we have not been told what it wants to do with that flexibility. That is something the house and the public are entitled to know.

Another concern about the bill was raised by the Scrutiny of Acts and Regulations Committee. It relates to clause 63 of the bill, which inserts new section 61DA, entitled 'Persons to answer questions in relation to suspected non-licensed sex work service providing business', into the act. That section provides — and I am summarising — that if an inspector believes on reasonable grounds that premises are being used as a brothel without a licence, the inspector may request any person who is entering or leaving the premises to provide their name and address, to answer any questions put by the inspector in relation to the use of the premises as a brothel and to provide a written statement to the inspector in relation to any questions put by the inspector.

This is a serious provision because a person must not fail to comply with a request by the inspector or they will face a level 10 fine, which is 10 penalty units or over $1000. It is a criminal provision to that extent. In the briefing I had with the minister's staff I raised the issue of whether this provision was seen as compatible with the Charter of Human Rights and Responsibilities, because on the face of it it seemed to be something which may raise issues in the charter. At the briefing I was assured that it had been considered in that context and had all checked out okay.

In the statement which was tabled by the minister he said:

> The proposal in clause 63 to empower inspectors to stop people entering and leaving reasonably suspected illegal brothel premises, question them and require them to provide a name, address and statements engages, but does not limit, the right to privacy. The evidence obtained by inspectors from Consumer Affairs Victoria may be used in subsequent proceedings. This proposal is compatible with the charter and not arbitrary or unlawful because section 15 of the Prostitution Control Act 1994 makes it an offence to be in, entering or leaving an unlicensed brothel without a reasonable excuse.

I turn to what the Scrutiny of Acts and Regulations Committee had to say. I note for the record that SARC is a bipartisan committee; it is a respected committee in this place because it has often acted as a watchdog, or guardian, and is probably one of the few instances where the executive is properly scrutinised by the Parliament — and that happens no matter who is in government or who is in opposition. Both sides give weight to what SARC says. In SARC's *Alert Digest* No. 15 of 2009, in referring to this bill, the committee observed that:

> … the statement of compatibility's discussion does not address whether clause 63's interference with privacy is proportionate to its purpose and formulated with sufficient precision to allow people being questioned to understand what questions they are obliged to answer.

The report goes on:

> Most importantly, the statement of compatibility does not address clause 63's impact on the charter's right against compelled self-incrimination.

The committee noted that:

> New section 61DA(3), in contrast to other compelled questioning requirements in the Prostitution Control Act 1994, does not provide for any defence of 'reasonable excuse' for the offence of not answering an inspector's question.

It goes on:

> The committee observes that the Supreme Court has recently held that a legal scheme of this type (in the Major Crimes (Investigative Powers) Act 2004) is incompatible with the charter. While compelled questioning without full immunity against self-incrimination may sometimes be compatible with the charter if the absence of a full immunity is both reasonable and demonstrably justified, the committee —

and this is SARC —

> feels that, in light of the Supreme Court's ruling, a number of features of clause 63 mean that it may be incompatible with the charter …

The Scrutiny of Acts and Regulations Committee report goes on in considerable detail, but given the amount of ground I need to cover in this debate I am unfortunately unable to go into it. But I note again that SARC is a respected committee of this Parliament. It has raised legitimate concerns about the structure of these provisions in part 7 of the bill. Given that on both sides of the house we are interested in cracking down on illegal brothels and on those who use them, we would also, hopefully, be in agreement that we need to do so in accordance with the requirements set out by the Charter of Human Rights and Responsibilities. I ask the minister to take what SARC has said on board and consider whether or not what would be done with this bill may not be done better in a different way. If the minister were looking to do that and introduce legislation to this house next year to improve the operation of these provisions, this side of the house would certainly welcome that.

There are some other aspects of part 7 that raise some issues that I would like to mention. One is that it provides an exemption from the definition of 'brothels' in the act for what is called a sex-on-premises venue. A sex-on-premises venue is defined in the bill to mean:

> … any venue where a person is required to pay an admission fee or charge to enter the venue for the purpose of engaging in sexual activities with another person who has also entered the venue on the same terms and who did not receive any form of payment or reward, whether directly or indirectly, for engaging in sexual activities.

That is what a sex-on-premises venue is. It is not, as some may have thought, Mike Rann's desk or anywhere where Tiger Woods happens to be! But it is also not a brothel, because it is not a place where money changes hands for the provision of sexual services. This is a phenomenon which I understand is associated with the gay community by and large. It is important that we get the health message out there.

The bill provides that these sex-on-premises venues may be exempted from the definition of 'brothel' if the secretary — and this is the health department secretary — is satisfied that the operator has agreed in writing to operate the venue in accordance with a statement of principles and procedures for the promotion of sexual health that has been endorsed by the secretary and, if the venue has commenced operation, the operator is operating the venue in accordance with the statement of principles and procedures.

We think it is important that these venues be required to sign up to obligations in relation to promoting proper sexual health practices on these premises. I query whether this goes far enough and whether something that may be a little bit more onerous or prescriptive in terms of the requirements to promote safe sex on these venues should be looked at.

There is something else that I am a little bit concerned about. I asked the minister's office in the briefing whether any sex-on-premises venues hold liquor licences, because brothels in Victoria cannot hold liquor licences and there are a number of reasons for that. One of the reasons is that there has always been a strong view taken by this Parliament that there is greater danger of sexual malpractice or other things going wrong in a brothel if alcohol is served because of the danger that alcohol may impair the judgement of either the sex worker or the client. I received advice from the minister — and I thank him for the advice — in a letter which is undated but was received by me in the last few days. The question was:

> Do any sex-on-premises venues hold a liquor licence, and do they need a planning permit before they commence operating?

The minister replied:

> I am aware that some sex-on-premises venues hold a liquor licence. A local planning approval is required to operate as a sex-on-premises venue.

I am concerned that we can be having sex-on-premises venues with liquor licences. The same thought process, that same logic, that led to this Parliament deciding that having liquor licences for licensed brothels was inappropriate would apply to sex-on-premises venues. I ask the Minister for Consumer Affairs, who also deals with liquor licensing, to consider whether the government believes it is appropriate that these venues continue to operate with liquor licences. Given that the minister has recently changed liquor licence fees and that venues that have sexually explicit entertainment will be paying $30 000 a year for their liquor licence, another question is: would these sex-on-premises venues which have liquor licences be in that category and will they be paying $30 000 a year? It may be that if such venues were paying $30 000 a year, they would decide it may not be worth their effort to have a liquor licence. It depends on whether the way the minister has defined 'sexually explicit entertainment' in his liquor licensing fee regime covers these sorts of sex-on-premises venues.

We raise this because we are concerned that, while there are some positive measures in the bill around increasing the penalties, there are some aspects which have the potential to be left open to some problems. We would like to put those on the record in the course of this debate and seek the minister's response in due course.

There are also other measures in part 7 to introduce identity card requirements for brothel owners and managers, which we think is appropriate. There are also penalty provisions for not taking all reasonable steps to minimise risks relating to sexually transmitted infections. These requirements are on both the client and the sex worker in relation to these matters. There is a considerable amount of explicit detail in the bill. To preserve the dignity of *Hansard* I will not go into it, but the Parliament does occasionally need to be earthy in order to get the message across as to how those sorts of practices are meant to be undertaken to try to promote proper sexual health.

One other aspect of the bill in relation to the Prostitution Control Act that I would like to mention is the new section 60A which is to be inserted into the act. This will provide that:

> … A licensee —

that is, the licensee of a brothel —

> must keep the prescribed signage relating to sexual slavery displayed on the premises of the sex work service providing business in such place or places that it may be read by any person on the premises.

And that is a penal provision if you fail to comply. I believe this is something that has been done by the City of Yarra. It was the trailblazing local government that decided to require that brothels needed to have signs up to let workers know what is sex slavery, and that if they find themselves to be in a position where they regard themselves as being subject to it, they have options and there are people who are able to provide them with assistance. I think that is a positive step, but I have to ask: is that all? The Brumby government recently referred the important issue — the urgent issue — of people trafficking in the sex industry to a parliamentary committee that will not report until 30 June next year. We know that sex slavery happens in Victoria, and that is an absolute indictment. There was a conviction in June 2006 of Ms Wei Tang for sex slavery offences that occurred in a licensed brothel in Fitzroy. This proves that sex trafficking is happening in Victoria and deserves urgent attention.

While it is good that the Drugs and Crime Prevention Committee has been asked to inquire into the issue of people trafficking in the sex industry and report to this Parliament, more needs to be done. The government has known, because of the conviction of Ms Wei Tang, that sex trafficking is happening in this state. The poor people who are subject to it — those who might well be living amongst us and walking amongst us when we walk out of this august chamber and down Bourke Street — deserve more action and more urgent action than what we have seen so far. While we support the measure to have the signage installed in licensed brothel premises, I think a lot more can and should be done by the government on this score.

Given that I am now two-thirds of the way through my allotted time, I do need to traverse some of the other matters in this bill. This bill repeals trade measurement legislation with effect from 1 July 2010, which is when the Australian government will take over some obligations for these issues under a Council of Australian Governments agreement. That seems to be a positive move. Trade measurement should be something that is a national issue. I do not think we need to have different standards for trade measurement in Victoria, New South Wales and Tasmania.

It does raise the question of what will happen to those people who have been acting as trade measurement inspectors. My understanding from the briefing is that many are under contract, and those people who are contractors are likely to take up new contracts with the Australian government. But if there are people who are employed in Consumer Affairs Victoria in relation to trade management whose services are no longer required in that area, I am sure there are many other areas of CAV regulation and enforcement where they can be better deployed. I would hope this does not see a net decrease in staff at CAV in the inspection and enforcement areas, and that those people can be transferred into other areas of CAV's responsibility which need a bit of a buck up.

The bill also repeals some redundant fuel legislation, redundant competition and corporations legislation and redundant provisions relating to common carriers and landlord and tenant legislation. In the course of my consultation with various stakeholders on the bill I have had it confirmed by the Tenants Union of Victoria that it has no concerns about this bill, and I quote:

> In particular we find the changes relating to the Landlord and Tenant Act acceptable.

Many provisions of the Landlord and Tenant Act are repealed under this bill, but there is a provision relating to chattels, fixtures and fittings which is taken out of the old Landlord and Tenant Act and inserted into the Property Law Act. As a former barrister who had a case that went on for far too many days dealing with the distinction between a chattel, a fixture and a fitting, I am pleased to see that that little provision survives. I might need to go back to it one day.

The bill also makes a number of technical amendments to the Owners Corporations Act, and I have had some correspondence on this from OCV, which describes itself as being the voice of the owners corporation industry. It was explained to me in the briefings that this was essentially some legislative tidying up and — I will not use the exact phrase — the legislative changes were designed to provide a simple guide for owners corporations managers and owners corporations owners as to how their procedures should operate; for example, we see provisions that state that an owners corporation committee only has the powers that have specifically been referred to it by a general meeting of the owners corporation. OCV has expressed some concern about this; it said that there is a respectable view that there is an automatic delegation of powers from a general meeting of an owners corporation to its committee, and therefore this amendment is not only unnecessary but also unhelpful. I respect the view of OCV and it has set

out why it believes it will be more helpful or more conducive to the smooth functioning of owners corporations' corporate governance to have automatic delegations.

Speaking for the coalition, it thinks it is important that the owners of owners corporations realise what powers they are passing on to those who they elect on the committee. I think having automatic delegations could lead to the situation where owners might have decisions made in their name which they would be completely unaware of, and in fact they would be unaware that they had given away the power to do so to the owners corporation committee. So while respecting the view of Owners Corporations Victoria, this is one issue where I think we would agree with the government that it is important that delegations of powers to committees be set out quite clearly.

There is also another concern expressed by OCV regarding proxies for committee meetings: OCV is not supportive of that. OCV puts the view that this is akin to an MP providing a proxy for a colleague to vote on a bill on their behalf. I am sure there would be no members of this house who would be interested in sitting at home and finding a proxy from among their colleagues to come in here and vote on their behalf, so I do not think the analogy quite stacks up. It is fair to say that, while owners corporations have very important roles to discharge, committees also have very important roles to discharge, but they are not necessarily in quite the same realm as elected parliaments.

To ensure the smooth functioning of committees it may be appropriate that proxies be permitted. However, I would say it is important that at least a significant quorum be required. You would not want two people turning up with proxies for every other member of the committee and simply having two people duelling over proxies. There needs to be a sufficient number of real life bodies in the room making the decisions. If it becomes a problem down the track, this is something the Parliament may wish to return to.

OCV also expresses concerns about changes being made to require owners corporations certificates to be sealed. I was advised by the government in the briefing that the witness requirements will be altered by regulation in the future, which will make what could otherwise be a fairly cumbersome procedure much easier. We welcome that proposal.

The bill also liberalises restrictions on the transfer of deposit moneys so as to permit, for example, an estate agent to pay deposit moneys to a conveyancer. Obviously it makes a lot of sense that, if lawyers, estate agents and conveyancers are going to be involved in the transmission of property through the sale of land, they be able to send and transfer and receive money to and from each other. At the moment there has been a glitch where some moneys can go only one way. This is being corrected by this bill.

The bill also streamlines aspects of the Estate Agents Act, most notably in relation to licensing. It removes the requirement for applicants for a real estate licence to have character references. In the briefing I asked whether that was because some applicants found it hard to find three people willing to stand up and give them a character reference, but I was assured that that was not the reason for the requirement. It was that we do not require character references for just about any other form of professional licensing. The mind boggles as to where you could wind up if you went down that path. The opposition supports the removal of what seems to be a quaint if not anachronistic form of regulation.

The bill also repeals the Private Agents Act relating to debt collectors and shifts regulation for this area into the Fair Trading Act. Notably the regulation shifts from being a licensing system, which requires a debt collector to obtain a licence to work in the area of debt collection, to a compliance system, which means that only those persons who are disqualified by reason of some statutory criteria are unable to act as debt collectors. At the moment, if you want to act as a debt collector — that is, collecting a debt or another person, not for yourself — you need to be licensed. However, this is moving to a system whereby anybody will be able to act as a debt collector unless they fall foul of some statutory criteria. These criteria relate to various offences that may have been committed by people: if they have been found to have been involved in the use of physical force, undue harassment or coercion in contravention of various acts; if they are insolvent under administration; if they are under 18 years of age or if in the preceding five years they held a private security licence under the Private Security Act 2004 that was cancelled or suspended.

It raises a few queries on our side as to whether, given the sensitivity of issues relating to debt collection, this is an appropriate way to go. But as long as the government and the minister closely monitor this issue, and as long as those statutory criteria are vigorously applied and any inappropriate people who are acting as debt collectors are quickly weeded out, we are prepared to give this form of reform a go.

As I said, this is quite a comprehensive bill. There is also a house amendment that was circulated by the minister. Part of the reason the opposition is not

opposing the bill rather than giving it our full support is that to some extent we have to take on trust the government's claim that a number of these repeals will not have unintended consequences. Given that the house amendment moved by the minister had its genesis in my picking up a problem in the bill during the course of the briefing, we think that not opposing the bill is an appropriate position for the opposition to take, and that is where we stand.

Mr CARLI (Brunswick) — It is with pleasure I rise to support the Consumer Affairs Legislation Amendment Bill. I am pleased that the opposition has chosen not to oppose this bill. I am also pleased that the member for Malvern was supportive of the work of the Scrutiny of Acts and Regulations Committee, which obviously does important scrutiny work in this Parliament. More importantly, I appreciate his support for the Charter of Human Rights and Responsibilities in Victoria and his belief that legislation should meet the higher bar it sets. There is increasing support for the charter of rights from the opposition, and the government greets this with great enthusiasm. We welcome the increasing number of references to the charter and the support of the charter, as we heard from the member for Malvern.

This amendment bill is the first tranche of a series of reforms of the consumer affairs legislation. It is about cleaning up the statute books and improving regulations. It is about a series of reforms that have now commenced and will continue. It is very important that governments do the necessary work of looking at existing legislation and getting rid of redundant parts of it, as is being done in this bill, as well as ensuring that the legislation is modernised and the regulatory frameworks we use are improved.

The part with which I am particularly pleased is the changes to the Prostitution Control Act, which after the passing of this bill will become the Sex Work Act. The name change is very important, because it in part implements the government response to the Prostitution Control Act Ministerial Advisory Committee. A former member in the other place, Glenyys Romanes, chaired that committee for many years, and I know she supported that change. She supported getting rid of the term 'prostitution' and replacing it with 'sex work'. We need to recognise the needs of sex workers and protect them, so updating the references to 'prostitution' in this legislation to 'sex work' is a positive measure and, as I said, it builds on the work of the ministerial advisory committee.

I am pleased there are significant increased penalties for operating illegal brothels, which mushroom in the suburbs. There certainly have been a number of cases of this in my own electorate. I am pleased that we are continuing to act against those illegal brothels. I also commend the requirements that sex workers and clients adopt safer sex practices, that they use condoms and take other measures to minimise the risk of sexually transmitted infection and that there be greater flexibility in terms of testing.

Improvements to the licensing scheme for sex worker service providers is good. It cleans up the statute book and improves the regulatory requirement.

The bill provides that brothels must display signage about sex slavery. As the previous speaker indicated, that practice has been trialled in the city of Yarra. My electorate encompasses part of the city of Yarra, and I think it is a positive step to improve awareness amongst both clients and sex workers, firstly, that sex slavery exists and is illegal, and secondly, of the problems that it causes.

There was some discussion by the member for Malvern about the work of the Scrutiny of Acts and Regulations Committee and SARC's deliberations on this bill. It was a very long deliberation. A long discussion was held by the committee during which a number of concerns were raised. The committee has written to the minister, and the minister will respond as this bill moves to the other place.

The first part of that process centres around the preparation of the statement of compatibility with the Victorian Charter of Human Rights and Responsibilities. Firstly, it ought be said that Victoria is unique in having compatibility statements which ask why legislation is compatible with the charter. Other jurisdictions which have similar charters and require statements of compatibility merely have to provide an argument why a particular piece of legislation is not compatible with a charter. In Victoria the bar is set higher. SARC has taken the view that we have to be scrupulous and forensic in looking at our statements of compatibility. Committee members have some concerns, and we have written to the minister. Our concerns are primarily about proportionality around the issue of questioning people entering or leaving what are reasonably believed to be illegal brothels. We do not think the arguments were put in the document. We do not think the case was argued. Obviously when such cases arise issues of privacy will come to the fore. When a right is limited or interfered with, an argument has to be put for doing so. SARC has some concerns that that issue was not addressed in the statement of compatibility.

Another issue has arisen about asking people questions when they enter or leave premises which are believed to be illegal brothels. The issue of self-incrimination arises in such a case, particularly in light of the right in the charter for a person not to be compelled to self-incriminate. Clause 63 would allow an inspector to force a person who enters or leaves a premises that the inspector believes to be an unlicensed brothel to provide information that could be used to convict that person of an offence under the Prostitution Control Act. We were particularly concerned about this, because a recent Supreme Court judgement held that a legal scheme of this type — in this case the Major Crimes (Investigative Powers) Act — is incompatible with the charter. Our question to the minister is: given the Supreme Court's decision, which hence is Victorian law, and the fact that section 63 demonstrates some of the same attributes as the legislation considered in that judgement, is clause 63 of the bill incompatible with the charter?

I have spoken to the minister about this matter as well as writing to him. Obviously a response will come to the committee prior to this bill being debated in the other place. From the perspective of SARC we want to ensure that statements of compatibility and the arguments that are put forward in them meet the requirements of the charter. This process is clearly one where we write to the minister indicating our concerns and in due course the minister will respond to those concerns.

As has been said, the bill makes a series of other amendments to legislation, some of which are about removing redundant legislation and repealing bills. The Fuel Prices Regulation Act and the Collusive Practices Act are repealed. The Trade Measurement (Administration) Act is amended by the bill and repealed, as are the Trade Measurement Act 1995 and the Utility Meters (Metrological Controls) Act. Those acts are now in the federal jurisdiction and are clearly no longer needed. The bill makes some changes to the Carriers and Innkeepers Act that limit common carriers' liability for loss of certain items. I suppose those amendments are fairly technical; however, they improve that series of acts and are part of the reform project within the consumer affairs portfolio and are very much about modernising consumer affairs legislation in this state.

Mr WELLER (Rodney) — It gives me great pleasure to rise to speak on the Consumer Affairs Amendment Bill 2009, a wide-ranging bill that covers many parts. Firstly, I would like to talk about the amendments to the Estate Agents Act. Clause 4 of this bill proposes to change the name of what was known as the Stock and Station Agents Association to the Australian Livestock and Property Agents Association. The old Stock and Station Agents Association has been a very important part of rural communities, and the people employed at those agencies have been of the highest character. They have been more than agents.

Mrs Powell — Family.

Mr WELLER — Yes, they have been family members. It certainly feels as though they are family members, and in recent tough times they have had to add the role of counsellors. They are the ones who go onto the farms and deal with farmers during times of stress, and they are the ones to whom farmers quite often turn for advice on how to handle affairs other than simply selling their stock or selling their farms.

The list of agents is not as long as it once was. Once upon a time every town, even a town the size of Lockington, had a fortnightly or monthly market. But, alas, towns such as Lockington, Heathcote, Nathalia and Kyabram no longer have marketplaces. There is only a fortnightly cattle sale at Echuca and a fortnightly horse sale at Echuca.

Changing the name of the association brings it in line with current practice. The Stock and Station Agents Association really has become the Australian Livestock and Property Agents Association, and the coalition fully supports that change of name.

Another part of this bill deals with debt collectors. Once upon a time if farmers sold their grain, it was to the likes of the Australian Wheat Board, the Australian Barley Board or the oat pool and they were paid by a statutory marketing authority. What happens now is that much of the trade is done with companies, and it is not as assured. Bad debts do occur, and obviously debt collectors are called in at that stage.

I am not totally convinced that the amendments in this bill are good, but I accept the minister's assurance that that is his intent. Allowing anyone to be a debt collector unless they have been prohibited from being a debt collector is not quite the right way to go about it. However, as I said, I will take on board the minister's assurances. We are not opposing the legislation but we will monitor its effects very closely. We would not like to see less reputable people putting themselves forward as debt collectors only to find they are doing things which are less savoury than we would like to see.

I think clause 18 states that pretty clearly. According to the explanatory memorandum:

> Prohibited person —

this is the only person who cannot be a debt collector now —

> means a person prohibited from engaging in debt collection unless given a permission to do so by the authority.

So we can have people who have been prohibited going back and getting permission to do it again. The only people who cannot be debt collectors are the people who have been prohibited. This opens the gates, and I am not too sure that is the best way for it to be managed, but we will take the minister's word that he is genuine about getting the decent thing happening in this area.

Under this legislation the Trade Measurement Act will become redundant as a consequence of an agreement by the Council of Australian Governments to establish a National Measurement Institute, which I think is a reasonable thing to do and will ensure consistency across Australia. This will be very important in the irrigation industry. There is no watchdog at this stage for water measurement in the Goulburn-Murray irrigation district. We have had problems in that district with the modernisation project and the installation of new meters. The new meters have been measuring water when there has been no water passing through, so we need an independent person in the measurement area to make sure that there is a fair and honest broker, not just a government corporation that is trying to make money out of selling water.

The new water meters have been measuring water when none has been going through them, and that is of concern to the irrigators in our district. There have been cases where measurements of 25 megalitres have registered on meters when those meters have not even been used. This occurred before 15 August and before the season started when there was no water in the channel to make it work. So we support the establishment of the National Measurement Institute. We think we may have to go further and have an independent body that can stand as a fair and honest broker between farmers — or indeed urban users — and the water corporations.

The bill also amends the Prostitution Control Act, and the name of that act is being changed to the Sex Work Act. Clause 44 talks about barriers to the transmission of sexually transmitted diseases and proposes that 'all reasonable steps' be taken to minimise such transmission. I think we need to have clarification of what constitutes 'all reasonable steps'. I think it is too vague. Again we accept the minister's advice that he is trying to make the industry a better industry, but I think there needs to be more clarification about what is meant by 'all reasonable steps'.

There are clauses in this bill which will give inspectors greater powers at suspected illegal brothels. I think that is a great thing; we have to stamp out illegal brothels. The bill will also give more powers to the Chief Commissioner of Police or his delegate to enter unlicensed premises without a warrant. Again that is something that we would support in an effort to clean up and eradicate illegal brothels.

One interesting clause in this bill is clause 106, which will amend, according to the explanatory memorandum:

> … section 31 of the Liquor Control Reform Amendment (Licensing) Act 2009 to correct an error regarding the name of the legislation in clause 23 of schedule 3'.

This is typical of the Brumby government. It is sloppy and it cannot get its legislation right. Here we have legislation that was in the Parliament not more than two months ago and we are having to fix up the government's sloppy errors. This clause shows that the government is tired. It has been in power for 10 years and it is time for a new broom.

Mr PERERA (Cranbourne) — I am pleased to speak in favour of the Consumer Affairs Legislation Amendment Bill 2009. I congratulate the minister and the Brumby government for their efforts to modernise Victorian consumer protection legislation, and I commend the Brumby government's commitment to completing the process of reviewing and modernising all consumer protection laws by 2010.

This bill makes a number of legislative changes in the consumer protection area. One of them is strengthening the regulation of sex work in Victoria. Prostitution is said to be the oldest profession in the world, and the profession will survive as long as there is a demand for its services. This groundbreaking legislation will make the profession more dignified by updating references to prostitutes in the legislation and substituting the term 'sex workers', and by renaming the Prostitution Control Act; it will in future be known as the Sex Work Act. This brings the terminology of the act into line with international best practice. The stakeholders universally support this change.

Unlicensed premises will invariably engage in unlawful activities. That is part of the reason they do not qualify for licences. It is important for the sex industry to be properly regulated. The bill extends the powers of Consumer Affairs Victoria inspectors to allow them to seek information about suspected brothels. The bill will require that an inspector introduce himself or herself, provide proof of identity and inform the person being questioned that providing false or misleading

information is an offence. An answer is not admissible in evidence in any criminal proceedings, other than in proceedings in respect of the falsity of the answer. These statements are critical for obtaining search warrants and in proceedings to shut down illegal brothels and prosecute unlicensed operators. The provision complies with the human rights charter because it is illegal to be in, entering or leaving an unlicensed brothel.

The bill also requires a brothel to display signage about sex slavery. This is a very important measure and will make everybody, including the clients and sex workers, aware that sex slavery exists and is illegal. We know that sex slavery exists, and it is by no means sexy. There could be situations where overseas sex workers who are unaware of the local laws are forced to work in the industry by intimidation. There could even be a situation where passports are confiscated by the brothel owners, and therefore awareness is paramount. It is a very sensible measure that has been built into this piece of legislation.

The bill improves the operation of the licensing scheme for sex worker service. This will allow a person to take over a business for 30 days, or longer if approved, upon the death or disability of the licensee. This is an important measure for the continuation of an operation so that sex workers will not be out of work or be pushed into becoming independent workers overnight. It is not easy to be an independent worker; it is very competitive and requires toughness in character.

The bill also repeals the Private Agents Act 1966 which regulates debt collectors. The scope of the act is limited to debt collectors and their subagents. At the time the licensing system was introduced there were two main aims with respect to collection agents: firstly, to protect creditors from defalcations by collection agents; and secondly, to stop the use of harassing tactics against debtors. To achieve these goals the act established a licensing regime for commercial agents with a requirement that an agent provide a surety.

A licence can be cancelled if the person is found to be engaged in harassing tactics. Such tactics would have been very common in earlier days, and I am sure this prevails in almost all parts of the world. When the act was introduced it was the sole form of statutory regulation for collection agents in Victoria. Over time other regulations regarding collection agents have emerged that seek to prohibit coercion, undue harassment and physical force. The licensing system established under the act will be abolished and replaced by a simplified compliance system to be included in the Fair Trading Act.

Because of time restrictions, I will now commend the bill to the house.

Mrs SHARDEY (Caulfield) — I rise to speak on Consumer Affairs Legislation Amendment Bill 2009. The coalition does not oppose this piece of legislation. The main purposes of this bill are to amend the Prostitution Control Act 1994 and to make changes to various acts under the consumer affairs legislation modernisation project.

I will deal first with the main provisions of the Prostitution Control Act. The bill will replace the term 'prostitute' with 'sex worker' and will double the penalties for operating an unlicensed brothel to 1200 penalty units. Clause 63 in particular will require persons entering or leaving reasonably suspected illegal brothels to give their names and addresses, answer questions and give statements to inspectors. I fully support this provision because there have been numerous complaints received in my office about illegal brothels operating within and near the Caulfield electorate.

The bill replaces the requirement for sex workers to have swab tests monthly with time periods determined by the Minister for Health. This is an issue I will discuss later. The bill also introduces ID card requirements for brothel owners and managers, something that is fully supported. The bill also introduces penalty provisions for not taking reasonable steps to minimise risks relating to STDs (sexually transmitted diseases). As I understand it, for some managers this can be difficult to enforce, particularly if clients offer enticements to sex workers, but this is certainly something which I think is very important and needs to be monitored as carefully as possible.

The bill also repeals trade measurement legislation effective from 1 July 2010 when that function is taken over by the Council of Australian Governments. It repeals some redundant fuel legislation, redundant competition and corporations legislation, redundant landlord and tenant legislation and redundant provisions relating to common carriers.

The bill amends the Sale of Land Act to liberalise restrictions on the transfer of deposit moneys for property, for example, from a real estate agent to a conveyancer. We support this because we believe and accept it will streamline aspects of the Estate Agents Act.

Finally under the bill, regulation relating to debt collectors shifts from being a licensing system requiring a debt collector to obtain a licence to work in an area to

being a compliance system in which only those persons who are disqualified by reason of some statutory criteria are unable to act as debt collectors. The concern here — and it has been raised by the opposition — is that this amounts to the introduction of a negative licensing system which could result in less supervision by regulators and therefore the opportunity for improper behaviour by debt collectors. Other speakers have raised this as an issue. It is certainly an issue we will be monitoring, and I hope the Minister for Consumer Affairs agrees to monitor that element as well.

I will make some general comments about prostitution in Australia in terms of the amendments to the Prostitution Control Act. I note that brothels are legal in Victoria, Queensland, New South Wales and the Australian Capital Territory, but not in South Australia, the Northern Territory, Tasmania or Western Australia. Street prostitution is illegal in all Australian states except New South Wales, where it is prohibited near churches, schools, hospitals and similar venues.

A survey conducted in the early 2000s apparently showed that over 15 per cent of Australian men between the ages of 16 to 59 have paid for sex at least once in their lives and nearly 2 per cent had done so in the year before the survey was taken. I cannot vouch for these *Wikipedia* statistics.

Finally I will make some general comments. In 1999 Australia implemented a protocol to prevent, suppress and punish the trafficking of persons, especially women and children, which supplemented the United Nations convention against transnational organised crime, to which Australia is a party. Like others, I have read of cases of child sex slavery, which this bill attempts to control even more.

In terms of the background to the amendments to the Prostitution Control Act, they implement the recommendations of the ministerial advisory committee report entitled *Improving the Regulation of the Sex Industry and Supporting Sex Workers Who Want to Move On*, which was completed in October 2007. It took the Brumby government a full year to respond to the report: the legislative response was made in November 2008. Then it took another year for the actual legislation to be implemented. It has taken two years since the time of that report for action to be taken.

While the change to the term ‘prostitute’ in the legislation to the term ‘sex worker’ is said to reflect the cultural change in the industry, I think most people would regard the term to be less discriminatory. I certainly support that. In the same vein, the Prostitution Control Act is being amended to be called the Sex Work Act.

Of concern are clauses 45 and 46 of the bill which remove the requirement for a sex worker infected with a disease such as HIV, chlamydia or gonorrhoea to undertake a swab test on at least a monthly basis. This is being replaced with a requirement that a swab test occur ‘at the time periods determined by the health minister’.

If in fact the time periods determined by the health minister are not as stringent as under the current legislation, this could well lead to lower standards. A lot of people are concerned about this, because the incidence of sexually transmitted infections in Victoria is rising. I refer the house to the *Victorian Infectious Diseases Bulletin* of June 2009, which reports a big increase in chlamydia — of some 17 per cent in the first quarter of this year compared to the same time last year; a 60 per cent increase in gonorrhoea compared to the previous quarter and nearly double when compared to the same time in 2008; and 65 new diagnoses of HIV infections during the first quarter of 2009, which represents a 9 per cent increase in the number of new HIV diagnoses in the previous quarter. We are seeing a big increase in STIs in Victoria, and I would hope that the government really looks at this issue. I call on the minister to give assurances to the Parliament that a worse situation will not arise in relation to swab testing.

There were other recommendations in the report. By and large the government’s response to the report was, in many cases, to merely support in principle and then list existing programs, no matter how remote those programs are to the specific recommendations. I note, for instance, recommendation 3, which refers to assisting young people involved in prostitution to develop alternative pathways. The government stated that it was developing potential services through a ‘leaving care reference group’. I just ask: are such services now available and are they being funded?

Recommendation 4 makes the point that women prisoners at the Dame Phyllis Frost Centre and Tarrengower prison could not initiate hepatitis C treatment. If they were getting treatment when they came in, they continued, but they could not initiate hepatitis C treatment plans. I ask the minister if he could explain whether this situation has changed.

Recommendations 6, 7 and 8 relate to controls over advertising for sex workers and ancillary staff. The government in response stated that it was considering, in 2009, looking at the adequacy and effectiveness of the advertising controls. I note that there is no

legislative change in relation to advertising controls, and I ask the government to explain its findings, if indeed it did examine this area.

Finally I ask the government to advise whether it has distributed the information booklet about the law as part of its communications strategy, which it said in its response it would do. I note that there is an information booklet for licensees and managers, but I ask: is there a similar information booklet for sex workers?

In summary, the amendments to the Prostitution Control Act are defensible, and we support the other measures.

Ms DUNCAN (Macedon) — I rise in support of the Consumer Affairs Legislation Amendment Bill. I note that the children have left the gallery. This chamber is always an interesting place to come to: you never know whether you are going to hear dry and boring debate — which is often the case — or whether you are going to be discussing child sex slavery and sex workers. It is a mixed bag in this place.

I support this bill. I support the government's efforts to reform legislation, particularly around consumer affairs. This is part of the government's consumer affairs legislation modernisation project which is looking at a whole range of statutes and seeking to make them more user friendly and more relevant to modern times while reducing red tape and the regulatory burden on business where appropriate. In this instance it seeks to strengthen the regulation of sex workers in Victoria.

As has been pointed out, we have in this state a harm minimisation approach to sex workers. The reforms in this bill continue that practice. It also, I think rightly, provides for a change in name, from the Prostitution Control Act to the Sex Work Act. This reflects changes in the community's attitude and removes the derogatory effect the word 'prostitute' has had for many hundreds of years. The renaming of the legislation recognises that prostitution is a legal act and a legitimate business.

The bill does a couple of other quite quaint things. I will not go into too much detail; a lot of it is very dry, as we have heard. But one of the things it does is repeal sections 3 to 12 of the Carriers and Innkeepers Act of 1958. The second-reading speech states:

> These sections limit the strict liability of stagecoach proprietors and other common carriers of goods to $20 for the loss of certain types of goods such as gold, glassware, silks and title deeds.

I do not believe there have been changes to that area of the act since it was introduced in 1830. We know now that stagecoach proprietors could be likened to taxi operators, and we know now that in common law the sorts of liabilities that were put on stagecoach carriers do not translate to taxis. Although they are common carriers of passengers, they have been held at common law in Victoria to own an ordinary duty of care — for passengers luggage, for example — rather than the heightened duty of care that a common carrier of goods must exercise. That is one of the quaint pieces of legislation that this bill seeks to repeal or to streamline.

There are a couple of other measures in the bill that I would like to briefly comment on. One of them is around greater flexibility in handling deposits for the sale of land. This will create greater flexibility around deposits held by legal practitioners, conveyancers and estate agents as stakeholders by allowing the transfer of deposits from a stakeholder to a legal practitioner, conveyancer or estate agent acting for the vendor. Previously only certain types of transactions were permitted. For example, conveyancers acting for the vendor were not allowed to receive any money from estate agents. This recognises the changes in the way conveyancers operate and the modernisation of the sale of land in this state.

With those few comments, I commend the bill to the house and wish it a speedy passage.

Mr CRISP (Mildura) — I rise to speak on the Consumer Affairs Legislation Amendment Bill 2009, which The Nationals in coalition are not opposing.

This bill has considerable purposes. It amends the Conveyancers Act 2006 to make provision for the conduct of audits of trust records. It amends the Estate Agents Act 1990 to bring it up to date. It will now refer to the Australian Livestock and Property Agents Association rather than the Stock and Station Agents Association. It also modernises the licensing arrangements for agents. It amends the Fair Trading Act 1999 to include some definitions around debt collectors and what they can and cannot do; repeals the Trade Measurement Act 1995, because it is covered by the Fair Trading Act 1995 and the National Measurement Institute; and amends the Owners Corporation Act 2006 to deal with what can be done with the common seal, how to run meetings, and an owners corporation's responsibility when it comes to insurance.

The bill amends the Property Law Act 1958 to deal with a tenant removing fixtures when he or she leaves and the responsibility to restore the premises to its original state. It also renames the Prostitution Control Act to the Sex Work Act and proposes to take all reasonable steps to minimise the risk of the transmission of sexually transmitted diseases, to make

licensing more stringent, to give inspectors greater power at suspected illegal brothels, and to allow the Chief Commissioner of Police to enter an unlicensed premises without a warrant or delegate that power to another member.

The provisions need a little explaining. For example, the bill amends the Prostitution Control Act to increase the penalty for operating an unlicensed brothel to 1200 penalty units, to replace the requirement for a monthly swab test for sex workers to time periods determined by the health minister, to introduce ID card requirements for brothel owners and managers, and to introduce penalty provisions for not taking all reasonable steps to minimise risks relating to sexually transmitted diseases and provide exemptions for sex-on-premises venues.

I am concerned as to what the minister has in mind in relation to the frequency of disease testing — whether he plans to make it more or less frequent. I think that is something we need to clarify. When the minister sums up perhaps he can advise the house what he has in mind and why. Sex-on-premises venues are venues where people pay money to enter the premises but do not pay for sex. As I understand it, this is most common in the gay community. We need to ensure that there is a health obligation for correct sexual health practices on these premises. The member for Malvern went into a great deal of detail on this. We need to question the commitment in this bill to maintaining good sexual health practices at these sex-on-premises places.

The issue of alcohol licensing for sex-on-premises venues has also been raised, and it is a concern. It does not appear to have the same logic as applies with brothels, where alcohol licensing is not permitted. The issue also arises — and this is very controversial at the moment — as to how much sex-on-premises venues pay for a liquor licence compared to other venues and how to compare sex-on-premises venues with other alcohol-licensed areas. At present we have considerable differences across a great deal of country Victoria over the licensing issue. Many places, even small sporting groups such as bowls clubs, are paying a great deal more for their liquor licences. I know that difference is based on the possibility of violence at the venue, but this is an anomaly and I think the minister needs to clarify how he is going to manage this issue.

Representatives of the Owners Corporations Victoria have put out a paper, and I thank them for that. Their paper was well covered by the member for Malvern. The proxy matter appears to be a key issue in terms of how it will be managed.

In regard to the real estate issue, real estate agents work out there in rural communities. As the member for Rodney pointed out, they have become de facto rural counsellors, along with many others in our community. Country Victoria is still very much in the grip of drought. We have had a little rain, but it only rains hope — it does not rain cash. The government has chosen to scale back its drought relief effort in country Victoria, thus putting more pressure on professionals who work in those communities. Real estate agents, along with other businesses, do a great deal of counselling work. In my electorate of Mildura I rarely go to a business counter without those on the other side of the counter saying how long they have had to spend talking to people during this drought — particularly lately, as government-sponsored rural counselling is being wound back with the end of the drought in sight. Allowing real estate agents and stock and station agents to transfer deposits streamlines the system, and that is very important. As there are no longer the services in rural areas that there used to be, I think that is a very common-sense approach.

I have a couple of other concerns. One is with the private agents section of the bill. I note that that section, which is to do with debt collecting, provides that anyone can now be a debt collector. The only exemption is that persons who are disqualified for reasons of statutory criteria are unable to act as debt collectors. This concerns me greatly. I think we have to talk about standover tactics that can be used in debt collection. People out there who are subject to standover tactics may be scared to make a complaint or may not know how to make a complaint. That is something we are going to have to work on. We are going to have to let a lot of people out there know how to defend themselves against the real possibility of unscrupulous tactics. This will increasingly become a part of country life now that statutory bodies are not involved in marketing. I am thinking in particular of the Australian Wheat Board and the possible use of such tactics in the grains area. We now have a deregulated market with a large number of companies buying. If payment is not received, we are going to go into debt collecting.

I also think it goes the other way — people's consciences may not rest easily knowing that they have employed a debt collector who may use unscrupulous tactics in order to get their money back. The horticultural industry and other vital industries in the electorate of Mildura have had some difficulties with this issue over time. It has also occurred in the production of food when many small operators go into a larger market where there is an imbalance of power. My office has heard a number of complaints about

people getting paid for their produce and the difficulties that come with that. There are concerns that hiring someone to fix these problems may present a crisis of conscience. We need an assurance from the minister on how he is going to handle this debt collection issue and make sure it does not get out of hand.

I also need to raise the issue of clause 106, which fixes up an error. It amends section 31 of the Liquor Control Reform Amendment (Licensing) Act 2009 to correct an error regarding the name of the legislation in new clause 23, which is being inserted into schedule 3 of the principal act. We dealt with that bill only a few sitting weeks ago. I think it is embarrassing and concerning that we are back here fixing up a mistake that should not have been made.

The other area of concern came from the Scrutiny of Acts and Regulations Committee. I noticed that SARC considered this bill at considerable length. My concern is about the section that SARC headed 'Rights or freedoms — Self-incrimination — Inspectors questioning powers — Persons entering or leaving unlicensed brothel — Prostitution Control Act 1994'. It is now an offence to refuse to answer an inspector's question. That is a concern, and we need to make sure that the checks and balances are there. Again, I think the words that SARC put into this need to be considered, but they are too detailed to go into while presenting this bill.

The Nationals will not oppose the legislation but we have concerns about the provisions concerning debt collection and the refusal to answer questions, as stated by SARC.

Debate adjourned on motion of Mr LANGDON (Ivanhoe).

Debate adjourned until later this day.

TRANSPORT INTEGRATION 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 Transport Integration Bill 2009.

In my opinion, the Transport Integration Bill 2009, 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 creates a new framework for an integrated and sustainable transport system in Victoria. It incorporates the key elements of the transport system under one central statute and sets out the vision, objectives and decision-making principles for the transport system to guide the activities of transport bodies and interface bodies.

Aside from empowering the Minister and the Department of Transport with the central strategic policy and portfolio coordination role for transport, eight of the transport system's current agencies, categorised as transport system agencies, transport corporations and transport safety agencies will be transferred from various acts into the bill. The inclusion of the remaining agencies will occur in an amending bill in 2010 as part of the Port Futures project. This will include an amalgamation of the Port of Melbourne Corporation and the Port of Hastings Corporation and will also include the transfer of the Victorian Regional Channels Authority.

Three name changes are included in the alignment process proposed by the bill. The V/Line Passenger Corporation is to be renamed the V/Line Corporation to better reflect the range of its operations, which also include responsibilities for network access and freight interests. The Southern and Eastern Integrated Transport Authority is to be renamed the Linking Melbourne Authority to reflect the broadening of its role into further complex urban road projects across Melbourne. Clause 202 of the bill repeals the Southern and Eastern Integrated Transport Authority Act 2003.

The chief investigator, transport and marine safety investigations is to be renamed chief investigator, transport safety as the marine sector is part of the transport system.

Similarly, the offices of the director, public transport safety and the director of marine safety are to be amalgamated into the single and independent office of director, transport safety. This amalgamation supports the safety functions shared by both offices, providing greater consistency, efficiency and transparency in safety regulation. It also addresses the lack of independence of the director of marine safety, who is currently appointed by the secretary and responsible to the department. The powers which would be available to both the chief investigator, transport safety and director, transport safety under the Marine Act 1988 are under consideration as part of the current review of marine safety laws towards a new proposed Marine Safety Act in 2010.

The bill also provides the department with a body corporate capability for project delivery through the transport infrastructure development agent.

Human rights issues

The bill has been assessed against the charter.

Land acquisition

The right to property in section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law. Any law that deprives a person of property must be accessible, sufficiently precise and should not provide for an arbitrary interference with property.

Under clauses 36, 72, 121 of the bill, the Secretary to the Department of Transport, the director of public transport and Victorian Rail Track may compulsorily acquire any land

required in connection with the performance of their powers or the exercise of their functions. Similar acquisition provisions are included in sections 112 and 114 of the Major Transport Projects Facilitation Act 2009.

Compulsory acquisition of an individual's land under the bill is a deprivation of property for the purpose of the right to property. However, the acquisition of interests in land under the bill requires ministerial approval and the acquisition and compensation requirements in the Land Acquisition and Compensation Act 2009 (LACA) will apply, with minor modification. A person deprived of their land under these clauses must be properly notified and compensated, and they may test the lawfulness of an acquisition through judicial review.

Accordingly, in my view, compulsory acquisition of land under the bill would be in accordance with the law and these provisions do not limit the property right.

Entry onto land and premises

Section 13 of the charter establishes the right of a person not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. A 'lawful' interference is one authorised by an accessible, sufficiently precise positive law, which is reasonable and proportionate.

Clause 37 of the bill permits the secretary to enter any land and do all things necessary and convenient for the purpose of determining whether the land should be compulsorily acquired. Under clause 98 of the bill, the Roads Corporation may enter into a building and undertake activities necessary to ascertain the construction and condition of a building. This power of entry is required to allow the Roads Corporation to inspect and record the condition of properties in the vicinity of planned works, before those works commence. Under clause 126, Victorian Rail Track may enter any land to construct or maintain works supporting any rail signalling system.

These provisions will enable the secretary, Roads Corporation and Victorian Rail Track to enter into private residences. Similarly, under the bill, residential land is not exempt from the entry and temporary occupation power under section 75 of the LACA in connection with land acquisitions under clauses 36, 72 and 121. However, a number of safeguards are included in the bill which prevent them interfering with a person's home and privacy arbitrarily.

The secretary may only exercise the powers in clause 37 with the consent of the owner after giving written notice or in the case of an emergency. Residential land may only be accessed during the day (until 6.00 p.m.), and the secretary (and those acting on his or her behalf) must cooperate with the owner, causing as little inconvenience as possible and must compensate any damage.

The Roads Corporation may only enter a building and Victorian Rail Track may only enter land when it is necessary and convenient to fulfil its respective functions. The Roads Corporation must give an occupier reasonable and written notice and may only enter a building during the day. Unless immediate entry is necessary because of an emergency, Victorian Rail Track must give an occupier seven days notice and may only enter residential land when authorised between 7.30 a.m. and 6.00 p.m. (unless the occupier consents to the entry and agrees to a different time). Further, when exercising this power of entry, Victorian Rail Track must cooperate with the owner and occupier of the relevant land, and can only stay as long as is reasonably necessary and must cause as little inconvenience as possible. Before the director of public transport or Victorian Rail Track can temporarily occupy land, they must comply with the notice requirements set out in sections 75(3) and (4) of the LACA.

Accordingly, I consider the powers of entry in the bill do not limit the right to privacy.

Disclosure of information

The right to privacy in section 13 of the charter has been described above. It also requires that a person has the right not to have their reputation unlawfully attacked.

Clause 177 of the bill permits the director, transport safety to disclose information obtained in the performance of his or her functions or powers, and to publish any information arising out of an investigation or inquiry. The director's functions are set out in clause 173 of the bill and include investigating and reporting on transport safety matters (clause 173(1)(d)) and collecting information and data relating to transport safety matters clause 173(1)(i)).

Information disclosed or published by the director under this clause could include private information about individuals. That information could impact on a person's reputation, particularly if related to his or her involvement in a transport safety matter or incident. However, disclosure of personal details under this clause is only permitted when the director considers that disclosure to be necessary for the safe operation of transport. Similarly, only information considered necessary for the safe operation of transport can be published, and any publication authorised by the director cannot identify a person by name. Disclosure and publication of personal information under this clause would be permitted by law and is reasonable and proportionate having regard to the public interest in transport safety.

Accordingly, in my opinion, this provision does not limit the right to privacy.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because to the extent that some provisions do raise human rights issues, these provisions do not limit human rights.

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 represents a watershed in the evolution of transport policy and legislation in Victoria and Australia. It confirms an end to the 'old' thinking and outdated debates about transport.

In essence, the bill charts the government's new direction in transport policy and delivery, providing a framework for integrated thinking on the best ways to move people and goods across the state.

Contemporary transport policy recognises that our transport system should be conceived and planned as a single system performing multiple tasks.

It also recognises that our transport system should be planned and delivered in a way that considers the broader social, economic and environmental impacts both now and in the future.

This means an integrated and sustainable transport system:

> a system in which each and every transport activity — public transport on road and rail, commercial road and rail transport, private motor vehicles, commercial and recreational water transport, walking and cycling — works together as part of an integrated whole;
>
> a system that complements, and is complemented by, integrated land-use planning and decision making;
>
> a system that is sustainable — in economic terms, in social terms, and in environmental terms;
>
> a system that delivers robust economic, social and environmental benefits for the state, with an eye on national and international responsibilities and opportunities.

This has not always been the theme of transport ministers in this house. We have come a long way since the then Minister of Railways, the Honourable R. G. Menzies, KC, spoke at length in this house back in November 1932 arguing that transport legislation was needed as a means to regulate 'the competing agencies in transport'.

Seventy-seven years later, this bill takes a very different approach.

There are major interdependencies in play across our transport system, so the notion of 'competition' between modes can potentially lead to areas of the portfolio acting to the detriment of the system itself.

The Brumby government takes a contemporary view of transport and transport policy. By aligning all transport agencies in pursuit of an integrated and sustainable transport system, we are helping to shape a livable and prosperous Victoria now and in the years ahead.

The bill will replace the Transport Act 1983 as Victoria's primary transport statute.

The government's vision for our transport system has been articulated over a number of years, most recently in the Victorian transport plan — the government's $38 billion program of action to modernise our transport system over the next decade and beyond.

The bill is a key part of the plan. As the plan stated (p.146):

> The Transport Integration Bill will set a strong new direction for transport policy and legislation in Victoria, aimed at building an integrated and sustainable transport network. It will establish new overarching principles to provide transport decision-makers with a clear legislative framework and enable more effective planning and coordination of transport services, as well as consolidate existing legislation and remove duplicate and redundant provisions.

The vision enshrined in law by this bill guides the unprecedented investment set out in the Victorian transport plan.

For the first time, the bill brings together all elements of the transport portfolio — those responsible for all land and water-based transport, historically segmented as roads, rail, ports and marine — under one statute.

By unifying all elements of the transport portfolio, the bill ensures that transport decisions and activities are complementary and work towards delivering the common vision.

It is important to note, however, that the bill cannot do this alone. It sits at the top of an extensive new legislative structure.

The Transport Integration Bill provides the broad policy and agency settings, while various subject-specific statutes contain the policy and regulatory detail relating to particular transport system activities. Regulations and other subordinate instruments support each act as required.

This is a comprehensive and contemporary structure that responds to the current and emerging challenges facing transport in the early 21st century, rather than the challenges that existed when the Transport Act was introduced 26 years ago.

Shortcomings of the current legislation

In 1983, the Transport Act was the largest overhaul of transport services management in the history of Victoria, initially repealing over 100 pre-existing acts.

The institutional and regulatory arrangements for transport have changed significantly since 1983. More importantly, the challenges facing the transport system and the community's expectations for transport are very different now than they were a generation ago.

Among the limitations of the current legislative arrangements for transport:

There is no clear vision for the transport system articulated in legislation.

It is not clear what constitutes the transport system.

The government's broader policy objectives or frameworks are not adequately reflected.

There is minimal guidance about social policy objectives.

Environmental objectives are not mentioned at all.

Transport bodies are established under different legislation and have different objectives.

Some decision-makers who can influence transport outcomes are neither established in, nor recognised by, the Transport Act.

The lack of overarching objectives for the transport portfolio was identified as an important issue by the Victorian Competition and Efficiency Commission (VCEC) in its 2006 report on transport congestion.

The government, in response to VCEC's report, supported developing unified objectives for transport legislation and reviewing the way transport agencies are set up.

Integration

To achieve transport integration, the different transport modes must operate together as an efficient, effective and seamless system.

Crucially, the bill recognises that transport planning and land-use planning are essentially one and the same thing. Land-use decisions determine existing and future transport needs, and transport decisions can alter land-use patterns.

For example, the location of housing and businesses affects the levels of travel to and from those locations — while building new transport infrastructure or providing new transport services may increase demand for housing or commercial development in particular areas.

The government has demonstrated the importance of transport and land use integration by simultaneously developing the Victorian transport plan and Melbourne @ 5 Million.

Importantly, the bill recognises that decisions impacting on the transport system are not made solely by transport agencies. It identifies a range of 'interface bodies' and explicitly acknowledges, for the first time in legislation, their important role in creating an effective transport system.

So those who plan for the development of our state — land managers, VicUrban, the Growth Areas Authority and Parks Victoria — are designated as interface bodies under the bill. Similarly, the legislation under which these bodies perform their functions is declared interface legislation.

This is a key aspect of this reform. These interface bodies are required to have regard to the objectives and decision-making principles when their decisions are likely to have a significant impact on the transport system.

The bill creates a common platform on which we can build a more integrated and coordinated effort across many areas of government.

Sustainability

The transport system needs to be planned, operated and managed so that it is sustainable, securing ongoing economic, social and environmental benefits for the state.

A transport system needs to support social outcomes by being inclusive and providing access to economic and social opportunities. It enables people to get to their jobs and to visit their families and friends. It can also support the health and wellbeing of individuals and communities — for example, by encouraging walking and cycling.

A transport system needs to support prosperity through efficient and effective access to jobs, markets and services. It facilitates economic activity in vital sectors such as freight and logistics, and the tourism industry.

And a transport system needs to support environmental responsibility by protecting the local and global environment — by mitigating negative impacts, by promoting forms of transport, energy and technologies which have the least impact on the natural environment, and by improving the environmental performance of all modes of transport. When transport and land use are integrated, they contribute to better environmental

outcomes by reducing the amount of travel needed and increasing access to sustainable modes.

Creating a sustainable transport system also involves looking at impacts and outcomes over the long term. This requires robust strategic planning processes which set clear priorities and reflect integrated transport and land use planning.

The policy framework

Comprised of a vision, transport system objectives and decision-making principles, the framework in the bill provides the guidance needed to achieve an integrated and sustainable transport system.

The vision tells all decision-makers what we are working towards.

The objectives centre on a triple bottom-line approach, highlighting the social, economic and environmental outcomes we are seeking.

This is achieved by specific social, environmental and economic objectives as well as objectives related to 'transport and land use integration', 'efficiency, coordination and reliability' and 'safety, health and wellbeing'.

The decision-making principles set out the other key considerations and processes which lead to good decision making.

The policy statement, *Towards an Integrated and Sustainable Transport Future — A New Legislative Framework for Transport in Victoria*, provides additional guidance for decision-makers on the context and intent of this framework.

Context for integrated transport decisions is also provided by other transport policy documents including *Port Futures*, *Freight Futures* and the *Victorian Cycling Strategy*, together with a range of higher level government economic, environmental and social policy documents.

Consolidation of transport agencies

Enshrining these important objectives and principles in legislation will not alone achieve the outcomes we seek for our transport system. We also need a contemporary approach to the organisation of the transport agencies.

At present, transport agencies tend to be —

scattered across a range of portfolio statutes; and

created at different times with their own charter, which sets no objectives, or limited objectives, for the agency to achieve.

This has been exacerbated by the absence of an adequate central statute with a common goal to unite transport agencies in a system-wide approach to transport policy and management.

The bill reverses past practice and deliberately clusters all transport agencies under the one statute.

At the same time, it makes appropriate changes to the charter of each agency. Clarifying these charters improves coherence within the portfolio by ensuring that bodies act within their remit (whether that be operational policy, system development, operations or regulation).

The bill provides for a realignment of transport agencies so they are best placed to deliver the vision and objectives for an integrated and sustainable transport system. It supports these agencies in performing their roles.

A key focus of the bill results from the creation of the Department of Transport in April 2008.

The bill reconstitutes transport agencies established by legislation such as the Transport Act, the Rail Corporations Act and the Southern and Eastern Integrated Transport Authority Act, bringing them within the same legislative framework.

This allows the bill to:

ensure that transport bodies are set up to deliver outcomes aligned to the vision and objectives for transport;

address inconsistencies between the charters of the transport bodies and the new policy framework; and

address existing overlaps, conflicts and gaps between the transport bodies across the portfolio.

The department's leadership role provides an important context for framing roles for the other bodies in the portfolio and monitoring their performance.

In particular, the bill clarifies that VicRoads is responsible for road safety-related strategic policy, while the department is responsible for all other strategic transport policy functions and advice.

This approach was supported by the State Services Authority review of the governance and operational capability of VicRoads, released earlier this year. The

bill implements elements of the government's response to this review.

The bill identifies the broad roles that transport bodies undertake within the portfolio and aims to remove any conflicts, support coordination and provide greater clarity.

Transport bodies have been defined and grouped as:

transport system agencies (director of public transport and VicRoads);

transport corporations (V/Line Corporation, VicTrack and the Linking Melbourne Authority, with the port corporations to come later — including the merger of the port of Melbourne and port of Hastings corporations as recently foreshadowed in *Port Futures*); and

transport safety agencies (the director, transport safety, and the chief investigator, transport safety).

The bill supports the State Services Authority review such that VicRoads will continue to have a wide function, as the state's prime road authority, in providing, operating and maintaining the road system. Importantly, it reinforces the pivotal partnership between VicRoads and the director of public transport, as transport system agencies, in delivering broader outcomes for sustainable transport in Victoria.

The name of the Southern and Eastern Integrated Transport Authority (SEITA) is formally changed in the bill to the Linking Melbourne Authority, reflecting its broader role in the delivery of projects under the Victorian transport plan.

The bill supports the ongoing role of V/Line in providing important passenger services to regional Victoria, but also its broader remit to operate the network in relation to below-rail assets and rail freight. In light of this role, the corporation will be renamed simply V/Line Corporation (as the term 'passenger' in its previous title does not reflect its broadened role).

Milestone changes under the legislation significantly strengthen and refine the role of VicTrack in supporting the transport network. The changes are designed to properly recognise the crucial part that VicTrack has to play — as custodian of much of the state's transport-related land, infrastructure and assets — in the delivery of quality transport outcomes. While VicTrack's operations are diverse, the bill reflects the government's intention that its core responsibility should be the protection of transport land, infrastructure and assets for the benefit of present and future transport users.

The 2004 TFG International review of the role and accountability arrangements for public transport and marine safety in Victoria provided the framework — implemented by the Rail Safety Act 2006 — to establish the independent director, public transport safety, and the chief investigator, transport and marine safety investigations. However, the director of marine safety has not yet been given this same independence.

The bill addresses this by merging the director of marine safety and the director, public transport safety. This is a significant change, creating a single independent transport safety regulator. It will provide a more integrated approach to safety regulation, while it is also likely to drive efficiencies by removing unnecessary duplication in systems and processes.

In 2010, legislation will effect the amalgamation of the Port of Melbourne Corporation and the Port of Hastings Corporation. The new Port Corporation, with the Victorian Regional Channels Authority, will be transferred into this statute, finalising the consolidation of all transport agencies under this new framework.

Key elements of the bill

The bill has two major sections:

the new policy framework for integration and sustainability;

alignment of transport bodies to the new policy framework.

Part 1 of the bill sets out preliminary matters such as the purpose and definitions, and describes the agencies that have been declared transport bodies or interface bodies for the purposes of the bill.

Part 2 sets out the new policy framework for transport — the vision, transport system objectives and decision-making principles — to deliver an integrated and sustainable transport system. It also includes the capacity of the minister to make statements of policy principle to provide support to transport and interface bodies in respect of the interpretation and application of the framework.

Part 3 of the bill sets out the general powers of the minister and the secretary as well as the charter of the Department of Transport to support the minister in the administration of the bill. It also provides for the establishment of a transport infrastructure development

agent in the department to deliver projects under the Victorian transport plan.

Part 4 sets out the planning requirements for the portfolio, including requiring the department to prepare or revise both the Victorian transport plan and corporate plans in line with the policy framework. The corporate planning provisions apply across the transport agencies established in the bill and enable a more integrated planning process led by the department and aligned to the policy framework in the bill.

Part 5 continues the establishment of Victoria's transport system agencies: the director of public transport, who plays the crucial role in managing our public transport system; and the roads corporation, VicRoads, which plays a crucial role in road management, construction, maintenance and safety as well as supporting public transport, walking and cycling.

Part 6 continues the establishment of the state's transport corporations, Victorian Rail Track and V/Line Corporation, and establishes the Linking Melbourne Authority (formerly SEITA).

Part 7 provides for the state's independent safety compliance and investigation offices. This includes the director, transport safety and the chief investigator, transport safety. The director, transport safety is charged with public transport and marine safety regulation — subsuming the roles of the director, public transport safety and the director of marine safety.

Part 8 of the bill relates to general matters, including regulation-making powers.

Broader reform process

Victoria's transport legislation is being completely rewritten with a more logical and integrated structure and reflecting contemporary policy and regulation.

This major reform program has been under way for a number of years, with important milestones to date including:

the Rail Safety Act 2006;

the Transport Legislation (Safety Investigations) Act 2006;

the introduction of taxi industry accreditation in 2006 (Transport (Taxi-cab accreditation and Other Amendments) Act 2006);

the Accident Towing Services Act 2007,

the Bus Safety Act 2009;

the Major Transport Projects Facilitation Act 2009; and

other important legislative initiatives aimed at improving integration and sustainability outcomes including improved safety, road priority and compliance.

Proposed future reforms include a new marine safety bill, a new taxi and hire car bill, a new walking and cycling bill, and a new road safety bill. Each of these will be major reforms in their own right, all within the framework established by this bill.

This reform program has positioned Victoria as the national leader in modern transport policy and legislation.

Conclusion

In essence, the Transport Integration Bill:

1. places a requirement on transport bodies and key non-transport bodies to have regard for the objectives and decision-making principles of the bill;

2. requires planning to be undertaken in line with this policy framework;

3. establishes transport bodies under one piece of legislation, with a common goal to work together to foster greater integration and sustainability.

This bill lays the policy and legislative foundation for an integrated and sustainable transport system.

It affirms the importance of an integrated and sustainable transport system for a modern and prosperous economy, for an inclusive and vibrant community, and for a clean and green environment.

In so doing, it shapes the direction of Victoria's transport system for current and future generations.

Generations that will see the benefits, right across the state and in their local neighbourhood, as the Victorian transport plan is put into action.

I commend the bill to the house.

Mr MULDER (Polwarth) — It is a pity the bill does not ensure that the trains turn up and turn up on time. On that note, I move:

That the debate be now adjourned.

Dr Napthine interjected.

The ACTING SPEAKER (**Mr Ingram**) — Order! I will ignore the comments. I assume that was not the member's contribution on the bill.

Motion agreed to and debate adjourned until Thursday, 24 December.

LIVESTOCK MANAGEMENT BILL

Statement of compatibility

Mr HELPER (Minister for Agriculture) 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 Livestock Management Bill 2009 (the bill).

In my opinion, the Livestock Management Bill 2009, 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 purpose of the Livestock Management Bill 2009 is to:

enable the adoption of agreed Victorian and Australian standards relating to aspects of livestock management;

address the current commitment towards national consistency in relation to the adoption and enforcement of livestock management standards;

provide for compliance with the adopted standards;

provide a co-regulatory mechanism to be able to recognise existing industry compliance arrangements that operate to demonstrate effective compliance with required livestock management standards;

address issues and complaints regularly received by government related to aspects of livestock management, particularly animal welfare, biosecurity and traceability, which cannot be resolved via the application of current legislation and are often the basis for significant community attention or concern; and

provide a framework that will consolidate requirements for livestock management and enable the regulatory system to be better described to the community, as well as improving the clarity around the 'expected practices' for livestock operators.

Human rights issues

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

The bill engages five human rights protected by the charter.

Section 8: the right of recognition and equality before the law

Section 8 establishes the right for recognition and equality before the law, the right to enjoy his or her human rights without discrimination and the right to be equal before the law and entitled to the equal protection of the law without discrimination. Section 8 also establishes the right to equal and effective protection against discrimination, where measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

Two enforcement regimes

Clauses 10, 48 and 50 of the bill engage the right of equality before law because it provides that offences under the regulations and specific offences under the proposed act will not apply to persons operating under an approved compliance arrangement. However, the bill also provides for persons operating under an approved compliance arrangement to be suspended — that is, 'not approved' in specified circumstances. These instances include where there has been behaviour or inactivity that would constitute a breach of the livestock management standards as well as where their behaviour is inconsistent with the basis for approval of the compliance arrangement. This will, as can be demonstrated in the draft *Approved Arrangement Guidelines for the Livestock Management Act*, include non-compliance with prescribed offences. This suspension will result in the offence provisions applying to that person, including in the first instance. The discretion for an authorised officer to so suspend an operator to enable enforcement of offences is no different to the discretion to prosecute operators not operating under an approved compliance arrangement. On this basis there is no inequality before the law and the right to equality under the charter is not limited.

Section 13: privacy and reputation

Section 13 establishes the right for an individual 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.

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

Entry and search provisions

Divisions 1 to 4 of part 5 of the bill provide for search and entry powers and as such engage the right to privacy. However, these powers are neither arbitrary nor unlawful for the reasons set out below.

The search and seizure powers granted to inspectors to enter and inspect that are authorised under clause 31 can only be exercised for the clearly stated public purposes of either determining whether the act, regulations, standards or specifics in the letter of approval have been, or are being, complied with or where the inspector has a reasonable belief that there has been non-compliance with the standards, which

has resulted in or is likely to result in an emergency that threatens animal welfare, human health or biosecurity.

The bill clearly prescribes the scope of the power to search and inspect. Places of residence cannot be searched unless the occupier has consented or where a magistrate has issued a warrant or in the emergency situation referred to above. The bill requires an inspector to inform an occupier of his or her rights in relation to consent before a search and entry power can be exercised. When a warrant has been issued, clause 34 of the bill specifies that an inspector must inform an occupier that he or she is authorised by a warrant to enter a place or vehicle and clause 35 specifies that an inspector must show his or her identity card before exercising any power as well as any time upon request. The bill also specifies the procedures that must be followed in the instance that a premises is entered without the occupier being present. Under the bill, this will only be applicable under a warrant or in an emergency situation.

To the extent that these provisions relate to private information and permit access to residences, they arise in the controlled and prescribed circumstances set out in the bill and are lawful. Procedural safeguards have been included in the bill in relation to the exercise of these powers. Consequently, I do not consider that these requirements can be described as arbitrary.

Accordingly the provisions are compatible with the right to privacy in section 13 of the charter.

Section 20: property rights

Section 20 establishes a right for an individual not to be deprived of his or her property other than in accordance with law. The right ensures that the institution of property is recognised. The right in section 20 of the charter only prohibits a deprivation of property that is carried out other than in accordance with law. This requires that the powers which authorise the deprivation of property are conferred by legislation or common law, are confined and structured rather than arbitrary or unclear, and are accessible to the public and formulated precisely.

This right is engaged by clause 41 of the bill that allows an inspector to take samples of livestock products and materials. This right may only be exercised in clearly defined circumstances and purposes, as the sample can only be taken for the purposes of either determining whether the act, regulations, standards or specifics in the letter of approval have been, or are being, complied with or where the inspector has a reasonable belief that there has been non-compliance with the standards that has resulted in or is likely to result in an emergency that threatens animal welfare, human health or biosecurity. Also the power may only be exercised where there is consent, or where a warrant has been issued by a magistrate or where an inspector has a reasonable belief that there has been non-compliance with the standards that has resulted in or is likely to result in an emergency that threatens animal welfare, human health or biosecurity. In relation to the seizing of documents, clause 39 provides that an inspector must provide the person with a certified copy of the seized documents within 21 days of the seizure, which is deemed of equal validity to the original document.

As the taking of a sample or document would be lawful, confined and structured and is not arbitrary, the provision is compatible with section 20 of the charter.

Section 25: rights in criminal proceedings

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

Offence provisions

Clause 48 provides that it is an offence to knowingly, negligently or recklessly fail to comply with a notice without reasonable excuse. Clause 50 provides that it is an offence to endanger people, animals or risk disease, with subclause (2) providing that a person does not commit an offence if they were acting reasonably in good faith or in the public interest. Clause 58 provides that a person must not obstruct or hinder an inspector in exercising the inspector's powers under this act without reasonable excuse. These offences are subject to penalties ranging from 10 to 60 penalty units in the case of a natural person.

By placing a burden of proof on the defendant with respect to the excuse or exemption that applies to these offences, these provisions engage the right to be presumed innocent. However, as these offences are summary offences they are subject to section 130 of the Magistrates' Court Act. The effect of this section is that an evidential burden lies on the defendant who wishes to rely on the excuse or exception contained in the description of these offences. As a result, the defendant must merely present or point to evidence that suggests a reasonable possibility of the existence of facts that establish the excuse or exception and is not required to prove the excuse or exception.

Courts in other jurisdictions have generally taken the approach that an evidential onus on a defendant to raise a defence does not limit the presumption of innocence. However, even if these provisions limit the right to be presumed innocent in section 25(1) of the charter, the limitation would be reasonable and justifiable under section 7(2) of the charter because the excuse and exceptions provided for relate to matters within the knowledge of the defendant. Furthermore, the burdens do not relate to essential elements of the offences and where the defendant meets this burden, the prosecution must rebut the existence of that excuse or defence beyond reasonable doubt. Accordingly, I consider these provisions compatible with the presumption of innocence under section 25(1) of the charter.

Section 15: freedom of expression

The right to freedom of expression, protected by section 15 of the charter, has been interpreted in some jurisdictions to include a right not to impart information. The definition of 'expression' has been interpreted to include false, misleading and dishonest communications.

Clause 58(1) makes it an offence to refuse to answer a question lawfully asked by an inspector or to produce a document lawfully required by an inspector, and clause 58(2) makes it an offence to give an inspector any information or answer that is false or misleading. However, to the extent that these information-gathering powers impose any restrictions on the freedom of expression, they are reasonably necessary for the protection of public order under section 15(3) of the charter. Livestock management is considered a matter of public order as it is an essential service in which proper regulation is vital to protecting human health, animal welfare, biosecurity and preventing the spread of disease. The ability

of inspectors to compulsorily gather information required to undertake their statutory functions is reasonably necessary to ensure proper regulation and monitoring of the livestock industry.

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.

Joe Helper, MP
Minister for Agriculture

Second reading

Mr HELPER (Minister for Agriculture) — I move:

That this bill be now read a second time.

The proposed Livestock Management Bill 2009 will meet four broad needs:

it will provide the framework for the implementation of agreed Victorian and Australian standards relating to aspects of livestock management, including standards for animal welfare, biosecurity, animal health and traceability;

it will address the current commitment by Australian governments for national consistency in relation to the adoption and enforcement of livestock management standards;

it will provide a co-regulatory mechanism that will facilitate recognition of existing industry compliance arrangements that operate to demonstrate effective compliance with required livestock management standards; and

it will address issues and complaints regularly received by government related to aspects of livestock management, particularly animal welfare, biosecurity and traceability, which cannot be resolved under current legislation and are often the basis for significant community attention or concern.

This bill is enabling legislation that will allow agreed standards to be prescribed, which will then trigger the bill's operation. As each set of standards is prescribed, the bill will require the mandatory implementation of those agreed standards of livestock management across all categories of livestock to which the particular standards apply, from the point of birth to slaughter. The government will administer these standards by assessing, verifying and ensuring their application across Victoria. Those responsible for meeting the standards include all individuals and enterprises involved in the husbandry, handling, management, ownership, transportation and/or slaughter of livestock.

It is clear that consumer and community attitudes and expectations are changing and there is a need to provide assurance to both domestic and international customers that Victorian livestock are well managed. As one of the largest exporters of livestock products in the world, Australia is subject to intense international scrutiny. There is a need to provide a system that can demonstrate that livestock management practices are conducted in accordance with clear, enforceable standards that are nationally consistent and underpinned by effective industry compliance arrangements.

The Primary Industries Ministerial Council (PIMC) has approved business plans for the development of national animal welfare standards and there are discussions within PIMC's national biosecurity committee regarding the setting of national biosecurity management standards.

PIMC endorsed 23 'key elements for animal welfare legislation consistency', which describe the broad principles by which each jurisdiction will ensure a consistent legislative approach. This bill is the mechanism by which Victoria will implement its agreement with other jurisdictions to integrate the new standards into legislation in accordance with these 23 'key elements'.

The rationale for considering a Livestock Management Bill as the vehicle for introduction of these new standards is twofold:

1. there is a need to separate 'management' from 'cruelty', which is the focus of the current animal welfare legislation — the Prevention of Cruelty to Animals Act 1986; and

2. it is recognised that a range of other standards related to livestock management, notably biosecurity, are likely to be developed in the near future.

The bill will directly address the recommendations of several national regulatory reviews, which have examined the need to reduce regulatory burden through consistent standards, harmonised delivery and consistent enforcement by government. The bill will also address critical stakeholder needs, including the need for consistent national standards in legislation, and the need for industry to use its compliance arrangement for example quality assurance schemes, to demonstrate compliance with standards.

Government regularly receives complaints related to welfare and biosecurity aspects of livestock management, many of which cannot be resolved via the application of current legislation and are the basis for significant community attention or concern. Examples of these include the time that livestock are transported for slaughter, the way livestock are handled in or near saleyards, the housing and confinement of livestock and the management of routine or surgical procedures on farm, such as mulesing. The latter has been an issue of public concern recently and one that has attracted considerable attention by both the media and animal rights groups. It should be noted that many of these issues have not been regulated previously, therefore they have not been routinely monitored, such that the level of compliance with acceptable standards of management is often unknown.

The introduction of nationally consistent standards for livestock management will provide government with the ability to ensure acceptable standards of livestock management are adopted, and to focus and address issues and some of the aforementioned risk areas. This legislation will consequently provide greater assurance to the community and national and international markets. The first set of standards intended to be referenced in regulations under the proposed bill are the Australian Standards and Guidelines for the Welfare of Animals (Land Transport) and the Pig Code (Victorian Standards for the Welfare of Pigs). These will be followed by other standards currently being developed nationally, including the Australian Standards and Guidelines for the Welfare of Animals (Sheep) and the Australian Standards and Guidelines for the Welfare of Animals (Cattle).

The current legislation — the Livestock Disease Control Act 1994 and the Prevention of Cruelty to Animals Act 1986 — is restricted to specific issues such as the extremes of cruelty and the management of certain diseases in animals. This bill will strengthen the enforcement of these matters and provide clarity around the 'expected practices' for livestock operators. An internal departmental review highlighted that significant amendment would be required to introduce standards that are 'proactive' into the existing legislation, given its current design, intent and focus on the more 'reactive' and/or extreme issues. Furthermore, the existing legislation is not capable of acknowledging co-regulatory arrangements. This bill will resolve these issues.

The bill will provide for a new and innovative approach — that is, it will introduce a co-regulatory mechanism by which industry may demonstrate compliance with standards. In other words, the bill will acknowledge existing compliance arrangements, such as quality assurance schemes, as mechanisms for demonstrating compliance with standards.

Recent reviews have recommended the need for government to reduce regulatory burden through providing linkages to industry quality assurance programs as vehicles for compliance. A Victorian review, commissioned by the Department of Primary Industries (DPI), reported that there is a need for recognition, support and acceptance by government of producers who have invested in and instituted a recognised quality assurance program (given these are well accepted by international markets and trading partners); and that industry should be empowered to take ownership and drive agreed, outcome-based requirements.

Through an 'approval process', government will establish a relationship with the controlling authorities of these programs that will allow government to identify the livestock operators that have these systems and seek to confirm their compliance. Under the terms of approval, scheme administrators will be obliged to provide access to audit findings and regular reporting on compliance with the standards. This in turn, will further inform DPI's inspection policies so as to provide a more targeted, risk-based approach to enforcement and improve compliance, Entities outside of an approved quality assurance scheme may enter into an approved arrangement directly with DPI for compliance with the standards. All instances of non-compliance with the standards will be subject to enforcement action under the sanctions policy, irrespective of whether the entity is a participant in an approved quality assurance scheme.

It is considered that these actions would result in a market-driven approach which would likely result in a higher degree of compliance with prescribed nationally consistent standards, compared to direct enforcement by government officers. Therefore, the proposed bill, by legally sanctioning the recognition of these compliance arrangements, will provide two distinct compliance regimes and, alongside this, deliver a risk assessment process to determine the level of inspection that might apply at each entity.

Livestock operators engaged within an approved quality assurance scheme that embraces the standards, will be deemed compliant in the first instance and be recognised as part of the co-regulatory mechanism. Livestock operators that are not participating in an approved quality assurance system will be subject to a level of inspection sufficient to demonstrate compliance. All entities will be subject to inspection for

the purpose of assessing, verifying and enforcing the standards; however, government policy will ensure that the focus of its inspectors is directed to operators that have no approved compliance arrangement in place.

The bill poses no additional obligation on any individual other than the requirement to meet the nationally endorsed standards. It should also be noted that the proposed bill does not directly require industry to have in place a compliance arrangement but provides incentive for those that do and will encourage this approach to be developed by industry over time.

Inspectors will be appointed by the secretary and required to have competency as an 'inspector of livestock' under the Livestock Disease Control Act 1994. Inspectors will operate under this bill at the same time as managing their responsibilities under the Prevention of Cruelty to Animals Act 1986 and the Livestock Disease Control Act 1994, to ensure improved coordination with the existing legislative tools.

The bill will be supported by 'approved arrangement guidelines', which will describe the policies and administration of the bill. These are currently being developed with full industry consultation, to ensure that the industries intending to utilise the compliance arrangement option under the proposed bill have ownership and are well engaged prior to the integration and requirement for any standards. This 'approved arrangement' approach is currently employed by the commonwealth government under its export orders.

There has been considerable stakeholder consultation to date. Industry and government agency stakeholders provided input to the concepts proposed for the bill as part of a consultation workshop in 2008. Further consultation in 2008 and 2009 involved direct discussions with peak industry bodies and associations, other jurisdictions, welfare organisations and government agencies. All key stakeholder groups have been involved in discussions on the detail of the bill and its policies. Stakeholders have indicated support for the bill.

Another key benefit reported by industry was the consolidation of livestock management standards under this single legislative framework. In future livestock operators may be able to effectively meet standards set by different commercial organisations via a single quality assurance system. This will thereby reduce the need for multiple records and audits, which if not managed, can create considerable burden to industry operators. All stakeholders indicated they were keen to continue consultation with the department to further consider and jointly develop the detail underpinning the bill.

From industry's perspective, there is little benefit in maintaining a compliance arrangement that cannot demonstrate compliance with minimum standards set by government as well as implementing best practice. Consequently, the bill will minimise regulatory burden over time, support industry's considerable investment in compliance arrangements and strengthen the underpinning and reputation of these programs in the marketplace. This will also provide incentive for the industries to take responsibility for meeting standards and to do this by utilising their own programs and arrangements.

I commend the bill to the house.

Debate adjourned on motion of Mr WALSH (Swan Hill).

Debate adjourned until Thursday, 24 December.

SEVERE SUBSTANCE DEPENDENCE TREATMENT BILL

Statement of compatibility

Mr ANDREWS (Minister for Health) 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 Severe Substance Dependence Treatment Bill 2009.

In my opinion, the Severe Substance Dependence Treatment Bill 2009, as introduced in the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Background

In 1968 the Victorian Parliament enacted the Alcoholics and Drug Dependent Persons Act 1968 (ADDPA). This act remains in force today. The ADDPA establishes a legislative framework to provide and monitor drug treatment services. It also authorises and regulates the detention of some alcohol and drug-dependent persons for the purpose of assessment and treatment through a process of civil detention.

The provisions in the ADDPA raise some concerns with respect to the protection of human rights in the charter. For example, the ADDPA authorises detention for up to seven days and provides that this period may be extended for a further seven days (by a medical officer in charge of an assessment centre). However, the act does not require there to be an adequate justification to extend the person's detention. I believe that the ADDPA cannot be said to embody the principle of least restrictive means to achieve its purpose.

A discussion paper (*Review of the Alcoholics and Drug-dependent Persons Act 1968*, August 2005) was prepared by the former Department of Human Services on the operation of the ADDPA. This paper identified issues in relation to various provisions of the ADDPA including definitions, redundant provisions and accountability mechanisms in the present act.

Overview of bill

This bill repeals the ADDPA and establishes a new system of civil detention for persons with severe substance dependence.

The following features of the bill are noteworthy:

Eligibility for a detention and treatment order

(a) Detention is strictly limited to adults who require immediate treatment as a matter of urgency to save their life or prevent serious damage to the person's health (clause 8);

(b) Detention must be the only means by which treatment can be provided and there must be no less restrictive means reasonably available to ensure the treatment (clause 8);

Process for making a detention and treatment order

(c) A detention and treatment order must be made by the Magistrates Court before detention is authorised (clause 20);

(d) Before a detention and treatment order may be made, a prescribed registered medical practitioner must certify that all of the criteria for detention and treatment outlined in clause 8 ('section 8 criteria'), have been satisfied (clause 12). The categories of medical practitioners will be prescribed in regulations and will include practitioners expected to have some knowledge or experience of alcohol or other drugs treatment issues;

Scope of a detention and treatment order

(e) The period of detention is strictly limited to a maximum of 14 days (clause 20)

(f) Treatment is restricted to medically assisted withdrawal (clause 6);

(g) If at any time the criteria no longer apply to the person the detained person must be released. In addition the bill clearly sets out when the person must be discharged from the order (clause 35);

(h) The person subject to a detention and treatment order may apply at any time during detention to the Magistrates Court for the order to be revoked (clause 22).

Safeguards during detention

(i) As soon as practicable after admission and no later than 24 hours after admission, the bill requires (clauses 23, 24 and 25):

  a. An examination of the person by the senior clinician of the treatment centre to decide whether or not the section 7 criteria apply;

  b. The patient to be given a written statement of their rights and entitlements under the act including the right to seek legal advice and obtain a second opinion about their condition and treatment.

  c. The senior clinician must inform the public advocate of the person's admission and take reasonable steps to notify a person nominated by the person and guardian of this fact.

Human rights issues

The bill engages a number of rights protected by the charter. Prior to analysing the rights in detail, I wish to make the following general comments.

The bill seeks to minimise interference with a person's human rights in a manner that is both reasonable and demonstrably justified.

The criteria for treatment in the bill are such that only a small group of persons is likely to be captured by this bill. These persons will be persons experiencing severe substance dependence to the extent that they no longer have an ability to make decisions not only about treatment for their substance use, but also decisions about their personal health, welfare and safety.

In my view, the bill's objectives are consistent with the principle of personal autonomy. The bill aims to enhance the capacity of persons with a severe substance dependence to make their own decisions about their substance use and personal welfare. The provisions for detention and treatment are designed to give persons with severe substance dependence 'time out' from their substance use, creating an opportunity for the person to engage with services for voluntary treatment.

Evidence-based policy

Research has shown that for this very small group of people a brief period of civil detention and treatment can be beneficial and life saving.

The 2007 *Turning Point Alcohol and Drug Centre Report* on compulsory treatment prepared for the Australian National Council on Drugs (ANCD research paper 14, Pritchard, Mugavin and Swan) found that while the Australian and international civil commitment legislation has not been evaluated for its long-term effectiveness, there is evidence that compulsory treatment can be an effective harm reduction mechanism for some people.

This finding is supported by a 2004 review of the ADDPA, undertaken for DHS by the Turning Point Alcohol and Drug Centre (Swan and Alberti) and a 2008 literature review of the effectiveness of compulsory residential treatment prepared for the NZ Ministry of Health (Broadstock, Brinson and Weston, *Human Services Advisory Committee Report 2008*).

The duration of the detention (for up to 14 days) is based on evidence that medically supervised withdrawal commonly requires between 7 and 14 days. For people with long-term drug or alcohol dependence, withdrawal is often protracted and complicated by other medical issues. It is only after withdrawal has occurred that an adequate assessment can be made of the person's capacity to make decisions about their dependence and their need for further treatment. The 14-day period aims to ensure enough time for withdrawal to take

place safely so that an assessment can be made to inform discharge planning, follow-up care options and voluntary treatment.

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

The rights engaged by the bill are:

Section 10(c) — right not to be subjected to medical treatment without his or her full, free and informed consent

Section 12 — freedom of movement

Section 13 — privacy

Section 21 — liberty and security of person

Section 24 — fair hearing.

The clauses of the bill that engage these rights are discussed below.

The bill may also engage the following additional rights:

Sections 8(3) and 8(4) — a person has the right to be protected from any discrimination on the basis of an impairment.

The charter protects against discrimination based on attributes set out in the Equal Opportunity Act 1995 including impairment. An impairment includes 'malfunction of a part of the body including … a mental or psychological disease or disorder'. This bill provides for treatment of persons with severe substance dependence. It is my view that a person with such dependence will have an 'impairment' so defined. The treatment provided to such persons is a measure taken to assist persons with such an impairment. The reason for this conclusion is that the bill provides an avenue for persons to receive urgent treatment to save the person's life or prevent serious damage to their health. For this reason, section 8(4) of the charter applies and the measures contained in this bill are compatible with the charter.

Section 9 — right to life.

This bill enhances the right to life. It provides for urgent medical treatment in order to protect the life of a person with severe substance dependence.

Section 17 — protection of families and children.

Section 19 — cultural rights.

These additional rights may be engaged through the operation of the bill. For example, detention may interfere with a person's ability to maintain family relationships or to practise their religion whilst in detention. However, we note that any restriction on these rights is likely to be very brief in duration as detention may only be authorised for 14 days.

Freedom of movement (section 12)
Right to liberty and security of person (section 21)

I have chosen to deal with these rights together as they raise issues which substantially overlap. To the extent that these rights are limited by the provisions in the bill, I consider that the limitations are reasonable having regard to section 7 of the charter.

Section 12 of the charter provides that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

Section 21 of the charter provides that every person has the right to liberty and security of person. The section sets out certain minimum rights of individuals who are detained to minimise the risk of arbitrary or unlawful detention recognising the following:

the right not to be subjected to arbitrary arrest or detention;

the right not to be deprived of his or her liberty except on grounds, and in accordance with the procedures, established by law;

the right to be informed at the time of arrest or detention of the reason for the arrest or detention and to be promptly informed about any proceedings to be brought against him or her;

that the person is entitled to apply to a court for a declaration or order regarding the lawfulness of his or her detention.

Reasonableness of the limitations

Detention and treatment orders

Clause 20 of the bill engages these rights since it provides for the making of a detention and treatment order. A detention and treatment order authorises the detention and treatment of persons with severe substance dependence in a specified treatment centre for up to 14 days.

(a) The nature of the rights being limited

The nature of the rights to liberty and freedom of movement is the basic principle that every person has a right to physical liberty that can only be interfered with in specific circumstances.

These rights are not absolute in international human rights law and may be subject to reasonable limitations.

(b) The importance of the purpose of the limitation

It is necessary to limit a person's rights in order to provide urgent treatment to save the person's life or to prevent serious damage to a person's health. This is a very important purpose.

(c) The nature and extent of the limitation

The limitation is proportionate. The bill provides that a person can only be detained if a number of criteria are established, and only for up to 14 days. There are a number of safeguards contained in the bill to minimise the interference that the bill may have on a person's human rights. These are listed above in the overview section.

(d) The relationship between the limitation and its purpose

The bill restricts a person's freedom of movement and liberty by detaining a person subject to a detention and treatment order in a treatment facility. The purpose of the limitation is to protect a person with severe substance dependence where urgent treatment is required to save the person's life or to

prevent serious damage to a person's health. This purpose is rationally connected to the purpose of limiting rights — namely, detention is necessary for the treatment to occur.

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

Engaging persons voluntarily in treatment would be less restrictive. However, this option is not reasonably available since the persons who are eligible for a detention and treatment order are not able to be engaged voluntarily. The bill clearly provides that treatment must only be able to be provided to the person through the admission and detention in a treatment centre.

I note that in the discussion paper of the review of the ADDPA referred to above, other mechanisms for treatment of individuals with severe drug and alcohol problems were identified. However, none of these avenues captured the client group to which civil detention would apply.

There is accordingly no less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

(f) Conclusion

For the reasons outlined above the limitations the bill places on the right to freedom of movement and liberty and security of person are reasonable and proportionate and compatible with the charter.

Restraint and sedation

Clause 38 engages the right to freedom of movement and the right to liberty and security of person. It empowers prescribed persons to restrain a person and to administer sedation for the purposes of safely transporting the person to a treatment centre and to and from a place for receiving medical treatment.

(a) The nature of the rights being limited

This is discussed above.

(b) The importance of the purpose of the limitation

The limitation is important to enable the safe transportation of a person who may be agitated or violent. Agitated or violent behaviour puts the safety of the person, transport and the other people involved at serious and imminent risk. This is an important purpose as it protects the safety of the person who needs treatment, and staff accompanying the person to a treatment facility.

(c) The nature and extent of the limitation

Sedation or restraint may only be used if necessary to take, transfer or return the person safely to the treatment centre or to take and return a person to a place for the purpose of receiving medical treatment. The bill does not authorise sedation or restraint outside of these situations. It provides additional safeguards by limiting the power to restrain and/or administer sedation to prescribed persons.

(d) The relationship between the limitation and its purpose

There is a rational connection between the limitation and its purpose. Restraint and sedation is authorised if it is necessary to safely transport persons to a treatment centre or to take and return a person to a place for the purpose of receiving medical treatment. Without the mechanism of restraint and sedation for transportation in these circumstances, such transportation could put all parties and other road users at serious risk.

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

There is no less restrictive means reasonably available in the prescribed circumstances to ensure safe transportation.

(f) Conclusion

For the reasons outlined above it is my view that the limitations on the rights to freedom of movement and liberty and security are compatible with the charter.

Right not to be subjected to medical treatment without his or her full, free and informed consent (section 10(c))
Right to privacy (section 13)

I have chosen to deal with these rights together as they raise issues which substantially overlap. To the extent that these rights are limited by the provisions in the bill, I consider that the limitations are reasonable having regard to the factors set out in section 7(2) of the charter.

Section 10(c) of the charter provides that a person must not be subjected to medical treatment without his or her full, free and informed consent.

Section 13(a) of the charter recognises a person's right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

In relation to the right against medical treatment without consent it is an accepted principle of international human rights law that it may be legitimate to require a person to undergo medical treatment in some circumstances.

The requirement that any interference with a person's privacy must not be 'unlawful' imports a requirement that the scope of any legislative provision that allows an interference with privacy must specify the precise circumstances in which an interference may be permitted. The requirement that an interference with privacy must not be arbitrary requires that any limitation on a person's privacy must be reasonable in the circumstances and should be in accordance with the provisions, aims and objectives of the charter.

These rights are engaged by the bill as it authorises the provision of medical treatment without a person's consent. Clauses 29 and 30 provide for medically supervised withdrawal treatment to be provided to a person without their consent in specific circumstances. Clauses 13 and 23 provide that in specific circumstances a person can be examined without their consent.

Reasonableness of the limitations

(a) The nature of the right being limited

Underlying these rights are the concepts of personal autonomy and human dignity. These rights are not absolute in international law and may be subject to reasonable limitations.

(b) The importance of the purpose of the limitation

It is necessary to limit a person's rights in order to provide urgent treatment to save the person's life or to prevent serious damage to a person's health. This is a very important purpose.

(c) The nature and extent of the limitation

The bill distinguishes between persons who are capable of making decisions and those who are not, due primarily to their alcohol and/or drug dependence. This limits the range of persons who may be subject to medical treatment without their consent. Only persons who are incapable of making decisions about their substance use and personal health, welfare and safety may be subject to a detention and treatment order.

Importantly, the bill does not assume that a person who is subject to a detention and treatment order is incapable of giving consent to treatment. The provision of treatment without a person's consent is restricted to medically supervised withdrawal and the bill does not alter the law relating to consent to other treatment. In this way, the bill only limits a person's human rights to the extent that it is necessary to achieve the purpose of the bill.

(d) The relationship between the limitation and its purpose

The limitation is rationally connected to the purpose. It seeks to ensure that by providing treatment without consent, a person receives treatment where it is required urgently to save their life or to prevent serious damage to their health.

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

There are no less restrictive means reasonably available to achieve the purpose of the limitation as the person is not in a position to consent to treatment.

(f) Conclusion

For the reasons outlined above the limitations the bill places on section 10(c) and 13(a) are compatible with the charter.

Right to privacy (section 13)

In addition to the provisions of the bill providing for medical treatment without consent, the bill also engages the right to privacy in other contexts.

Entry powers

Clauses 13, 20, 34 and 37 grant a power to an authorised person to enter a premises without an occupier's consent. This may include residential premises.

The purpose of this provision is to allow a person to enter premises in order to take or return a person to a treatment centre for urgent treatment required to save the person's life or to prevent serious damage to the person's health.

The clause specifies the circumstances in which interferences with this right are permitted.

These clauses do not unreasonably limit the right to privacy. The powers are provided by law and are not arbitrary since they are circumscribed.

Searches

Clause 38 engages the right to privacy because it empowers certain persons to carry out a search of the person in prescribed circumstances. This engages the right to bodily integrity which is protected by section 13 of the charter.

The purpose of empowering certain persons to carry out a search is to enable the person to be safely taken, transferred or returned to a treatment centre for medically supervised withdrawal.

This clause does not limit the right protected in section 13 of the charter. The powers are provided by law and are not arbitrary since they are circumscribed. The bill specifically defines what constitutes a search, the circumstances in which a person may be searched and that only a member of the police force, the senior clinician or manager of a treatment centre, or a member of staff of the treatment centre directed by the senior clinician or manager may carry out the search.

Right to a fair hearing (section 24)

Section 24(1) of the charter recognises a person's right to a fair and public hearing. Section 24(2) recognises that a court or tribunal may exclude members of the media organisations or other persons or the general public from all or part of a hearing if permitted to do so by a law other than the charter.

The right to a fair hearing and the right to public pronouncements of judgements and decisions are engaged by clauses 15–19 and 22 of the bill.

Conduct of hearing

Clause 15 of the bill outlines the process for the Magistrates Court to hear an application for a detention and treatment order. Clause 16 outlines the requirements for proof of service. In my view, these clauses seek to protect a person's right to a fair hearing through the following means:

By requiring personal service of an application for a detention and treatment order on a person (clause 16); and

By establishing a right of the person who is subject to the application to appear at the hearing of the application (clause 15); and

By establishing a right to legal representation at the hearing of the application (clause 18);

In the case of an application for the revocation of a detention and treatment order, by requiring the court to hear an application 'as soon as practicable after it is filed' (clause 22). In addition, the bill guarantees the right to appear and to be legally represented in revocation applications.

Private hearing

The bill provides that the court may direct a hearing to be held in a closed court (clause 19). I note that the matters being considered by the court under this bill relate to a person's sensitive health and personal information. To the extent that the bill limits a person's right to a public hearing, it is my view that the interference falls within the scope of section 24(3).

Conclusion

I consider that the bill is compatible with the charter of human rights because to the extent that some provisions may limit rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

Hon. Lisa Neville, MP
Minister for Mental Health

Second reading

Mr ANDREWS (Minister for Health) — I move:

That this bill be now read a second time.

In May 2008, the Brumby government approved the Victorian Alcohol Action Plan as a comprehensive strategy to prevent and reduce harm associated with alcohol misuse in Victoria. The plan includes a commitment to introduce legislation to provide for the short-term involuntary detention of people with severe alcohol or drug dependence where they are at risk of serious harm.

This bill delivers on that commitment and on the findings of a review of the Alcoholics and Drug-dependent Persons Act 1968 that found that for a small number of people, civil detention is necessary as a last resort to save people's lives.

The Severe Substance Dependence Treatment Bill will repeal and replace the Alcoholics and Drug-dependent Persons Act. This bill will modernise the law and provide a more compassionate approach to the very small group of people who cause serious continuing harm to themselves and put their lives at risk through their drug or alcohol dependence.

The bill does not target the issue of alcohol-fuelled violence or street drinking. Neither is the bill concerned with binge drinkers or those who become aggressive when under the influence of alcohol. These are all significant community issues that are being addressed by the Victorian Alcohol Action Plan, but there is no research evidence that such behaviours will respond to the involuntary treatment to be provided under the bill.

Neither does the bill target people who use substances at dangerous levels over a long period of time.

The foremost objective in the development of this bill has been to ensure that only those people with the most severe substance dependence who urgently require treatment to save their life or prevent serious damage to their health come under the legislation. Detention must be the only means by which treatment can be provided and there must be no less restrictive means reasonably available to ensure the treatment.

These are people who have lost all capacity to make decisions about their substance use and personal health, welfare and safety. Typical elements of their situation will include a long history of severe substance dependence, increasingly heavier or more dangerous use of the substance, serious medical and health complications, signs and symptoms of an acquired brain injury, and more recent behaviour that indicates the person no longer has any control over their substance dependence. They will often prioritise their substance use ahead of meeting their other basic needs such as food and self care. Without intervention these people will more likely than not become permanently disabled or die.

Research has shown that for this very small group of people a brief period of detention and treatment can be beneficial and life saving.

The first point of access to the legislation will be through an examination and assessment provided by a prescribed registered medical practitioner. The practitioner may complete a recommendation that the person be admitted to and detained in a treatment centre if the practitioner is satisfied that all the criteria for detention and treatment apply to the person.

The bill has been drafted to ensure that this assessment is thorough and is made with the appropriate level of knowledge and experience. To this end only certain groups of registered medical practitioners will be prescribed to provide this assessment and complete a recommendation. The categories of medical practitioners will be prescribed in regulations and will include practitioners expected to have some knowledge or experience of alcohol or other drugs treatment issues, such as forensic physicians, addiction medicine specialists and doctors engaged by emergency departments and alcohol and other drugs treatment services. This will ensure there are sufficient numbers of prescribed registered medical practitioners accessible on a statewide basis to provide equitable access to the benefits of the legislation.

In addition, the bill requires that the medical practitioner conducting the examination must also consult with the senior clinician of the treatment centre at which it is proposed to detain the person. The aim of that consultation is to ensure there is a thorough and expert consideration of the person and their situation. The bill outlines the issues that must be considered during this consultation, including the nature of the urgent risk to the person's life and health, and available less restrictive options in preference to detention and treatment.

This mandatory secondary consultation with a specialist will ensure a high level of expertise and experience is brought to the decision making and will give the opportunity to explore available less restrictive treatment options in preference to detention and treatment that may be unknown to the prescribed registered medical practitioner.

Another important consideration in the development of this bill has been to ensure that the processes are accessible and timely, given the potential risk to health and life, and include important safeguards to protect human rights.

The bill provides that any adult person will be able to make an application to the Magistrates Court for a detention and treatment order. A detention and treatment order must be made by the Magistrates Court before detention is authorised. It is expected that the applicant will most likely be a concerned family member, a health worker or a member of the police force. Before making an application the bill requires that the applicant must have arranged for the person to be examined by a prescribed medical practitioner for the purposes of making a recommendation as described earlier.

The Magistrates Court was chosen because it is an accessible and responsive forum in which to hear an application for detention and treatment and test the evidence provided by the applicant as to why a person should be made subject to a detention and treatment order.

Given the bill focuses on the most severe cases, the bill seeks to ensure any delays in hearing an application should be kept to the minimum possible in the circumstances. The bill specifies that the applicant must personally serve a copy of the application on the person within 24 hours. The court must list the application for hearing within 72 hours of the application being lodged.

These time lines seek to balance the need to ensure a hearing can proceed expeditiously, in the knowledge that a person's life or health is at serious and imminent risk, with the requirement to give the person sufficient notice and time to attend the court and give an initial response to the application. It is considered that allowing longer time lines could potentially lead to deaths or permanent injury.

The person has the right to attend the hearing and be legally represented. Importantly, the bill permits the court to adjourn a matter to a further date to enable a person to obtain legal representation and otherwise prepare for the hearing if required.

The court cannot make a detention and treatment order unless it is satisfied that each of the criteria for detention and treatment apply to the person and, having regard to all relevant matters, the court considers the detention and treatment of the person at a treatment centre is necessary. The court will not be bound by the usual rules or practice with regards to evidence and may inform itself in relation to any matter in the manner it thinks fit.

The onus will be on the applicant to ensure the court has sufficient information to make a decision, particularly if the person does not attend the hearing. In addition to information about the person's severe substance dependence and their need for treatment, the applicant should to the extent possible provide information about the person's social and cultural circumstances. These provide important contextual information for the court to help it decide whether detention and treatment is the least restrictive option in the circumstances.

For example, the negative impacts of detaining Aboriginal people and separating them from their family, community and country are well documented. If the person subject to an application is Aboriginal, it will be important for the court to consider whether there are any less restrictive services and treatment options, including those provided by the Aboriginal community, to address the needs of Aboriginal people who are substance dependent.

The bill provides for a period of up to 14 days detention and treatment. This provides a critical intervention that will help bring the person back from the brink, give them time out from their substance dependence, access to medically assisted withdrawal, a chance to recover their capacity and think more clearly about their situation, and the opportunity to engage in voluntary treatment.

It is acknowledged that a short period of detention and treatment on its own cannot cure the person of their substance dependence and associated issues. However, the power to detain and treat a person under the bill is intended to save lives or prevent serious damage to a person's health. It is a last chance for individuals with severe substance dependence to regain capacity, reassess their situation and get help — a chance they might otherwise not get.

The government recognises that detention and treatment engages significant human rights such as the right to liberty and security of person and the right not to be subjected to medical treatment without full, free and informed consent.

However, the government considers the bill's objectives are consistent with the principle of personal autonomy. The bill aims to enhance the capacity of persons with severe substance dependence to make their own decisions about their substance use and personal welfare. It seeks to create an opportunity for a person to engage with services for voluntary treatment.

The bill has been drafted to ensure any limitations on rights are reasonable and are the minimum necessary in the circumstances. The bill includes a comprehensive and integrated range of safeguards to achieve this end.

I now turn to the parts of the bill.

Part 1 of the bill sets out the objectives, definitions and criteria for detention and treatment.

The purpose of the bill is to provide for the detention and treatment of persons with severe substance dependence.

The criteria for detention and treatment provide the critical threshold for determining whether a person should be the subject of a detention and treatment order. The criteria have been developed to ensure that the legislation only captures the small group of people for whom it will be life saving or to prevent serious damage to health.

Detention and treatment will not be applied to any person under 18 years of age. This will ensure there are no jurisdictional issues with other protective legislation that applies to young people, such as the Children, Youth and Families Act 2005.

This part of the bill also includes a definition of treatment that limits treatment to medically assisted withdrawal from severe substance dependence and the things done to lessen the ill effects, or the pain and suffering, of the withdrawal.

The bill does not alter the law relating to consent to other treatment. Importantly, if a person requires treatment for a medical condition and is unable to consent to that treatment, the bill does not interfere with existing legal regimes such as the Guardianship and Administration Act 1986 and the Medical Treatment Act 1988 to enable the person to receive appropriate medical treatment.

Part 2 of the bill provides a framework for making a detention and treatment order. This framework provides all the parties involved in the process with a clear understanding of their role. It addresses both the need to be expeditious in cases where the lives of individuals may be at risk and the need to protect and promote the rights of the person.

The applicant for a detention and treatment order must personally serve a copy of the application on the person within 24 hours of lodging the application with the Magistrates Court. Any guardian of the person must also be served with a copy of the application within 24 hours. This is an important safeguard that will allow the guardian to make representations on behalf of or act for the person and assist the person to exercise their rights under the bill.

The bill provides that the court may direct a hearing to be held in a closed court and prohibit the publication of any report of the proceedings. Whether or not the court gives such directions, the bill prohibits the publication or broadcast of any information that is likely to identify the person and other key parties to a hearing. The matters being considered by the court relate to a person's sensitive health and personal information. This provision is an important safeguard to minimise any interference with the person's right to privacy.

Before the court can make a detention and treatment order, the court must have received a certificate from the manager of the treatment centre or the senior clinician at which it is proposed to admit the person stating that there are facilities and services available in that service for the treatment of the person. The certificate will provide an outline of the facilities and services available for the treatment of the person at that treatment centre.

If the court makes a detention and treatment order, the person is to be detained and treated in a treatment centre. The period of detention is strictly limited to a maximum of 14 days.

During this period, the bill gives the person an important right to apply at any time to the Magistrates Court for the order to be revoked.

This part of the bill also contains another important and potentially life-saving provision. The bill provides that a warrant may be applied for from a magistrate if the applicant believes on reasonable grounds that all of the criteria for detention and treatment apply to a person and a prescribed registered medical practitioner is unable to access the person for the purpose of determining whether or not to make a recommendation. This addresses the distressing situation where a person may have locked themselves in a room or a house and cannot be examined. The magistrate must be satisfied by evidence on oath that there are reasonable grounds for the belief that the criteria apply to the person and is

unable to be accessed. It is expected that this will be a little used but critically important provision of the bill.

Part 3 of the bill deals with the admission, detention and treatment of the person at the treatment centre. This section provides a number of important provisions with the purpose of ensuring the person is provided with a high level of treatment and care and that human rights are protected and promoted while the person is undergoing treatment and detention.

The bill establishes the position of senior clinician of a treatment centre. The senior clinician must be a registered medical practitioner with relevant expertise in substance dependence and its treatment. The senior clinician would typically be an addiction medicine specialist. The principal role of the senior clinician is to plan and supervise treatment for a person subject to a detention and treatment order.

The senior clinician must examine the person as soon as practicable after admission, but not more than 24 hours, to review whether or not the criteria for detention and treatment apply to the person. The senior clinician must discharge the person if they do not apply.

A person who is placed on a detention and treatment order will be vulnerable and will need support to express their wishes and preferences about treatment and to exercise their rights. Accordingly the bill provides that the person may nominate another person to help protect their interests. The role of the 'nominated person' will be to receive key information, such as being told about admission or transfer to a different treatment centre, to be consulted about treatment and discharge options, and have the ability to apply for the revocation of an order on behalf of the person subject to the order. The nominated person might assist the person to exercise their rights or act as an advocate, but he or she will be free to act independently and will not be required to act on the instructions of the person subject to the order.

In order to provide independent support and advice to people who come under the bill, the public advocate must be notified within 24 hours that the person has been admitted to a treatment centre. The public advocate must visit the person as soon as practicable. The role of the public advocate will be to give advice and support to a person subject to a detention and treatment order, make representations on their behalf and help the person to exercise their rights, if requested. To assist the public advocate to perform this role, the public advocate will be informed about important stages of the person's treatment, such as admission, transfer to a different treatment centre or discharge from the detention and treatment order.

The person must be given a written statement of rights and entitlements under the legislation within 24 hours of admission. The statement must include advice about the person's right to obtain legal advice and obtain a second medical opinion. The person must be given an oral explanation of the information contained in the statement and given all reasonable assistance to exercise these rights.

Only people who are incapable of making decisions about their substance use and personal health, welfare and safety may be subject to detention and treatment. Accordingly the senior clinician will provide consent to treatment for people subject to a detention and treatment order.

However, the government recognises that treatment is best conducted in collaboration with the person and wherever possible their family and other people who are significant in the life of the person. Accordingly the bill requires that the senior clinician must involve the person in treatment and discharge planning decisions and take into account their wishes and preferences. Further the senior clinician must also consult with the nominated person and, if relevant, the person's guardian.

In developing a treatment plan the senior clinician must consider any beneficial alternative treatment available and ensure that treatment is provided in the least intrusive manner that will enable treatment to be effectively given.

The bill provides a right to a second medical opinion about both the treatment the person is receiving and whether or not the criteria for detention and treatment continue to apply to the person. If the second opinion recommends that the person be discharged from the detention and treatment order, the senior clinician must examine the person without delay to decide whether or not the criteria still apply to the person.

If the senior clinician disagrees with the second opinion and does not propose to discharge the detention and treatment order, the senior clinician must notify the public advocate without delay. This will give the public advocate the opportunity to support and advise the person if required. For example, the public advocate might assist the person to apply to the court for a revocation.

Importantly, the senior clinician must discharge a person from a detention and treatment order if at any time the criteria no longer apply to the person. This

provision has been included in recognition that a person's health and capacity to make decisions about their substance use will improve with treatment, and that it is possible the criteria for detention and treatment may cease to apply at some time during the 14-day period of the order.

In this regard, it is possible the immediate risk to a person's life and health may abate quickly in the treatment setting as a result of the safe environment and the treatment and other services given to the person. However, the judgement about whether or not the criteria continue to apply to a person must take into account the context. In particular the order should not be discharged if the serious risks to the person's life or health were to immediately resume if the person is discharged from detention and treatment.

Part 4 of the bill includes specific powers to enter premises in prescribed circumstances to enable a person to be taken to a treatment centre.

In addition, it authorises the use of restraint and sedation to enable safe transport to a treatment centre. The power to use sedation and restraint is important to enable the safe transport of a person who might be agitated or violent. Agitated or violent behaviour puts the safety of the person and the people providing the transport at serious and imminent risk. Sedation or restraint may only be used in the prescribed circumstances. The bill provides additional safeguards by limiting the power to restrain or administer sedation to prescribed persons. Consistent with the objectives of the bill, sedation and restraint should only be used when there is no less restrictive means reasonably available in the circumstances to ensure safe transportation.

It is important that there are no barriers to a person receiving treatment in the prescribed circumstances. If a prescribed registered medical practitioner makes a recommendation and is not otherwise entitled to receive payment for making the recommendation, for example through Medicare, the medical practitioner may apply to the Secretary of the Department of Health for payment of the prescribed recommendation fee. This ensures there is no financial disincentive to prescribed registered medical practitioners examining individuals for the purpose of making a recommendation. This payment would not apply to medical practitioners who complete a recommendation as part of paid employment, such as medical practitioners employed in emergency departments.

Part 5 of the bill provides repeal and transitional provisions.

In conclusion, the government recognises that it is not enough that a person undergoes withdrawal and treatment for a short period and that the intervention ends there.

The government will fund the development of a treatment service in consultation with key stakeholders to address the multiple and complex needs of the very small group of people who will be detained and treated under the bill. The proposed treatment service will be intensive, flexible and expert and designed to give these individuals the best chance in the longer term to take control of their life and health and manage their substance dependence.

I commend the bill to the house.

Debated adjourned on motion of Ms WOOLDRIDGE (Doncaster).

Debate adjourned until Thursday, 24 December.

CONSUMER AFFAIRS LEGISLATION AMENDMENT BILL

Second reading

Debate resumed from earlier this day; motion of Mr ROBINSON (Minister for Consumer Affairs).

Mr LANGDON (Ivanhoe) — I rise to speak briefly on the Consumer Affairs Legislation Amendment Bill. The overall objectives of the bill are to consolidate and modernise Victoria's consumer affairs acts, to repeal redundant and otherwise unnecessary legislation and to strengthen and reform the regulatory regime for sex workers. Other members will speak on the last objective of the bill more than I will, because the parliamentary committee of which some are members, being the Drugs and Crime Prevention Committee, is investigating that matter quite thoroughly.

The bill repeals the Private Agents Act 1966 and inserts reform regulatory provisions relating to debt collectors into the Fair Trading Act 1999. The bill repeals the common carrier provisions of the Carriers and Innkeepers Act 1958, repeals parts I to III of the Landlord and Tenant Act 1958 and inserts reform provisions relating to fixtures and other matters into the Property Law Act 1958.

The bill repeals a number of bills, which I will not name, but they include bills relating to petroleum and fuel prices and other similar bills.

The bill also increases flexibility with respect to the handling of deposits under the Sale of Land Act 1962 and increases the cap on deposits from 10 per cent to 20 per cent while improving disclosure issues arising from auctions for the sale of land.

The bill refines licensing and enforcement measures under the Prostitution Control Act 1994 by increasing penalties for illegal brothels and increasing inspection powers for direct investigation of illegal brothels, and promotes safer sex practices.

I said it would be a brief contribution to the bill. I commend the bill to the house.

Mrs POWELL (Shepparton) — I am pleased to speak on the Consumer Affairs Legislation Amendment Bill. The coalition will not be opposing this bill. The purpose of the bill is to consolidate, to modernise or to repeal a number of consumer acts. The bill also repeals redundant and spent transitional provisions in a number of acts. I would like to concentrate my contribution on the amendments to the Prostitution Control Act 1994.

I note firstly that the name of the Prostitution Control Act will be changed. The removal of the word 'prostitution' from the act means the act will now be called the Sex Work Control Act.

Amendments in this bill are the result of recommendations made by the Prostitution Control Act Ministerial Advisory Committee. That committee looked into improving the regulation of the sex industry and supporting sex workers who want to move on, which is an important issue. We have heard from a number of members of the committee, and we may hear contributions from others who were on the committee or would like to speak about that particular report.

I would like to pick up on three issues I think are very important. The bill increases penalties for operating a brothel without a licence and brings those penalties in line with those for operating a brothel without a permit. I have been a councillor, a commissioner and a shire president, so I know that a local council receiving an application for a brothel causes huge angst amongst the councillors and the community. I also know that local government looks at and determines whether people want a brothel in their community. Questions asked include: where will the brothel be situated, and who will monitor, investigate and police the activities surrounding that brothel?

The bill also contains provisions that deal with illegal brothels. I know a number of councillors from around Victoria who often tell me that it is very difficult to police illegal brothels because sometimes they are underground and sometimes people know where they are but turn a blind eye. However, one issue that is perhaps more important is the protection of people who frequent these brothels, whether they be the clients or the sex workers. We need to make sure there are not activities going on in those establishments that are harmful to the sex worker, the client or the community.

Consumer Affairs Victoria will now take on enforcement action against illegal brothels. For a very long time local government has grappled with the lack of expertise and manpower to police illegal brothels. Often they find out about the illegal brothels only to see them close down and move somewhere else, so it is important that unlicensed brothels be wiped out.

The second point is about improving the health outcomes for sex workers and their clients. The bill will require condoms to be worn. Sometimes there are no requirements for people to take up those health issues, and it is important to have protection for not just the workers but also those who go into those establishments. We also need to make sure that there is no risk to the community by minimising the risk of transmission of sexually transmitted infections.

The member for Malvern raised a concern about clause 45 and the removal of the requirement for swab tests. The wording in the legislation is 'on at least a monthly basis'. That will now be replaced with the words 'at the time periods determined by the health minister'. We are not sure why that has been brought in. Has there been some documentation that said there needs to be change and that at least once a month was not good enough and did not protect the workers or the community, or is there another reason? In neither the minister's second-reading speech nor the explanatory memorandum to this bill is a reason given for that change.

It would be interesting to know the reason. When the member for Malvern raised this concern he said he hoped the tests would not be less onerous. It is an important point. It is fine to amend legislation and provide the minister with the opportunity to determine the frequency of those tests, but we are concerned to ensure that there is no reduction in the protection of sex workers or their clients. If there is an increase in the health risks as a consequence of this amendment, it will be the community and not just the sex worker or their client who will be at risk. We urge the government to ensure that this change does not diminish the protection offered by regular testing.

I turn now to sex slavery, which is also dealt with in this legislation. The bill will require signs to be

displayed in brothels about sex slavery. I think this is an important issue, and this amendment makes it plain that sex slavery continues to exist in the community. Hopefully this provision will also increase awareness so people will know that it is illegal, it is continuing and there is a need to stamp it out. But the government must ensure that it is not just about putting the burden on the brothel operators to inform people of the existence of sex slavery. There is still a lot of work to be done by this government and by our police force to make sure that those vulnerable people who become sex slaves are found and moved out of the industry.

We have seen media reports about women who come to Australia and work in the sex industry and have their money confiscated. I am advised that part of that money goes to the owners of the brothels to pay off the cost of the sex worker's passage to Australia, their visa or a debt which was incurred to come to Australia. We all love Australia. I am a migrant, and I think it is abhorrent that some women have to become sex slaves to pay off a debt and that there are people who own brothels and prey on these women, putting them into the most extreme circumstances and putting their lives and those of their families at risk. We need to make sure that practice is stamped out. Australia is a country that welcomes migrants; we need to send a strong message that we will not tolerate that behaviour. The bill will impose other requirements on the owners of brothels, and I support those.

The bill also contains amendments in relation to debt collectors and their use of violence and harassment; no-one should tolerate that behaviour. If a debt has to be repaid, there is a legal framework and a proper process in place. The practice of somebody going into any sort of business and using physical violence, harassment or intimidation to collect debts is not warranted, and we do not support it. With those remarks, I advise the house that the coalition does not oppose the bill.

Mrs MADDIGAN (Essendon) — I am pleased to support the Consumer Affairs Legislation Amendment Bill 2009, and I also wish to speak on the provisions that change the name of the Prostitution Control Act to the Sex Work Act, amongst other things. Changing the terminology is very significant to people who work in the sex industry. There is no doubt they will be very pleased to see the references to 'prostitutes' changed to 'sex workers', because a great deal of social stigma is attached to the word 'prostitute'.

It is legal to work in the sex industry in Victoria, and people who work in that industry should have the same rights and protection as any other worker in our state. It is important that people understand that and treat those who work in this industry with respect.

I pay tribute to the great work of a former member for Melbourne Province in the other place, Glenyys Romanes. She has worked extremely hard over a number of years in this area and has made a great contribution to our understanding of it. I also pay tribute to Project Respect, an organisation which does a great deal of excellent work with people who work in the sex industry. It also helps to identify people who are trafficked into Victoria for that purpose.

In her contribution the member for Shepparton said she hoped the Victorian government would take this matter seriously. I am surprised she does not know that the Minister for Consumer Affairs gave the Drugs and Crime Prevention Committee a reference to look at the subject of trafficking of women into Victoria for sex purposes. That reference was given last year and is actively being considered by the committee, which will report to Parliament in June next year.

There is no doubt that workers are more susceptible to abuse in some industries than in others. Unfortunately the sex industry is one. But I think the provisions in this bill are positive ones and that people will be pleased to support this legislation.

Sex slavery is governed by a federal act, not a state act, but that does not mean the state has no responsibility to look after any worker in this state. In that way I think the government has a role to play in trying to assist women who may have been brought to Victoria under a condition which might be called slavery. In fact there have been two cases fairly recently in Victoria: the Tang case, during which the judge redefined sex slavery, and more recently the Ho case, where people have been found guilty of such offences.

Consumer Affairs Victoria has always had the right to seek out illegal brothels. The problem is that they are extremely difficult to find, and whilst this legislation makes further provisions in relation to that, there is no doubt that people involved in illegal brothels are very adept at moving them and their workers around to escape the eyes of the law. However, we have a legal system that is there to protect the women who work in the sex industry and it is important that we do everything we can to assist them. It is also important that the operators of legal brothels do not suffer because they are legal while operators of illegal brothels act in a way that is not acceptable to the broader Victorian community. I think these steps will be warmly welcomed by the industry, and I look forward to the bill passing both houses.

Mr BURGESS (Hastings) — It is a pleasure to rise to speak on the Consumer Affairs Legislation Amendment Bill 2009. The purpose of the bill is to amend the Prostitution Control Act 1994 and consolidate, modernise or repeal many consumer acts under the consumer affairs legislation modernisation project.

The bill amends the Prostitution Control Act to, among other things, replace the term 'prostitute' with 'sex worker'. It doubles the penalty for operating an unlicensed brothel to 1200 penalty units. It replaces the requirement for sex workers to have swab tests monthly to time periods determined by the Minister for Health. It introduces the requirement for brothel owners and managers to have ID cards. It introduces penalty provisions for not taking all reasonable steps to minimise risks relating to sexually transmitted diseases and provides exemptions for sex-on-premises venues.

The replacement of the requirement for sex workers to have swab tests monthly is a concern. The government has a long and, I am sure, proud history of bungling just about everything it touches. Therefore to place this at the discretion of the minister instead of replacing the provision with some sort of reasonable time period or having some sort of replacement requirement puts the health system further at risk.

The bill repeals trade measurement legislation. This will take effect from 1 July 2010. The bill also repeals some redundant fuel legislation, some redundant competition and corporations legislation and redundant provisions relating to common carriers and landlord and tenant legislation.

The bill makes a number of technical amendments to the Owners Corporations Act. It amends the Sale of Land Act to liberalise restrictions on the transfer of deposit moneys so as to permit, for example, an estate agent to pay deposits to a conveyancer. The bill streamlines aspects of the Estate Agents Act, most notably in relation to licensing.

The bill repeals the Private Agents Act, which relates to debt collectors, and shifts regulation of this sector to the Fair Trading Act. Notably the regulation shifts from being a licensing system, which requires a debt collector to obtain a licence to work in an area, to a compliance system where only those persons who are disqualified by reason of some statutory criteria are unable to act as debt collectors. This is a fairly sensitive area, given the current circumstances where people in the community struggle more and more to pay their bills and find themselves at the mercy of debt collectors. It would have been more appropriate to make those requirements more onerous rather than making them less onerous by allowing self-regulation in a circumstance like that, particularly because of the position the community finds itself in. The government has moved in a negligent way.

We will not be opposing this legislation. I will watch with interest how those two aspects of the legislation are dealt with.

Mr PANDAZOPOULOS (Dandenong) — It is a pleasure to speak on the Consumer Affairs Legislation Amendment Bill, which repeals a number of acts and sections of acts and modernises consumer affairs legislation by amending a range of acts in this area.

I particularly want to focus on the amendments to the Owners Corporations Act. I say up-front that I am a member of an owners corporations board; our AGM (annual general meeting) is next week. I have had interesting experiences being a part of that board, having been a tenant in the past and an owner-occupier nowadays. I am particularly pleased these provisions and amendments are in this bill. We continue to modernise and in effect make fairer owners corporations arrangements as we see a significant increase in medium-density housing. Owners corporations have become an essential part of managing the common areas of buildings and the common interests of people who live in those buildings.

I am particularly pleased about clause 20(2), which states:

> The instrument of delegation must be made at a general meeting —

and it lasts until the next general meeting. One of the things I found quite interesting when I first got onto the board and that I was not aware of is that at an annual general meeting there is no decision. There is a continuous delegation that new members and committee members are never really aware of or informed about. They come up every now and again, and you find a permanent delegation has been provided. I do not think that is transparent or fair on the owners who have an interest in these facilities. That is something that should be raised at AGMs every year, and a deliberative decision should be made about delegations every year at AGMs.

I am pleased our owners corporation is managed quite well, but as members we are aware that there are disputes. There are basic things which you would hope, as good common practice, would be made available when notification is sent out for the required AGM, including minutes of the previous AGMs. It is

surprising how many groups have a legal requirement to call an AGM but do not have any record of what occurred beforehand and are suddenly given minutes that might be quite detailed. There might be financial statements which are quite detailed and owners may not have an opportunity to peruse those beforehand. This area of the bill clarifies a number of these issues and sets them out as legal requirements.

Another area which I think is worth mentioning in terms of transparency is the requirement that there be a resolution at the general meeting of an owners corporation where penalty interest has been, in effect, given in arrears. As members of owners corporations we should be entitled to know who is receiving the penalty interest, which means they are not overpaying or underpaying. This bill also clarifies the voting rights of such people and highlights that people who are not fully paid up do not have voting rights. Payments must be made at least four days prior to an annual general meeting to avoid cheques being issued on the day that might end up bouncing a few days later, because then there might be a legal argument about whether the person was entitled to vote at the annual general meeting.

Whilst these issues are predominantly housekeeping, they are very important. The medium-density housing and apartment sector is expanding and makes up a growing share of our housing sector, and it needs good regulation. But we are also learning about good regulation; that is why we have these amendments. I commend this bill to the house.

Mr FOLEY (Albert Park) — It gives me great pleasure to rise to make a few comments in support of the Consumer Affairs Legislation Amendment Bill 2009. I would like to restrict my comments to those provisions that amend and enhance the operation of the Prostitution Control Act 1994.

This particular group of amendments continues the evolution, which has received bipartisan support across this Parliament for over two decades now, of the framework of harm minimisation in a sector that undoubtedly brings together a clash of complex religious, political and moral views of the world. It is an area where the pre-existing policing and, for want of a better phrase, the non-harm minimisation approach of the last century saw a complex set of arrangements that fostered corruption, violence, high levels of exploitation and dangerous arrangements in community health.

Since the Neave report and the passing of the initial Prostitution Control Act in 1994 we have seen a continued evolution of the harm minimisation framework. Like the member for Essendon, I would like to make some brief comments in support of the previous chairperson of the Prostitution Control Act Ministerial Advisory Committee, Ms Glenyys Romanes, the team at the consumer affairs department public policy area and the voluntary members from a range of sectors who make up the ministerial advisory committee for their ceaseless and tireless work in engaging with the sectors involved — local government, community health, the sex work industry and a range of other community stakeholders — to continue the discussion around how to best ensure that the complex issues that attach to prostitution and brothel management are dealt with.

From my local community's perspective, the district of Albert Park has the somewhat dubious honour of having the highest number of registered legal brothels in its boundaries, as well as sharing with the electorate of my friend the member for Prahran some of the street sex working areas where that continues to be an even more perplexing public policy issue.

Through seeking to continue to bring into the regulatory framework a series of professional and public health measures, this bill continues the approach of saying, 'As difficult as it is, the best way to manage and comply with the harm minimisation framework in 2009 and beyond is to ensure that this sector is regulated through planning schemes, through local government, through policing and through public health as a way to avoid the alternative of problems in all those areas'. While this sometimes causes community concern and interest, it is vital that it continues to receive bipartisan support across this Parliament, and I am pleased to see that it has.

I invite those opposite who have expressed some legitimate concern around some of the public health changes to seek to engage with the University of Melbourne's sexual health centre, particularly the work done by Professor Kit Farley, and to seek advice on, as the member for Shepparton referred to, the modern approach by which to ensure that public health issues associated with the testing of sex workers are dealt with by a best practice method that meets both the public health concerns of the sector and the broader sexual health concerns of the community. As the work done by Professor Farley has demonstrated, he and his centre were equally perplexed — as was the member for Shepparton — as to what was the historical driver for these particular arrangements. I would urge those opposite to seek to have their concerns allayed through the work done by the University of Melbourne and the public health branch of the Department of Health in looking at some of these issues.

Some other measures this bill introduces in the area of prostitution control include efforts to continue to ensure an appropriate regulation of the brothels to improve the professionalism, the policing and the regulation of them. Through a host of small but incremental steps the practice will be continued of making sure that regulatory agencies, local government and communities know where and when these establishments are operating and that they are operating in a manner that complies with planning laws and allows the engagement of a range of regulatory and support and health agencies.

In that respect this legislation continues to deal with ensuring that licensed brothels operate in as safe and appropriate a manner as possible, while at the same time ensuring that those illegal brothels are easier to police, easier to locate, easier to prosecute and easier to close down. That is a package that should allow bipartisan support to continue across this Parliament in this most complex, and at times diabolical, public policy area.

I will close my comments by acknowledging the work done by a number of outreach and support agencies in my electorate that deal with brothels and street sex workers. I particularly acknowledge the work of the Inner South Community Health Service; the agency Resourcing Health and Education in the Sex Industry, or RhED; and the Sacred Heart Mission, particularly its social inclusion project where it works intensively with a number of street sex workers to get their lives into a position where they can pursue some sustainable form of action elsewhere. All in all, I wish the bill a safe passage through this house, and I look forward to it becoming law.

Sitting suspended 12.59 p.m. until 2.04 p.m.

Business interrupted pursuant to standing orders

ABSENCE OF MINISTERS

The SPEAKER — Order! Before calling questions without notice I advise the house that the Minister for Mental Health, who is also the Minister for Senior Victorians and Minister for Community Services, will be absent from question time today. The Minister for Health will take questions in relation to the mental health and senior Victorians portfolios, and the Minister for Local Government will take questions in relation for the community services portfolio. Also absent today is the Minister for Energy and Resources, who is also the Minister for Community Development. The Minister for Agriculture will take any questions for the minister.

QUESTIONS WITHOUT NOTICE

Mr Cameron — On a point of order, Speaker — —

Honourable members interjecting.

The SPEAKER — Order! I advise members that points of order will be heard in silence.

Mr Cameron — Speaker, I draw your attention to standing orders, which require that when a question is asked the information provided must be factual. I refer to a question yesterday by the Leader of the Opposition in which he stated that it is a fact that the standards for Victoria Police law enforcement data security required the publication of a register. I am advised that that is not the case at all — that that is not a fact —

Honourable members interjecting.

The SPEAKER — Order! I ask for members' cooperation. Points of order will be heard in silence.

Mr Cameron — Accordingly, Speaker, I ask that you direct the Leader of the Opposition to provide information that is factual.

Honourable members interjecting.

The SPEAKER — Order! I ask government members to come to order.

Mr Baillieu — On the point of order, Speaker, in his 2006–07 annual report the commissioner for law enforcement data security included a list of approved third parties. In 2007–08 he included a list of third parties. In 2008–09 — nothing. What has Bob got to hide?

Honourable members interjecting.

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

Police: forensic services

Mr BAILLIEU (Leader of the Opposition) — There is no minister, Speaker! My question is to the Minister for Police and Emergency Services.

Honourable members interjecting.

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

Mr BAILLIEU — I refer to the Ombudsman's report today detailing the scandalous collapse of Victoria Police forensic services, and I ask: does the

minister share the conclusion of the Ombudsman when he reports that 'mismanagement and lack of accountability create an environment in which corruption may occur and go unnoticed'?

Mr CAMERON (Minister for Police and Emergency Services) — I certainly welcome the Ombudsman's report. We welcome it, and Victoria Police has made it very clear that it welcomes it and accepts all of the recommendations.

Honourable members interjecting.

The SPEAKER — Order! I warn the members for South-West Coast, Warrandyte and Hastings.

Economy: performance

Mr PANDAZOPOULOS (Dandenong) — My question is to the Premier. 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 Premier outline how the Victorian economy is performing and how our investment in our roads and the public transport system is creating jobs for working families?

Mr BRUMBY (Premier) — I thank the member for Dandenong for his question. Today the Australian Bureau of Statistics released its monthly labour force data, and what a great way to finish the parliamentary year with such fantastic news about the Victorian economy. What the ABS data, released today, shows is that for the last seven consecutive months in Victoria we have seen more jobs growth generated than in any other state in Australia and that over the past year Victoria has generated 73 200 new jobs; in that period the total number of new national jobs has been 69 680.

We have been busy generating jobs but other states have been losing jobs. Victoria is the engine room of the national economy. Our job growth is outstripping the nation. If you wanted a great early Christmas present for Victorian families, it would be strong job growth, strong economic leadership, strong budget leadership and a state that is leading Australia. You would say that that is a great result at the end of the year.

Victoria's unemployment rate is 5.4 per cent, which is 0.3 percentage points lower than the national rate of 5.7 per cent, and when you look around the world, as some of the commentators have done online already, you will see that in Spain the unemployment rate is 19 per cent; US, 10.2 per cent; Australia, 5.7 per cent; and Victoria, 5.4 per cent. Here is what the commentators are saying today. ABC Online reports Victoria was:

> … responsible for the strongest jobs growth of about 24 000 positions —

this is in the last month —

> and an even stronger rise in full-time work.

The *Herald Sun* reports:

> In Victoria the news was even better, with a drop from 5.7 per cent in October to 5.4 per cent, well below the national average.

And CommSec chief economist Craig James said:

> Job seekers have received an early Christmas present.

All of this result is no accident. It comes about because of the right economic policies being put in place in Victoria — the right tax policies driving down the rate of land tax, driving down the rate of payroll tax, five successive cuts to WorkCover premiums, building a competitive economy, and of course our job building budget, which was roundly criticised by all those opposite. Imagine where Victoria would be today if we had listened to the advice of those opposite, such as the member for Scoresby. The unemployment rate would be way up somewhere near the ceiling, in double digit numbers. Ours was a job building budget, which is producing results.

One of the things that is driving the strong job growth is obviously great performance in the private sector — strong performance — but also of course our major capital works program, particularly in the transport area. I mentioned that Victoria was the engine room, and so it has been in the transport area. If you look over the last — —

Honourable members interjecting.

Mr BRUMBY — Here we have got the member for Polwarth, without ever a single new idea except how to knock off the Leader of the Opposition — —

The SPEAKER — Order! I ask the Premier not to comment on individual members of the opposition.

Mr BRUMBY — Over the past 12 months the government has completed improvements to the North Melbourne railway station, which the minister opened just last week — a fantastic investment totalling $38.6 million. We completed the $52 million Clifton Hill rail project, which puts the second line there and which has never been done since Federation — —

Honourable members interjecting.

The SPEAKER — Order! The member for Yan Yean is warned. I ask that the conversations members

of the government are having across the chamber with members of the opposition stop. I ask the Premier to resist interjections, and I ask the member for Scoresby not to interject in that manner. I remind the Premier that he has been speaking for some time and should conclude his answer.

Mr BRUMBY — We have delivered the first of 38 new trains.

Ms Thomson interjected.

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

Mr BRUMBY — We have opened the red orbital SmartBus from Mordialloc to Altona; we have introduced more than 600 new weekly train services across Melbourne; we have introduced the new operators for the train and tram systems; we have opened the Deer Park bypass eight months ahead of schedule; we have opened the first three sections of the Geelong Ring Road, removing 31 sets of traffic lights; we have begun Peninsula Link early works; we have completed the Calder Freeway upgrade, again months ahead of schedule, saving lives and cutting travel times; we have completed the upgrade of the gold lines and most of the silver lines in time for this year's freight program and grain crop; and of course we have opened the $173.9 million Dynon port rail link.

I put on the record my appreciation and that of the Parliament for the work of the Minister for Public Transport and the Minister for Roads and Ports in delivering these projects.

Finally, next year we have work under way on the $4.3 billion regional rail link project, the $270 million Sunbury electrification, the $650 million South Morang extension, the $220 million worth of new stations at Caroline Springs, Williams Landing, Lynbrook and Cardinia Road, new SmartBus work between Chelsea and Broadmeadows, and of course the Springvale Road level crossing will disappear with a new rail separation. This is an extraordinary investment in our public transport and road system. It is an investment which secures the future of our state, and it is an investment which is generating jobs and helping to give this great job performance in our state, as shown in these latest ABS figures.

Police: forensic services

Mr RYAN (Leader of The Nationals) — My question is to the Minister for Police and Emergency Services. I refer to the Ombudsman's report detailing the scandalous collapse of forensic services, and I ask: given that senior staff members in Victoria Police have identified critical staff shortages as a major cause of critical systems failures, will the minister now accept responsibility for those critical systems failures and will he tell the house what staff and resourcing increases he will provide?

Mr CAMERON (Minister for Police and Emergency Services) — If you read the Ombudsman's report, you will see it talks about the financials coming from a low base. What that means is the Baillieu presidency of the Liberal Party years in the 1990s, back when police were starved and 800 police were slashed.

Mr Ryan — On a point of order, Speaker, the minister is debating the question. I would ask him to answer at least one; could he just answer one?

The SPEAKER — Order! Clearly the minister is debating the question. The minister, to come back and address the question as asked.

Mr CAMERON — What has occurred during the years of the last decade with Labor is that we have seen a substantial increase in the budget for forensics — a budget that has gone from $16 million in 1998–99 to $35 million in 2010–11. Certainly when you have a look at this government's commitment, and this government's commitment to staff, what we have seen at forensics has actually been 100 extra staff, bringing the total number to 350, and in fact there has been a 60 per cent increase in the number of scientists.

Honourable members interjecting.

Mr CAMERON — The Leader of the Opposition says, 'That is not right; that is not right'. I can tell him I was with the Chief Commissioner of Police this morning, and he was saying that that was right. That is what we have done in terms of our commitment, and as members will be aware from the Ombudsman's report, there are practices there, work practices and management issues, that seriously need addressing. As from today those steps are being taken.

The appointment of Graham Ashton to head forensics is a very good move. He comes with a national reputation. He is probably well known in this house because he was a deputy at the Office of Police Integrity, but more particularly he led the Australian Federal Police investigation into the Bali bombings.

Bushfires: preparedness

Mr HARDMAN (Seymour) — My question is to the Minister for Police and Emergency Services. Can the minister update the house on how the government,

fire agencies, emergency services and others are working together to ensure Victoria is best prepared for this fire season?

An honourable member interjected.

The SPEAKER — Order! The member for Polwarth will not interject in that manner, or he will not remain during question time.

Mr CAMERON (Minister for Police and Emergency Services) — I thank the honourable member for Seymour for his question and also for the contribution he makes as a volunteer with the Country Fire Authority (CFA).

As a government we believe very much in fire services. When we came to government Victoria had the second-lowest spending per person when it came to fire services. We have seen that increase over the years, and now Victoria is the highest spending state per person.

Can I also say that when you look at full-time career fire staff, whether it is in absolute terms or in per person terms, we do more than any other state. We have tripled the budget of the CFA. You are seeing more with the Department of Sustainability and Environment (DSE); you are seeing more of the seasonal firefighters. Certainly when it comes to spending, what you saw in this budget was the boost to the Emergency Services Telecommunications Authority and the boost to purchase new radios and upgrade radio and pager networks used by the State Emergency Service and the CFA, building on that $450 million investment we have made since 2000. We also saw the upgrade announcement in the budget regarding DSE pagers and radios. We saw the announcement of new CFA tankers and new ultralight tankers for CFA brigades. We saw the commitment of more resources and more vehicles for VICSES.

What you have seen during the course of the year is Victoria leading the way. Just as we led the way in the discussion of this, we led the way to deliver the emergency alert system on behalf of the nation, and we are very thankful to the commonwealth for the enormous contribution it has made. We have seen new laws to clarify the role of the CFA chief in issuing warnings. We have seen the Chief Commissioner of Police's review of command and control, we have seen the massive public information and awareness campaigns and we have seen the first ever fire preparedness week. We have seen new fire warning systems and township protection plans put in place.

What we have is fire agencies, emergency services, police, local communities and councils working together, united to be as fire ready and fire safe as possible. Part of that, with councils and the CFA, has been the identification of areas for neighbourhood safer places; these are neighbourhood places of last resort. I am aware of comments from those opposite — —

Honourable members — Who?

Mr CAMERON — I will tell you who. The deputy leader of the coalition said the government would be better off waiting for the recommendations from the commission and then setting about a process whereby a concept of neighbourhood safer places could be developed — in other words, we should do nothing. By setting out to divide and confuse, and totally rejecting the united approach that everybody else is trying to take, what we have with the coalition leadership is a divisive group, which is trying to cause confusion, and it is the biggest risk this bushfire season.

Police: forensic services

Mr BAILLIEU (Leader of the Opposition) — My question is to the Minister for Police and Emergency Services. I refer to the Ombudsman's report detailing the scandalous collapse of forensic services, and I ask: given that there were reviews of Victoria Police Forensic Services in 2003, 2006 and 2008, all of which warned of critical systems failures, why did the minister yet again fail to act and do nothing?

Mr CAMERON (Minister for Police and Emergency Services) — I thank the Leader of the Opposition for his question. What you have to recognise, and what the Ombudsman's report says, is that the issues go back to 1993. I have to say that over those 16 years, despite the efforts of police, what we have ended up with is an unacceptable situation.

Honourable members interjecting.

The SPEAKER — Order!

Mr CAMERON — What we have seen during the course of — —

Mrs Shardey interjected.

The SPEAKER — Order! I ask the minister to pause for one moment. I warn the member for Caulfield.

Honourable members interjecting.

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

Mr CAMERON — As we work with police we have seen a record number of police and a record budget for Victoria Police, and what we have seen in forensics is more than a doubling of the budget for forensics and a 60 per cent increase in the number of scientists. But I have to say that the lack of action earlier, which is highlighted by the Ombudsman's report, has been unacceptable.

Last year then Chief Commissioner of Police, Christine Nixon, outlined a series of problems. The deputy chief commissioner started work on the matters, and it has always been clear that as soon as the Ombudsman's report was tabled action would be taken, and that is exactly what has occurred today.

Housing: government initiatives

Ms MARSHALL (Forest Hill) — My question is to the Minister for Housing. 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 outline to the house the action the Brumby Labor government is taking to deliver social housing in Victoria?

Mr Wakeling interjected.

The SPEAKER — Order! I suggest to the member for Ferntree Gully that he not interject in that manner.

Mr WYNNE (Minister for Housing) — I thank the member for Forest Hill for her question. It is a great time for those of us who are interested in delivering public and social housing throughout Victoria. I am pleased to advise the house that as of this week contracts have been signed for more than 1400 new homes across the state to be delivered through the Nation Building economic stimulus package. Construction on 1100 of those new homes is already under way.

This of course, as the house knows, is part of our partnership with the Rudd federal government which will deliver 4500 new homes across the state for low-income Victorians. Members will be aware that the Rudd government adjusted the Nation Building package in August, and we had a reduction in funding for social housing in Victoria of $318 million. This will require an adjustment to our building program by 428 units in this financial year. Nonetheless, we are on the job, building homes right across the state — —

An honourable member interjected.

Mr WYNNE — I have got a hard hat! We are building homes from Ballarat to Bairnsdale and from Mildura to Moorabbin in what is undoubtedly the biggest social housing building program in decades.

Just last Friday the whole cabinet was in Ballarat, where the Premier made a significant announcement in relation to IBM. Also I had the opportunity to inspect 2 of the 110 houses that are going to be built in Ballarat. We want to ensure that the investment that is made through the Nation Building program is distributed right across Victoria.

These new homes are bounding out of the ground all over the state. But unfortunately I have to advise the house that not everyone is getting behind these projects. Speaker, you will recall that I have talked in the past in this house about opposition to public and social housing projects and distortions and attempts to manipulate — —

Honourable members — Who?

The SPEAKER — Order! I ask the Minister for Housing to pause for one moment. I ask the Minister for Housing not to debate the question, and I ask for some cooperation from all members within the house.

Mr WYNNE — There have been attempts by some people to manipulate and frighten local communities. My attention has been drawn to a website where the tactics of dog whistling have been deployed. In the past I have characterised this as dog whistling. That website relates to a significant Nation Building development which has gone through all the local council's planning processes, including advertising, a period for comment and objection and a council decision where, I might add, there were no objections. This project is now under construction. You have to ask: what would be the motivation of a person who puts their name to a web-based campaign that states that the local community is being locked out of the planning process for a project that has been granted a permit by the local council and is already under construction?

Mr R. Smith — You are misrepresenting, Richard.

An honourable member — Guilty!

Mr WYNNE — No, it is not the member for Warrandyte this time.

Honourable members interjecting.

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

Mr WYNNE — Either that person — —

The SPEAKER — Order! I remind the Minister for Housing that he has been speaking for some time now, and I ask him to conclude his answer.

Mr WYNNE — I will, Speaker. Either that person is another member of the dog whistling brigade or they are simply too lazy to check the background of this project.

In conclusion, as we head towards the Christmas period, a time that is particularly difficult for many vulnerable and homeless people, this is a time for us to pause and reflect on the actions of some who have chosen deliberately to frustrate and block the biggest public housing construction program this state has seen in decades. Speaker, can I say to you that there are people in this chamber and in the other place who ought to reflect deeply on their actions to date. In the instance I have cited today — —

Honourable members — Who?

Mr WYNNE — It is in fact the member for Doncaster. It is time for the Leader of the Opposition to call off the dog whistlers or be judged.

Desalination plant: memorandum of understanding

Mr RYAN (Leader of The Nationals) — My question is to the Minister for Police and Emergency Services. I refer to the comment made by the minister yesterday in relation to memorandums of understanding (MOUs) signed by Victoria Police that 'it is a matter for Victoria Police as to what it does with that document' and to the fact that at a press conference earlier today the Chief Commissioner of Police stepped in to answer questions on this issue that were directed to the minister, and I ask: did Victoria Police approve in advance the release by the government of the MOU between Victoria Police, the Department of Sustainability and Environment and AquaSure for the desalination plant, or was this memorandum meant to be kept secret?

Mr CAMERON (Minister for Police and Emergency Services) — As the Minister for Water advises, the Department of Sustainability and Environment released the memorandum as one of the signatories. This morning the Chief Commissioner of Police reiterated the arrangements of the memorandum of understanding, and, in relation to the comments of recent days, he said it was a beat-up.

Freedom of information: administrative reforms

Mr EREN (Lara) — My question is for the Attorney-General. I refer to the government's commitment to openness and transparency, and I ask: can the Attorney-General update the house on recent reports and initiatives related to the government's commitment to this issue?

Mr HULLS (Attorney-General) — I thank the honourable member for his question. Today the annual report on freedom of information was tabled in this place. It is both a testament to government compliance with the act as well as an account of the positive community attitudes and engagement in the political processes under the Brumby Labor government. In 2008–09 there were a record number of FOI requests in this state — some might say a world record — and 28 698 requests were made, which amounts to a 13.2 per cent increase from last year and is reflective of the community's confidence in FOI. The number of FOI requests has increased by 66.6 per cent since 2000–01, when we first opened up reform of FOI. Repair was needed after the damage done by the Kennett government.

This government's commitment to openness and transparency through FOI is clearly demonstrated in this report. It shows that applicants were provided with full or partial access in 97 per cent of cases. There are exemptions, and the most commonly used exemption is that to protect an individual's personal affairs. We believe this is an appropriate balance between a person's privacy and the right to access government information. The quality and rigour of access decisions remains high: in 2008–09 there were 37 Victorian Civil and Administrative Tribunal appeals decided; of those, the department or agency's decision was confirmed in 31 cases and decisions were partially confirmed in the remaining 6.

Members will recall the Ombudsman's report in June 2006 entitled *Review of the Freedom of Information Act*, which recommended reforms to FOI. I am pleased to say that all departments and Victoria Police have implemented the procedural and administrative recommendations made by the Ombudsman. You will recall, Speaker, that we also attempted to introduce legal reforms in line with his recommendations and went even further by making FOI applications free, but those opposite voted against the independent Ombudsman's recommendations.

Following another recommendation by the Ombudsman, and this is yet another demonstration of

this government's commitment to FOI, we have the recently updated — in fact they were released yesterday — Attorney-General guidelines on the responsibilities and obligations of principal officers and agencies. These new guidelines provide practical assistance to government departments and agencies to assist them in making quality decisions, and they emphasise the government's expectation of the culture of FOI being one of openness and integrity.

Under the Brumby government's reforms to FOI more people are getting more access to more documents more often. The annual report statistics speak for themselves, but we also remain committed to ongoing reform and meaningful improvement in this area. This is in stark contrast to the situation under the Liberal Party, which has a record of destroying FOI. When it comes to probity issues, this government is prepared to take advice from the Ombudsman and indeed to attempt to adhere to the Ombudsman's recommendations, but we will not take advice from someone who still refuses to put his vast share portfolio into a blind trust.

The SPEAKER — Order! Before calling the Leader of the Opposition for his question, I remind members that there are about 10 members already on warnings, and I could add another 10 members to that. I ask members if, in the spirit of the last question time before Christmas, we could perhaps conclude the next two questions without the force of standing order 124 being applied to any member.

Minister for Police and Emergency Services: performance

Mr BAILLIEU (Leader of the Opposition) — My question is to the Minister for Police and Emergency Services. I refer to the fact that in the last 12 months alone Victorians have learnt that Victoria has the lowest number of police per capita of any state; police IT is in chaos; police crime stats are dodgy; police emergency communications systems are inadequate; according to the chief commissioner, Victoria Police's management data is 'rubbish'; police DNA evidence is currently unreliable; and today the Victoria Police Forensic Services Centre has all but collapsed, and I ask: given that the minister was warned about all these issues over several years, will he now accept the title of the worst police minister in Victoria's history or will he finally do something and resign?

Honourable members interjecting.

The SPEAKER — Order! I note that my plea to members has gone unheeded. The next time I stand because of an interjection the member concerned will leave the chamber.

Mr CAMERON (Minister for Police and Emergency Services) — Speaker, I have to tell you this: I totally reject the Leader of the Opposition and his policy of the 1990s of cutting police numbers. As a government we are proud of record numbers of police. We are proud of a record budget. We support the chief commissioner all the way, unlike those opposite who attacked former chief commissioner Christine Nixon and who have had a go at the current chief commissioner, Simon Overland. We believe in those people; we have great faith in them. We work with them on policy matters, and we work with them in terms of providing record funding. We are proud of police and what they are able to do to achieve an overall reduction in crime.

Health: government initiatives

Mr LANGDON (Ivanhoe) — My question is to the Minister for Health. I refer to the government's commitment to build a better health system, and I ask the minister to outline to the house how the Brumby Labor government has taken action to ensure a stronger, healthier future for Victorian families and to outline the support for these actions.

Mr ANDREWS (Minister for Health) — I thank the honourable member for Ivanhoe for his question and his strong support of health services in his local community. As a government we very proudly have given to each of our dedicated health services the funding boost they need and the practical support they need to treat more patients, to provide better care, to meet the health challenges we all face today and to set them up for the health challenges of the future. That is what our government has done; that is what it will continue to do.

As we reflect today, the last sitting day of the year, on the program of works throughout 2009 it is important to acknowledge a number of important milestones: we have 130 per cent more recurrent funding than was provided in 1999; we have 10 516 additional nurses working in our health system today compared to 1999 levels; we have in the order of 3150 additional hospital doctors working in our health system today compared to 1999 levels; and we have the best part of 1200 additional ambulance paramedics out there providing dedicated pre-hospital emergency care and transport compared to the numbers we inherited back in 1999. On any measure that is giving to our health system and the patients who rely on it the resources and

support required to treat them, to treat more patients and to provide better care.

The strength of our system is in every way its people. That is why we have invested in the doctors, in the nurses, in the ambulance paramedics and in the broadest possible health professional team to, as I said, deliver even better care.

If you look back through 2009, you see that in relation to cancer it has been a very big year in the rollout of this state's biggest ever cancer control, research and treatment program — the most comprehensive cancer action plan this state has ever seen — at a cost of $150 million. One iconic project that sums up this government's investment priority for cancer is the Parkville Comprehensive Cancer Centre, which is being funded in partnership with the commonwealth government. It is $1 billion of investment for not just a good cancer centre and not just a great cancer centre but the very best comprehensive cancer centre anywhere in the world. That is our aim, and that is what will be achieved because of the record investment of this government in partnership with the commonwealth and all of our other partners, who are the best and the brightest in the cancer community right across our great state.

Speaking of capital works and that important project, it is one among many. This year, with announcements the Premier and I made yesterday, we have almost reached the $6 billion mark — the $6000 million mark — in terms of health capital works during our period of office, giving to our dedicated staff the facilities they need to provide care into the future.

There are many examples. Some of them are very large, like the one in Parkville; others are more modest but no less important. I think of things like expansions at Barwon Health, at Bendigo Health and at Ballarat Health, and of course the expansion at the Box Hill Hospital announced just yesterday. Those projects have much in common: they have all been opposed by one section of the community, but they are proudly supported by this government and they will continue to be supported by this government.

I was asked about support for our government's investment and support for our government's work in backing our health professionals to meet the challenges of the future. A lot has been achieved during 2009. A lot has been said and written about health. My attention was drawn to one particular quote. It struck me as an odd quote, but it did ring true. Having been asked about support for our efforts, I think it is appropriate that I enlighten the house about this quote. It was for readers — and I know we all are — of the *Kyabram Free Press*. The following was said in relation to our investment in health, as reported in the article:

> … the funding was another example of the Victorian government's commitment to promoting the health and wellbeing of Victorians living in regional and rural areas.

Never was a truer word spoken. The question then is: who might have said that? It was none other than the shadow minister for country Victoria, Wendy Lovell, a member for Northern Victoria Region in the other place, and to her we wish a very merry Christmas.

CONSUMER AFFAIRS LEGISLATION AMENDMENT BILL

Second reading

Debate resumed.

Mr DELAHUNTY (Lowan) — I am proud to rise on behalf of the Lowan electorate to speak on this important Consumer Affairs Legislation Amendment Bill 2009. The main purpose of this bill is to amend the Prostitution Control Act 1994. The bill also repeals many other consumer affairs acts. I want to go through a couple of the changes made by this legislation.

Firstly, the bill repeals the Trade Measurement Act and the Trade Measurement (Administration) Act. This will take effect from 1 July 2010. This has come about because of a Council of Australian Governments agreement; therefore some of this legislation has become redundant. I speak in particular of fuel legislation, redundant competition and corporations legislation and redundant provisions relating to common carriers and landlord and tenant legislation.

I digress to tell a good story about competition. The great little township of Willaura in my electorate had the unfortunate circumstance where the local fuel distributor was going to close. The owner of the fuel distributorship company, the people of Willaura and Ararat Rural City Council have arranged that the new operator will be charged only $5 a week rent for the facility. More importantly, that operator is providing fuel for the great little township of Willaura.

Secondly, the bill makes a number of technical amendments to the Owners Corporations Act, but I will not discuss those at this stage.

Thirdly, the bill repeals the Private Agents Act, which affects the regulation of debt collectors and shifts responsibility for those matters to the Fair Trading Act. These changes will mean that the regulation shifts from

being a licensing system requiring the debt collector to have a licence to work in that area, to a compliance system where only persons who are disqualified by some reason of statutory criteria are unable to act as debt collectors. There are some concerns about this negative licensing system. It could mean that without good supervision by regulators we could see debt collectors operating in an inappropriate way.

The main aspect of the bill I want to speak on is the amendments it makes to the Prostitution Control Act. Clause 42 of the bill replaces the term 'prostitution control' with the term 'sex work', which means the act will now be called the Sex Work Act and states that the schedule has effect.

Ms Asher — A sweeping reform!

Mr DELAHUNTY — It is an absolutely sweeping reform! The schedule updates references to 'prostitute' and 'prostitution' to 'sex worker' and 'sex work' in the Prostitution Control Act 1994. I am a member of the Drugs and Crime Prevention Committee (DCPC).

Honourable members interjecting.

Mr DELAHUNTY — Now we are getting some action! We have been given terms of reference by the Minister for Consumer Affairs to inquire into people trafficking for sex work. Members of that committee cannot discuss the information we have been collecting.

An honourable member — You would be put in jail!

Mr DELAHUNTY — We would have to be put in jail. However, I can assure members of this house that the Drugs and Crime Prevention Committee is doing some great work. The terms of reference for the inquiry include looking at the extent and nature of trafficking people into Victoria from overseas for the purposes of sex work, the interrelationship, if any, between the unlicensed and licensed prostitution sectors in Victoria, and trafficking for the purposes of sex work.

It is interesting that the explanatory memorandum for the bill indicates that clause 60 of the bill:

> inserts proposed section 60A into the Prostitution Control Act 1994 to require licensees to display prescribed signage relating to sexual slavery in brothels in places where any person on the premises can read that signage. The Governor in Council may also make regulations prescribing the signage and its locations.

I hope the Governor in Council also looks at the issue of how many languages that signage will be displayed in. I know the Minister for Consumer Affairs is listening intently to this. Obviously ours is a multicultural society, so it is important that any signage in brothels reflects that.

The last point in the DCPC's terms of reference for this inquiry requires it to inquire into:

> … the need for policy and legislative reform to combat trafficking for the purposes of sex work in Victoria …

I have no doubt that the legislation before the house covers some of the work that was intended by the Minister for Consumer Affairs to come from our current inquiry, so I sometimes wonder why I come down here to Melbourne — a 3½ hour drive to sit for a 2-hour meeting — when this legislation covers some of the issues I have no doubt will be raised in this very important inquiry of the Drugs and Crime Prevention Committee.

It is difficult to work in the area of the regulation of sex work. Although my knowledge about this industry comes mainly from reading books, I know that a great deal of work has been undertaken in this area. Sex work is big business in Victoria. We have introduced a licensing system, but unfortunately unlicensed brothels are also operating in this state.

I note that this legislation doubles the penalty for operating an unlicensed brothel to 1200 penalty units and provides for the introduction of ID card requirements for brothel owners and managers. We all know that not only do we have licensed operators of brothels but there are many unlicensed facilities. More needs to be done by the Minister for Consumer Affairs and his staff in this area.

There are also sex workers on the streets. Unfortunately concerns have been raised about whether the health status of these people is appropriate for the activities they engage in.

This legislation provides some changes, and the opposition does not oppose it. I wish it a speedy passage.

Debate adjourned on motion of Mr BROOKS (Bundoora).

Debate adjourned until later this day.

MAGISTRATES' COURT AMENDMENT (MENTAL HEALTH LIST) 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 Magistrates' Court Amendment (Mental Health List) Bill 2009.

In my opinion, the Magistrates' Court Amendment (Mental Health List) Bill 2009, 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 introduce a new procedural framework in the Magistrates Court of Victoria which is designed to assist courts to appropriately address the issues associated with offending behaviour of accused persons with mental illness and co-occurring impairments. Court-based interventions and support programs which target complex needs of mentally impaired persons have been shown to be effective in reducing the risk factors associated with reoffending.

One of the principal features of the mental health list (the list) is that it will have a dedicated magistrate who will be actively involved in supervising the progress of the accused's individual support plan. The program will also have a clinical assessment function which will be undertaken by qualified court-based mental health practitioners. The third aspect of the program involves the coordination of health and welfare services which will be undertaken by experienced court-based case managers.

A suitable term of court supervision will be determined based on the accused's specific needs and circumstances. It is anticipated that the majority of accused will be discharged from the program within six months. However, the services will be available for up to 12 months where an accused's circumstances require a longer period of care.

The bill establishes the mental health list by amending the Magistrates' Court Act 1989. Clause 5 of the bill introduces sections 4S to 4Y into the Magistrates' Court Act 1989.

Human rights issues

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

Section 8 — recognition and equality before the law

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

The proposed section 4T of the Magistrates' Court Act 1989 engages the right in section 8(3) by limiting the jurisdiction of the list to accused with a mental illness, thereby differentiating between accused with a mental illness and those without.

However, section 8(4) of the charter recognises that 'measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination'.

The measures introduced by the bill are designed to assist courts in dealing with accused persons who have a mental illness or multiple complex needs.

Research has shown that mentally impaired defendants present to court with coexisting problems, including homelessness, substance abuse, poor social or interpersonal skills and unemployment.

The bill creates a new procedural framework for eligible individuals in the Magistrates Court of Victoria, featuring a case management function, as well as a therapeutic component, which are designed to meet the particular needs of mentally impaired individuals and assist courts in dealing with individuals who have complex therapeutic needs. These measures can be characterised as promoting 'positive discrimination' within the meaning of section 8(4) and are compatible with the charter.

Section 13 — privacy and reputation

Section 13 of the charter protects a person's right to privacy and reputation.

The proposed section 4U of the Magistrates' Court Act 1989 engages the right in section 13 as involvement in the list requires the accused to reveal personal and medical information to treatment providers and the court.

An interference with privacy will not limit the right if the interference is neither arbitrary nor unlawful. The interference will not be arbitrary if the restriction on privacy accords with the objectives of the charter and is reasonable in the circumstances. The interference will not be unlawful if the law authorising it is circumscribed, precise, and determined on a case-by-case basis.

The provision of information in the proposed section 4U is prescribed by law and will be determined on a case-by-case basis. The court, the mental health practitioners and the treatment providers will remain under their respective legal obligations to safeguard an accused's right to privacy and not disclose the accused's personal information (except where otherwise required or permitted by law). The provision of information is necessary to ensure the efficient functioning of the list and that the accused receives effective treatment. Furthermore, participation in the list is voluntary and requires the consent of the accused. As such, the requirement is neither unlawful nor arbitrary and does not limit an accused's right to privacy.

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

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

The proposed section 4V of the Magistrates' Court Act 1989 engages the right in section 25(1) as it may require the accused to complete an individual support plan prior to

entering a plea. This may involve undergoing treatment prior to a charge being proved. However, while the bill does impose additional obligations on the accused, the right is not limited because the list operates at the pre-plea and pre-sentence stage of the criminal process, which means that the accused can choose to contest the charges and plead not guilty at any time. In that case, the matter will be diverted from the list and heard by a magistrate in the mainstream Magistrates Court. As the accused's participation in the program is voluntary, they are able to opt out of the list at any time and can have their matter heard and determined in the mainstream Magistrates Court where they can plead not guilty. Therefore, the right to be presumed innocent is not limited.

Section 26 — 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.

Under the proposed section 4U of the Magistrates' Court Act 1989, the court may require an accused to complete an individual support plan prior to entering a plea. This may involve undergoing treatment and complying with directions of the court prior to a charge being proved.

Under the proposed section 4Y(6) of the Magistrates' Court Act 1989, a court may find that the accused did not participate in the individual support plan satisfactorily which will then require the accused to be sentenced. Participation in an individual support plan under this bill is voluntary and is not a form of punishment. Rather, an individual support plan is therapeutic in its aims and designed to assist and support the accused, not only in relation to the proceedings at hand but also in dealing with related issues such as homelessness and drug and alcohol abuse. As such, the right not to be punished more than once is not engaged.

In addition, the proposed sections 4Y(5) and (6) require that the court must take into account the extent of the accused's participation in the individual support plan when sentencing the accused. Furthermore, the accused can choose to contest the charges and plead not guilty at any time. In that case, the matter will be diverted from the list and heard by a magistrate in the mainstream Magistrates Court. As the accused's participation in the program is voluntary, they are able to opt out of the list at any time and can have their matter heard and determined in the mainstream Magistrates Court where they can plead not guilty.

Conclusion

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

Rob Hulls, MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

The Magistrates' Court Amendment (Mental Health List) Bill 2009 will facilitate the establishment of a modern procedural framework in the Magistrates Court of Victoria which is designed to meet the particular needs of defendants who experience mental illness and cognitive impairments. The mental health list ('list') is a key component of the Victorian government's mental health reform strategy, Because Mental Health Matters.

Because mental health matters, the government has created a special ministerial portfolio for mental health, providing $128 million over four years for initial seeding reforms to address the disadvantages of these particularly vulnerable members of our community. Our vision is that all Victorians should have the opportunities they need to maintain good mental health and wellbeing, and that those experiencing mental health problems should be able to access timely, high-quality care and support to live with success and dignity in the community. We have been working hard to turn this vision into reality.

The program facilitated by this bill recognises the particular circumstances of mentally impaired defendants and seeks to assist courts to appropriately address the issues associated with their offending behaviour.

Research has shown that mentally impaired defendants present to court with coexisting problems, such as homelessness, substance abuse, poor social or interpersonal skills and unemployment. Mental illness can be exacerbated without appropriate treatment and support, and lead to a 'revolving door phenomenon', where mentally impaired defendants continue to cycle through the criminal justice system, with diminishing prospects for reintegration in the community. As a result, mental illness is disproportionately represented in the prison population.

The program facilitated by this bill recognises that our courts can find a better, more dignifying and more humane way to respond to persons with a mental illness. Early intervention programs, such as the one facilitated by this bill, seek to divert defendants to services that can address the matters that contributed to their offending behaviour effectively.

The bill also seeks to address other immediate and practical issues confronting these individuals, by providing better alignment and service coordination between the courts, government agencies and service providers who can assist the defendants in addressing their coexisting problems such as drug and alcohol abuse and homelessness.

The model proposed by the bill is based on a number of successful interstate and international programs, adopting the 'best practice' features of each of those models, while also taking into account the particular characteristics of the existing health services and associated infrastructure in Victoria.

The model will continue to deliver on the government's commitment to take a problem-solving approach to justice, address disadvantage in the justice system and modernise courts.

Much has been achieved over the past few years; however, we can and must do more to make Victoria a better and fairer place to live. We are strongly committed to developing more innovative, client-orientated and responsive court strategies that will ultimately improve the way in which we provide justice.

Following the establishment of the list, Victorian courts will be at the 'leading edge' of practice in this area. The list will utilise therapeutic jurisprudence principles which we have successfully pioneered in the Drug Court in Dandenong, the Koori courts across Victoria, the Neighbourhood Justice Centre in Collingwood and the Court Integrated Services program.

The procedural and clinical measures facilitated by this bill will enhance the capacity of our courts to respond to defendants who experience mental illness or coexisting impairments.

The courts will be able to reach this group of defendants at an earlier stage of the offending cycle, thereby reducing their likelihood of reoffending. Furthermore, the program will improve the efficiency of the court processes by streamlining the procedures via a dedicated program, while at the same time reducing the high cost of imprisonment and other correctional services.

Key features of the mental health list

The list will hear cases involving defendants who have complex needs and moderate to severe mental impairments, including:

mental illness;

intellectual disability;

acquired brain injury;

autism spectrum disorder; and/or a

neurological impairment, including dementia.

Eligibility will be restricted to cases that do not involve serious violence or serious sexual offences. In cases involving low-level sexual offences, the magistrate will have the discretion to admit the defendant to the list, following consultations with the coordinating magistrate for the sexual offences list. The defendant must consent to participate in the list. List participants may withdraw from the list at any point prior to their matter being finalised. If they withdraw from the list their matter will return to the 'mainstream' Magistrates Court. Withdrawal from the list will not prevent defendants from accessing other court-based support services.

The list will focus on those defendants whose risk of reoffending is related to their mental health issues. Priority will be given to defendants who would most derive benefit from involvement in the problem-orientated court process and from receiving coordinated services in accordance with the support plan. These defendants will include individuals who have complex health and welfare needs and those who have 'fallen between the cracks' of the community service system.

It is anticipated that the list will work with approximately 300 defendants per year. Referrals to the list will be accepted from defendants themselves and other people involved in their lives, as well as from magistrates, police, prosecutors, defence lawyers, and other court-based support services. Defendants will participate in the list for between 3 and 12 months. The list will have a court-based clinical assessment function and a case management and liaison function. The clinical assessments will be undertaken by a small team of experienced mental health practitioners who will undertake comprehensive assessments of defendants, prepare individual support plans, advise the court of the defendants' treatment progress and provide some time-limited psychological interventions.

Support for defendants during their time of involvement with the list will be provided by case managers, who will be able to purchase certain additional services to address defendants' needs related to mental illness or cognitive impairment, homelessness, as well as drug and alcohol abuse. One of the most significant features of the program will be the effective coordination of health and welfare services, which will be facilitated by the program's case managers. Early referrals to the list will be encouraged in order to maximise service and treatment options for eligible participants. The critical task for the court-based mental health practitioners and the court will be to assess and refer defendants to appropriate treatment and support services, with the

aim of reducing their involvement in the criminal justice system.

While the program will be available for up to 12 months, it is anticipated that the majority of defendants will be discharged from the program within six months. Flexibility in this regard is designed to ensure (on a case-by-case basis) that a suitable term of supervision is set, based on the defendants' specific circumstances. The aim will be to stabilise the defendant in the community and provide the court with an indication of the defendant's progress for the purposes of sentencing.

One of the most important procedural aspects of the list is that the magistrate will be actively involved in the processes of monitoring and supervising the defendant's individual support plan. The magistrate will be able to adjourn the matter and conduct periodic status hearings to ensure that the defendant has complied with the program and individual support plan undertakings. Successful completion of the pre-sentence program could result in the magistrate discharging the defendant or imposing a sentence that takes into account the defendant's participation in the program.

The bill does not amend the Sentencing Act 1991, and the magistrates will retain the full range of sentencing options available under that act. The Sentencing Act 1991 requires magistrates to decide an appropriate sentence after taking into account factors such as deterrence, punishment, rehabilitation, protection of the community and concerns of the victim. This remains the same for the mental health list.

Further, the list will have the same sentencing dispositions available to it as the 'mainstream' Magistrates Court, from a dismissal to a fine, through to a community-based order or imprisonment. Successful participation in the list program by a defendant will be taken into account by the list magistrate in determining an appropriate sentence. Though the bill provides that the list magistrate may dismiss charges where appropriate this merely clarifies an existing option that magistrates already have.

The mental health list will commence operations early in 2010 and will be piloted until 30 June 2013. The trial of the mental health list will be formally evaluated by independent evaluators to ensure that it is effectively achieving its intended outcomes.

Conclusion

We have made significant progress in improving the Victorian justice system over the past nine years, and I commend all those who have worked tirelessly to bring about positive institutional and cultural change in our justice system. We are determined to continue working in this direction, and this bill is a result of our determination to reduce disadvantage in the criminal justice system.

The fairness of our system, our institutions and our democracy is measured by the manner in which we treat the most vulnerable members of our community, including mentally impaired individuals. One of the great strengths of the mental health list is its ability to deliver responsive, meaningful and fair outcomes for these individuals and to improve the way in which justice agencies and service delivery networks work together in response to the needs of the community.

I commend the bill to the house.

Debate adjourned on motion of Dr NAPTHINE (South-West Coast).

Debate adjourned until Thursday, 24 December.

CRIMES LEGISLATION AMENDMENT 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 Crimes Legislation Amendment Bill 2009.

In my opinion, the Crimes Legislation Amendment Bill 2009, 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

A key purpose of this bill is to amend the Crimes Act 1958 to alter the structure of the penalty provisions established in section 45 for the offence of sexual penetration of a child. This amendment will apply the maximum penalty available under that section (25 years jail) to all offences involving a victim aged under 12. This penalty currently applies to all offences against children under 10. This amendment will also mean that there can be no defence of marriage, mistaken age or consent to an offence against a child under 12.

The bill also remedies an anomaly in the reporting dates under the Crimes (Controlled Operations) Act 2004 and mirrors provisions in the Fisheries Act 1995 and the Wildlife Act 1975. This correction will allow the special investigations monitor to report comprehensively on the controlled operations conducted by various agencies.

The bill adjusts the sunset provisions of the Family Violence Protection Act 2008 to allow the family violence safety notice regime to operate until December 2011. The regime is currently due to sunset in December 2010.

The bill amends the definition of document in the Evidence Act 1958 so that it is effectively aligned with the definition of document in the Evidence Act 2008. This will ensure consistency between the operation of documentary provisions within the Evidence Act 1958 and the Evidence Act 2008.

Human rights issues

The only provisions in the bill that engage any human rights protected by the charter are those provisions that extend the life of the family violence safety notice (FVSN) trial.

Clause 6 of the bill extends the expiry date of part 3 division 2 of the Family Violence Protection Act 2008 from two years to three years. This is to ensure that there is sufficient time to carry out an independent evaluation of the FVSN trial and make any legislative changes recommended before the sunset provision takes effect.

To the extent that the FVSN trial engages charter rights, the extension of the sunset provision will also. However, as was established when the Family Violence Protection Act 2008 was presented to Parliament, the rights engaged by the FVSN trial are reasonable and demonstrably justified.

Extending the trial by 12 months to enable a thorough and independent evaluation to be completed is also reasonable and justified.

Section 12 — freedom of movement

Section 12 of the charter protects various rights in relation to freedom of movement. These rights include the right to move freely within Victoria, the right to choose where to live in Victoria, and the right to be free to enter and leave Victoria. The rights conferred by section 12 apply only to persons who are 'lawfully' within Victoria.

The trial of the FVSN system engages the right to freedom of movement. For example, if a respondent is to be excluded from a protected person's residence, or prohibited from being within a particular distance of a person or prohibited from approaching a person (by telephone or otherwise) the right to freedom of movement is engaged and limited.

The relationship between the limitation and its purpose is both rational and proportionate, given that the legitimate objective of the provisions is to protect a protected person and any children of a respondent from that respondent. In particular, a family violence safety notice is of limited duration (up to 72 hours), may only be made after hours (that is, after 5.00 p.m. or before 9.00 a.m. on a weekday, and at any time on a weekend or public holiday), may only be made in circumstances which require an urgent response to protect from family violence and are subject to the supervision of the courts.

A respondent's rights are protected by the fact that they may be granted access to particular places that they are prohibited from entering or going near in circumstances where they are accompanied by a police officer and the police officer has made all reasonable inquiries to ensure that this is practical in the circumstances. The limitation balances the rights of a respondent and the rights of a protected person.

No less restrictive approach to achieve the intended outcome is available and on balance, the limitation on the right to freedom of movement is reasonable and demonstrably justified in a free and democratic society.

Privacy of the home

Section 13 — privacy

Section 13 confers a number of rights regarding privacy. Specifically, a person has a right not to have their privacy, family or home unlawfully or arbitrarily interfered with or their reputation unlawfully attacked.

Privacy encapsulates concepts of personal autonomy and human dignity. It encompasses the idea that individuals should have an area of autonomous development, interaction and liberty — a 'private sphere' free from government intervention and from excessive unsolicited intervention by other individuals. Privacy comprises bodily, territorial, communications and information privacy.

The exclusion of a respondent from a protected person's residence may have the effect of interfering with a respondent's right to privacy of the home. Such exclusion is provided for in the FVSN regime. However, in each instance, the right to privacy of the home is not limited as the interference is lawful and not arbitrary. The interference is not arbitrary because it is in accordance with the provisions, aims and objectives of the charter (particularly section 17, which provides for the protection of children and families) and is reasonable in the circumstances (where the intent is to protect a person from further family violence incidents). Further, any exclusion only occurs if police officers consider it is necessary in the circumstances. Therefore, the interference with the right is neither unlawful nor arbitrary and the right is not limited.

Section 17 — protection of families and children

Section 17 provides for the protection of families and children. The charter provides that families must be protected by society and the state. However, while family unity is an important charter right, it must be balanced with other rights. Section 17(1) might be qualified by the special right of children to protection in section 17(2) (for example, when children are removed from a situation of family violence). The FVSN regime achieves an appropriate balance between the protection of the family unit (section 17(1) of the charter), the protection of the rights of family members to life (in section 9) and security of the person (in section 21) and the protection of the rights of the child to such protection as in his or her best interests (in section 17(2)).

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.

Rob Hulls, MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

The Crimes Legislation Amendment Bill contains a range of initiatives that will improve the operation of the criminal justice system.

Crimes Act 1958 — sexual penetration of a child under 16

Sexual offences against children are heinous crimes against the most vulnerable members of our society, and the community has an expectation that offenders are sentenced accordingly. This government has introduced major changes to improve the criminal justice system's response to sex offences, including child sex offences.

These include changes to jury directions in sex offence cases, new arrangements for giving evidence in child sex offence cases, and establishing a child witness service, specialist sex offence lists in the courts and a specialist sex offences prosecution unit in the Office of Public Prosecutions.

The improvements continue with the amendments to the Crimes Act 1958 contained in this bill.

Section 45 of the Crimes Act establishes the offence of sexual penetration of a child under 16. Three different maximum penalties are provided for:

> firstly, if the court is satisfied beyond reasonable doubt that the child was, at the time of the offence, under the age of 10, an offender faces a maximum sentence of 25 years jail;
>
> secondly, if the court is satisfied beyond reasonable doubt that the child was, at the time of the offence, aged between 10 and 16, and under the care, supervision or authority of the offender, an offender faces a maximum sentence of 15 years jail;
>
> thirdly, in any other case, an offender faces a maximum sentence of 10 years jail.

This bill will restructure this offence by extending the protection of the most serious of the penalties, 25 years jail, to all children aged under 12. This change will flow on to the other categories of penalty, so that they will apply to offences against children aged between 12 and 16.

Raising the age limit for the most serious class of offences means that the statutory defences to this offence do not apply to an offence against a child under 12. While there can be a defence of marriage, reasonable mistake as to age or consensual sex between young people where the offence involves a child aged between 12 and 16, none of these will be any defence to an offence against a child aged under 12.

In considering these defences, it must be remembered that absence of consent is not an element of this offence. Non-consensual sex can always be charged as rape, regardless of the age of the victim and the accused. Rape carries a maximum penalty of 25 years jail.

The catalyst for this amendment to the Crimes Act was the County Court case of *R. v. Maurice*. Maurice broke into his victim's home and sexually assaulted her whilst she was sleeping in her bed.

The victim had only two weeks previously turned 10 years of age. Because she was over the age of 10, the available maximum penalty for the offence was 10 years imprisonment. If the offence had been committed two weeks earlier, when she was under 10 years of age, the applicable maximum penalty would have been 25 years imprisonment.

In October 2008, I sought the advice of the Sentencing Advisory Council on the adequacy of the current maximum penalties for the offence of sexual penetration of a child under 16.

The council released their report in September 2009. It found that while the overall maximum penalties were appropriate, the age ranges that define the different penalties that apply should be altered in the manner I have described. The council's recommendations for restructuring the maximum penalties have been endorsed by this government and are reflected in this bill.

In its report, the council acknowledged that any aged-based legal definition is problematic and to some extent arbitrary. However, the majority of people consulted for the council's report considered that limiting the application of the higher maximum penalty of 25 years imprisonment to children aged under 10 did not reflect the inherent vulnerability of pre-teen children.

The council did find that many people who work with children consider that the transition from primary to secondary school is significant. Most children turn 12 in year 7, and children in high school are generally treated as having more independence.

Making the changes recommended by the council will have an impact upon sentences. Offences against 10 and 11-year-olds will now fall within the most serious of the three categories of penalty and will attract a maximum penalty of 25 years jail. I have no doubt that

this reform will be welcomed as appropriately recognising the evil of sexual offences committed against such young children.

For these reasons this government is pleased to accept the recommendations of the SAC on this point and to amend the offence of sexual penetration of a child under 16 accordingly.

Sentencing Advisory Council

In delivering its report on the maximum penalties for sexual penetration of a child, the council again demonstrated its worth to the government. Its work on sentencing is always well researched, cogent and persuasive.

One of the areas that the council has focused on since its inception is the range of sentencing options that are available to courts. Its April 2008 report, *Suspended Sentences — Final Report Part 2*, discussed a raft of changes to the Sentencing Act 1991 designed to give judges and magistrates a range of robust and useful sentencing options. It also canvassed the need to improve the way we respond to breaches of those sentencing options.

This government has always firmly supported judicial discretion and an independent judiciary. That is why we have always opposed mandatory sentences. We also want to give judges as many tools as possible in their sentencing armoury. We continue to consider the role of home detention as a sentencing option, as well as the way in which courts respond to the breaches of sentences.

Early next year the government will bring forward some further reforms based on the work of the council. Like the reforms contained in this bill, they will contribute to the creation of an effective and efficient criminal justice system.

Family Violence Protection Act 2008

In introducing the Family Violence Protection Act 2008, this government created a comprehensive raft of policies and procedures to protect Victorians at risk of family violence.

An integral feature of that act was the creation of family violence safety notices. These notices gave police a tool with which they could respond to incidents of family violence that occurred outside court hours.

Family violence safety notices are designed to make it easier for police to act quickly, decisively and efficiently to protect victims of family violence. These notices have the same effect as an interim intervention order made by a court to provide legal protection for victims of family violence.

A family violence safety notice can contain many of the conditions that a court can include in a family violence intervention order, including requiring a person to leave a residence or prohibiting a person from contacting another person.

I am pleased to be able to report that since the introduction of this new police power there has been an increase in police action in response to family violence. There were 1723 safety notices issued from 8 December 2008 to 30 June 2009.

The chief commissioner and the Chief Magistrate are required to report on the operation of the family violence safety notice regime within three months of the Family Violence Protection Act being in effect for a year, and I look forward to receiving their views on the new system. The act commenced operation in December 2008.

The family violence safety notices regime is due to sunset two years after commencement of the Family Violence Protection Act. This will fall in December 2010.

This government made a public commitment to independently evaluate the efficacy of the family violence safety notice system to determine whether it is an effective and efficient after-hours response to family violence incidents.

This comprehensive 12-month evaluation is under way. Extensive consultation is being undertaken with Victoria Police members, the courts, family violence service providers as well as victims of family violence and perpetrators. The evaluation outcomes will inform the government's future decision on the system's continuation.

However, under the current provisions, it is likely that the family violence safety notice regime will sunset before the government is able to properly consider the results of its evaluation.

Rather than rush our response to the evaluation, we intend to allow the family violence safety notice system to operate until December 2011. This will give the government time to consider the evaluation and make any changes that are needed before the legislation sunsets.

To this end, this bill extends the sunset date of the family violence safety notice regime from December 2010 to December 2011.

Crimes (Controlled Operations) Act 2004

When this government introduced the Crimes (Controlled Operations) Act 2004 as part of a package of reforms addressing major crime and terrorism, it included several accountability mechanisms. One of these was the provision of independent oversight of any controlled operations conducted by law enforcement agencies.

This oversight is conducted by the special investigations monitor. Each year the special investigations monitor is required to report to the Parliament on any controlled operations conducted by Victoria Police or fisheries or wildlife inspectors.

To allow the special investigations monitor to fulfil that role, those agencies must report to him every six months, detailing any controlled operations they have undertaken.

However, there is an anomaly in the reporting dates required by the legislation. The agencies, such as Victoria Police, that report to the special investigations monitor are required to make their reports in March and September. However, the special investigations monitor must report to Parliament as soon as possible after the end of each financial year.

The special investigations monitor was therefore potentially left waiting until September each year before he could begin to prepare his annual report. I understand that the goodwill of the agencies has prevailed so far, and agencies have provided supplementary reports in order to allow the special investigations monitor to meet his obligations. However, we will now act to improve the reporting obligations that apply to the law enforcement agencies.

The Crimes Legislation Amendment Bill amends the Crimes (Controlled Operations) Act, along with the Fisheries Act 1995 and the Wildlife Act 1975, to change the reporting dates for the agencies that report to the special investigations monitor. Their reports will now be due as soon as possible after December and June each year. The special investigations monitor will therefore be better placed to report to the Parliament after the end of each financial year.

Evidence Act 1958 — definition of document

This amendment is a technical amendment that flows from the introduction of the Uniform Evidence Act to Victoria.

The Evidence Act 2008, which is due to commence on 1 January next year, defines a document in a way that allows courts to use copies of documents as evidence where that is appropriate.

However, the Evidence Act 1958 retains a range of provisions, including powers relating to bodies like royal commissions.

The definition of document in these two pieces of legislation is not identical, resulting in inconsistency between the operation of documentary provisions within the Evidence Act 1958 and the Evidence Act 2008. This amendment will bring the definitions into step with one another.

The amendments contained in the bill continue this government's commitment to improving the criminal justice system, particularly where this involves protecting the most vulnerable members of our community.

I commend the bill to the house.

Debate adjourned on motion of Dr Napthine (South-West Coast).

Debate adjourned until Thursday, 24 December.

EDUCATION AND TRAINING REFORM AMENDMENT BILL

Statement of compatibility

Ms PIKE (Minister for Education) 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 Education and Training Reform Amendment Bill 2009.

In my opinion, the Education and Training Reform Amendment Bill 2009, 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 makes amendments to the Education and Training Reform Act 2006 (the act) to improve the role, functions, structure and operation of the Victorian Institute of Teaching,

to enhance the operation of the merit protection board, and to amend the registration provisions applying to accredited senior secondary courses. In particular, the bill:

makes changes to the investigation of registered teachers, including widening the grounds on which teachers may be investigated and creating in certain circumstances a requirement to undergo a health assessment;

provides for the establishment of an informal hearing panel and a medical hearing panel to deal with complaints against registered teachers;

widens the sanctions available to disciplinary panels under division 12 of part 2.6 of the act;

provides for the annualised registration of teachers who are registered under section 2.6.9 of the act;

alters the constitution of merit protection boards and the council of the Victorian Institute of Teaching;

provides for registered schools to have ongoing registration with respect to accredited senior secondary courses; and

makes consequential and miscellaneous amendments to clarify the intent of the act.

Human rights issues

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

The right to privacy (section 13 of the charter)

Section 13(a) of the charter provides that individuals have a right not to have their privacy unlawfully or arbitrarily interfered with.

Health assessments and medical panels

The bill provides that the Victorian Institute of Teaching has the power to inquire into (clause 27) and investigate (clauses 29 and 30) whether a registered teacher's ability to practise as a teacher is seriously detrimentally affected or likely to be seriously affected because of an impairment. 'Impairment' is defined in clause 11 as a physical or mental impairment, disability, condition or disorder including substance abuse or dependence.

In order to assess whether or not a registered teacher is seriously detrimentally affected or likely to be seriously detrimentally affected by an impairment, an investigator has the power to ask a teacher to undergo a health assessment (clause 30 and the new section 2.6.33C). If a registered teacher does not agree to undergo the health assessment, the investigator must report on the matter to the Victorian Institute of Teaching. The Victorian Institute of Teaching may then refer the matter to a hearing by a medical panel. A medical panel may require a registered teacher to undergo a health assessment (clause 41 and the new section 2.6.41F).

A medical panel may also be established if the Victorian Institute of Teaching determines that a medical panel hearing be held into a registered teacher's ability to practise as a teacher or an informal or formal hearing panel has referred a matter to a medical hearing in relation to a registered teacher's ability to practise as a teacher. A medical panel hearing is not open to the public. Clause 41 provides that a medical panel may, at any time during the panel's hearing into a registered teacher's ability to practise, direct the teacher to undergo a health assessment to assess the teacher's ability to practise as a teacher on the basis that the panel believes that the teacher has an impairment.

These clauses engage the right to privacy, however, in my view, the right is not limited because the interference with the right is neither unlawful nor arbitrary. This is because the health assessment powers are clearly defined and circumscribed in the bill (in particular they are limited to ascertaining whether a teacher's ability to practise is or is likely to be seriously detrimentally affected by an impairment), and are necessary to achieve the important purpose of ensuring teachers' ability to practise.

The right to a fair trial (s 24(1) of the charter)

Section 24(1) of the charter provides that a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. In *Kracke v. Mental Health Board & Ors (General)* [2009] VCAT 646, Bell J. held that the right to a fair hearing in section 24(1) is not limited to judicial proceedings and can extend to administrative proceedings that are determinative of private rights and interests. However, he also noted that the entire decision-making process in question (including reviews and appeals) must be examined in order to determine whether the right in section 24(1) is satisfied and that the right does not necessarily require that the initial decision-maker be an independent and impartial court or tribunal.

There are several decisions provided for in the bill which potentially constitute administrative proceedings determinative of the private law right of teachers to practise their profession and which may therefore engage section 24(1) of the charter. These are decisions regarding the refusal to renew registration or impose conditions on re-registration, and decisions regarding the imposition of sanctions, conditions, suspension and other requirements imposed through decisions of informal hearing panels, formal hearing panels and medical panels.

In my opinion, the proceedings in question when viewed as a whole satisfy the requirements of section 24(1) of the charter. In proceedings before informal hearing panels, formal hearing panels and medical panels, the teacher is entitled to be present, to be accompanied by another person and to make submissions. Although there is not an automatic right to have legal representation, the teacher can seek leave to have legal representation. Under the act, a teacher is entitled to make submissions regarding decisions to refuse registration, or renewal of registration, and in relation to suspension of registration or permission to teach. Importantly, the act provides for a review of these decisions by the Victorian Civil and Administrative Tribunal, an independent and impartial tribunal (section 2.6.55).

For these reasons, I consider that the bill is compatible with section 24(1) of the charter.

The right to recognition and equality before the law (section 8 of the charter)

Section 8 of the charter provides that every person has the right to enjoy his or her human rights without discrimination, the right to equal protection of the law without discrimination, and the right to equal and effective protection against discrimination. 'Discrimination' is defined in section 3 of the charter as meaning discrimination within the meaning of the Equal Opportunity Act 1995, on the basis of an attribute set out in section 6 of that act.

As discussed earlier, registered teachers may be investigated and may be required to undergo health assessments in order to assess whether or not a registered teacher's ability to practise is seriously detrimentally affected or likely to be seriously detrimentally affected by an impairment. The definition of impairment in the bill is likely to overlap with the defined attribute of 'impairment' in the Equal Opportunity Act 1995. However, in my view, these clauses do not constitute either direct or indirect discrimination under the Equal Opportunity Act 1995. A registered teacher with an impairment within the meaning of the Equal Opportunity Act 1995 will not be treated differently because of the impairment, but rather because the registered teacher's ability to practise is seriously detrimentally affected or likely to be so affected. Further, the requirement to attend a health assessment is not a requirement which someone with an attribute does not or cannot comply with, or a requirement that a higher proportion of people without that attribute, or with a different attribute, do or can comply with.

Accordingly, I consider that the bill is compatible with section 8 of the charter.

Conclusion

I consider that the bill is compatible with the charter.

Hon Bronwyn Pike, MP
Minister for Education

Second reading

Ms PIKE (Minister for Education) — I move:

That this bill be now read a second time.

The Education and Training Reform Amendment Bill 2009 will make a number of amendments to the Education and Training Reform Act 2006 to implement government policy and further improve its operation.

The main purposes of the bill are:

to make changes to part 2.6 of the Education and Training Reform Act 2006 relating to the Victorian Institute of Teaching (the institute) to make improvements to the role, functions, structure and operation of the institute;

to amend part 2.4 of the act to enhance the operation of the merit protection boards;

to amend section 4.3.12 of the act so that registered schools which provide an accredited senior secondary course (such as the Victorian certificate of education or the Victorian certificate of applied learning) will have ongoing registration to provide such a course.

The bill also corrects minor anomalies to clarify the operation of the act.

As the provisions of the bill are grouped under these main purposes, the following further details are also given in that same order.

The bill includes amendments to part 2.6 of the Education and Training Reform Act 2006, which will enable reforms to the Victorian Institute of Teaching arising as a result of the review of the institute conducted in late 2007.

The Victorian Institute of Teaching was established in 2001 as a professional body for the teaching profession, with responsibility for setting entry-level standards of professional practice, assessing qualifications, advising on professional development, undertaking police records checks and administering a discipline system to ensure that registered teachers in Victoria meet high standards of professional practice and conduct.

The creation of the Victorian Institute of Teaching reflected the government's commitment to improve Victoria's education services and was part of a broad range of reforms implemented in the education sector to improve the quality of teaching in all Victorian schools.

In the second-reading speech for the Victorian Institute of Teaching Act 2001, the then Minister for Education committed the government to a review of the institute after five years of operation.

The review was undertaken in 2007 and considered:

the appropriate objectives for the institute in the light of government policies and changes in all education sectors since its establishment;

the effectiveness of the institute in achieving its original objectives;

the most appropriate structures for achieving the objectives identified under point 1;

whether the institute or a successor body has a role to play in this future environment; and

if the institute is to continue, changes that may be required to its functions, structure and legislative mandate.

The review considered 277 submissions, met with key stakeholders, analysed the current responsibilities and operations of the institute and researched similar bodies within Australia, New Zealand, the United Kingdom, the United States of America, Canada and other pertinent international jurisdictions. The basis for its findings was thorough and inclusive of the views of relevant stakeholders. A number of recommendations in relation to structure, functions and operations were provided in the report for consideration by government.

The review found that there was a role for the institute, but one that has a more streamlined, single focus to avoid potential overlaps with the core roles of other major stakeholders. The changes to part 2.6 of the Education and Training Reform Act 2006 contained in this bill will give effect to reforms that will improve the efficiency and effectiveness of the Victorian Institute of Teaching. This will in turn have direct benefits for teachers, schools, children and their families.

Under the reforms contained in this bill the institute will be governed by a smaller council of 12 members, which will be able to focus on leadership and strategic planning for the institute. The council will continue to consist of both appointed and elected members, with broad representation from our diverse education sector being maintained. As with the previous council composition, those elected will be practising members of the profession. The reformed council will be well positioned to further develop its regulatory role in Victoria's evolving and dynamic education system.

The composition of the council will now include:

five members appointed by the Governor in Council on the recommendation of the Minister for Education, who shall be:

one teacher, who will be appointed as chairperson of the institute;

two employers of teachers;

one expert in pre-service education, and

one parent.

six elected members, who shall be:

three registered teachers employed in government schools;

one registered teacher employed in a government school for students with disabilities or impairments;

one registered teacher employed in a Catholic school, and

one registered teacher employed in an independent school.

one member, who shall be the secretary or the secretary's nominee.

A deputy chairperson position, nominated by the minister, will also be created to provide support to the chair in meeting governance and administrative responsibilities.

The reduction in the size of the membership of the council will not increase the administrative workload of members in terms of hearing panel responsibilities. The act will be amended to provide for a pool of persons to be approved by the Governor in Council, on the recommendation of the minister, to fulfil this function.

The functions of the institute under the act are to be amended to more strongly emphasise the role of the institute as a regulator. The institute will no longer have responsibility for promoting the teaching profession, but will have an added function, to recognise and promote its own role and activities.

The bill will enable the institute to provide a more streamlined and efficient registration service to Victorian teachers. Renewal of registration will be annualised, with a straightforward online process being developed to minimise the time spent on this task by teachers. Renewal of teacher registration will occur each year coinciding with the payment by the teacher of the annual fee. The institute will renew the registration of teachers who meet the institute's minimum requirements of professional practice; those that do not meet those requirements will not have their registration renewed.

In Victoria, provisional registration for teachers is currently granted for one year, with a further one year extension possible on application by the teacher. Many provisionally registered teachers require two years to satisfy the standard required to qualify for full registration, including induction and mentoring processes. To this end, the act is being amended to raise provisional registration from one to two years. In addition, the institute will also have the power to grant an additional three-month extension of provisional registration to allow applicants to complete the requirements for full registration.

By extending the provisional registration period in this way the institute will provide improved client service to graduate teachers and give schools a more realistic time

frame in which to manage induction and mentoring of provisionally registered teachers.

Permission to teach provisions allow non-registered persons to be employed to teach or instruct in schools in specified circumstances, under the supervision of registered teachers. This provision provides schools with the flexibility to respond to changing education contexts while protecting standards of professional integrity and competence. I believe that permission to teach should be encouraged and suitable support and supervision utilised to ensure that the highest standards are met in our schools.

It is important to note that the bill requires that an application for permission to teach must be accompanied by evidence that the person or body seeking to employ or engage the applicant attempted to employ or engage a registered teacher first, with some exemptions. This amendment will encourage a school to undertake a comprehensive recruitment process. Exemptions will provide for the registration of people who are recruited to teaching through programs or initiatives such as 'Teach for Australia' and 'Career Change', which address workforce diversity and supply needs. The act will also be amended to change the period of 'permission to teach' from five years to three years for each application.

The bill proposes a range of amendments to the act relating to assessment of teachers for initial registration and to the investigation of teachers who are the subject of a complaint, allegation or notification. These changes will extend the powers of the institute in determining those applicants who are suitable to be registered, and in managing its discipline function. I would like to summarise these changes for the house.

The bill will amend part 2.6 of the act to alter the concept of 'fitness to teach' and introduce the concept of 'suitability to teach'. The term 'suitability to teach' is considered to be a broader term than 'fitness to teach' and allows scope to include criteria relating to an applicant's physical and mental health — as well as their criminal records. In addition to a teacher's record of work in Victoria, the institute will be able to take account of a teacher's record in other parts of Australia as part of determining a teacher's 'suitability to teach'. This approach will help to ensure Victoria's registration procedures are consistent with work currently being undertaken at the national level and will result in increased confidence in the capacity of the registration process.

The bill will give the institute the power to investigate allegations below the level of serious misconduct and to impose a greater range of sanctions, including that a teacher undertake specified further education or training and cancelling a teacher's registration for a period of time. I believe that the institute's capacity to undertake its regulatory function will be enhanced by expanding investigatory powers to include less serious matters. This broadening of the institute's current powers is needed so that the institute will be able to respond with greater flexibility and nuance to different levels of misconduct and to serious incompetence.

The bill grants the institute the power to initiate an investigation into a matter in relation to a registered teacher under certain circumstances without a complaint or formal notification. The review of the institute found that on occasion notifiers declined to lodge a formal complaint despite compelling evidence. Under the bill the institute can initiate an investigation if it believes or has knowledge of a registered teacher's serious incompetence, misconduct, serious misconduct, lack of fitness to teach or matters which affect ability to practise as a teacher. The power to initiate an investigation into such matters without a complaint or notification will provide the institute with greater capacity to investigate cases which might otherwise have escaped its attention. The expansion of the powers of the institute to investigate matters less than serious misconduct brings the teaching profession into line with other professions in this matter.

The review found some complaints received by the institute have been about teachers who exhibit erratic or irrational behaviour. Further investigation revealed that this was due to ill health or alcohol or drug abuse. The current powers of the institute prevent it from dealing adequately with such cases. The bill gives the institute the power to convene medical panels in cases where a registered teacher's ability to practise is seriously detrimentally affected or is likely to be seriously detrimentally affected by a physical or mental impairment. This will prevent teachers who may be unfit to continue to teach for health reasons being subject to a discipline hearing process to determine their fitness to teach.

Where a finding is made by a medical panel that a teacher's ability to practise is seriously detrimentally affected or is likely to be seriously detrimentally affected by a physical or mental impairment, the panel will be empowered to make a determination, including to impose a condition on the teacher's registration or to suspend the registration for a period, subject to a condition specified in the determination. Such conditions may include that the teacher undergo counselling, undertake specified further education or training within a specified period, work under the

supervision of another teacher or attend an appropriate registered health practitioner for treatment. This will enable the institute to determine the most appropriate course of action following a hearing into a matter.

The review recommended that the institute be granted the power to enter into an arrangement with teachers that permits deregistration by mutual consent, without the necessity of an investigation and hearing as a precondition to that deregistration. Providing the institute with such capacity will enable parties to resolve matters without the need to undergo protracted hearings. The decision to surrender registration will be binding with no right of review. This is consistent with powers provided under Health Professions Registration Act. This amendment will provide for more satisfactory outcomes to be achieved by all parties in a more timely and efficient manner.

The bill proposes amendments to part 2.4 of the act to change the membership of the merit protection boards to include education support employees. This will ensure that matters relating to this group will be heard by a panel which includes a member of the same employment classification. Additionally, the structure of the boards has been changed so that member boards will be appointed from three respective pools of persons, increasing the availability of members to hear matters. This change will enable the merit protection boards to operate more efficiently and expand representation on the boards to better reflect the diversity of staff employed in schools.

The act currently provides that the Disciplinary Appeals Board's function is 'to hear and determine appeals in relation to a decision of the secretary' in regard to misconduct under division 10. The bill will provide the Disciplinary Appeals Board with the power to also hear and determine appeals in relation to a decision of the secretary made in regard to unsatisfactory performance.

The act will be amended so that registered schools that are also approved to provide an accredited senior secondary course such as the Victorian certificate of education, the Victorian certificate of applied learning and the international baccalaureate diploma will have ongoing registration to provide the accredited senior secondary course. Currently, such schools are only registered for up to five years.

Schools in Victoria are required to register with the Victorian Registration and Qualifications Authority. They remain registered until the registration is suspended or cancelled by the authority. Additionally, non-school providers of accredited senior secondary courses, such as the Victorian certificate of education or the Victorian certificate of applied learning, are required to register with the authority. The registration is for up to five years.

The act will be amended so that registered schools that are also approved to provide an accredited senior secondary course will have ongoing registration to provide the accredited senior secondary course. This amendment will address the current registration period anomaly and reduce the administrative burden on schools.

In December 2008, all Australian education ministers signed the Melbourne Declaration on Educational Goals for Young Australians. The declaration commits all key education stakeholders in Australia to an agreed set of goals which sets the direction for Australian schooling for the next 10 years. The declaration is a major achievement in national cooperation and a source of pride for Victoria and the Victorian Department of Education and Early Childhood Development in particular, which led the work on developing the declaration. Amongst the outcomes was the introduction of eight new learning areas that are the subject of free instruction in government schools. The bill will amend schedule 1 of the act to reflect this change, providing a statutory basis for the implementation of these new learning areas.

Collectively, the amendments contained in the bill will ensure that our legislative framework continues to provide for the ongoing innovation and improvement occurring in the education sector in Victoria. They will go a long way to providing all Victorians with the assurance that Victoria maintains high-quality teachers, which is critical to ensuring the wellbeing of our future generations.

I commend the bill to the house

Debate adjourned on motion of Mr DIXON (Nepean).

Debate adjourned until Thursday, 24 December.

LEGISLATION REFORM (REPEALS No. 6) BILL

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Legislation Reform (Repeals No. 6) Bill 2009.

In my opinion, the Legislation Reform (Repeals No. 6) Bill 2009, 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 purpose of the bill is to repeal a number of redundant acts of Parliament (listed in schedule 1).

In consultation with parliamentary counsel, the government has carefully reviewed the legislation listed in schedule 1 and is satisfied that the repeal of that legislation will not engage any human rights protected by the charter.

In addition, section 14(2)(e) of the Interpretation of Legislation Act 1984 provides that the repeal of an act or a provision of an act, by itself, does not 'affect any right, privilege, obligation or liability acquired, accrued or incurred under that act or provision', unless the repealing act expressly provides for a contrary result. The bill does not expressly seek to affect any person's existing rights, privileges, obligations or liabilities, but simply to repeal the acts specified. As a result, this section should operate to prevent any unintended impairment of the rights or obligations of any persons that might result from the repeals.

Human rights issues

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

The bill does not engage any of the rights under the charter.

2. Consideration of reasonable limitations — section 7(2)

As the bill does not engage any of the rights under the charter, it is not necessary to consider the application of 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.

Hon. John Brumby, MP
Premier of Victoria

Second reading

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

That this bill be now read a second time.

At the 2006 state election, the Victorian government made a policy commitment to improving the efficiency of government. The bill before the house demonstrates the Brumby government's ongoing commitment to this election promise and to the Reducing the Regulatory Burden initiative.

The government's legislation reform initiative is already well under way. Four acts in this series have been passed, and a further bill has been introduced into Parliament.

The first four acts in the series repealed approximately 200 principal and amending acts from the statute book. Once passed, the Legislation Reform (Repeals No. 5) Bill 2009 will take this process further.

This bill provides a valuable contribution to Parliament's ongoing review of legislation in the Victorian statute book and to repeal acts that are no longer required. Clearing the statute book of redundant acts will help to make the task of consulting our legislation easier and less confusing.

This bill will contribute to the significant progress that has already been made. The bill will repeal another 63 spent and redundant acts, which have been identified as part of an ongoing government-wide review of the statute book.

The repeal of these acts will improve the accessibility of our legislation for all Victorians.

I commend the bill to the house.

Debate adjourned on motion of Mr WAKELING (Ferntree Gully).

Debate adjourned until Thursday, 24 December.

Referral to committee

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

That the proposals contained in the Legislation Reform (Repeals No. 6) Bill 2009 be referred to the Scrutiny of Acts and Regulations Committee for inquiry, consideration and report.

Motion agreed to.

BUSINESS OF THE HOUSE

Adjournment

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

That the house, at its rising, adjourns until a day and hour to be fixed by the Speaker, which time of meeting shall be notified in writing to each member of the house.

Mr McINTOSH (Kew) — I would like to make a brief contribution to the motion that the minister has just moved. The opposition of course will not oppose

and in fact will support the motion. This is the standard motion that is put at the end of a year's sitting to enable the Parliament to come back at the appropriate time next year.

What is unusual about this motion is that it is being moved during the course of the day, and while it is within the rules to be moved at this time during the course of the day it is unusual, because the government has decided to orchestrate a significant amount of pressure being placed on the Legislative Council in relation to the growth areas infrastructure contribution bill that has just been debated in the other place and, I understand, has been adjourned for one week.

It is a demonstration that the government is prepared to use its numbers in the most oppressive manner to put pressure on the Legislative Council to make a decision about an important piece of legislation. Notwithstanding the fact that the government moved its own amendments to that bill and will have to come back to this place, I understand the opposition has moved amendments and the Greens have also moved amendments to the bill.

There is a considerable amount of debate left in the bill, yet this government has decided to put pressure on the Legislative Council to try to force its hand in relation to that bill by moving a motion in relation to the Dispute Resolution Committee, and accordingly, rather than the motion being put at the usual time at the beginning of a day's sitting, it is taking the unusual step of putting pressure on the upper house, and indeed that is the reason we are debating the motion at this late stage.

As I said, the opposition supports the motion — it is the usual motion — but it is just a demonstration that when it comes down to it the government is prepared to manipulate all of the processes of this Parliament and use all of its numbers to put undue pressure in the most undemocratic fashion on the upper house even while the debate is unfolding and even when that debate is foreshadowing amendments that have been moved by the government itself.

The debate is not concluded, yet the government wants to put undemocratic pressure on the upper house to force its hand, and the government stands condemned for that behaviour.

Motion agreed to.

ACCIDENT COMPENSATION 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, I make this statement of compatibility with respect to the Accident Compensation Amendment Bill 2009.

In my opinion, the Accident Compensation Amendment Bill 2009, 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. Overview of the bill

The purpose of the Accident Compensation Amendment Bill 2009 is to amend the Accident Compensation Act 1985 (the act) in response to recommendations made by Mr Peter Hanks, QC, in the Accident Compensation Act review (the Hanks report).

The bill introduces a package of reforms for the operation of the compensation scheme that applies to injured workers under the Act (the Scheme).

2. Human rights issues

The bill has been assessed against the charter.

Discrimination — clauses 12 and 54

Under section 82(2A) of the act, compensation is not payable in respect of mental injuries that arise wholly or predominantly from reasonable management action or decisions. Clauses 12 and 14 of the bill have the effect of widening the definition of 'reasonable management action', thereby potentially creating more situations in which a relevant claim may be rejected.

Part 6 of the bill amends the act in relation to an injured worker's entitlement to compensation for non-economic loss where he or she suffers from a permanent impairment. Pursuant to clause 54 of the bill, the amount of the lump sum benefit to which an injured worker will be entitled varies depending on the type of permanent impairment suffered by the injured worker and its impact on the worker's whole person.

Under clause 54 of the bill compensation for non-economic loss for injured workers with a permanent spinal impairment and with an impairment rating between 10 per cent and 30 per cent is increased by a factor of 1.1 over the other permanent injuries with a similar impairment rating.

Under section 98C(3) of the act, entitlement for lump sum benefits for injured workers with a permanent psychiatric impairment is subject to a higher threshold for compensation (i.e. 30 per cent of whole person impairment) than other types of permanent impairment

(i.e. 10 per cent of whole person impairment). Clause 54 (section 98C(4)) retains the different thresholds for compensation but equalizes the amount applicable to permanent psychiatric impairment and other types of permanent impairment above 30 per cent. The ameliorating effect of the amendment assumes the continuation of the higher threshold applicable before persons suffering permanent psychiatric impairments may recover lump sum benefits.

Section 8 of the charter provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination (within the meaning of the Equal Opportunity Act 1995). Under the EO act, 'direct' discrimination occurs where a person treats someone with an attribute less favourably than the person treats someone without that attribute, or with a different attribute, in the same or similar circumstances. The relevant attribute is 'impairment'.[1] In clauses 12 and 54 of the bill, the discrimination argument arises not from the treatment that a person with an impairment will receive vis-a-vis a person with no impairment, but from the treatment a person with a specific type of impairment will receive compared to a person with a different type of impairment. This is otherwise known as intra-attribute discrimination. In my view, intra-attribute discrimination is comprehended within the Victorian definition of discrimination by the reference to treatment that is less favourable than a person 'with a different attribute'. That reading of those words is necessary in order to make the definition of discrimination work in contexts that it must obviously have been intended to cover. This is because discrimination on the basis of certain categories of attribute (e.g. race, sex or age) assumes comparison between persons who fall into different subsets of the same attribute. For example, race discrimination envisages a comparison to be drawn between persons of different racial groups.

Discrimination on the basis of a disability or impairment is more problematic because it is more difficult to identify the subcharacteristics that it is legitimate to compare in assessing a claim of intra-attribute discrimination. Hence, not all claims of intra-attribute discrimination ought necessarily be recognised as falling within the scope of the EO act. Where, however, the claim is made that persons suffering from a particular disease are being treated differently from persons suffering from some other disease this seems to fall within the scope and purposes of the equality regime. That is because the protection against discrimination on grounds of impairment is clearly intended to proscribe the stigmatisation of particular kinds of disease or disorder. So, a person who suffers from HIV should not be treated less favourably than a person who suffers from lung cancer, any more than a person who is Asian should be treated less favourably than a person who is black.

Mental injuries arising from 'reasonable management action'

Currently under section 82(2A) of the act, claims for stress-related and psychiatric injury are subject to exclusion from compensation where these arise wholly or predominantly from certain actions or decisions that are reasonably taken by an employer in respect of the worker.

Through the existing exclusion, any 'stress' response or reaction to these legitimate employer actions is and will continue to be ineligible for compensation. Such actions currently include reasonable actions to transfer, discipline, demote, redeploy, retrench or dismiss a worker. The act also protects reasonable decisions not to promote, reclassify or transfer a worker or provide them with leave or other employment benefit. Similarly, any expectation by a worker that such actions or decisions will be taken is also exempted under the act.

Clause 12 confirms the intent in section 82(2A), which treats persons with mental injuries arising from reasonable management action less favourably than persons suffering physical impairments, such as disfigurement or loss of bodily functions or parts, or from persons suffering other mental injuries, unrelated to management activity.

The essence of what clause 12 is trying to achieve is to clarify the operation of the existing exclusionary provision for mental injuries arising as a consequence of reasonable management action. The relevant comparison, therefore, is probably with persons suffering physical injuries where the employer's conduct has been similarly reasonable. Clause 12 treats persons with a mental injury resulting from reasonable management action less favourably than persons suffering physical injuries in circumstances where the employer has acted reasonably.

I therefore accept that the amendments relating to claims for mental injuries under clause 12 may limit the right to equality, as protected by section 8 of the charter. Assuming this to be so, for the following reasons I nevertheless consider that any limit is reasonable and demonstrably justifiable in terms of section 7(2) of the charter.

(a) the nature of the right being limited

The right in section 8 of the charter is a right to 'recognition and equality before the law' in a manner that affords effective legal protection against discrimination. Its effect here is that a person should not be refused access to facilities or benefits enjoyed by others because they suffer from a particular medical condition. The key idea behind equality is that persons should not be unfairly disadvantaged by assumptions that stigmatise certain members of the community. I accept that this protection is important to persons suffering mental injuries arising from workplace incidents because of the high level of stigmatization surrounding these conditions.

(b) the importance and purpose of the limitation

The limitation serves a number of important purposes:

The limitation is designed to protect the capacity of employers to regulate workplace activities and to ensure that employees comply with their contractual obligations. For this reason, clause 12 only limits mental injury claims arising from 'reasonable management action'. In my view, the ability of employers to regulate employee conduct through 'reasonable management action' reflects an important public interest in maintaining effective, efficient and supportive workplaces and encourages both workers and employers to cooperate towards this end.

[1] The EO Act defines this to mean a range of total or partial physical or mental disabilities such as loss of a bodily function or part; the presence in the body of organisms that may cause disease; loss of a part of the body; malfunction of a part of the body, including mental disease or disorder; or malformation or disfigurement.

The assessment of mental or psychiatric injuries is not assessed in the same manner as physical injuries. Rather, mental injuries, unlike physical injuries that are assessed on the basis of scientific data, are based wholly on self-reporting of a worker's mental state or behavioural examination by clinicians. As a result, diagnosis turns on clinical judgement and consideration of the subjective experience of claimants. Limiting mental stress claims where there has been reasonable management action is designed to discourage fraudulent claims where this would expose the scheme to systemic abuse.

The restriction on mental injury claims also reflects the difficulty in establishing a causal link between the stress-related injury and the reasonable management action. As noted in the Hanks report (Hanks report 70), psychiatric injuries are frequently caused by multiple factors including a worker's personal life, interpersonal relationships and personality factors.

(*c*) *the nature and extent of the limitation*

There is no blanket exclusion of claims for mental injuries arising from workplace incidents or from any management action. Rather, the restriction on recovery by workers suffering these types of injuries is limited to where the injury arises from 'reasonable management action'.

(d) the relationship between the limitation and its purpose

For the reasons given above, the limitations on section 8 of the charter presented by the differential treatment of mental injury claims under the bill directly address issues which go to the heart of the integrity of the scheme — its financial viability and its role in compensating claims for genuine workplace injuries.

(e) any less restrictive means reasonably available

The restriction on compensation for mental and psychiatric injuries under the bill is narrowly tailored to addressing these ends. The relevant provisions do not deny injured workers the right to claim compensation for any mental or psychiatric impairment which is said to arise from a workplace injury. Rather, the limitation on mental injury claims is narrowly focused and seeks to limit claims only where the mental injury is wholly or predominantly caused by reasonable management action. The amendment thus only limits claims for compensation for mental injury to the extent necessary to safeguard the ability of an employer to take steps to manage employee relations. A worker may continue to claim compensation where an employer has acted inappropriately or unreasonably. Clause 12 encourages employers to appropriately and reasonably manage workplace activities. This restriction is consistent with the public interest in maintaining the productivity of workplaces and the legality of the relations governing them.

Clause 12 of the bill presents a reasonable and fair option for achieving the three objectives of protecting the scheme's integrity, economic viability, and of protecting employer's autonomy in managing workplace activities and employee relations. Clause 12 implements recommendation 7 of the Hanks report.

The amendments do not prioritise financial viability over worker entitlement. Rather, clause 12 accommodates the important objective of compensating workers with mental or psychiatric injuries with the public interest in protecting the affordability of the scheme so that it can adequately compensate both mental injuries and other injuries in accordance with the act.

In conclusion, therefore, to the extent that clause 12 limits section 8 of the charter, I consider that the limit is reasonable and proportionate to the objective of maintaining the integrity of the scheme, its affordability and the interest of employers in regulating workplace activities, productivity and performance.

Different threshold for permanent psychiatric impairments

Although the bill improves benefits for workers suffering permanent psychiatric injuries by adjusting the calculation for impairment assessed at 30 per cent and above, clause 54 specifically retains the current statutory exclusion of compensation for permanent psychiatric impairments below 30 per cent. This aspect of clause 54 of the bill results in persons with permanent psychiatric impairments being treated less favourably than persons suffering a permanent physical impairment of at least 10 per cent whole body impairment but less than 30 per cent.

Clause 54 has the effect of reinforcing the less favourable treatment of persons with psychiatric injuries compared with persons suffering physical injuries resulting in a comparable degree of impairment (of at least 10 per cent whole person impairment but less than 30 per cent). In my view, however, that is not the relevant comparator group because persons with permanent physical impairments are differently situated for the purposes of assessment under the scheme. As noted above, the assessment of psychiatric impairment is based on the worker's self-reports and behavioural observations by clinicians and is highly subjective. Consequently, the reliability of psychiatric injury assessments presents greater risks to the scheme than physical injuries (which are more readily assessed through objective criteria) and is more susceptible to abuse than physical injuries.

The statutory limitations are directed at correcting the perceived unfairness where workers are able to claim compensation for mild mental impairment on the basis of subjective criteria that are difficult to verify. They also reflect the difficulty of establishing that these injuries were caused by workplace incidents.

The difficulty in identifying an appropriate comparator means that clause 54 is unlikely to limit the equality right protected by s 8 of the charter. In any event, I consider that such limit is justified for the following reasons.

(a) the nature of the right being limited

The nature of the right has been outlined above.

(b) the importance and purpose of the limitation

The differential treatment of a person with at least 10 per cent but less than 30 per cent psychiatric impairment with a person with the same degree of physical impairment directly addresses the need to maintain the financial viability of the scheme.

The burden on the scheme of claims for mental or psychiatric injury has already been noted.

The different threshold level for permanent psychiatric impairments also takes account of the challenges that the

assessment process for psychiatric injury presents for the integrity of the scheme. These challenges have been outlined and suggest that it is sometimes inappropriate to compare physical injuries with psychiatric injuries as there can be a difficulty in establishing a causal connection between psychiatric impairment and workplace incidents. This is particularly the case where the level of impairment is mild and below the 30 per cent threshold reflected in the bill.

(c) the nature and extent of the limitation

There is no blanket exclusion of claims for permanent psychiatric injuries. Indeed, clause 54 operates to increase the current statutory entitlement of persons with a permanent psychiatric impairment of at least 30 per cent to achieve parity with the entitlement of persons with a physical impairment of a comparable rating.

(d) the relationship between the limitation and its purpose

Largely, for the reasons already given, there is a rational connection between the objectives of the bill and the limitations on rights. I note that injured workers will be entitled to claim compensation for most moderate psychiatric impairments and all moderately severe or severe impairments. These levels of impairment are more reliably assessed than lesser degrees of impairment under the current *Guide to the Evaluation of Psychiatric Impairment for Clinicians* standards.

(e) any less restrictive means reasonably available

In my view, the retention of different thresholds for compensation for permanent psychiatric impairment and permanent physical impairment is a reasonable and fair option for achieving the objectives of protecting the scheme's integrity and economic viability. The restriction on recovery for psychiatric injuries under clause 54 of the bill is narrowly tailored to the public interest in maintaining the integrity of the scheme and its financial viability. The relevant provisions do not deny injured workers an entitlement to claim compensation for all permanent psychiatric impairment. Rather, the bill reinforces the need to limit recovery in circumstances where the psychiatric impairment is mild and consequently more vulnerable to fabrication or based on idiosyncratic or non-work related factors.

In conclusion, therefore, to the extent that clause 54 limits section 8 of the charter, I consider that the limit is reasonable and proportionate to the objective of maintaining the integrity of the scheme, its affordability and the interest of employers in regulating workplace productivity and performance.

Lump sum benefits for permanent spinal impairments

The formula under clause 54 of the bill for calculating economic loss for permanent spinal impairments does not treat such persons more or less favourably than persons suffering other types of permanent impairment. The seemingly more 'favourable' formula applicable to spinal impairments corrects a perceived injustice arising from the current assessment process for such injuries. In particular, the current AMA assessment standards assess a worker's impairment as against his or her disability or the impact of the impairment on the worker's daily life.

Consequently, the assessment process ignores the impacts of a spinal injury on a worker beyond the worker's assessed impairment and does not adequately recognise the prolonged pain and lost activity frequently associated with back injuries. The increase in compensation payable for spinal injuries ensures that all spinal injuries receive a level of compensation that is commensurate with the severity of the injury. The adjustment in compensation payable for spinal injuries reflects the recommendations in the Hanks report.

Right to be presumed innocent — clause 23

Section 25(1) of the charter protects the right of a person charged with a criminal offence to be presumed innocent until proved guilty according to law. This means that the burden of proving all elements of the particular charge is on the prosecutor and the accused has the benefit of doubt unless the charge is proved beyond reasonable doubt.

Clause 23 of the bill strengthens the offences under section 242(3) of the act relating to discriminatory conduct by employers and prospective employers against employees and prospective employees where the employee has notified the employer of an injury or made a claim for compensation under the act. Under clause 23 (section 242AA(6)), once the prosecution has shown that the employer or prospective employer has engaged in discriminatory conduct the employer is required to adduce evidence that the dominant reason for that conduct did not relate to the worker's injury or claim for compensation.

Clause 23 (section 242AA(6)) imposes on the defendant an evidential onus. It does not transfer the legal burden of proof because once the defendant employer has adduced or pointed to some evidence, the prosecutor will still have to prove beyond reasonable doubt that the reason in the charge was the dominant reason for the discriminatory conduct.

The dominant reason for the discriminatory conduct will be a matter that is peculiarly within the knowledge of the defendant. The evidential burden removes the need for the prosecution to conduct the impossible exercise of eliminating a potentially infinite number of possible reasons by requiring the defendant to put in issue the precise reason that he or she wishes to rely on. The defendant must provide sufficient evidence but the burden remains with the Crown to disprove to the ordinary criminal standard. Further, the imposition of an evidential onus presents a fair and reasonable option for increasing the success rate of prosecutions for discriminatory conduct offences which have been notoriously difficult to establish.

Under clause 23 (section 242AA(7)), the employer is provided a defence if he or she proves that:

> the conduct was necessary to comply with requirements in the act or in the Occupational Health and Safety Act 2004; or
>
> the employee or prospective employee was unable to perform the inherent requirements of the employment, even with reasonable adjustments; or
>
> the employee was engaged in fraud or dishonesty in relation to, or associated with, the giving of notice of the injury or pursuit of the claim for compensation.

The question whether it is possible in the light of section 32 of the charter to read the words 'if he or she proves' as imposing an evidential onus is currently before the Supreme Court. For now, the safer assumption is that in accordance with the ordinary meaning, the words 'if he or she proves' place a

legal (or persuasive) onus on the employer to satisfy the court that the facts relevant to the defence are proven. The prosecutor, having established that the employer has undertaken discriminatory conduct and that the dominant reason did not relate to the worker's injury or claim for compensation, is taken to have proved what is necessary against the employer unless the employer satisfies the court on the balance of probabilities to the contrary. However, I consider that the limit is justified for the following reasons:

(a) the nature of the right being limited

The right to be presumed innocent protects defendants in criminal proceedings from conviction, and the potential loss of liberty or imposition of financial penalties, where the prosecutor is unable to prove all elements of the offence beyond reasonable doubt.

(b) the importance and purpose of the limitation

The provision of defences under clause 23 (section 242AA(7)) is designed to give employers and prospective employers an opportunity to avoid conviction where they have been shown to have undertaken discriminatory conduct for a prohibited reason. In particular, the defence aims to protect employers where they engage in discriminatory conduct for other legitimate reasons which also reflect the public's interest in the lawful behaviour of employers and workers, or in maintaining performance standards and operational efficiency in the workplace.

(c) the nature and extent of the limitation

Clause 23 (section 242AA(7)) only becomes relevant once the prosecutor has established that the employer engaged in discriminatory conduct and that the dominant reason related to the employee or prospective employee's injury or claim for compensation. The defence does not shift the legal burden to the defendant to prove that the reason alleged in the charge was the dominant reason. The legal burden to prove the essential elements of the offence remains with the prosecutor under clause 23 (section 242AA(7)).

(d) the relationship between the limitation and its purpose

The legal burden placed on employers and prospective employees under clause 23 (section 242AA(7)) is rationally connected to its protective purpose by giving employers an opportunity to explain the reasons for their discriminatory conduct. In particular, employers should not be able to rely on the defence and escape liability for discriminatory conduct unless they are able to articulate the chain of reasoning which motivated that conduct and demonstrate their internal investigations or decision making on the matters going to the defence. Further, the defence is limited to matters of strong public interest and in respect of which employers can be said to have significant responsibility and control — matters relating to an employer's compliance with the act or the Occupational Health and Safety Act 2004, to the maintenance of workplace productivity and employee performance, and to the integrity of the scheme by honest compliance with its requirements.

(e) any less restrictive means reasonably available

There is no less restrictive means that achieves the purpose of giving employers an opportunity to defend their conduct which otherwise would comprise an offence against clause 23 (section 242AA(1)). An evidential onus would be insufficient because it would enable an employer to avoid the consequences of discriminatory conduct without significant and detailed proof of these additional matters.

Right to a fair trial — clauses 23, 57(2A), 71, 114, 91, 43, 135

Section 24(1) 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. The right to a fair hearing has three potential applications in the bill.

Reverse onus in civil proceedings — clause 23

It is possible that a provision which transfers the legal burden of proof in civil proceedings to the defendant might, in some circumstances, compromise the right of the defendant to a fair trial.

Clause 23 (sections 242AD and 242AE) provides for civil proceedings against employers or prospective employers who have engaged in discriminatory conduct for a prohibited reason. The amendment targets the same conduct as discussed in relation to clause 23 (sections 242AA).

Clause 23 (section 242AD(7)) is in similar terms to clause 23 (section 242AA(6)) and provides that once the plaintiff has proved all facts constituting the discriminatory conduct, the defendant employer or prospective employer must adduce evidence that the reason alleged in the proceeding was not a substantial reason for the discriminatory conduct. For the reasons given above in relation to clause 23 (section 242AA(6)), clause 23 (section 242AD(7)) has the effect of imposing an evidential burden on the defendant but does not transfer the legal onus to him or her. Similarly, for the reasons already stated, I do not consider that the imposition of an evidential onus compromises the right to a fair hearing under section 24(1) of the charter. Further, to the extent that clause 23 (section 242AD(7)) may limit the right to a fair hearing, the limit is justified for the reasons stated in respect of clause 23 (section 242AA(6)).

Clause 23 (section 242AD(8)) is in similar terms to clause 23 (section 242AA(7)) For the reasons given above in relation to clause 23 (section 242AA(7)), clause 23 (section 242AD(8)) has the effect of imposing a legal onus on the defendant employer. Similarly, for the reasons already stated, to the extent that the imposition of a legal onus might limit the right to a fair hearing under section 24(1) of the charter, the limit is justified.

Retrospective application of laws to pending proceedings — clause 57(2A)

There is no general bar on retrospective laws in the charter but case law from the European Court of Human Rights suggests that retrospective laws may compromise the right to a fair hearing if they apply to alter the current legal position of parties to civil proceedings where the state is one of those parties. Laws of this kind need to be examined carefully in order to ensure they do not violate the principle of equality of arms.

Clause 57(3) (section 134AB(19A) provides that a determination by the authority that a worker has a 'serious injury' and so is entitled to recover damages at common law

in respect of the injury does not give rise to an issue estoppel in those proceedings.

In my view, preventing injured workers relying on an issue estoppel in this way does not make the common-law proceeding unfair as against the injured worker. This is because the authority is not advantaged as the defendant insurer in the sense of being able to avoid liability for damages due to the worker that are commensurate with the degree of seriousness of the relevant injury.

Restriction of the jurisdiction of the Supreme Court — clauses 71, 114, 91, 43, 135, 23

Numerous provisions of the bill are subject to a statement made under section 85 of the constitution on the basis that they are intended to deprive the Supreme Court of its jurisdiction, powers or authorities. The relevant clauses affect provisions of several types: provisions providing that no review is allowed against particular decisions under the act (clauses 71, 91, 43, 135 and 23); and provisions requiring mandatory review by bodies other than the Supreme Court before proceedings can be brought before that Court (clause 114). Careful consideration has been given to each of these provisions and whether their terms restrict the right to access a fair hearing by an independent and impartial tribunal for the purposes of section 24(1) of the charter. Given the extensive nature of procedural protections afforded to an aggrieved person under these clauses, including rights of appeal or other review, I consider that the amendments are compatible with the right to a fair hearing.

Privacy — clauses 17, 57, 29, 76, 77, 89, 129, 158, 177, 143, 126

Section 13(a) of the charter protects a person's right not to have his or her privacy, family, home or correspondence interfered with in a manner that is unlawful or arbitrary. The secrecy of personal information (including medical records and other information about a person's identity and personal relations) lies at the heart of the privacy right because of its direct relevance to the choices or circumstances of an individual's personal life over which he or she is responsible and autonomous. The protection of privacy through confidentiality of documents is not, however, absolute. Disclosures that are authorised by law and not arbitrary are permissible under the charter.

The bill provides for the disclosure of information to the Victorian WorkCover Authority (the authority) in a range of circumstances. Various provisions in the Bill specifically require the disclosure of medical information relevant to the injured worker's claim for compensation:

> Clause 17 of the bill gives the authority access to information from the Chief Commissioner of Police, a court or the Roads Corporation in relation to workers injured while drink driving or drug driving.
>
> Clause 57 of the bill provides that any serious injury application must be accompanied by an authorisation releasing relevant medical information to the authority.
>
> Clause 29 of the bill relates to the disclosure of medical information that is relevant to an injured worker's claim for compensation for the purposes of resolving disputes before conciliation officers.
>
> Clause 76 authorises the court to refer medical questions to a medical panel for the opinion of the Panel either on its own motion or at the request of a party to proceedings before the court. Clause 77 provides that medical information and reports will be admissible in proceedings under the Act irrespective of the provisions of 'any act (other than the Charter of Human Rights and Responsibilities), or at common law'.
>
> Clause 129 of the bill introduces new provisions designed to encourage employers and injured workers to cooperate to ensure that workers successfully returned to work. Participation in the return to work program is likely to involve scrutiny of personal medical information about injured workers.

None of these provisions reflect an arbitrary interference with the right to privacy that is protected by section 13 of the charter. I note that injured workers bring themselves within the regime established by the act by making a claim for their injuries. They do so on the understanding that all matters relevant to legal entitlement, including particulars of their injury, incapacity for work and rehabilitation progress are to be scrutinised and assessed. The uses of personal information, especially information that goes to the worker's medical condition, is necessary to assess entitlement and to ensure the proper administration of the scheme. There is no suggestion that personal information collected in accordance with the bill will be put to ulterior purposes unrelated to the operation of the scheme.

In relation to all provisions relating to disclosure of medical information (except clause 77) the importance of responsible handling of personal information is reinforced by the provisions of the Information Privacy Act 2000 which apply to the authority and other bodies (including self-insurers) established or appointed for public purposes under the act. The Information Privacy Act establishes a regime for the responsible collection and handling of personal information in the Victorian public sector and restricts the collection of personal information unless the information is necessary for one or more of its functions.

In respect of clause 77, the further disclosure of medical information produced in accordance with the act is not subject to the provisions of the Information Privacy Act. The further use of medical documents that is envisaged by clauses 76 and 77 is strictly limited to proceedings relating to the worker's claim for compensation under the act. In these circumstances, any intrusion on the right to privacy by the disclosure is proportionate to the legislative objective of ensuring all workers receive compensation for compensable injuries and cannot be said to be arbitrary.

A number of additional provisions raise privacy issues of a different kind.

> Clause 158 of the bill strengthens the obligations of employers to keep a register of injuries under section 101 of the act and introduces new penalties for non-compliance. The register identifies workers by name and job title and records the particulars of an injury, including the bodily parts affected. Under section 101(1) of the act, the register is an open record and must be kept in a place readily accessible to workers employed in the workplace. Nothing, however, suggests that the recording and viewing of this information is arbitrary or unlawful so as to limit the privacy right.

Information is recorded on the register following notification of an injury by an injured worker or at the request of an injured worker. The register of injuries is an important mechanism for the efficient and effective reporting of injuries by workers and in these circumstances, my view is that clause 158 of the bill does not limit the privacy right of injured workers under section 13 of the charter.

Clause 177 of the bill authorises a court to make adverse publicity orders against persons found guilty of an offence against the act. Adverse publicity orders involve publication of the particulars of the offence, its consequences, the penalty imposed and any other related matter to a specified person or class of persons. The amendment authorises the publication of a person's personal information which is already on the public record as a consequence of judicial proceedings. In these circumstances, clause 177 does not disclose information that is 'private' but communicates in a different form information that is already in the public domain. In my view, the disclosures envisaged by clause 177 of the bill reinforce the integrity of the scheme and do not communicate information that is protected by the privacy right under section 13 of the charter.

Clause 143 of the bill relates to the investigation of conduct of persons providing medical or allied health services to injured workers and the referral by the authority of particular providers for review by the relevant professional body. The referral may be initiated following complaints by injured workers or on the authority's own motion. It is likely to involve the communication of sensitive information relating to compensable claims, including medical information and records relating to injured workers and the handling of individual cases by service providers. The communication of personal information is not, however, to the world at large. Personal information about injured workers and/or service providers may be communicated to the professional body for the purposes of scrutinising the conduct of the service provider in connection with the effective and proper management of claims under the act. In these circumstances, I am of the view that clause 143 is reasonable and not arbitrary and does not limit the right to privacy under section 13 of the charter.

The right not to be compelled to incriminate oneself — clause 133

Sections 25(2)(k) of the charter protects the right of persons charged with a criminal offence not to be compelled to testify against themselves or to confess guilt. In a recent decision, the Chief Justice has said that this right not to be compelled to incriminate oneself is also protected by the general right to a fair trial found in section 24(1) of the charter.[2]

Clause 133 (section 248D(1)) of the bill protects this right by providing that persons may refuse or fail to give information or do any other thing that they are required to do under the act or regulations if giving the information would tend to incriminate them. However, clause 133 (section 248D(2)) provides that this protection does not apply to: 'the production of a document or part of a document that the person is required by this act to produce'. Section 239 of the act provides for a broad range of circumstances where a person may be required by the authority to produce documents and books where it is necessary for determining whether the provisions of the act or the Accident Compensation (WorkCover Insurance) Act 1993 have been contravened.

I accept that the absence of any protections in the bill against the use of documents obtained under compulsion in a subsequent prosecution against the individual concerned may limit the right not to be compelled to incriminate oneself, as protected sections 24(1) and 25(2)(k) of the charter. In my view, however, that limit is reasonable and demonstrably justifiable in terms of section 7(2) of the charter.

(a) the nature of the right being limited

The right in section 25(2)(k) of the charter is a right not to 'testify against oneself', the core idea being that a person should not be conscripted into incriminating themselves. For that reason, a search of and seizure of a person's records is not generally considered to breach the privilege against self-incrimination. The High Court of Australia has recognised that the application of the privilege to documentary material is potentially less far reaching than the protection for oral answers.[3]

Furthermore, an abrogation of the privilege against self-incrimination in the case of compelled production of already existing documents may be considerably easier to justify than an abrogation of the privilege in the case of oral testimony or documents that are brought into existence to comply with a request for information. A number of law reform bodies in other jurisdictions have agreed with this proposition.[4]

(b) the importance and purpose of the limitation

The primary purpose of the abrogation of the privilege is to assist the authority to enforce penalty provisions or to prosecute offences by employers and others. The abrogation of the privilege is designed to protect the public interest in ensuring that the authority has adequate powers to inquire into and monitor activities that are relevant to the lawful operation of the scheme.

(c) the nature and extent of the limitation

Clause 133 (section 248D) of the bill allows persons to refuse to give information or do acts required by the act where the disclosure or act is likely to incriminate the person but carves out an exception for documents. This is restricted to the

[2] *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381 (7 September 2009) (*Major Crime*).

[3] *Environment Protection Authority v. Caltex Refining Co Pty Ltd* (1993) 178 CLR 477 per Mason CJ and Toohey J at p 502. See also per Deane, Dawson and Gaudron JJ at p 527 and per McHugh J at p 555.

[4] for example, the New Zealand Law Commission, *The Privilege Against Self-Incrimination*, (Preliminary Paper 25, September 1996); Joint Statutory Committee on Corporations and Security, *Use Immunity Provisions in the Corporations Law and the Australian Securities Commission Law* (November 1991); Queensland Law Reform Commission, Report, *The Abrogation of the Privilege against Self-Incrimination* (Report No 59, December 2004)).

production of documents that are required by the act. It does not go further and require a person to create any incriminating documents. For example, in my view, a person would still be able to claim the privilege against self-incrimination in relation to a requirement to give evidence on oath or by statutory declaration under section 239(2) of the act. Further, the requirement to produce documents only applies where the purpose of the request is to determine whether the act has been contravened and whether a person has a liability or entitlement under the act.

I note that the act also provides important procedural safeguards for individuals required to produce information. For example, the act qualifies the duty to disclose documents by requiring the authority to give written notice requiring the production of information and books. These safeguards alleviate concerns that the potential loss of privilege may involve an abuse of powers of interrogation or intrusion on the right to privacy.

(d) the relationship between the limitation and its purpose

In my view, the abrogation of the privilege facilitates the enforcement of penalties and safeguards compliance by giving the authority access to information and evidence that is difficult or impossible to ascertain by alternative evidentiary means. The successful prosecution of contraventions against the act would be seriously undermined if these documents could not be relied upon.

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

There are no less restrictive means reasonably available that would achieve the purpose of clause 133. Although the privilege against self-incrimination is an important human right, the legislature is entitled to protect the public interest in ensuring that the authority has adequate powers to inquire into and monitor activities that are relevant to the lawful operation of the scheme. Further, the act establishes a compulsory compensation scheme which involves the keeping of specified records. Disclosure of these documents is necessary to ensure the purposes of the scheme are respected and offences under the act properly investigated.

In conclusion, therefore, to the extent that clause 133 (section 248D) limits sections 24(1) and 25(2)(k) of the charter, I consider that the limit is reasonable and proportionate to the objective of ensuring reasonable prosecuting prospects for offences against the act.

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 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 reform package contained in this bill is of the utmost importance to Victorian workers, their families, and employers.

Victoria has the safest workplaces in Australia, and yet still nearly 30 000 workers every year are injured seriously enough to lodge a claim for workers compensation. Viewed in this way, the significance of the workers compensation scheme to the Victorian community cannot be overstated. When we consider the ripple effect of every workplace injury, thousands of Victorian families are touched by workplace injury and death.

Prudent management of the scheme by this governments over the last 10 years has resulted in record low employer premiums that are also the second-lowest of any state in Australia. We are rightly proud of this achievement. It follows that because of this outstanding performance, the government is now in a position to provide the benefit enhancements contained in this bill.

The bill represents the government's legislative response to the review of Victoria's workers compensation arrangements conducted by Mr Peter Hanks, QC. In preparing his report, Mr Hanks embarked upon a review process that was characterised by the breadth and depth of its community consultation, before ultimately presenting over 150 recommendations to governments for consideration. The overwhelming majority of these have been accepted, and are sought to be implemented by this bill.

This bill has been specifically designed to provide simpler and faster access to fairer entitlements, better rehabilitation and return-to-work outcomes, and greater transparency and accountability around decision making.

Specifically, this bill delivers:

a landmark decision to be the first jurisdiction in Australia to pay compensation in the form of superannuation contributions for eligible injured workers;

the highest lump sum payments of any jurisdiction for some of the most vulnerable members of the Victorian community — workers suffering from severe permanent injuries and the family members of those workers who tragically lose their lives at work;

increases in weekly compensation payments to reduce the gap between pre-injury income and compensation payments;

streamlined obligations on employers to return injured workers to work, with an emphasis on outcomes rather than processes; and

a transparent and robust mechanism for review of premium decisions.

The package of reforms contained in this bill will therefore provide fair, tangible and immediate benefits for injured workers, while ensuring the long-term financial viability of the scheme.

This bill delivers on Labor's commitment to review Victoria's accident compensation legislation to ensure workers receive the assistance, support and benefits they deserve.

Simpler and faster access to entitlements

Timely access to benefits for injured workers is crucial. This bill will improve the claims process to assist both workers and employers in serving and lodging claim forms more efficiently and encourage earlier decision making.

The changes include reducing the formalities that need to be complied with when completing a claim form. This will be of particular benefit to workers from a non-English-speaking background. These changes also anticipate a range of more efficient methods by which workers can give or serve a claim to an employer, including by facsimile and other electronic methods such as email. Such changes will speed up the process by which workers can make claims and will reduce red tape for workers and employers.

Better and fairer benefits

It is important that injured workers and their families are provided with the highest level of appropriate benefits to ensure that they have all the support they need.

This bill provides the most substantial increase to statutory benefits in the history of the scheme, but also applies these improvements across every category of statutory benefit.

The government will significantly increase the amount of compensation and benefits available to the dependants and other family members of deceased workers. Other amendments will ensure that this vulnerable group of claimants will be able to access such compensation and benefits more quickly and efficiently.

Currently, only persons who were dependent on the earnings of the deceased worker are entitled to compensation under the act. However, there may be some circumstances where a worker dies leaving no dependants but his or her family members nonetheless suffer financial disadvantage because of the worker's death. To ensure equity and to protect family members who find themselves in such unfortunate circumstances, the bill will enable a court to order reimbursement of their reasonable expenses of up to $30 000 per family in the event of financial hardship.

The maximum amount of lump sum benefits payable to the most severely permanently impaired workers is to be aligned with the maximum amount available at common law for pain and suffering damages for workers with a serious injury.

The bill also increases lump sum payments by 10 per cent for workers with spinal injuries. This increase will apply where the worker has a spinal impairment only, or has multiple impairments where their spinal impairment attracts the highest amount of compensation, in which case the worker will receive the amount payable for the spinal impairment only.

The bill removes a disparity between lump sum benefits awarded for psychiatric impairments and those for physical impairments, by aligning the lump sum payments for psychiatric impairments between 30 per cent and 70 per cent with the equivalent physical impairment amounts.

I am particularly proud to announce that Victoria will be the first jurisdiction in Australia to provide compensation in the form of superannuation contributions for long-term injured workers. Eligible workers who continue to receive weekly payments after 52 weeks will be able to nominate a complying superannuation fund into which WorkSafe or a self-insurer will pay a superannuation contribution directly and, in the process, minimise any administrative burden on employers. The amount contributed will be a percentage of the worker's gross weekly payments, pegged at the percentage prescribed for employer contributions under the commonwealth superannuation guarantee act — currently 9 per cent.

This bill also increases weekly compensation payments in ways that better reflect a worker's real earnings. It increases the second step down from 75 per cent to 80 per cent of eligible workers' pre-injury average weekly earnings. This will be of immediate benefit to enormous numbers of injured workers already receiving benefits under the scheme.

The maximum weekly payment to eligible workers in the future will be significantly increased to $1753.80 to reflect double Victoria's average weekly earnings. This bill will also double the period during which overtime and shift allowances are included in pre-injury average weekly earnings for the purpose of calculating the worker's weekly compensation payments, from 26 weeks to 52 weeks.

For workers who have a work capacity after 130 weeks of compensation payments, but who subsequently require surgery because of their injury and need time off work, the bill includes a provision that enables workers to receive up to 13 weeks of weekly compensation payments to allow these workers sufficient time to recover.

The bill sets out a clearer process for determining any entitlement to weekly compensation payments for those workers who return to work after 130 weeks but not to their full capacity. In addition, the bill will make it easier for those workers to maintain their current level of weekly compensation despite temporary fluctuations in their work hours.

Another benefit improvement for injured workers introduced by this bill is the ability for them to retain any redundancy and severance payments without affecting their weekly compensation payments. In addition, injured workers will be able to retain their disability pensions — up to the level of their pre-injury earnings, as well as accessing their own contributions to any superannuation or retirement fund, without affecting their ongoing weekly compensation payments.

Return to Work, Return to Life

Improving the ability of injured workers to return to work is a key consideration for the government in introducing reforms to the compensation system.

Following the success of Victoria's occupational health and safety reforms, the return-to-work provisions of the act will be reframed. In simple terms, this means there will be less focus on processes and more emphasis on results.

The objective is to encourage a workplace culture that is more conducive to early, safe and sustainable return to work, while reducing red tape and administrative costs for employers.

This bill clarifies the duties of employers and workers in relation to return to work. It will provide a clear basis for consultation and cooperation between workers and employers, and a clear direction for return-to-work guidance material issued by WorkSafe. It will also put a greater emphasis on compliance by increasing the powers of return-to-work inspectors.

The objectives of the return-to-work provisions of the bill set out how return-to-work obligations are to be interpreted, making plain that everyone involved in returning injured workers to work — employers, workers, health practitioners and occupational rehabilitation service providers — has an important role to play.

Allowing for greater flexibility in how the obligations are met does not mean that current standards will be reduced. An injured worker's employer will have an obligation to plan the worker's return to work, which is an ongoing process of gathering information; identifying, assessing and proposing suitable employment options; consulting with the worker and the worker's health practitioner and occupational rehabilitation service provider; communicating with the worker about the worker's duties, hours of work and arrangements for his or her return to work; and monitoring the worker's progress.

Worker obligations in the return-to-work process will be expressed more simply. All workers will continue to be required to make reasonable efforts to actively participate in return-to-work planning, occupational rehabilitation and assessments of rehabilitation, progress and future work prospects.

The government also recognises that the current compensation penalty for a worker failing to participate in the return-to-work process can in some cases operate unfairly. A staged approach has been introduced to any compensation penalties that might be imposed on the worker for failing to comply with their return-to-work obligations. This is intended to give workers fair warning of the consequences and thereby encourage them to comply.

By implementing a performance-based approach to the return-to-work obligations, matters of detail that must be prescribed will be contained in ministerial directions. WorkSafe will be able to issue codes, like those issued under occupational health and safety legislation, which will provide employers with practical guidance on how to comply. WorkSafe will also publish guidelines that give further guidance, advice and information about return-to-work obligations

The powers of the return-to-work inspectorate are also being increased. The role of return-to-work inspectors is to enforce non-compliance with return-to-work obligations, and to raise awareness of those obligations

and to provide advice about compliance. Return-to-work inspectors will have similar powers to those exercised by their counterparts under occupational health and safety legislation, including the power to issue improvement notices to employers.

Preventing discrimination

The new discrimination provisions in this bill will generally align with the provisions prohibiting discrimination under the Occupational Health and Safety Act.

The amendments broaden the range of conduct that will be captured under the offence of discriminatory conduct for a prohibited reason. This will prohibit conduct including dismissal, altering the position of a worker to their detriment, treating a worker less favourably and threatening to do these things.

In addition, it will be an offence in some circumstances for employers to refuse employment to an applicant for employment where that refusal is relevantly connected to compensation matters. These antidiscrimination provisions are not intended to override return-to-work obligations on employers.

The bill will also give the court a broad range of remedies to flexibly and effectively address instances of discrimination. These will be available in relation to both civil and criminal offences.

Protecting the rights of workers to pursue common-law damages

In 2000, the Labor government reintroduced the right to access common-law damages for seriously injured workers in Victoria, marking the restoration of a fundamental right removed by the Kennett government. In doing so, key controls were also introduced to ensure only those workers who were seriously injured could access common-law damages.

Today I take this opportunity to restate the clear intent of the Parliament when common law was reintroduced; that the government sees the deeming test to be the main gateway for access to common-law rights.

Maintaining access to common-law damages for seriously injured workers is a fundamental priority for this government. However, sustaining this aspect of the scheme requires careful management of its ongoing financial viability.

The bill reinstates the approach of the act to a worker's earnings from suitable employment for the purpose of determining whether the level of these earnings satisfy the requisite 'serious injury' threshold for loss of earning capacity. The references to 'suitable employment' throughout the act were always intended to capture a wide range of employment, vocational training and education arrangements through which workers may be returned to gainful employment. This concept has been obscured through restrictive interpretation by the courts of what suitable employment entails, most recently in the case of *Smorgon Steel Tube Pty Ltd v. Majkic*. This undermines fundamental controls in the scheme as well as the core objectives of the act, including the common-law economic loss gateway and return-to-work obligations.

More transparent decision making and efficient dispute resolution

It is inevitable that disputes will arise in the administration of a workers compensation scheme. When they do, both workers and employers should be provided with quick and accessible means of reviewing the decisions that effect their entitlements and obligations under the scheme.

The Accident Compensation Conciliation Service is the primary vehicle for resolving statutory benefits disputes for workers. This bill makes a number of important amendments to promote the efficiency of the conciliation process for workers and employers.

This bill also makes several amendments to the current medical panel processes that are designed to improve its efficiency and fairness. The changes focus on improving the quality of referrals of medical questions to the panel by conciliation officers and the courts.

This bill will take the important step of removing the limitations on the jurisdiction of the Magistrates Court to deal with workers compensation claims in order to improve access for injured workers.

This bill also improves accountability for decisions made by agents from the perspective of employers. There will now be some circumstances in which employers may seek written reasons for decisions by agents, internal review by WorkSafe, and ultimately, review by the Supreme Court.

This bill will introduce changes to improve accountability and transparency in the premium process to make the system fairer and simpler. It creates a process for review of aspects of premium calculation via WorkSafe and the Supreme Court. The process is broadly based on the model for internal review of taxation decisions that has been tested and works well.

The bill will also provide for the review of the setting of premiums by an independent expert body. This acknowledges both the need for a higher level of transparency in the process of setting premium, and the complexity of this process for both employers and the general community.

The bill introduces a number of important changes to reflect the need for the act to enshrine and protect occupational health and safety principles. The act currently provides an avenue for potential recovery of compensation costs from a third party. These recovery actions ultimately benefit both the scheme and employers.

However, host employers commonly seek to protect themselves from liability under the act by means of 'hold harmless' clauses in their labour hire agreements. These purport to have the effect of shifting the financial burden of a host employer's negligence back on to the labour hire agency.

Amendments to the act will render unenforceable any contractual provisions that require the real employer of the worker to indemnify a third party (such as a host employer) for any liability that might be imposed upon the third party by the act.

As a matter of principle it is important that each party remains accountable for its role in workplace safety.

Claims for mental injury caused by stress

This government supports the right to compensation for a worker who suffers an injury caused by the mental anguish of being the victim of unreasonable treatment in the workplace.

This right is to be balanced against the need to ensure employers are reasonably able to manage their businesses effectively. The provision previously developed to balance these competing interests has not worked as intended. At times it has resulted in delay and confusion.

This bill therefore seeks to amend the act to simplify its language, to clarify the definition of 'management action' to include contemporary management practices, but to preserve the protections afforded to workers who suffer injury arising from unreasonable employment circumstances.

Section 85 Constitution Act 1975

I make the following statement under section 85 of the Constitution Act 1975 of the reasons why it is the intention of this clause of the bill to alter or vary section 85 of the Constitution Act 1975.

Clause 71 inserts section 92D into the Accident Compensation Act 1985. Section 92D allows WorkSafe to make provisional payments to the dependants of a deceased worker prior to any formal decision as to their entitlement, subject to certain restrictions. It is the intention of this clause to alter or vary section 85 of the Constitution Act 1975.

The nature of a decision by WorkSafe under clause 71 is a preliminary one and is not ultimately determinative of a dependant's rights to compensation. Where WorkSafe decides not make a provisional payment to a person under this section, that person is then entitled to make a claim under the act in respect of the worker's death. This would have the effect of requiring WorkSafe to make a decision as to the person's entitlement to compensation 'proper' under the act. In the event that WorkSafe were to reject such a claim, the person would then have access to their full court review rights under the act, as is the case for any other disputed claim.

Clause 114 introduces part 2A into the Accident Compensation (WorkCover Insurance) Act 1993 ('the insurance act') that provides for a process of review by WorkSafe of premium amounts that are disputed by employers.

Business interrupted pursuant to standing orders.

The ACTING SPEAKER (Mr K. Smith) — Order! The time set down for consideration of items on the government business program has expired, and I am required to interrupt business.

CONSUMER AFFAIRS LEGISLATION AMENDMENT BILL

Second reading

Debate resumed from earlier this day; motion of Mr ROBINSON (Minister for Consumer Affairs).

Motion agreed to.

Read second time.

Circulated amendments

Circulated government amendments as follows agreed to:

1. Clause 30, line 16, omit "by cheque" and insert "in cash".

2. Clause 30, line 17, after "to" insert "be".

Third reading

Motion agreed to.

Read third time.

ACCIDENT COMPENSATION AMENDMENT BILL

Second reading

Debate resumed.

Mr HOLDING (Minister for Finance, WorkCover and the Transport Accident Commission) — The clause inserts new sections 32–36M into the Insurance Act that:

require employers to first seek review by WorkSafe of their disputed premium before they can bring court proceedings in respect of that dispute; and

restrict the ability of employers to seek review of decisions by WorkSafe not to allow applications for judicial review out of time.

The new premium review process set out in the bill is aimed at providing an accessible, low-cost process for employers to challenge premium decisions that will deliver consistency in premium decisions. Employers who remain dissatisfied following an review outcome will continue to have access to their full review rights under the bill.

The exclusion of applications for review that are made out time ensures that the exercise of WorkSafe's discretion to allow an application that is made out of time is not reviewable.

Clause 91 introduces a limited objection right for employers in connection with initial decisions by WorkSafe to accept liability for certain claims for compensation. It is the intention of this clause to alter or vary section 85 of the Constitution Act 1975. The clause inserts new sections 114H–114R into the Accident Compensation Act and restricts the ability of employers to seek judicial review of decisions by WorkSafe not to allow objections that are lodged with WorkSafe out of time.

The exclusion of objections that are lodged out of time ensures that the exercise of WorkSafe's discretion to allow an objection that is made out of time is not reviewable. However employers will continue to have access to the courts outside of the objection process set out in the act.

Clause 43 introduces a right for employers to request written reasons from agents for certain liability decisions. It is the intention of this clause to alter or vary section 85 of the Constitution Act 1975 by inserting section 109AA which restricts the ability of employers to seek judicial review of the written reasons of those liability decisions. This is because the review of those liability decisions is already provided for in the internal and external review mechanism introduced by clause 91.

Clause 122 of the bill inserts subsections 138(6)–138(9) to authorise WorkSafe to recover, on behalf of employers, certain payments that they have made to workers, and for which they are directly liable, pursuant to certain provisions of the act. It is the intention of this clause to alter or vary section 85 of the Constitution Act 1975. The clause inserts new section 138(8) to exclude any right of appeal or review by employers in respect of such recovery actions.

The payment amounts that may be recovered under the provision are very small and therefore it would inefficient to provide for appeal or review rights in respect of disputes over whether or what proportion of these payments are recovered.

Clause 23 of the bill inserts section 242AC into the act to allow a person to request WorkSafe to bring a prosecution against an employer who contravenes the antidiscrimination provisions under the act. Where WorkSafe refuses to bring a prosecution, that person can then request that the matter be referred to the Director of Public Prosecutions for his consideration. New section 242AC(7) excludes any right of appeal or review in respect of WorkSafe's decision to bring proceedings against an employer.

Section 242AC(3) provides an appropriate and proportionate mechanism whereby WorkSafe decisions under this new provision may be subject to scrutiny by an expert body.

Clause 135 of the bill inserts section 252AA into the act to allow a person to request WorkSafe to bring a prosecution against an employer who contravenes a provision of part VIIB of the act. Where WorkSafe refuses to bring a prosecution, that person can then request that the matter be referred to Director of Public Prosecutions for his consideration. New section 252AA(7) excludes any right of appeal or review in respect of WorkSafe's decision to bring proceedings against an employer.

Section 252AA(3) provides an appropriate and proportionate mechanism whereby WorkSafe decisions under this new provision may be subject to scrutiny by an expert body.

Conclusion

This bill providers fairer and better benefits to injured workers and their dependents, recognises that getting injured workers back to work is a central pillar of the scheme, and provides greater transparency for employers in their interactions with the scheme.

The benefit enhancements in this bill are financially responsible, affordable, and consolidate Victoria's position as the leader in workers compensation in Australia.

I commend the bill to the house.

Debate adjourned on motion of Mr WELLS (Scoresby).

Debate adjourned until Thursday, 24 December.

PUBLIC FINANCE AND ACCOUNTABILITY 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 Public Finance and Accountability Bill 2009 (the 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 the bill

The purpose of the bill is to enact a cohesive framework for public finance and financial management in Victoria that supports effective government resource allocation and promotes transparent accountability for performance to Parliament. The bill creates an act to replace the Financial Management Act 1994, the Borrowing and Investment Powers Act 1987, the Monetary Units Act 2004 and the Public Authorities (Dividends) Act 1983. The bill will also amend the Constitution Act 1975, the Administrative Arrangements Act 1983 and other related legislation.

The main features of the bill include:

(a) the establishment of a differential framework to better account for the range of captured public entities and their differing sizes, complexities and risk profiles;

(b) the provision for government's intended outcomes and associated outputs to be the determinants for the whole of cycle planning, resource allocation, resource management and reporting;

(c) requirements that all government reporting is clear, accurate, timely and accessible for users;

(d) more effective procurement governance that focuses on the probity of high-risk procurement activities of all public entities;

(e) an extension of the scope of borrowing and investment powers to all public entities, centralising their application through the Treasury Corporation of Victoria; and

(f) clarification of the responsibilities of department heads, accountable officers and public entities in relation to each other, executive government and Parliament.

Human rights issues

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

The bill engages two human rights protected by the charter.

Section 20 — property rights

Section 20 provides that a person must not be deprived of his or her property except in accordance with law. This right to property is relevant to clause 64 of the bill.

The proposed amendment in clause 64 relates to the insertion of section 338A into the Land Act 1958. The section exists as current legislation under section 54N of the Financial Management Act 1994. It allows the minister for finance to purchase by agreement or compulsorily acquire any land required for the construction, completion or extension of any public works, or for any related purpose. Any compulsory acquisition of land is subject to the Land Acquisition and Compensation Act 1986 (land acquisition act).

The minister for finance is a public authority under section 4(1)(f) of the charter and therefore bound to act compatibly with the charter. The charter allows deprivation of property 'in accordance with law'. A deprivation of property will be in accordance with law when it conforms with a set of procedures established by law and is not arbitrary.

Deprivation of property under the proposed amendment must follow the set of procedures established by the Land Acquisition Act. The deprivation of land occurs under a power that is confined to situations where the land is needed for public works. The power to acquire land is not arbitrary as the Land Acquisition Act sets out clear and accessible procedures for acquiring land and determining the amount of compensation payable. The titleholder must be notified of the minister's intention to acquire land and has the right to have any dispute arising out of the acquisition determined judicially.

Therefore, the amendment under clause 64 provides for deprivation of property in accordance with law and does not limit the right in section 20 of the charter.

Section 15 — freedom of expression

Section 15 of the charter establishes a right for an individual to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria, whether orally, in writing, by way of art, in print or other medium. The right to freedom of expression also encompasses the right not to express.

This right is relevant to clause 6 of schedule 1 of the bill. The clause is identical to current section 54I of the Financial Management Act 1994, relating to the Victorian Government Procurement Board. The clause prohibits current and former members of the State Procurement Board from improperly using information acquired in the course of their duties to obtain any pecuniary or other advantage for themselves or others. Improper use of information may occur through the communication or expression of that information. In this way, the clause limits the right of freedom of expression.

2. Consideration of reasonable limitations — section 7(2)

Freedom of expression

(a) the nature of the right being limited

Freedom of expression, including the right not to express, is an important right central to a democratic society.

(b) the importance of the purpose of the limitation

The limitation on board members' use of information is commonly applied to persons undertaking public duties and performing public administration functions. By prohibiting board members from taking improper advantage of the information they receive in the course of their duties, those providing the information can do so freely without any fear that the information might be used to profit board members or others. The information that the board members receive in the course of their duties may be commercially sensitive and is provided to members by public bodies in the knowledge that it will not be used for any purpose except the performance of board functions.

The purpose of the limitation on the improper use of board information is to ensure the integrity and independence of the board's activities in fulfilling its statutory functions to advise and report to the minister, and review and monitor procurement activities and complaints (as stated under clause 16 of the bill). The limitation encourages the full and appropriate provision of information to the board and assists to uphold the reputation and positive public perception of board members.

(c) the nature and extent of the limitation

The right to freedom of expression will be limited only to the extent that a current or former board member is compelled not to use information improperly, in order to obtain directly or indirectly a pecuniary or other advantage for himself or herself or for any other person. It does not impose a prohibition on the expression of information in any other circumstances.

(d) the relationship between the limitation and its purpose

There is a direct relationship between the limitation and the purpose to ensure there is integrity in the processes employed by the State Procurement Board and that board members do not misuse information obtained in the course of fulfilling their duties.

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

There are no less restrictive means reasonably available to achieve the intended purposes.

(f) any other relevant factors

There are no other relevant factors to be considered.

For the above reasons the proposed limitation on the right to freedom of expression is considered 'reasonable' pursuant to section 7(2) of the charter.

Conclusion

For the reasons outlined above, I consider that the bill is compatible with the charter of rights and responsibilities.

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.

When this government came to office in 1999, we embarked on an ambitious program of reforming Victoria's fundamental legislation.

In the first stage of this program, we amended the Constitution Act 1975, substantially improving governance and strengthening democracy in Victoria. We introduced coinciding terms for both houses of Parliament, fixed four-year terms and a system of proportional representation for the upper house, and the protection of a referendum for core provisions of the constitution. And we entrenched the independence of the electoral commissioner and the Ombudsman as independent officers of Parliament, following our earlier restoration of the independence of the Auditor-General.

In 2004, we introduced the Public Administration Act 2004, which re-established merit and equity in public sector governance, and established the State Services Authority to help improve the delivery and integration of government services, and strengthen the professionalism and adaptability of the public sector.

With this Public Finance and Accountability Bill, we are delivering the final component of our fundamental public sector legislation reform package, strengthening government accountability to Parliament and the public by modernising the state's principal financial and resource management legislation.

This bill confirms the government's reputation as an administration that is focused on forward-looking, substantive reform that serves the long-term public interest.

Through concerted effort over many years, Victoria has already led the way in developing and implementing most of the hallmarks of best practice public finance including: the provision of forward estimates, accrual budgeting and accounting, and performance and output reporting, thus enabling heightened transparency and accountability.

Nevertheless, the government believes it is imperative we now seize this opportunity to introduce a series of additional significant improvements into our public finance system.

This bill will ensure that Victoria remains at the forefront of public sector financial and resource management both within Australia and across the world.

The case for reform

Victoria embarks on this reform from a position of great strength.

Our principal public finance legislation, the Financial Management Act 1994 (the FMA), was an important advance in public financial administration. After a focus on program budgeting was established by the state government in the 1980s, the FMA introduced features such as:

accrual accounting and, subsequently, accrual budgeting (in 1997);

output management (also in 1997);

reporting for output performance and reports of operations;

budget flexibility measures; and

auditing of departments and public bodies.

The act was leading edge at the time and in many respects it is still best practice. However, the pace of development in public financial and resource management throughout advanced economies has been beyond what the FMA can keep up with. It is now too reliant on complex procedures rather than clear, fundamental principles, providing for prescriptive administrative procedures rather than principles of financial management that should be followed. It confines public bodies of vastly different size, risk profile and importance to a 'one-size-fits-all' governance approach. Finally, and most significantly, the FMA does not provide for a focus on outcomes.

Another important function this legislation will perform will be to rationalise Victoria's public finance legislation from disparate acts into one fundamental, comprehensible and purpose-built act.

The government shares the view of the Public Accounts and Estimates Committee that there is 'an opportunity for it to build on past achievements and adopt a leading-edge resource management and accountability framework'. In preparing this bill, the government has carefully considered the findings of the committee's 85th report entitled *New Directions in Accountability*, tabled in June of this year, on Victoria's public finance practices and legislation. I would like to take this opportunity to acknowledge the beneficial cross-party contribution made to the development of the bill. The vast majority of the committee's findings are broadly similar to the reforms proposed in this bill.

Consultation on reform

Given the extent of change that the bill represents, the government has undertaken a comprehensive program of consultation with Parliament, interested stakeholders and the public. This consultation has been integral to shaping the bill.

The consultation process commenced with the issue of a discussion paper on the state's public finance practices and legislation, inviting public comment on potential reform. The paper prompted submissions from public bodies, professional organisations (including the professional accounting associations and the Australian Accounting Standards Board) and the Victorian Auditor-General's Office. These responses were the starting point of productive, extensive dialogue.

The government also established a project board to guide the development of the policy. I would like to acknowledge former Minister for Finance, the Honourable Roger Hallam, for his constructive and diligent commitment to the project as a member of this project board.

The benefits of reform and the Public Finance and Accountability Bill

I will turn now to the most important innovations and benefits of the bill.

Principles-based legislation

First and foremost, the bill is principles based. As I stated previously, one of the drawbacks of Victoria's current public finance system, and the FMA in particular, is its reliance on complex, prescriptive, technical procedure.

This legislation establishes the essential principles for good and effective resource and financial management.

Such an approach enables legislation to evolve and therefore remain relevant and useful for a generation. By authorising ministers to set regulations and directions the legislation allows government to customise public finance requirements to the needs of different users over time, while providing Parliament and the community with full transparency and accountability.

This is legislation that clearly articulates the principles of financial reporting that will have to be observed by all public bodies. But, crucially, and unlike the FMA, it gives the government the ability to adjust the methods and processes for achievement of these principles over time. As the legislation is clearer and simpler, this bill will bring about greater public sector compliance and accountability and, with it, improved governance and oversight.

Clear principles of public finance and accountability for all

The bill establishes clear, guiding principles of public finance and accountability, which will apply across government, strengthening the principles of sound financial management that were inserted into the FMA by this government in 2000. It also clarifies the responsibilities and powers of ministers, departments and public bodies, delineating clear lines of accountability for various functions.

The outcome-output framework

Outcomes are the desired impacts that the government's outputs, activities or investments have on the community. One of the primary objectives of the bill is to make outcomes and associated outputs the basis for the whole of the cycle of planning, resource allocation, resource management and reporting.

The government will be required to publish a statement of its intended outcomes. And each year an accompanying statement of outputs will describe how each department's outputs, activities and investments will contribute to the achievement of those outcomes. Finally, the government will publish an outcomes progress report, specifying progress on these intended outcomes in each subsequent financial year.

The outcome reporting instituted by this bill will not obviate the government's long standing commitment to outcome reporting in *Growing Victoria Together* annual progress reports. Future governments may choose to meet the outcome reporting requirements of this bill through GVT, or a new mechanism, or both.

This move towards formalising an outcome-output framework for appropriations by the Parliament has several benefits. It ensures that outcomes are the focus of government's planning, resource allocation, management and accountability.

The allocation of appropriations to departments for contributions to specified outcomes will also increase Parliament's control over the application of appropriations. Parliament will have a clearer understanding of what outcomes the government is trying to achieve and provide a stronger basis to evaluate government's financial and non-financial performance.

This outcomes approach will also bring the state's reporting framework into closer alignment with the 2008 COAG intergovernmental agreement on federal financial arrangements. The intergovernmental agreement instituted simpler, standardised and more transparent performance reporting by all jurisdictions, with a focus on the achievement of outcomes and efficient service delivery.

Outputs will remain the most important means by which the government will pursue outcomes, and the instrument for funding and certifying departments' performance.

Appropriations reform

In order for an outcomes-output framework to function, reform of departmental management of appropriations is both necessary and beneficial. Accordingly, this bill enables the transfer of appropriations during the year by the Treasurer, in consultation with relevant ministers. Appropriations can only be transferred between departments for the same outcome and consistent with the bill's principles. This will facilitate greater cross-government collaboration. All such transfers will be disclosed in the relevant financial reports.

Departments will also be able to transfer amounts between outputs, additions to net asset base and payments made on behalf of the state for the same outcome, with the approval of the Treasurer. This will give departments the flexibility to manage their appropriation base to maximise the achievement of outcomes.

These reforms heighten accountability to Parliament, as the use of appropriations is made more transparent, and Parliament can focus on the government's overall performance in managing appropriations for outcomes.

This accountability is further strengthened by the institution of a limit of 3 per cent of total annual appropriations being placed on additional supplementation to those appropriations. Again, the Treasurer will only approve the supplementation where this is demonstrably consistent with the government's statement of intended outcomes, and where there is an urgent need for the amount or issuing the additional amount is in the public interest. This provision replaces the existing advance to the Treasurer in the appropriation act. Once again, use of this provision will be clearly and transparently disclosed in relevant financial reports and the following year's appropriation act.

Reform of the public account

The bill makes further important improvements to the operation of the public account. Departmental working accounts will now be established. These accounts will strengthen accountability and transparency through additional reporting requirements on resources departments are holding and using.

The bill also significantly changes the use of trust accounts. Currently, accounts (other than trusts for third parties) are used, for administrative convenience, to manage funds outside the Consolidated Fund. Departmental working accounts will now enable departments to manage all their funds in a single account within the public account. This will enable the closure of a significant number of trust accounts which will no longer be required. Further, warrants will no longer be required as their purpose can be achieved through more efficient means.

Improved governance of public bodies

This bill improves both the governance and accountability of public bodies whilst seeking to minimise the administrative burden of these requirements.

This bill provides an improved, clearer and broader definition of public bodies. Gone will be the previous confusion about which bodies were in and which bodies were out of the purview of public finance legislation. This legislation, unlike the FMA, will also apply to all public bodies, including those formed under the Corporations Act 2001.

While the bill clarifies and extends the coverage of public finance legislation to public bodies, it also improves the quality of requirements these bodies must meet. Whereas previously all public bodies had to comply with the same accountability requirements, this bill establishes a fit-for-purpose, differential framework that takes into account the varying size, complexity and risk profile of public bodies.

Four categories of public body will be created by this bill. Category 1 and category 2 bodies, such as the Treasury Corporation of Victoria and Melbourne Health, will be monitored with the highest level of oversight by the Parliament, the Treasurer or the minister for finance, and portfolio ministers. These bodies will meet the same or greater requirements than they currently observe. Category 3 and category 4 bodies, however, such as the Medical Radiation Practitioners Board of Victoria and the Central Murray Regional Waste Management Group, which have both a low financial and risk profile, and will comply with reduced and more appropriate requirements. All public bodies that currently table an annual report in Parliament will continue to do so.

The bill also provides greater accountability for governance of public bodies to Parliament. It establishes clear rules for the timely notification of the Auditor-General and Parliament of the creation or dissolution of a public body, or the re-categorisation of a body by a minister, and the reasons for this change.

Another significant improvement to the governance of public bodies involves the centralisation of their borrowing and investments practices. This bill provides for a single consistent and uniform framework for borrowing and investment powers for entities. This framework would, in the main, see the responsibility for borrowing and investment decisions residing with the respective boards of the responsible entities, in consultation with the Treasury Corporation of Victoria and the Victorian Funds Management Corporation, whilst the financial transactions would be carried out by TCV and VFMC.

Finally, departments will be required to provide support to portfolio ministers to enhance oversight of public body compliance with public finance requirements. In

many respects this is a codification and clarification of existing practice and is consistent with the direction and principles of the Public Administration Act 2004.

All public bodies — including Corporations Act 2001 companies controlled by the state — will be subject to clear, fundamental, minimum principles of financial management. Furthermore, subordinate legislation will require that all public bodies will:

for the first time be subject to common investments and borrowing standards;

publicly attest their compliance with requirements or indicate how and why they have been exempt from them; and

be monitored by portfolio departments.

At the same time that the legislation achieves improved governance and accountability, this bill seeks to maintain or reduce the administrative burden for the public sector. This is because the bill has moved away from the one-size-fits-all governance requirements and has adopted a more tailored risk based approach. The Public Finance and Accountability Bill will benefit thousands of public bodies, many of which depend on volunteer labour and goodwill.

Procurement

The practice and governance of public sector procurement will also be significantly improved by this bill. As is the case with other elements of our public finance system, this bill will improve public procurement by:

enhancing procurement outcomes for the state;

eliminating unnecessary bureaucracy;

broadening public sector compliance with best practice;

simplifying interface with suppliers; and

more strongly aligning accountability with responsibility and authority.

The current Victorian Government Purchasing Board will be replaced by the State Procurement Board. The new SPB will focus on high-value, high-risk procurement activities across the public sector, not just departments. The SPB will report annually on public sector procurement capability and advise the minister for finance on the application of procurement principles and policy. Importantly, the board will review complaints on matters of probity and process if they cannot be resolved by a department or public body's accountable officer.

In addition, by reorientating the focus of the state's procurement oversight towards best practice in high-value and high-risk activity, the new procurement board will promote industry excellence and provide assistance where it is required.

Reporting

Victoria is recognised as the most transparent Australian jurisdiction by leading commentators such as Access Economics.

The changes in reporting practice instituted by this bill will further enhance the quality of reporting and the accountability of the government to Parliament and the public.

Reporting of financial information will be more comprehensive. The budget papers and budget update will include estimates for the public financial corporations sector.

Parliament will receive most financial reports earlier than is currently the case.

A greater amount of better quality non-financial information will also be disclosed, and it will be better aligned with financial information. Departments will prepare a detailed report of operations each year that will compare:

actual performance against output measures;

actual performance against intermediate performance indictors; and

historical trend series information for performance against intermediate performance indicators.

These reports will also comment on the contribution of outputs towards the achievement of outcomes (based on intermediate performance indicators) and the influence of external factors on this contribution.

Significantly, the overall accessibility and comprehensibility of all regular reports, such as the budget, the annual financial report, the midyear financial report and the budget update, will be improved by the inclusion of plain language overviews.

Victoria has a long and proud history of best practice financial and resource management legislation over several decades. The Public Finance and Accountability Bill will deliver enhanced governance across the public sector that is based on risk and materiality. It provides

for management and accountability frameworks that will enable the government to respond to the many challenges that face the modern public sector. In this respect, this bill represents the next evolution of Victoria's public finance and resource accountability and management frameworks, positioning Victoria to be once again at the forefront.

I commend the bill to the house.

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

Debate adjourned until Thursday, 24 December.

DOCUMENTS

Tabled by Clerk:

Disability Services Commissioner — Report 2008–09

Food Safety Council — Report 2008–09

Mental Health Review Board incorporating the Psychosurgery Review Board — Report 2008–09.

Remaining business postponed on motion of Mr WYNNE (Minister for Housing).

ADJOURNMENT

The SPEAKER — Order! The question is:

That the house do now adjourn.

Water: Target 155 campaign

Ms ASHER (Brighton) — The issue I have is for the Minister for Water. The action I am seeking of him is that he provide a full and transparent disclosure of the precise method of calculation of and actual figures for Melbourne's industrial water use for the purposes of the Target 155 campaign. I suggest that the minister should provide this information on the Melbourne Water website and to the Parliament.

I want to refer to the Melbourne Water website. The method of calculation of Melbourne's industrial water use is set out on the website. It advises as follows:

> Melbourne's water consumption and progress on achieving Target 155 is estimated weekly and reported every Friday. This is calculated by:
>
> totalling the week's water use in Melbourne;
>
> subtracting water used for purposes other than household use;
>
> dividing by Melbourne's population;
>
> dividing by 7 days.
>
> This provides an estimate of whether Melbourne has hit the target for the week.

However, there is an asterisk in relation to business and industrial water use, and the explanation of that is as follows:

> Business use changes seasonally in Melbourne as a result of a range of social and production factors. The amount subtracted will incorporate an assessment of these factors.

I asked the minister via a question on notice on 4 December 2008 how he was going to calculate the water being used by households and the water being used by businesses. The minister avoided answering the question with any precision and basically used the same words that appear on Melbourne Water's website.

The minister, however, at least had the decency, as does the website, to acknowledge that the targets given to the public are estimates, not actualities. I believe that people who shorten their showers or lug buckets around and are making a huge effort to cut back on their water consumption deserve to be told how the estimate is calculated.

There are some odd usage figures. In the week ending Thursday, 12 November 2009, the average use was 204 litres, and in the week ending Thursday, 12 February 2009, the average water usage was 202 litres. We used more water in a week in November than in the whole week of the bushfires.

The industrial use varies. You would expect in January, for example, business and industrial use to have declined. I reiterate that I am urging the minister to provide full disclosure of the precise details of the calculations and formulas for the social and production factors and of how Melbourne's business and industrial use is calculated for the purpose of these figures for Target 155.

Field and Game Australia: metropolitan gun club

Ms GREEN (Yan Yean) — Tonight I wish to raise a matter for the attention of the Minister for Sport, Recreation and Youth Affairs. The action I seek is for him to have his departmental officers undertake discussions with Field and Game Australia's (FGA) metropolitan gun club, which is based at North Epping. The club is very competitive and has members from all over the northern suburbs, including many from the Italian community. The pace of urban housing development is putting pressure on the club to move to

a new location. Club officials have found sourcing a new location very difficult.

The club has a long and proud history in Epping and throughout the northern suburbs dating back to the 1950s when it moved to Epping from Northcote. I have had numerous dealings with Field and Game Australia and have been impressed by its passionate commitment to our environment. FGA members are some of the most passionate and hardworking environmentalists I have met, undertaking numerous wildlife and bird hatchery projects on both public and private land. Young and upcoming clay target shooting members of the club have represented Victoria and Australia and are vying for Olympic selection.

Two weeks ago I, along with many members of this house and some from the federal Parliament and our staff, competed in Field and Game Australia's annual politicians clay target shoot, which was, as always, a fantastic event that showcased the prowess and responsible attitudes of the sporting shooters fraternity. The Labor Party fielded five teams, the coalition two and the Independents and minor parties one. Given the event took place during the recent bloody federal Liberal leadership battle, there were some concerns that the Liberals might be tempted to use their weapons on each other, but these concerns proved to be unfounded and I understand all of them returned home safely.

I am pleased to report to the house that Labor's no. 1 team was again victorious, meaning that the ALP has won the tournament on three of the six occasions on which it has been held. The Independents have won twice, The Nationals once — they cheated; a ringer was brought in from the Country Liberals in the Northern Territory — and the Liberals are yet to get onto the scoreboard. They have not shown up very often at the politicians clay target shoot, and they have not been good at hitting the targets.

Congratulations on their efforts must go to all members who participated, particularly staff from the Premier's office and the office of the Minister for Roads and Ports. The minister's chief of staff, Cressida Wall, was the best female shooter, with a perfect score in her first attempt at using firearms. I am very pleased that the annual trophy will sit proudly in the bar at Parliament House for the next 12 months as a testament to Labor's shooting prowess. Thanks must go to Field and Game Australia and the organisers of this great event, in particular Russ Bate and all the team at Field and Game Australia.

I urge the minister to have his department undertake discussions with Field and Game Australia's metropolitan gun club so that they can assist Field and Game Australia to find a new home for its great club so its great efforts can continue into the future.

Police: protective vests tender

Mr JASPER (Murray Valley) — I raise a matter for the attention of the Minister for Police and Emergency Services. I seek urgent action from the minister in relation to the contract that has apparently been let for protective vests for the Victoria Police. I raise this issue because Bruck Textiles in Wangaratta was one of the contractors chosen to provide the protective material to Hellweg, which would be making these garments in Melbourne. This issue needs urgent investigation by the minister because of the lack of protection for Victorian industries. This is the key issue.

Tenders were sought back in June 2008 and each contractor indicated it would provide samples to the Victoria Police for further investigation. All tenderers were short-listed. They had to provide 18 samples of the vest, and it is estimated it would have cost tenderers $50 000 to put forward those vests.

Taking that into account, this process went over a long period of time. There was an investigation by Victoria Police, and more recently there was an indication of what would happen in relation to this contract. I indicate quite clearly that Bruck Textiles is an industry operating in Wangaratta where conditions have been tough and difficult over a long period. However, in this particular case that company provided the sample materials and Hellweg provided the sample vests, but apparently the contract has been let to an overseas firm. This has raised anger, particularly at Bruck Textiles in its operations at Wangaratta. We should recognise that Bruck Textiles relocated equipment from Melba International at a cost of approximately $20 million, and Bruck specialises in protective equipment.

To say the least, anger has been expressed by people in the local area, particularly from Alan Williamson and through the local media, including through the *Border Mail* and the *Wangaratta Chronicle*, indicating extreme concern with the actions that have been taken.

One newspaper article has reported Alan Williamson, the chief executive of Bruck Textiles, as saying:

> This is not about Hellweg, it's about Victorian industry, Australian industry, and protecting jobs.

The article goes on:

> Mr Williamson said he was 'absolutely' confident the Hellweg-Melba bid would have stacked up well against other tenders.

> 'If this decision stands up on its merits, there will be not a murmur from this company', he said.

However, Bruck Textiles believes the tender has not been investigated satisfactorily. The critical issue is that Victorian industry has not been protected by the government, and in this case a contract has been let to an overseas tenderer. I believe the matter should be further investigated by the minister, and I request that he take urgent action to support local industries within the state of Victoria.

Consumer affairs: weight-loss programs

Mr SCOTT (Preston) — I raise a matter for the attention of the Minister for Consumer Affairs relating to the marketing of weight-loss programs based on meal substitution. The action I seek is that the minister investigate this industry and warn consumers that these plans may not be effective and may put their long-term health at risk. These types of programs are aimed at people who want to lose weight in a fast and non-challenging way. They are usually marketed through pharmacies, lending them credibility they might not otherwise enjoy if they were promoted in supermarkets.

The programs are also promoted through infomercials on television. The programs often make extravagant and unrealistic claims of fast weight loss, such as losing 30 kilos in 30 days. The companies promoting these programs employ young attractive people as so-called nutritional consultants, creating an idealised image for customers to emulate. These consultants, who often wear smart uniforms and go through apparently professional processes of interviewing their clients about their health needs, at times do not possess any professional qualifications and are more properly regarded as salespeople.

These programs rely on substituting diet shakes and bars for nutritious meals. Therefore they do not educate people about appropriate food choices, and when a client goes off the product they gain weight again. There is no magic ingredient in these diet products that makes people lose weight. They are simply lower in energy than what a person may normally eat. Consumer watchdog Choice recently examined what it termed 'pharmacy diet plans' and raised concerns about the lack of medical supervision and professional support. I urge the minister to take action to protect consumers from these programs.

Hume Freeway: Bandiana link

Mr TILLEY (Benambra) — I raise a matter for the attention of the Minister for Roads and Ports. It concerns the incomplete bypass of Albury-Wodonga by the Hume Freeway known as the Bandiana link. The action I seek is for the minister to complete the link to improve safety and efficiency for Wodonga and regional residents. The unfinished Bandiana link has been a blight on my local community for some time. The link forms part of the wider Hume Freeway project and has been left sitting unfinished since the Hume Freeway project was opened to traffic on 6 March 2007.

The Bandiana link was supposed to be a two-way link allowing motorists access to and egress from both the north and southbound lanes of the Hume Freeway. I understand that the current position of the Melbourne–Sydney railway line is stopping the prompt completion of that link, but this railway line should not still be there.

That project was originally committed to and funded in 1999 — shortly before Labor took office — and it should be completed by now. It has not been completed, which is an absolute disgrace. The Wodonga railway relocation project is 10 years late, and for 10 years Labor has neglected the north-east by stalling this project for locals. Labor has starved residents of the Wodonga region of a reliable and efficient public transport and freight link to Melbourne for too long. Labor has failed to deliver the rail bypass and residents have suffered.

The Bandiana link, like the rail bypass, is imperative in ensuring the ongoing growth and vibrancy of the Wodonga region, but Labor just does not get it. If one were being half cynical, one might think that the extension of delays on these incomplete projects has all the hallmarks of a desperate, unpopular government dragging the chain to ensure — —

Mr Nardella interjected.

Mr TILLEY — Oh, here he is! Labor is ensuring it has all its good news stories saved up to announce to much-neglected country residents just before the election.

I would like to take this opportunity to wish you, Speaker, my fellow members in this chamber and in the other place and my constituents in Benambra a very merry Christmas and a safe and happy New Year. I am sure that you, Speaker, and everyone here hopes that when we return to this place after the New Year we do not have to mourn a substantial loss of life on our roads, as we have had to in past years.

However, returning to the topic of the Bandiana link, I again ask the Minister for Roads and Ports to get on

with the job and to get his fellow ministers to get on with their jobs to get the Bandiana link project completed for the residents of Benambra.

Film industry: government initiatives

Ms LOBATO (Gembrook) — I raise a matter for the attention of the Minister for Innovation. The action I seek is for the minister to continue to further the Brumby government's support for the Victorian film industry, and film production within regional Victoria in particular.

I am very proud that the electorate of Gembrook is fast becoming the Hollywood of Victoria, with the film industry choosing the townships of Gembrook and Warburton as key locations for shooting two movies. Even as I speak filming is continuing for the movie *Surviving Georgia*, which is being filmed throughout the township of Warburton. *Surviving Georgia* is a movie based on a story of two sisters who were abandoned by their mother and who later return to their home town to secure their inheritance.

The facilitation of the Victorian film industry by the Brumby government also led to the filming of the movie *Where the Wild Things Are* within the forest of Kurth Kiln and Gilwell Park scout camp in Gembrook. This movie was also shot in Little River, Portland, the Wimmera, Woodend and Flinders. *Where the Wild Things Are* has been a box office success, taking more than US$70 million in America recently. It is now being shown in Australia. I urge everyone to see this delightful film, which highlights the beauty of Gembrook and much more of regional Victoria.

I can attest to the economic stimulus this production provided to the township of Gembrook with busloads of crew members spending money on a daily basis in Gembrook and surrounding towns. Also recently the hugely successful television series *Neighbours* enjoyed the beauty and hospitality of the Gembrook town as it, too, was filmed there.

As I speak, the township of Warburton is buzzing with excitement and activity. The *Surviving Georgia* cast and crew are staying in Warburton and contributing significantly to the local economy while increasing the attraction of the township for tourists and encouraging locals to spend more time and money in the town. The timing of this production is very welcome, because the economy of Warburton and the Upper Yarra was significantly reduced during the last bushfire season. Therefore the importance of the continued support for the Victorian film industry to invest in regional Victoria cannot be understated. I also congratulate the rural and regional councils and communities for their facilitation of the film industry.

The Brumby government's Location Victoria initiative has promoted locations and services throughout Victoria to television and movie productions and has provided substantial assistance to local councils to attract and manage local productions. Launched in Bendigo in 2005 Locations Victoria has been an extraordinary success with 100 per cent council participation in provincial Victoria. I am pleased and proud that film and television producers are now recognising the many and varied benefits of producing quality entertainment within the electorate of Gembrook and in other regional parts of Victoria. I therefore encourage the Minister for Innovation to continue to and further support this vital industry.

Portland: cliff stabilisation

Dr NAPTHINE (South-West Coast) — The issue I wish to raise is for the Minister for Environment and Climate Change. The action I seek is for the state government to immediately undertake the necessary engineering works to stabilise the cliff in the Clifton Court-Anderson Point area in Portland. Department of Sustainability and Environment documents released under FOI demonstrate the very real risks facing local residents and the many visitors to this popular cliff top viewing spot overlooking Portland Bay. A DSE memo dated 18 May 2009 says:

> There is a strong likelihood that this section of cliff will collapse dramatically in the relatively near future.

Another DSE email dated 25 February 2009 provides a summary of the Parsons Brinckerhoff (PB) geotechnical report of this area, which says that cliff collapses are 'highly likely' and that this slip area 'potentially poses the biggest threat to private property and human life'. The email also advised that if the government did not undertake major engineering works, it 'will eventually involve removal of all infrastructure from the cliff top, including car park, Clifton Court and possibly some houses'. It also says the cost to government 'may include purchase of properties and legal costs'.

I have recently obtained a copy of the November 2009 DSE landslip monitoring report, which says:

> The site remains relatively active … the area to the north of the initial slip (i.e. the slopes directly above the Anderson Point stairs) is undergoing continual slow movement with survey points showing lateral downslope movement in the past three months.

Further, it says under a dot point:

> Anderson Point landmass (imminent failure likely).

In relation to Wade Street, the report says:

> Use of the car park at the end of Wade Street and possible use of Clifton Court by tour and sightseeing buses should be actively discouraged —

because DSE is concerned about the safety of that cliff face. Indeed a letter from the Glenelg Shire Council dated 14 July says:

> As pointed out in the PB report, the section of the landslip closest to Clifton Court entrance poses the biggest threat to public safety and private property. In addition, it is apparent that 'adapt' or 'retreat' are not tenable or appropriate risk management strategies for even the short to medium term.

Everybody agrees that the area is unsafe and that action needs to be taken. Ongoing government delays simply put lives, infrastructure, homes and private and public property at very real risk. Action is needed now to stabilise these cliffs, and an action plan in the PB geotechnical report outlines a process to stabilise the cliffs at a cost of $1.8 million to $2.5 million. That would secure the public land, the private property, the public infrastructure and the lives that are at risk. This is a serious issue of human safety and protecting infrastructure, and I urge the government to implement the action plan immediately.

George Street Bridge, Dandenong: redevelopment

Mr PANDAZOPOULOS (Dandenong) — The matter I wish to raise is for the Minister for Roads and Ports. It relates to the George Street Bridge redevelopment, a $29.5 million project in Dandenong as part of the Revitalising Central Dandenong project which is a $270 million state government initiative to get things moving in Dandenong and achieve better utilisation of under-utilised land, build up the local population and attract more business, commercial and retail opportunities to the central Dandenong area.

Tomorrow morning I will be representing the Minister for Roads and Ports at the unveiling of the artist's impression of the bridge as the bridge is under construction, and as part of that the public art on the bridge, which the community has been looking forward to very much. This bridge will be constructed over the old Dandenong stockyards site. For people who know of and remember Dandenong's history, it was referred to as the gateway to Gippsland until about five or six years ago, before the stockyards closed. Many people from the region brought their cattle and sheep into central Dandenong and sold them at the stockyards. This site is now under development.

There is a new housing estate under construction right next to the railway station, and it is a fantastic location. The George Street Bridge is about linking this new development — a suburb called '3175', which will house about 3000 people in the future — to the central Dandenong area. If members are familiar with Dandenong, they will be aware that one of the problems has been that there is one way into and one way out of Dandenong, and that is the Princes Highway, otherwise known as Lonsdale Street. The George Street Bridge will connect this new estate on Cheltenham Road to a point which is in effect right in front of my office. It will create a bit of a bypass of central Dandenong that will allow better circulation of traffic and will lead to less congestion in the central business area. We want there to be more pedestrian activity and more outdoor cafes and restaurants in that area, and this will be an important part of helping to shift that traffic around with ease, as well as allowing public transport to use this bridge.

Because this site is of heritage importance to the local area, it is great that the council, working with VicRoads, has come up with a design that reflects the stockyards heritage of that site. The action I seek from the minister is for him to support my call and a call from the community for us to have a naming competition for the bridge in association with the council and the community that reflects the local heritage of that site.

Many great people who were pioneers of Dandenong or who served the community on the council have not necessarily been recognised in the past because streets were already named. We need to give the community an opportunity to have a say, because this is really the new Dandenong connecting with the old Dandenong and its heritage. Dandenong was known as a golden mile back in those years. It has suffered a little bit, and this is a way of bringing back the good old days of Dandenong in a new form and in a new way. The George Street Bridge will be a very important project — a $29.5 million project out of the $270 million the state is investing in Revitalising Central Dandenong.

Box Hill Hospital: redevelopment

Mr CLARK (Box Hill) — I raise with the Minister for Health the government's recently announced proposal to undertake a scaled back, hybrid, part new, part refurbishment project at Box Hill Hospital, and I ask the minister to make public the business case, plans,

time lines, costings and funding option assessments for the project. Under Labor Box Hill Hospital has some of the worst waiting lists and waiting times of any hospital in Melbourne. In 2008–09 it failed seven of nine government benchmarks. The waiting list for elective surgery has gone from 1166 patients in December 1999 to 2791 patients in June 2009.

Before the 2006 election eastern suburb residents were promised a new 'super hospital', to quote the *Sunday Herald Sun* of 28 May 2006, which reported in a story obviously based on an exclusive government briefing:

> The Bracks government will spend $650 million on a new hospital in Box Hill to service 700 000 Melburnians in the east.

On 16 May 2008 the Minister for Gaming and Minister for Consumer Affairs, the member for Mitcham, was reported as saying:

> … he was 'very confident' the state government would deliver the $850 million-plus needed to massively upgrade the ageing hospital —

and that the funds would be delivered 'within 12 months'.

On 16 September this year, the *Whitehorse Leade*r reported:

> Premier John Brumby revealed exclusively to the *Leader* that the state would foot the entire bill for the hospital's rebuild, tipped to cost $1 billion.

The Bracks and Brumby governments have spent more than seven years planning and replanning the rebuilding of the Box Hill Hospital. Eastern Health management, with the support and encouragement of the government, has spent years of work and millions of dollars drawing up detailed plans and business cases for a completely new rebuilt Box Hill Hospital. These plans went to the government before the 2006 election. They were what the government was talking about in its 2006 election promise, and they were updated in a business case submitted by Eastern Health to the government in December 2007.

Now the Brumby government has walked away from seven years of work, millions of dollars spent on planning and a clear election promise. On Wednesday it announced a $407.5 million mishmash proposal, which the government had put together internally without consultation with the hospital community. A large part of the proposal is just a short-term attempt to patch up an outdated and inadequate facility.

An Eastern Health board member and Whitehorse City Council councillor, Robert Chong, rightly said in the *Whitehorse Leader* of 30 April 2008:

> Box Hill is a rabbit warren … It doesn't matter how you try to organise it, as it stands it just can't cope.

However, Wednesday's announcement shows the Brumby government has decided to pour millions of dollars down this rabbit warren when the money should have been put towards the new hospital that residents were promised.

Eastern suburbs residents have been badly short-changed. The new facilities will bring some improvements, but they are far short of what was promised and what is needed. To make matters worse, by going for a patch-up job on the existing hospital, the government has added years to the project, which is not due to be completed until 2015. It may well make waiting lists worse rather than better over the next six years due to operating theatres being unavailable while being refurbished.

That is why the minister must make public all documentation relating to the proposal, so the public can see exactly how the Brumby government came to decide on this hybrid model, how much money is going to be wasted on short-term patch ups, how much it will add to delays and waiting lists, and how much residents will now not receive in comparison to the fully planned new hospital they were promised.

Housing: Forest Hill electorate

Ms MARSHALL (Forest Hill) — I rise in the house today to raise a matter for the Minister for Housing. The action I seek is for the minister to ensure that there are adequate supports in place to foster the health and wellbeing of elderly housing tenants in my electorate of Forest Hill.

My constituency is comprised of many elderly citizens. When compared with the rest of Victoria, Forest Hill electorate has a high proportion of people aged 75 years and over, a number of whom reside in public housing and live alone. It is important that these senior Victorians, some of the most vulnerable in our state, are given supports to increase their confidence and peace of mind and to allow them to stay at home for as long as possible.

At times I have visited the homes of a number of elderly residents that fit this description to make certain they are well after they have had a rare period of no contact. Conversations with constituents in this situation have centred around their fear for their own

personal safety and their total reliance on neighbours in the case of emergencies. These concerns are especially pronounced in warmer months. Today it may not seem like it, given the weather, but it is predicted that temperatures this summer will be some of the warmest on record. Whilst anyone of any age can suffer from heat-related illness, those most at risk include people over 75 years of age. These vulnerable Victorians need to be reassured there is support available and they are not alone.

I know the minister is committed to supporting this state's most vulnerable residents, and the Brumby Labor government has recently developed the Keeping in Touch public housing contact service, which has been running since April 2009 as a pilot program in Melbourne's northern and western suburbs. This pilot program involved Office of Housing staff contacting eligible tenants to invite them to participate. Those who wished to be part of the program received weekly phone calls from the Department of Human Services personnel to check on their welfare and to provide support. This program provided comfort for families as well as tenants, because if a resident does not answer the phone after a number of attempts, the family of the tenant is contacted.

With more than 600 tenants aged 75 years and over in the eastern region, of which Forest Hill is a part, it is imperative that services such as this be made available to them. I ask the minister to see that the Keeping in Touch program is accessible to eligible tenants in my electorate and that supports are in place to ensure the health and wellbeing of elderly Office of Housing tenants over this summer period and beyond.

Responses

Mr WYNNE (Minister for Housing) — I thank the member for Forest Hill for raising this important and timely issue in the house today. It is an issue that my department has been working on for some time given the extreme heatwave we experienced last year.

There are over 7000 elderly Victorians who are 75 years and over living in public housing. The member for Forest Hill is correct to point out that in her electorate there is a disproportionately higher proportion of older people. I can assure the member for Forest Hill that we are taking steps to support those older residents, especially through the hot summer months that are now before us. The government's heat stress advice package is being mailed to every public housing household this month. Every household will receive important advice on how to avoid heat stress during summer along with emergency phone numbers. A handy-sized fridge magnet will be sent to every household and made available at housing offices with useful advice on how to keep cool and who to contact in the case of an emergency.

Similar material will also be included in the tenant newspaper *Over the Fence*, as well as posters which will be displayed in major housing areas. Tips include taking a cool shower or bath, keeping blinds and curtains closed during the day and avoiding going outside wherever possible, but particularly doing shopping and so forth earlier in the day before the heat of the day comes upon us.

I am also pleased to announce that a pilot program, Keeping in Touch, which the member referred to, is currently being rolled out across the state. Keeping in Touch, a public housing contact service, is a practical way of maintaining contact with single people who are 75 years and older. We know that as people get older there is a need to maintain regular contact to ensure that they are healthy and safe. This is why we are offering a service to our tenants involving a regular weekly telephone call from the Office of Housing. A housing worker will ask about the tenant's welfare and make sure that they are looking after themselves well. In the case that tenants do not answer the phone after a number of attempts, the tenant's next of kin will be contacted. This service provides elderly tenants who live alone with the chance to voice any concerns they have about their property or their welfare to the housing worker who can provide advice or refer them to another service.

In addition to the Keeping in Touch service, the government funds a network of 11 older persons support workers across public housing estates to support our older residents. It is important we recognise that summer is quite a trying time for elderly people. Our Keeping in Touch program was piloted earlier this year in the northern and western regions of Melbourne. It was a very successful program. Many residents sought to sign on to this program to keep regular contact. It is an opt-in program; people who choose not to avail themselves of this service of course have the right to not continue with the program. However, we think it is important there is a friendly voice available to our residents — some of them are quite isolated — to keep in touch with them and to know there is a next of kin, neighbour or someone else we can ring if we cannot contact that person. It is an important service the government should provide.

I welcome the contribution by the member for Forest Hill. It is timely because summer is going to be quite a tough period for us. We want to ensure that all our

residents of 75 years and older remain safe, well and active and look after themselves during the quite difficult summer period that is ahead of us.

The member for Brighton raised a matter for the Minister for Water seeking the disclosure and calculations of Melbourne industrial water use in relation to the 155 target. I will make sure the minister is aware of that.

The member for Yan Yean raised a matter for the Minister for Sport, Recreation and Youth Affairs seeking his support for the Field and Game Australia gun club at North Epping and a potential new location for that very good facility.

The member for Murray Valley raised a matter for the Minister for Police and Emergency Services in relation to the contracts for vests for Victoria Police and pointed out his concerns in relation to protection for Bruck Textiles in Wangaratta.

The member for Preston raised a matter for the Minister for Consumer Affairs about concerns in relation to weight-loss programs and their potential health impact, particularly on young people.

The member for Benambra raised a matter for the Minister for Roads and Ports seeking the completion of the Bandiana link project.

The member for Gembrook raised a matter for the Minister for Innovation seeking support for film industry productions, particularly in regional Victoria and most particularly in her electorate of Gembrook, and she indicated a number of examples of how important the film industry has been in her electorate.

The member for South-West Coast raised a matter for the attention of the Minister for Environment and Climate Change seeking his support for a cliff stability program at the Anderson Point lookout at Portland, with a potential budget implication of somewhere between $1.8 million and $2.5 million.

The member for Dandenong raised a matter for the Minister for Roads and Ports seeking his support for a naming competition for the George Street bridge, which will link the new 3175 project with central Dandenong. It is a really wonderful project which will breathe huge life into the Dandenong precinct. I will make sure the minister is aware of that matter.

Finally, the member for Box Hill raised a matter for the Minister for Health seeking the release of the business case and all documentation pertaining to yesterday's announcement of the Box Hill Hospital redevelopment.

In conclusion, Speaker, I convey my good wishes to you, to the clerks and to both sides of the house for a peaceful and safe Christmas. We look forward to being back again in February.

Dr NAPTHINE (South-West Coast) (*By leave*) — On behalf of the opposition I also wish you, Speaker, members of government, the Independent member and members of the Liberal Party and The Nationals and their families a safe and happy Christmas. We thank the Clerk, the table staff and all the staff of the Parliament, including staff in the dining room and the grounds, the attendants and of course Bill, who would be disappointed if we did not mention him, for their support this year. We thank Hansard — I will not speak for too long, because we do not want to go too long — and we thank all the staff and wish them a safe and happy Christmas. We look forward to a very good year in 2010.

The SPEAKER — Order! Before adjourning the house, I would also like to express my appreciation to all the Legislative Assembly staff. We know they do an excellent job in supporting our task in serving the community of Victoria, and they do it very proudly and very, very well. I say to all the catering staff, the building staff and the ground staff that it is a pleasure for me to work with them personally, and I know their interactions with all members across the chamber are always delightful. Of course the staff at the Department of Parliamentary Services, who support our electorate staff and our operations within our electorates, have my appreciation and I am sure the appreciation of all members.

Merry Christmas to everyone and a happy new year. I look forward to 2010, along with all other members. The house is now adjourned.

House adjourned 4.57 p.m.