PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 12 November 2009

(Extract from book 14)

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By authority of the Victorian Government Printer

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Professor DAVID de KRETSER, AC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

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Minister for Roads and Ports, and Minister for Major Projects	The Hon. T. H. Pallas, MP
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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*): Ms Marshall and Mr Northe. (*Council*): Ms Darveniza, Mr Drum, Ms Lovell, Ms Tierney and Mr Vogels.

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

Heads of parliamentary departments

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

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

Parliamentary Services — Secretary: Dr S. O'Kane

MEMBERS OF THE LEGISLATIVE ASSEMBLY

FIFTY-SIXTH PARLIAMENT — FIRST SESSION

Speaker: The Hon. JENNY LINDELL

Deputy Speaker: Ms A. P. BARKER

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

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The Hon. 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
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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
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Burgess, Mr Neale Ronald	Hastings	LP	Napthine, Dr Denis Vincent	South-West Coast	LP
Cameron, Mr Robert Graham	Bendigo West	ALP	Nardella, Mr Donato Antonio	Melton	ALP
Campbell, Ms Christine Mary	Pascoe Vale	ALP	Neville, Ms Lisa Mary	Bellarine	ALP
Carli, Mr Carlo Domenico	Brunswick	ALP	Noonan, Wade Mathew [5]	Williamstown	ALP
Clark, Mr Robert William	Box Hill	LP	Northe, Mr Russell John	Morwell	Nats
Crisp, Mr Peter Laurence	Mildura	Nats	O'Brien, Mr Michael Anthony	Malvern	LP
Crutchfield, Mr Michael Paul	South Barwon	ALP	Overington, Ms Karen Marie	Ballarat West	ALP
D'Ambrosio, Ms Liliana	Mill Park	ALP	Pallas, Mr Timothy Hugh	Tarneit	ALP
Delahunty, Mr Hugh Francis	Lowan	Nats	Pandazopoulos, Mr John	Dandenong	ALP
Dixon, Mr Martin Francis	Nepean	LP	Perera, Mr Jude	Cranbourne	ALP
Donnellan, Mr Luke Anthony	Narre Warren North	ALP	Pike, Ms Bronwyn Jane	Melbourne	ALP
Duncan, Ms Joanne Therese	Macedon	ALP	Powell, Mrs Elizabeth Jeanette	Shepparton	Nats
Eren, Mr John Hamdi	Lara	ALP	Richardson, Ms Fiona Catherine Alison	Northcote	ALP
Foley, Martin Peter [2]	Albert Park	ALP	Robinson, Mr Anthony Gerard	Mitcham	ALP
Fyffe, Mrs Christine Ann	Evelyn	LP	Ryan, Mr Peter Julian	Gippsland South	Nats
Graley, Ms Judith Ann	Narre Warren South	ALP	Scott, Mr Robin David	Preston	ALP
Green, Ms Danielle Louise	Yan Yean	ALP	Seitz, Mr George	Keilor	ALP
Haermeyer, Mr André [3]	Kororoit	ALP	Shardey, Mrs Helen Jean	Caulfield	LP
Hardman, Mr Benedict Paul	Seymour	ALP	Smith, Mr Kenneth Maurice	Bass	LP
Harkness, Dr Alistair Ross	Frankston	ALP	Smith, Mr Ryan	Warrandyte	LP
Helper, Mr Jochen	Ripon	ALP	Stensholt, Mr Robert Einar	Burwood	ALP
Herbert, Mr Steven Ralph	Eltham	ALP	Sykes, Dr William Everett	Benalla	Nats
Hodgett, Mr David John	Kilsyth	LP	Thompson, Mr Murray Hamilton Ross	Sandringham	LP
Holding, Mr Timothy James	Lyndhurst	ALP	Thomson, Ms Marsha Rose	Footscray	ALP
Howard, Mr Geoffrey Kemp	Ballarat East	ALP	Thwaites, Mr Johnstone William [6]	Albert Park	ALP
Hudson, Mr Robert John	Bentleigh	ALP	Tilley, Mr William John	Benambra	LP
Hulls, Mr Rob Justin	Niddrie	ALP	Trezise, Mr Ian Douglas	Geelong	ALP
Ingram, Mr Craig	Gippsland East	Ind	Victoria, Mrs Heidi	Bayswater	LP
Jasper, Mr Kenneth Stephen	Murray Valley	Nats	Wakeling, Mr Nicholas	Ferntree Gully	LP
Kairouz, Ms Marlene [4]	Kororoit	ALP	Walsh, Mr Peter Lindsay	Swan Hill	Nats
Kosky, Ms Lynne Janice	Altona	ALP	Weller, Mr Paul	Rodney	Nats
Kotsiras, Mr Nicholas	Bulleen	LP	Wells, Mr Kimberley Arthur	Scoresby	LP
Langdon, Mr Craig Anthony Cuffe	Ivanhoe	ALP	Wooldridge, Ms Mary Louise Newling	Doncaster	LP
Languiller, Mr Telmo Ramon	Derrimut	ALP	Wynne, Mr Richard William	Richmond	ALP
Lim, Mr Muy Hong	Clayton	ALP			

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

CONTENTS

THURSDAY, 12 NOVEMBER 2009

Thursday, 12 November 2009

The SPEAKER (Hon. Jenny Lindell) took the chair at 9.34 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 139 to 144, 189, 190 and 238 to 243 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.

PETITIONS

Following petitions presented to house:

Students: youth allowance

To the Legislative Assembly of Victoria:

This petition of residents of Victoria draws to the attention of the house the proposal to change the independence test for youth allowance by the federal government.

The petitioners register their opposition to the changes on the basis that the youth allowance changes proposed in the federal budget place another barrier to university participation for students in regional areas; unfairly discriminates against students currently undertaking a 'gap' year; and contradict other efforts to increase university participation by students from rural and regional Australia.

The petitioners therefore request that the Legislative Assembly of Victoria reject the proposal and calls on the state government to vigorously lobby the federal government to ensure that a tertiary education is accessible to regional students.

By Dr SYKES (Benalla) (20 signatures), Mr CRISP (Mildura) (44 signatures) and Mr WELLER (Rodney) (484 signatures).

Liquor: licences

To the Legislative Assembly of Victoria:

The petition of residents of Victoria draws to the attention of the house the need to urgently reconsider the proposed massive increases in liquor licence fees in view of the enormous adverse impact such across-the-board increases will have on many highly reputable liquor outlets, and most particularly those in country areas.

Such huge blanket increases in licence fees will impact on employment, community sponsorships, even business survival in some cases. Risk-based fees should actually address the problems which have arisen in 'hot spot' areas, distinguish activities increasing risk of antisocial behaviour, and be imposed selectively, to address those issues.

The petitioners therefore request that the Victorian government recognises the damage such across-the-board increases will cause, particularly in many country communities and review the legislation as a matter of urgency.

By Dr SYKES (Benalla) (293 signatures) and Mr WELLER (Rodney) (167 signatures).

Croydon South Primary School site: future

To the Legislative Assembly of Victoria:

The petition of the residents of Croydon South and the surrounding area draws to the attention of the house that the land and buildings at the disused Croydon South Primary School site sit vacant and unkempt, deteriorating and subject to acts of vandalism.

The petitioners therefore request that the state government turn the land into public parkland and open space and allow the buildings to be used by community groups.

By Mr HODGETT (Kilsyth) (14 signatures).

Patient transport assistance scheme: rural access

To the Legislative Assembly of Victoria:

The petition of residents of Victoria draws to the attention of the house the inequitable nature of the current level of reimbursement under the Victorian patient transport assistance scheme (VPTAS) and points out to the house that many rural patients are disadvantaged under the current scheme.

The petitioners therefore request that the Legislative Assembly of Victoria:

a. update and revise the VPTAS regulations from 100 kilometres to 50 kilometres one way to the most appropriate town centre with medical/dental specialist treatment, not just the nearest available town centre;

b. increase the current 17-cent-per-kilometre reimbursement rate and accommodation reimbursement rate of $35 plus GST to levels that are more reflective of the current travel and accommodation costs;

c. allow for the calculation of kilometres travelled to be based on the safest, appropriate road route not just the shortest distance alternative.

By Mr DELAHUNTY (Lowan) (28 signatures) and Mr CRISP (Mildura) (19 signatures).

Marine safety: recreational vessels

To the Legislative Assembly of Victoria:

The petition of residents of Victoria draws to the attention of the house to the proposed changes to the marine safety laws by the Department of Transport in relation to recreational boating and safety and points out to the house that many

recreational boaters will be disadvantaged if the new laws are adopted in the current format, including other parties such as the family unit and tourism.

The petitioners therefore request that the Legislative Assembly of Victoria:

a. Reject the submission recommendation no. 7 to restrict the distance that boats may travel offshore;

b. Reject the submission recommendation no. 16 to increase boat registration;

c. Reject the submission recommendation no. 15 the introduction of owner onus;

d. Ensure that rural people are not disadvantaged by introduction of skill-based boat licence testing that cannot be done in the country (i.e., have to travel to the coast);

e. Reject the submission recommendations (various) to increase penalties and charges to recreational boaters.

By Mr DELAHUNTY (Lowan) (186 signatures).

Rail: Mildura line

To the Honourable Speaker and members of the Legislative Assembly of Victoria:

This petition of the citizens of the region known as Sunraysia, primarily in the state of Victoria but including cross-border citizens of New South Wales centred on the city of Mildura brings to the attention of the house the many promises to return the Melbourne–Mildura passenger train, without delivery.

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

1. the many undelivered promises;

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

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

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

By Mr CRISP (Mildura) (34 signatures).

Rail: Mildura line

To the Legislative Assembly of Victoria:

This petition of residents of Victoria draws to the attention of the house for 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) (47 signatures).

Rail: Shepparton line

To the Legislative Assembly of Victoria:

The petition of residents of Victoria draws to the attention of the house the need to reinstate passenger rail services from Shepparton through Numurkah and Strathmerton to Cobram and return, to service this important area and provide the convenience of passenger rail services directly to and from Melbourne, as has previously been provided.

The petitioners therefore request that the Victorian government takes positive action to reinstate passenger rail services as a matter of urgency.

By Mr JASPER (Murray Valley) (390 signatures).

Princes Freeway–Sand Road, Longwarry: upgrade

To the Legislative Assembly of Victoria:

The petition of the undersigned residents of Gippsland and other road users draws to the attention of the house the growing safety concerns surrounding the existing Sand Road interchange on the Princes Freeway at Longwarry.

Of particular concern is the poor development of the Sand Road intersection following the construction of two BP service stations. The manner in which road users must enter and exit the Princes Freeway at high speed with no filter lane, traverse the intersection to use Sand Road across oncoming traffic and re-enter from service station exits onto the Princes Freeway puts at risk the lives of road users who have to use the intersection every day.

We therefore ask the house to ensure that immediate action is taken in upgrading this intersection to better manage a safer flow of traffic, and to eliminate the many accidents now being experienced. We further ask that the flyover previously proposed by VicRoads be built to ensure road user safety.

By Mr BLACKWOOD (Narracan) (1083 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:

I present the following petition again, due to no action being taken to amend the legislation and the serious injustice that is being allowed to continue unimpeded.

The Victorian public are being misinformed by the Victorian state Ombudsman, Mr George Brouwer, in regard to his claim that, '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.

The covert practices and processes of the Victorian Ombudsman office are totally unacceptable, there is no transparency or accountability. Decisions are made behind closed doors and are often made without any inquiries or investigations being conducted. The Ombudsman's office will simply decide not to make any inquiries or investigations into a serious complaint, regardless of the amount of indisputable documented evidence presented by the complainant to the Ombudsman's office. As there are no disciplinary or penalty provisions in place in the Freedom of Information Act 1982 for breaches and non-compliance of the act by agencies and the Ombudsman and officers of the Ombudsman are protected under section 29 of the Ombudsman Act 1973 from 'any civil or criminal proceedings', also section 29A, 'Exemption from Freedom of Information Act 1982', this amounts to an abuse of power.

Public servants are a law unto themselves and do as they please without fear, this is indefensible.

Mr Brouwer states, 'We will provide an independent, impartial and effective complaints management system.' Contrary to this, the Ombudsman's office made available to all Victorian public sector bodies a manual titled 'Unreasonable Complainant Conduct: interim practice manual', which the New South Wales Ombudsman's office claims credit as the source of the material. This manual is a very seriously damning document, in which, step by step and word by word instructs and coaches public servants in how to treat and respond to complainants, (in a dictatorial, domineering and discrediting manner). This practice often results in a complainant, who is justifiably exercising his/her democratic right in making a legitimate complaint, being labelled an unreasonable or vexatious complainant further resulting in the complainant receiving a letter stating, '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 is the most contemptible practice in order to evade scrutiny.

Mr Brouwer also states, 'In 2008 I commenced a program of monthly workshops for public sector agencies. At these sessions public sector agencies are introduced to my *Good Practice Guide* and unreasonable complainant conduct manual. They have been well attended and I intend to continue to provide guidance through similar workshops in 2008–09.' This clearly supports that the Ombudsman's office lacks the ability to independently investigate, review and resolve complaints and it seriously questions its impartiality, integrity, effectiveness and credibility.

It is absolutely incompatible and totally unacceptable for the Ombudsman's office to be both the adviser to public servants and adjudicator of complaints made against them, this constitutes a serious conflict of interest. It is also an unacceptable denial of due process of natural justice that cannot be tolerated under any circumstances.

I therefore request that the Legislative Assembly of Victoria review and amend both the Ombudsman Act 1973 and the Freedom of Information Act 1982 in order to hold both offices fully accountable, open, transparent and fair in their dealings with the public, in line with the Labor government's commitment of open, transparent and fair government and revoke section 29 of the Ombudsman Act 1973, (Protection of the Ombudsman and Officers of the Ombudsman) and section 29A (Exemption from Freedom of Information Act 1982). Also establish mandatory disciplinary action and penalty provisions for breaches and non-compliance of the Freedom of Information Act 1982.

By Ms BARKER (Oakleigh) (1 signature).

Gas: Heathcote supply

To the Legislative Assembly of Victoria:

The petition of the following residents of Victoria draws to the attention of the house that future growth and development in the Heathcote district is being restricted by the absence of a natural gas supply to the area.

The petitioners therefore request that the Legislative Assembly of Victoria instruct the state government to commit to a further round of funding through the natural gas extension program to subsidise natural gas reticulation to Heathcote.

By Mr WELLER (Rodney) (80 signatures).

Tabled.

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).

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

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

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

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

Ordered that petitions presented on 11 November by honourable member for Benalla be considered next day on motion of Dr SYKES (Benalla).

Ordered that petitions presented by honourable member for Benalla be considered next day on motion of Dr SYKES (Benalla).

DOCUMENTS

Tabled by Clerk:

Infertility Treatment Authority — Report 2008–09

Mildura Cemetery Trust — Report 2008–09

Ombudsman — Own motion investigation into the tendering and contracting of information technology services within Victoria Police — Ordered to be printed.

BUSINESS OF THE HOUSE

Adjournment

Ms NEVILLE (Minister for Mental Health) — I move:

That the house, at its rising, adjourn until Tuesday, 24 November.

Motion agreed to.

MEMBERS STATEMENTS

Sherbrooke Community School: radio program

Mr MERLINO (Minister for Sport, Recreation and Youth Affairs) — The Sherbrooke Community School has helped create local history with a group of 11 students recently having radio contact with a crew member of the international space station. I was privileged to join the students in Sassafras as they asked Canadian astronaut, Robert Thirsk, as many questions as possible in their contact window. The contact was made possible through a telebridge in California and by Australian amateur radio legend, Tony Hutchison, in South Australia.

Sherbrooke shared its experience with its sister schools: the Jialun Middle School in China and the Early Learning Centre in Bhutan. Seven Sherbrooke students — Christopher, Emma, Sam, James, Oscar, Callum and Monique — currently hold amateur radio licences and they used their personal call signs during the 9-minute contact.

Congratulations to Sherbrooke Community School on its leading radio program making contact with the international space station. It was certainly a groundbreaking exercise. Extremely exciting was the credit to the dedication of teacher Ed Seeto and Sherbrooke Community Radio Club president, Jim McNabb.

White Ribbon Day

Mr MERLINO — I encourage all Victorians to wear a white ribbon on 25 November, the International Day for the Elimination of Violence against Women. It is a great privilege to be a local white ribbon ambassador. The City of Knox has certainly taken a lead role in the community campaign to end violence against women. The Knox Accord was established in recent years in which community members are encouraged to sign the 'commitment statement' to not commit, condone or remain silent about violence against women. One in three women will experience physical violence, and one in five will experience sexual violence in their lifetime. These shocking statistics must be confronted and reversed, and it is up to all of us to challenge violence-supporting attitudes and behaviours and help drive real change in our community.

Water: recycling

Ms ASHER (Brighton) — I wish to draw to the house's attention the fact that Melbourne Water has had its recycling levels go backwards rather than increase in the past year. This astounding information was revealed in Melbourne Water's annual report 2008–09, which showed that Melbourne Water had failed to meet its key performance indicators on recycled water.

The annual report shows that the 2008–09 water recycling target was 64 150 megalitres. However, the actual amount achieved was 60 285 megalitres. Appallingly, this is even less than the 2007–08 level of 61 984 megalitres. The problem is that the government has set itself a recycling target of 20 per cent and it keeps trumpeting that it has met that target, but these targets show that Melbourne Water has not met its targets for recycled water. This is particularly bad given the government has been incredibly tardy on the upgrade of the eastern treatment plant. If that project had been completed, recycled water could have been available for industry and for watering sportsgrounds.

It is also particularly bad because the Environment and Natural Resources Committee has recommended an increase in recycling targets post the upgrade of the eastern treatment plant. I call on the government to lift its game.

Bushfires: preparedness

Mr NORTHE (Morwell) — As the bushfire season commences there is concern that Victoria is dangerously unprepared for the extreme conditions predicted for this summer. These concerns relate to

issues such as the fact that neighbourhood safer places and school refuges are still not identified in many communities. Phone warning systems that were supposed to be in operation at the commencement of the fire season are still some weeks away. There is a list of many issues. However, I want to concentrate my contribution today on fire surveillance.

I have been approached on various occasions in recent times by well-credentialled persons in the Gippsland community who have conveyed their concern about the lack of surveillance for fires and other disasters. For example, equipment in many fire-spotting towers is inadequate and in need of upgrade. There is also a distinct lack of aerial surveillance occurring in Victoria that would assist in spotting and tracking bushfires. Whilst there has been much debate over the merits of utilising large jet fire bombers in fighting fires, one has to question what the Brumby government is doing to ensure there is an appropriate number of aerial surveillance appliances.

We have amazing technology at our fingertips, yet this government seems to ignore the capabilities of local aircraft that can provide real-time information to emergency service personnel on the ground. The government should be acutely aware of such technology given the recent rescue of the Minister for Water from Mount Feathertop. However, it appears this government is more interested in reacting to disasters than in being proactive. If such aircraft were utilised I believe they would assist enormously in firefighting efforts across Victoria and not leave this state dangerously unprepared for this fire season.

Headlight Productions: short films

Ms NEVILLE (Minister for Mental Health) — I was delighted to be at the Drysdale Community Health Centre last week for the premiere screening of Headlight Productions short films. It was an honour to be asked to officially launch the screening of these terrific films that showcased the talents of young people. Headlight Productions has been a highly successful initiative of the Bellarine community health service. It was funded by VicHealth and has created opportunities for young people to explore and expand their interests and talents.

The project is a wonderful example of the service's focus on prevention, reaching out to young people and working with them to make the most of opportunities to support them and optimise their health and wellbeing. The project was focused on tackling the issue of social connection for young people in Portarlington, Indented Head and St Leonards. Through the process of developing and producing these films, this great group of young people came together.

My congratulations to all the members of Headlight Productions: Jesse Leaman, Liam Way, Elijah Vetma, Anu Blazey, Eli Robinson, Callum Joyce, Rikki-Jade Eagle. As a group they have demonstrated in a practical and creative way the power of working together, being included and feeling connected to others. The films were very powerful stories about their own lives, their own families and the experience of living on the Bellarine Peninsula. Congratulations also to John Fendyk, chief executive officer of Bellarine Community Health, the members of the mental health working group and all those staff who put such a lot of energy into supporting and caring for the young people involved in this important project.

Victorian Funds Management Corporation: performance

Mr WELLS (Scoresby) — This statement condemns the Brumby government for its incompetent prudential oversight and for its deliberate and direct interference in the operations of the Victorian Funds Management Corporation, which have cost Victorian taxpayers and public sector employees over $10 billion in lost investments and superannuation funds. First we had the VFMC's former chief investment officer, Mr Leo de Bever, publicly stating that he had resigned in April 2008, halfway through his contract, due to the Premier breaking a promise, government red tape and political bullying. This was reported in the *Australian Financial Review* of 24–25 October 2009. Leo de Bever stated that Premier Brumby had broken a promise, made before he agreed to take the job, to make the VFMC autonomous of state government control.

Recently a leaked email revealed that Mr de Bever had stated that the VFMC had been instructed by the state to take a higher level of risk with its investments. We then had the revelation that VFMC fat cat executive salaries increased by a massive 42 per cent and bonuses and other benefits by 57 per cent in 2008–09.

These damning revelations by Leo de Bever and the executive remuneration debacle place the blame for the VFMC's appallingly poor investment and management performance over the past two years very much at the feet of John Brumby. The Premier, first as Treasurer and now as Premier, dreamt of making the VFMC — —

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

Tarneit electorate: Premier's reading challenge

Mr PALLAS (Minister for Roads and Ports) — I wish to acknowledge the outstanding efforts of students in my electorate in participating in this year's Premier's reading challenge. In the following weeks I will have the immense privilege of giving out certificates at Westgrove and Cambridge primary schools. This year Westgrove primary had a massive 577 students complete the Premier's reading challenge, which was almost every student who had agreed to participate. Cambridge primary school had 380 students complete the challenge.

In my electorate, Cambridge, Glen Devon, Corpus Christi, Glenn Orden, Werribee, Westgrove, Mossfiel, St Peter Apostle, Manorvale, St Andrews and Woodville primary schools, as well as Galvin Park Secondary College, Good News Lutheran School, Warringa Park, Heathdale Christian College, Hoppers Crossing Secondary College, MacKillop College, The Grange P-12 College and Thomas Carr College, participated in this year's Premier's reading challenge and were part of the 1222 schools who completed this year's challenge.

Over 212 000 students from prep to year 10 participated in this year's challenge and they read more than 3.8 million books, which was 200 000 more than last year. Teachers, parents, Premier's reading challenge ambassadors, librarians from schools and public libraries played an important role in motivating and inspiring students to discover the joys of reading. I would like to thank the participating schools who encouraged and supported every child in the Premier's reading challenge. I would also like to commend every student who completed this challenge.

Drugs: government policy

Ms WOOLDRIDGE (Doncaster) — Under this government and this Minister for Mental Health Victoria is now being branded the nation's drug capital. This is the real legacy of the Victorian Labor government. In early 2007 the former Premier and his government assured Victorians that heroin was no longer a problem, and they launched a so-called pre-emptive campaign on the drug ice. In doing so the Labor government ripped $14 million out of the heroin budget and diverted it into a headline-grabbing ice campaign.

At the time I, along with key experts, warned that cutting funds from heroin services was robbing Peter to pay Paul and that it would have disastrous consequences. In terms of the ice campaign, despite the fact the government has been repeatedly asked for details, very little of the $14 million funding for the ice campaign has ever been accounted for.

Ms Neville interjected.

Ms WOOLDRIDGE — That is right. The Minister for Mental Health has no idea at all. Importantly, let us have a look at what has happened with heroin. Recently released data by the government in its *Victorian Drug Statistics Handbook* reveals that in 2007 the number of heroin overdoses and heroin-related deaths have more than doubled in comparison with the previous year, increasing by 104 per cent and 105 per cent respectively. There was also an increase in the number of people needing to be admitted to hospital as a result of heroin.

At exactly the same time as the Labor government was slashing the heroin budget, heroin overdoses and heroin-related deaths were dramatically increasing. It is typical of this government that all advice fell on deaf ears. Our drug awareness and treatment programs are going backwards under this government.

Woodend Children's Park: opening

Ms DUNCAN (Macedon) — On Tuesday, 27 October I had the privilege of accompanying the Minister for Community Development, Mr Peter Batchelor, to officially open the Woodend Children's Park. The Brumby government contributed $170 000 towards this project, while the local community contributed more than $300 000, including a $150 000 donation by a local family in honour of their son Robbie Lodder, who died at the age of 11 following his courageous battle against chronic myeloid leukaemia. The Macedon Ranges Shire Council also made a significant contribution by donating the land and providing assistance in managing the project. There was also a federal government contribution.

One of the best features of this project was the community engagement and that was a critical feature. More than 500 entries were received from local schoolchildren for the Design Your Park competition, and the Macedon Ranges council also consulted with local teenagers on their vision for this community space.

More than 100 volunteers donated their time and energy to plan and build this amazing playground — and it is an amazing playground. It is very big and for adults it has barbecues and covered areas, with the capacity to hold outdoor concerts. It also has a flying fox and fantastic equipment for kids to play on.

Special mention needs to be made of Kellie Duff and Jane Walduck for their inspiration and commitment to this project. They were well supported by the members of the Woodend Children's Park committee, and together they have created this fantastic space, designed beautifully and catering to all ages. This group of dedicated residents have created a legacy for future generations to enjoy, and I pay tribute to their commitment.

Framlingham fire brigade: funding

Mr MULDER (Polwarth) — I recently visited the Framlingham Aboriginal Trust in south-west Victoria and discussed with it, amongst other things, the Framlingham fire brigade's application to the community safety emergency support (CSES) program for funding to purchase a light tanker to supplement its firefighting equipment.

On a tour of the area around Framlingham I noted that the area contains a large amount of forest and uneven terrain. It is also the home of the Framlingham Aboriginal Trust, including the Kirra health and community centre, 18 domestic dwellings and associated structures and sporting facilities. This area has seen two major bushfire incidents: Ash Wednesday in 1983 and the Framlingham forest fire in January 2007. The Ash Wednesday fire devastated the township, with loss of life and property. Given this history and the warnings about the upcoming bushfire season, the brigade is seeking to ensure that it is properly resourced.

The brochure explaining the CSES program, to which the brigade has applied, announces 'More money, more equipment' and goes on to state that funding for emergency services doubled in 2008–09, with an additional $11 million committed to the program. According to the brochure, these funds are provided for 'specialised' equipment to 'support local needs'.

The Framlingham fire brigade wishes to contribute to the protection of its community, and state government support should be provided to allow it to do so. This community is extremely vulnerable.

Mr Crutchfield interjected.

Mr MULDER — It is extremely vulnerable. They have asked for equipment in the past and they have been turned down. I call on the minister to make sure they are properly resourced.

Relay for Life: Murrumbeena

Ms BARKER (Oakleigh) — On Saturday, 24 October I was privileged to participate in the opening ceremony of the annual Relay for Life held at the Duncan MacKinnon Reserve in Murrumbeena. In opening the relay I read the Relay for Life oath, which is:

> In the name of all Relay for Life participants I confirm that we are here to celebrate the lives of cancer survivors, to support those fighting cancer, and to honour those we have lost.
>
> Our commitment will be symbolised in every step we take, each and every one moving us nearer to our goal — the goal of a cancer-free world for future generations.

Jen McLennan, a survivor herself, then read out the names of other survivors present, and we cut the ribbon and walked the first lap together, along with survivors, carers and the wonderful teams of people.

The Relay for Life is an inspirational annual event and, as a 24-hour event, there is a great deal of organisation involved. I thank most sincerely the volunteer committee for their dedication and hard work: Sue Wales, chairperson; Gary Scott, treasurer; Rebecca Penglase, secretary; Kelly Halliwell, team recruitment coordinator; Steven Tang, ceremonies coordinator; Pamela Peters, catering coordinator; Gabriela Ammendolla, facilities coordinator; Roger Cagliarini, occupational health and safety; Nichola Potter, activities coordinator; Ingrid Nugent, public relations; Bev Olbrich; Jan Hamilton; Elisah Warren; and Erich Olbrich. I also thank Kieran Dickson and Terry Hogan, who for a number of years have assisted by acting as MCs.

This year the Murrumbeena event will raise close to $75 000, and I thank all the participants for their determination, positive attitude and commitment to a truly inspirational event.

Rail: Ringwood station

Mr R. SMITH (Warrandyte) — For over three years now, on behalf of my community I have been lobbying this government for security cameras to be installed at the Ringwood railway station. Although currently there are some fixed cameras at the station, the cameras I have been asking for are moveable cameras that can be controlled and viewed by the local Ringwood police. It is worth noting that it is these police who have been amongst the many groups that have asked for my help in securing these cameras, groups which include both Maroondah City Council

and the Ringwood Chamber of Commerce and Industry.

I have highlighted incidences of crime with the Minister for Public Transport. I have raised the matter before in Parliament, and local papers have reported on the strong community support for this project. I have been courteous and, I believe, constructive in my communication with the minister. In August of this year I received assurances from the minister that I would within a short period receive some sort of outcome on this project. Yesterday, three months after these assurances, I was appalled to hear the minister intimate that she was now reluctant to assist my community on this issue because of the manner in which I raised the issue with her. Surely the minister's responsibility is to assist my community on the merits of their concerns, and decisions should not be made on whether or not to proceed because of the manner in which the issue was raised.

Security cameras at Ringwood station may be unnecessary after the 2010 state election, as a Baillieu coalition government will ensure that Victoria Police protective services officers will be patrolling Ringwood station and be available to assist and protect victims of violent crime at Ringwood station. In the meantime, however, those of my community who use Ringwood station need the police-endorsed protection of security cameras. I ask the minister put aside the politics and deal with the community issues she has responsibility for.

Sherbourne Primary School: Tournament of Minds

Mr HERBERT (Eltham) — I rise to congratulate students at Sherbourne Primary School following their terrific achievement of winning the regional, state, and Australasian and Pacific finals of Tournament of Minds in the primary division for applied technology.

Members will know that Tournament of Minds is an excellent school competition program in which teams of students work together to solve problems in a range of disciplines in an exciting public forum. The Australasian and Pacific championships were held last month in Brisbane, and Sherbourne Primary School was the only team from Victoria to receive first place at the championships. I would like to congratulate students Megan Deakin, Edie Morehu, Amber Steward, Danielle Peatling, Bradley Paterson and Stephan Ryan and their dedicated teachers, Karen Paul and Peter Watson, on this terrific achievement.

Their project entitled Movie Maniacs answered the question 'Did video kill the radio star?'. The challenge was to explain the re-emergence of the radio play as a popular form of entertainment by creating a documentary showing how radio plays were created and to demonstrate how and why audiences appreciate listening to them. All students put a huge effort into this competition and learnt a range of valuable skills. They thoroughly deserve recognition for their outstanding achievement. I congratulate all on their success. I know the entire local community is proud of their victory at Tournament of Minds.

Supreme Court: judicial appointment

Mr CLARK (Box Hill) — Last week the Attorney-General continued his attack on the independence of the Victorian judiciary with the appointment to the Supreme Court of a person whose status as yet another Labor mate appears to have been enormously helpful in winning preferment. Justice Iain Ross is a former assistant secretary of the Australian Council of Trade Unions and a former member of the Australian Industrial Relations Commission.

Following a brief period of practice as a solicitor, he was appointed to the County Court barely two years ago. His lack of prior experience of either the Victorian court system or the work of the County Court showed his appointment owed far more to his union and industrial relations background than it did to his qualifications for the bench. Since then he has had limited opportunity to gain any better experience of a court system, having spent most of his time as a vice-president of Victorian Civil and Administrative Tribunal. His appointment to the Supreme Court ahead of far better qualified and experienced judges and lawyers suggests he is being lined up to be appointed as president of VCAT when the term of the current president, Justice Kevin Bell, expires in March next year.

Courts: resources

Mr CLARK — Victoria's courts are also being undermined by the Attorney-General's failure to provide the courts, Victoria Legal Aid and the Office of Public Prosecutions with the staffing, facilities and logistical support they need to cope with their ever growing workloads. Rising levels of violent crime are putting enormous pressure on Victoria's courts at all levels. Long delays are adding greatly to the stress of all parties waiting for trial and increasing the risk that fading evidence will lead to unjust outcomes.

The Attorney-General has ignored the growing problems for so long that both the Chief Justice and Chief Magistrate have been forced to state their concerns, increasingly bluntly and publicly. The Attorney-General talks long and loud about justice, but the reality in Victoria is that justice for many is delayed or denied because of the Attorney-General's failures and neglect.

Banksia-La Trobe Secondary College: Pavilion program

Mr LANGDON (Ivanhoe) — Today I commend Banksia-La Trobe Secondary College for its outstanding work seeking to re-engage high school students from at-risk backgrounds in secondary education. In 2007 Banksia-La Trobe Secondary College began the Pavilion program. The program seeks to ensure that young students who, for whatever reason, wish to discontinue their high school education remain engaged in high school education. The program pursues this objective by providing students with an individually tailored and relevant curriculum which meets the standards of the Department of Education and Early Childhood Development.

The Pavilion program also attempts to create and maintain a positive, supportive and productive learning environment. Teachers and social workers operate under the fundamental principles of unconditional positive regard, respect, honesty and empathy and employ a person-centred approach when dealing with students. The learning environment is also a holistic one with students encouraged to grow as a whole person, developing socially and building self-esteem and confidence. The program has enjoyed success and has re-engaged 140 students, who would have otherwise fallen by the way, with their education. In 2007, 1 student completed Year 12; in 2008, 7 students completed Year 12; and this year the program is on track for 14 students to complete Year 12.

This personalised and innovative approach to education has helped students in danger of falling out of the system and consequently losing all the opportunities an education affords young people. By staying engaged they enhance their education as well as their social skills and that encourages and enables students to continue with education or transition into employment or vocational training, all at their own pace. I again congratulate Banksia-La Trobe Secondary College for changing 140 lives.

Liquor: licences

Mr TILLEY (Benambra) — Labor's panicked proposed changes to its liquor licence fee do not resolve the fundamental flaws which make the fees unfair to small businesses and local communities across north-east Victoria. I, like my coalition colleagues, support a move towards a genuine risk-based liquor licensing system and better planning for licensed premises, but Labor does not. Public safety and the need to reduce alcohol-fuelled violence is an issue this government has failed to address in its 10 long years in office. However, the government's intentions must be recognised for what they are — a tax grab. We know this because Labor admitted as much in its regulatory impact statement, saying the tax hikes:

> … are not in themselves expected to bring about dramatic changes in licensees' behaviour.

Recently local Benambra licensees met to discuss the impact that this $20 million tax grab will have on their businesses and the communities they serve. These liquor fee increases will force many local pubs to cut staff numbers and reduce sponsorship of community events and sporting teams. Labor's tax grab will also be paid for by volunteer, not-for-profit groups across the state, with some categories of licences rising by more than 1000 per cent. Also, mum and dad mixed grocery stores that stock a few bottles of wine will pay exactly the same fee as massive booze barns. This is unfair to small business and is obviously not based on risk

Cutting down alcohol-fuelled violence is an imperative. It is something Labor has failed to tackle. However, Labor's changes to liquor licence fees are nothing more than a grubby tax grab.

Grovedale community centre: achievements

Mr CRUTCHFIELD (South Barwon) — It is my pleasure to inform the house of an amazing group of people within my electorate, who are the heart and soul of the thriving Grovedale community centre. I recently had the pleasure of attending the centre's annual general meeting, where special guest Chris Van Ingen spoke on inclusion, and guests were entertained by Delwyn Jenkins and her dynamic belly dancers and the Blues Bustin Choir and leader Robyn Hodge.

I have a very close relationship with this centre and its recently retired president, Deidre Slater. Together we fought hard with many in the community to get this centre established, and the results and usage today are proof that this was a strong community victory for a vital facility. Deidre was president of the centre for two years and has done a simply amazing job getting local

groups and residents involved and caring for the centre. Her vision was simple — creating a community centre that would be fully utilised by the community — and she will continue to be involved in a smaller capacity with the centre.

I would also like to make special mention of committee members who have worked tirelessly to make the facility a success. They are: treasurer Noela Grove; secretaries Pam Lynch and Elaine Sertic; general committee members Barbara Dawson, Jan Clark, Sandra Rolfe, Lyn McLaren and Margaret Moritz; and centre coordinators Iris Speare, Robyn Hodge and Nicole Rowan.

I also congratulate the 2009 elected committee members who have taken on the responsibility of continuing the exemplary work carried out by previous committees and further growing the facility within the Grovedale community. They are: president Dale Kelly, vice-president Sandra Rolfe, secretary Elaine Sertic and treasurer Noela Grove. I wish the committee and the various groups and residents that utilise Grovedale community centre another very successful year of operation and growth.

Leila Shaw Memorial Gallery: opening

Mr BURGESS (Hastings) — I congratulate the Somerville, Tyabb and District Heritage Society on the opening of the wonderful Leila Shaw Memorial Gallery. The establishment of this gallery represents the culmination of the hard work and dedication of the many people who make up the society, including president Ken Archer, secretary Brenda Thornell, patron the Honourable Ron Bowden, and of course Mrs Leila Shaw. It was through Mrs Shaw's vision and understanding of the rich history of the local area that the society began in 1996. Mrs Shaw has also provided the basis for the society's collection, a testament to her skill and dedication as a local historian.

I sincerely commend the Somerville, Tyabb and District Heritage Society for all it has achieved and the contribution it has made to the history of Somerville, Tyabb and the surrounding area. This society continues to work tirelessly to enhance the accessibility of local history to many.

Hastings electorate: men's sheds

Mr BURGESS — Men's sheds are a great way for men of all backgrounds to connect with each other. It is a great concept that combines men coming together, sharing skills and working on projects that can include anything from woodwork to the restoration of old cars. While men's sheds provide men with an excellent opportunity to socialise and learn something new, they are also a badly needed forum for addressing key issues relating to men's physical and emotional health.

There are several men's sheds in the Hastings electorate, and it is fantastic to see these valuable organisations grow in popularity as more people in our communities realise the benefits they bring to men's health and wellbeing. The Somerville Men's Shed is a project of the Somerville community house and is located at Freshfield Alpacas farm, and the Western Port men's shed is located at Hastings Neighbourhood Renewal. Men's sheds would not be able to operate without the commitment and generosity of volunteers like Gary Rogers of the Somerville shed and Terry Kelly of the Western Port shed.

I commend those involved in this great initiative and encourage all men to become involved in their local shed.

Hastings Western Port Historical Society: publication

Mr BURGESS — I would like to congratulate the Hastings-Western Port Historical Society on the publication of *Hastings — People and Places — Volume III*. The latest addition to this wonderful series was officially launched on 10 October by Professor Weston Bate, OAM.

Planning: Edgars Creek parkland

Ms CAMPBELL (Pascoe Vale) — I thank all those who are working in a cooperative spirit of partnership on the Edgars Creek-Merri Creek parklands task force. The Minister for Planning recently appointed a task force that aims to ensure planning for public open space. Pedestrian and bike path facilities are considered in the context of increasing urban development within the Edgars Creek-Merri Creek area. The task force membership includes representatives from the Merri and Edgars Creek Parklands Group, Friends of Edgars Creek and the Department of Planning and Community Development (DPCD); the mayor and chief executive officer of Moreland City Council; the chief executive officer of VicRoads; and me as the chair.

Our November meeting included an overview of the roles of the members of the task force, including the roles of Friends of Edgars Creek and the Merri and Edgars Creek Parklands Group. DPCD representatives made presentations on issues such as Melbourne @ 5 Million, gave a general overview of the role of the DPCD and advised of the status of some of

the major development sites in the nearby vicinity. They also provided a background of the general urban design principles relating to parklands. Preliminary information was provided regarding the impact of the Kodak plant site on the Edgars Creek-Merri Creek confluence, and a fact sheet prepared by the developer was provided to the task force members. Representatives of the Friends of Edgars Creek presented a summary of the role they play and the work they do, which includes enhancing the creek. The group also advised that its work extends the full length of the creek up to Epping and that it has numerous long-term projects under way. They presented copies of newsletters to the task force and advised in detail of the work they have carried out to date. I advised the task force that at the last election the state government committed to the retention of the Edgars Creek parkland.

Buses: Kilsyth electorate

Mr HODGETT (Kilsyth) — What on earth has happened to the Knox-Maroondah-Yarra Ranges bus service review? The review was announced with great fanfare, trumpeted as yet another state government initiative to improve local bus services in Knox, Maroondah and Yarra Ranges. The Brumby government's public relations machine went into overdrive as taxpayer dollars were spent on advertising, spin and propaganda campaigns telling us that the state government is working with local councils, public transport operators and the community to identify how local bus services can be improved. We were told how to get involved and how to have a say on our bus services. We were invited to community consultation meetings and informed about state government community workshops.

I attended one of these workshops in February this year to make representations on behalf of local residents and my local constituents. I took the opportunity to comment on the current bus network, to identify and discuss existing issues, and to put forward the concerns of local residents and their suggestions for improvements to the local bus services. I am informed that both the Maroondah City Council and the Yarra Ranges Shire Council made submissions to the bus service review. This process commenced in October 2008 and all submissions have closed, but we have heard nothing since. The obvious question now is what has happened to the bus service review.

I am informed that the review has been completed, but the Brumby government is refusing to release the report or any of its findings and recommendations. What is the secret? Why will the government not take note of our concerns and suggestions for improvements? We need more low-floor bus services on the local bus network. We need more services on the weekends, and particularly on Sundays. We need more frequent services in Croydon, Mooroolbark, Kilsyth and Bayswater North, and I call on the government to upgrade the Mooroolbark bus interchange.

Merri Stationeers

Ms RICHARDSON (Northcote) — On 6 October volunteers from the Merri Stationeers gathered at Merri Station to proudly receive grants of $6000 and $2000 respectively from VicTrack and Connex to clean and landscape neglected areas around the station. In addition they received support from the Darebin City Council and Keep Australia Beautiful Victoria to purchase plants and landscaping materials.

Undeterred by the rain and the chill on the day, the Merri Stationeers turned out to celebrate this acknowledgement of their efforts. In fair weather and foul they have completed a number of working bees at the station. Most spectacular of the projects so far is the planting of a garden bed along the platform on the western side of the station. I would particularly like to acknowledge the efforts of Janna McCurdy, Patricia McGuane, Jela Ivankovic-Waters, Liz Wotherspoon, Anna de Leeuw Pool, Jenny Bastas, Heather Hesterman, Rohan Griffiths, Anne-Marie Rourke, Anne-Marie Tenni and Matt White. The transformation of this once-neglected site is a credit to them.

Merri Stationeers is a Keep Australia Beautiful Victoria program managed by Sustainability Victoria. It supports community members in making improvements to their local railway station precinct, through activities such as developing garden beds. There are currently 28 stationeer groups throughout regional and metropolitan Victoria. We know that railway stations that are cared for by locals provide better facilities for train travellers and reduce vandalism. Equally importantly, groups like this engender a sense of pride in the local community. Our community is rightly proud of all that our Merri Stationeers have achieved since their humble beginnings just over 18 months ago.

FAIR WORK (COMMONWEALTH POWERS) AMENDMENT BILL

Second reading

Debate resumed from 10 November; motion of Mr HULLS (Attorney-General).

Ms THOMSON (Footscray) — I have a few minutes left in the time allocated for my contribution to this debate. I remind members that what we heard in the

contribution from the new shadow Minister for Industrial Relations shows a failure to understand the industrial relations system that has been put in place.

An honourable member interjected.

Ms THOMSON — In response to that interjection, if the shadow minister had undertaken to get his own personal briefing on the bill, he might have made a better contribution. It helps to take up the option of having a briefing.

The industrial relations survey indicated that 98 per cent of Victorian workplaces did not have industrial relations action taken in 2008. Let us be clear about this: the way in which we will create the economic drivers, the growth and the kinds of industries we will need in the future will be through employees and employers working together. It is outrageous to continually make trade unions the bogeyboys. In fact if you go back to the time when changes were made to the vehicle building industry, you will find it occurred as a result of unions sitting down with employers and working out how to modernise that industry to make it viable for the long term. It is about sitting down with unions, talking about what a sector or a workplace may need and being fair to employees.

The workplace advocate, which the Victorian government had to legislate for because WorkChoices was totally inadequate in its protection of employees, had to investigate more than 100 complaints because WorkChoices did not work for the individual employee, and it never would. A woman or man from a migrant background who worked in a very large organisation had no chance to negotiate their own individual contract. WorkChoices was not fair and did not work. The system was proven to have so many flaws that all the amendments made by the former Howard federal government were too little, too late. None of it should have been introduced into the Parliament. The people of Australia spoke loud and clear at the 2007 federal election and said, 'We do not want WorkChoices'. It is about time the opposition in this place woke up to the fact that the 2007 election was very clear in sending the message, 'WorkChoices does not work. It is not what we want, and we want to go back to a system where the basic rights of employees are fair'.

Employers in small businesses, and businesses generally, wanted to know the basic rights that employees are entitled to and that their competition must also provide. They wanted to know what the rules were. They did not want to employ people to undertake that task for them; they did not want to have to pay lawyers or human relations experts. They wanted to know if there was a set of standards by which they could work when they were employing staff. We now have such a system back in place. We now have a system that is fair to workers and employers and that will see the country grow and develop.

Let us not see the industrial relations system as an avenue for war. It is actually an opportunity to create balance within the workplace and to give unions their rightful place in helping to protect the most vulnerable in our workforce and working with employers to secure our future.

Mr JASPER (Murray Valley) — I am glad to join the debate on the legislation before the house. I listened to the contribution from the member for Footscray. She has rose-coloured glasses; there is no doubt about that.

I think you need to have grown up in business to understand business. I talk to business people across my electorate of Murray Valley, and in fact I have grown up in business myself in the motor industry and I understand the difficulties for employers and employees within an industry. Most employers want to have a good relationship with their employees. They understand that their employees are the strength of their business, but they need a situation where there is fairness to both sides. In years gone past we have seen many cases, particularly in bigger businesses, where the unions have come in and caused huge difficulties within the state of Victoria and indeed across Australia.

The member criticised the WorkChoices legislation. I have got to say to her, when you look at the effects of the WorkChoices legislation, overall there were many great things that came out of that legislation. Part of the reason that it became so criticised prior to the last federal election was that the unions poured millions of dollars into advertising; some of that information was not accurate and was not able to be combated prior to the election. Whilst there may have been some concerns with the operation of the legislation, employers were fairly happy with the situation overall.

The legislation before the house is a bill to amend Victoria's referral of various powers to the commonwealth, arrangements which were made earlier this year, in light of the more recent referrals to the commonwealth agreed to by the states of South Australia and Tasmania, to correct minor errors and for other purposes. The bill is not a hugely important bill as far as the Parliament is concerned, but it does present us with an opportunity to be able to speak on the new legislation that is operating within Australia — that is, the federal Fair Work Act. Everybody will be aware

that in the 1990s the coalition state government handed over a lot of industrial relations powers to the federal government so that the provisions could be operated effectively from a federal level. We now see other states of Australia coming on board and handing over their industrial relations powers to the federal government. This is a further review and refining of that legislation at a federal level.

I applaud the state government for seeking to protect Victoria by its being able to terminate some of the provisions that have been passed to the federal government if the state government believes they are not effective and appropriate for the state of Victoria. Whilst those powers have been passed to the federal government and we are refining them, there is also the ability to terminate that amendment reference to the federal government. There needs to be three months notice if the commonwealth seeks to amend the Fair Work Act in any way inconsistent with the fundamental workplace relations principles while the state's initial reference and transfer reference continue to be in force. So there certainly are some provisions which will protect the states.

I want to just digress and talk about the effect of this industrial relations legislation on particular industries and particular people across Victoria, and indeed in my electorate of Murray Valley. I refer to a letter which I received from Wayne Dyson from Dyson's supermarket, an IGA supermarket in Numurkah in the western end of my electorate. He wrote to me in May of this year:

> I am writing to you to express my concerns in regard to the introduction of the new general retail industry award which will become effective for my business as from 1 January 2010.
>
> I operate a small business, which is an independent supermarket, in your constituency. I employ full-time, part-time and casual employees who work across a seven day working week. Many of them are working mothers and students who rely on flexible hours and casual work.
>
> The federal government has spent the last 18 months working towards reforming workplace relations laws, which includes the introduction of a new general retail industry award. If this award becomes operative it will have a serious damaging effect on my business. We provide an important service to our local community but we may be unable to do that in the future if we are required to pay these large increases. For example, under the new award we will be required to pay a Sunday rate of $39.48 per hour to a casual employee and $31.58 per hour to a full-time employee.

I will quote one more paragraph from his letter. It goes on to say:

> Increased penalties and higher loadings will undoubtedly affect the viability of our business. We strongly believe that with the economic downturn this is not the right time to make these drastic changes to the award system.

I wrote to the federal Minister for Employment and Workplace Relations, the Deputy Prime Minister, Julia Gillard, and received a response from her. I quote from the minister's letter dated 13 July 2009:

> The government appreciates the vital role that small businesses make to the Australian economy, particularly in terms of job creation. For this reason, in finalising the passage of the act through the Parliament, the government agreed that the objects of the act will acknowledge the special circumstances of small and medium-sized enterprises and that a special information and assistance unit for small and medium-sized enterprises will be established within the Office of the Fair Work Ombudsman.

The letter goes on to say:

> The creation of modern awards is also not intended to disadvantage employees or increase costs for employers.

It is going to increase costs for employers. The only saving grace in the letter from the minister is that she indicates that:

> The government has made submissions to the AIRC —

the Australian Industrial Relations Commission —

> supporting the use of transitional provisions in modern awards. In its most recent submission of 29 May 2009, the government encouraged the AIRC to consider the needs of the particular industry and to use the full five-year period to phase in changes where appropriate.

If we can get a phase-in period that will be of some assistance. I also wrote to the state Minister for Industrial Relations and he provided some comment, but additionally he indicates:

> The new Fair Work Act, which became operational on 1 July, also enables employers and their employees to enter into agreements that provide additional flexibility. The provisions in the modern retail industry award, which allow for flexible application of some terms, may address some of Mr Dyson's concerns.

In the time that I have left, I want to say that most employers want to operate effectively within the guidelines but they also want to be fair to their employees. They know that their employees are critical to their profitability in the long term and they want to have a balance between the rights of employers and employees. I have some concern about the change of government and the removal of WorkChoices because, whilst there was some difficulty with it, I believe it was working very effectively.

The work was undertaken by the Victorian government, and in the last election the unions together with the federal Labor government produced information which

was not accurate and encouraged the people in Victoria to vote out the coalition government at a federal level.

Here we have a situation of changes which will add to the costs for employers and make it more difficult for small businesses, such as Dyson's IGA at Numurkah and others that have contacted me, to operate effectively. With the new arrangements that are being put into place, particularly the charges and costs involved, they will have to operate outside the usual work hours. They will be operating on Saturdays and Sundays and at other times when there are holidays.

This is one of the critical issues which will be facing many of the businesses across my electorate and the rest of Victoria and Australia. Small businesses will be in the situation where they will have to operate for long hours outside the normal hours between 9.00 a.m. to 5.00 p.m., which are in effect in most places, and they will be saddled with huge costs. One of the employers I spoke to recently talked about the increase in the charges for their business and having to work at weekends, on a seven-day-per-week basis. This guy, who is working his business with his wife, said to me, 'Mum and I will work harder. We will work on the weekends. So that we will not have to pay the higher charges for people working at those times, we will work ourselves'.

There is talk about flexibility. The letters I have received from federal and state ministers indicate we need flexibility to protect businesses and to be able to provide work when it is required and at the prices and charges they are able to impose.

Mrs MADDIGAN (Essendon) — I am pleased to rise in support of the government's Fair Work (Commonwealth Powers) Amendment Bill 2009. I must say I was disappointed by the member for Warrandyte's first excursion into this house as the shadow Minister for Industrial Relations. The member for Warrandyte is a well-educated and sophisticated young man, and one would have hoped that he would have provided for us a sophisticated industrial relations policy that demonstrated that he is well-educated and that gave some idea of what the Liberal Party's policies on industrial relations might be in the future. But, regrettably, he failed that test badly. He indulged in a substantial amount of union bashing, which we really have not seen since the 1980s.

If you look at the workplace generally, as the member for Murray Valley mentioned, you see that sensible employers understand that good employers tend to have good employees. That, of course, is a benefit to both the employers and employees. Some of the most successful organisations are those where the employers and employees work together very well, where the employer respects the employees and vice versa. But to start a union-bashing attack is a divisive thing for the community and is a retrograde step. I am sorry that the member for Warrandyte chose to take that approach.

The other thing that concerned me was that a number of things the member for Warrandyte said showed a strong opposition to unions. We have seen that coming through in speeches he has made before. I am not sure why he would dislike unions so much as they are a fairly recognised part of the workforce. Whilst he said he does not have anything against unions, he made it clear as early as May 2007 in a debate about workplace entitlements that he thought unions were irrelevant. As we listened more and more to the member for Warrandyte's contribution we heard that he is a strong proponent of the previous WorkChoices legislation. I will say for him that he did have enough sense — even though he espoused the virtue of WorkChoices the whole way through — not to mention the word 'WorkChoices'. That was sensible because even he must know that, whilst he might still be a strong supporter of WorkChoices, the community of Australia has made it very clear that that is not its view.

I want to refer to a couple of points he made. He said this new referral covers an additional 30 per cent of the workforce. That is simply wrong; it is not correct. The referral simply extends the application of the commonwealth's fair work system to those who would not otherwise have been covered. This bill makes changes to the Victorian referral to ensure consistency between various states' referrals to the commonwealth and the application of the intergovernmental agreement which Victoria and the other states have made with the commonwealth.

This is the whole point of this bill, which I am not sure the opposition spokesman covered. This bill follows on from the last bill. It was identified during the debate on that bill that we would have a further bill. The legislation is required to accommodate initially Tasmania, South Australia and Queensland to ensure there is a standard process right across the commonwealth. I cannot see why anyone would think there was anything wrong with that and speak so strongly against the bill, even though I understand the opposition's position is to support it. It just seems a common-sense thing to do. You can only assume, if you listen to the comments made by the member for Warrandyte, that he does not want a consistent system across the commonwealth and states. That does not makes sense at all.

In addition, the member for Warrandyte misunderstands the application of the fundamental workplace relations principles which apply in the context of the intergovernmental agreement (IGA) between the commonwealth and various states and the termination provisions relating to the IGA itself. During the debate on Tuesday the shadow minister sought comfort from government members that individual flexibility arrangements would not contravene clause 4 of the bill. However, the function of clause 4 is such that it is not possible to contravene this provision, as the Victorian bill is simply the means by which the commonwealth fair work clause can apply. If the shadow minister had sought a briefing from the department, I know its officers would have been more than happy to make these provisions clear to him.

If we look at the overall aspect of the bill, we realise the member for Warrandyte has some way to go. I would like him to think again about his view on industrial relations. We have had a couple of quotes from small business owners. I have a lot of small businesses in my electorate of Essendon, and I know that the employers and employees there do not want to return to an adversarial system. They prefer to work together in a way in which they are not coerced to work together but willingly work together in a way that gives both the employers and the employees protection. That is the system that has been working in Victoria since the change in government and the removal of WorkChoices legislation, and it has proved to be very successful. Good employers do not want to be fighting with their employees; they work with them for the benefit of themselves and the profitability of their organisations. Many of them would be horrified to think that the opposition policy is to return in the future to a system of union bashing and attacking unions, which is unsettling for the whole industrial relations system.

The opposition also suggested that there has been a significant increase in industrial disputes since the changes. There is no evidence of that, either. In fact, if members look at what has occurred under the Brumby government, they will see that working days lost to industrial disputation remain at historically low levels. I know that the opposition does not like to hear it, but it is the fact. In the June quarter 2009, Victoria's level of industrial disputation of 4.6 working days lost per 1000 employees is comparable with the national average of 5; in fact, it is slightly below it. The reality is that since our government was elected in 1999 industrial disputes in Victoria have declined. They have declined. Whether the opposition likes it or not, that is the reality. That is because we have a much better working arrangement with both employers and unions. The state government has worked extremely well with employer organisations as well as union organisations to be able to have a much better system. I remind members of the opposition who support the return to the sorts of policies that were around when the Kennett government was in power, including presumably its support for WorkChoices, that the average number of days lost per quarter due to disputes during the Kennett government was 112 000. This is well above the 11 000 recorded in the June quarter of 2009 — —

Mr Clark interjected.

Mrs MADDIGAN — Not under the Howard federal government. The poor old member for Box Hill thinks the Howard government is still in power. Let me tell him that I think he will find that in the June quarter 2009 the Prime Minister of Australia was Kevin Rudd and that an Australian Labor Party government is in power. I think he will find that, in fact, it is our legislation, the fair work legislation, that has brought this about.

There has been broad support from the community for fair work legislation, both the commonwealth and state legislation. I have no doubt this support will continue in future to provide a better industrial relations system for Australia and Victoria, a better environment for workers, a better environment for employers, many of whom are supportive of our legislation, and a much better environment for the people of Victoria and Australia.

I look forward to this bill going further. We can perhaps look forward to a much more sophisticated and well-educated approach to industrial relations from the current government than what we heard from the member for Warrandyte on Tuesday.

Mr CLARK (Box Hill) — I am pleased to join this debate, and I congratulate the member for Warrandyte, the new shadow Minister for Industrial Relations, on his contribution leading on behalf of the opposition in this debate. In their contributions the members for Footscray and Essendon floundered around trying to find points of criticism, with little success at all.

To go back and look at the big picture, over the past 20 years or so in Australia there has been an enormously beneficial transformation in workplace relations that has led to vast increases in productivity and increases in the standard of living. However, the changes being driven at a federal level under the Rudd government by Deputy Prime Minister Gillard are threatening to undo a huge amount of the beneficial

change that was achieved, both under the Howard government and under the Keating government.

As many well-informed observers have pointed out, in fact the current Rudd government reforms in many respects go back to the system which was in place prior to the reforms that were initiated under the Keating government; they go back to an increasingly centralised and inflexible wage fixing and industrial relations system. That will have a long-term, detrimental effect on Australia's productivity and our standards of living. Let us hope that the threat posed by that is recognised and responded to before it bears increasingly bitter fruit for the nation.

The member for Essendon made a series of claims about industrial relations statistics. Again, the clear record is that levels of industrial disputation around the nation fell consistently over the term of the Howard government. Since the election of the Rudd government those levels have generally been increasing, including in Victoria, although there is volatility on a quarter-by-quarter basis and the member for Essendon concentrated on the last quarter's figures.

Victoria has a particular interest in having a stable, fair and flexible industrial relations system and one that keeps a tight check on union lawlessness. There are many responsible union leaders around and there is nothing that we, on this side of the house, are saying that denigrates their good work in representing their members. However, as in so many areas, it is the minority that can bring the whole regime into disrepute, and it is the minority that can cause terrible and devastating consequences for everybody else.

Here in Victoria we have militant unions like the Construction, Forestry, Mining and Energy Union (CFMEU) and the Australian Manufacturing Workers Union that have been throwing their weight around since the election of the Rudd government. We have seen that with the West Gate Bridge lawlessness, thuggishness, picket lines and violence. The ALP needs to come to grips with the fact that the CFMEU continues to be one of its affiliated unions, and it continues to accept money from the CFMEU into its campaign coffers. By that very fact the ALP continues to condone the sorts of violence and lawlessness that a number of the key figures in the CFMEU perpetuate and condone. Until the Labor Party confronts that issue and either expels the CFMEU or brings it back to a commitment to act as a law-abiding union, as other unions are, then there will continue to be this serious threat hanging over Victoria.

That threat is compounded by the knackering of the Office of the Australian Building and Construction Commissioner (ABCC) under the Rudd-Gillard reforms. Despite the claims by Deputy Prime Minister Gillard that she is maintaining a strong cop on the beat, it is clear that, in large measure, is an illusion. A range of the changes that have been made to the ABCC arrangements and for its successor are going to drastically hamstring that organisation, including the obligation to seek administrative tribunal approval before exercising a range of its powers, which is going to make effective action against union lawlessness very difficult indeed.

We had a number of wild claims from the member for Footscray about the workplace rights advocate in Victoria, which was nothing but a taxpayer-funded political campaigning device. We saw that by the fact the government had to be dragged kicking and screaming to any form of commitment to provide a report on the final period of the activities of the workplace rights advocate. When the report was produced it fudged accountability for that final period; it did not give any breakdown and simply gave aggregate figures for the alleged activities of the workplace rights advocate over its entire term of existence.

Of course our workplace rights advocate was a sham, because the commonwealth workplace ombudsman, which was established under the Howard government and continued under a different name under the Rudd government, has been vigorous in upholding the law, and in particular in taking action against delinquent employers, as indeed should be the case.

The bill before us is in some respects a mechanical bill. It is said by the government to reflect recent referrals agreed to by South Australia and Tasmania, and to ensure consistency. In many respects the amendments made by this bill are to make a series of corrections and opportunities for improvement to the bill that went through the Parliament earlier this year. To the extent to which they make those corrections and improvements, we have no objection.

We have concerns about the terms in which the references to fundamental workplace relations principles are couched. The member for Essendon gave a similar account of those to the account provided to us in the departmental briefing. At a legal level it is a correct statement to say the fundamental workplace principles only have operation in relation to the termination on three months notice of the amendment referral, but when you have a clause in legislation that says the following are the 'fundamental workplace

relations principles' under this act, it is intended to be a message that is far broader than simply a mechanical trigger for a termination of an amendment referral.

The point that we on this side of the house have been making is that there is a degree of humbug in the wording of these 'fundamental workplace relations principles', because one of those principles is that the commonwealth Fair Work Act should provide for collective bargaining at the enterprise level with no provision for individual statutory agreements. However, we already have on the books at a federal level provision under Labor's modern awards for individual flexibility agreements which can vary the terms of award to suit the genuine needs of the employee and employer.

While Labor goes around with its hand on its heart, saying, 'We are going to have nothing to do with these wicked individual statutory agreements', in fact the Gillard regime already provides for individual statutory agreements. On that basis already there exist the preconditions for Victoria, should it see fit, to terminate the amendment referral on three months notice if this bill becomes law. We are again seeing a huge inconsistency with what the Labor Party is on about. It is saying one thing to one group of people and another thing to another group of people. That is the key issue we highlight on that aspect of the bill.

Overall it is welcome that the Labor Party recognises the merits of the Kennett government's decision to refer virtually all of Victoria's workplace relations power to the commonwealth in order to achieve an integrated, single industrial regime in Victoria. That regime has served Victoria well over recent years, and it will continue to serve Victoria well into the future. It is on that basis that we do not oppose this bill.

Mr NOONAN (Williamstown) — I rise to make a contribution in support of the Fair Work (Commonwealth Powers) Amendment Bill. Before the member for Box Hill leaves the chamber, I just want to acknowledge how refreshing it is to hear the member for Box Hill finally acknowledge that responsible unionism does exist in Victoria. However, I do not think there is any chance of him receiving an honorary membership of the Construction, Forestry, Mining and Energy Union in any good time. The best he might hope for is an invitation to the Christmas barbecue.

An honourable member — He is a vegetarian.

Mr NOONAN — He is vegetarian, too. I acknowledge that he was prepared to put on the record the fact that responsible unionism does exist in this state. I will speak a bit more about that later in my contribution. As other members have pointed out, this bill is not substantial in detail; it is really mechanical in nature. Its objective is to finetune Victoria's workplace relations referral framework to the commonwealth's Fair Work Act to ensure uniformity across other states.

The current referral framework for Victoria is set down in division 2A of part 1–3 of the commonwealth Fair Work Act 2009. The original referral arrangements came into effect on 1 July 2009. As a result, the commonwealth's new workplace laws now apply to all Victorian employers and their employees, subject to the public sector exclusions from the referred matters.

As outlined by the Attorney-General in his second-reading speech, the changes to this bill are designed to help accommodate the referrals being made by South Australia and Tasmania to join Victoria as full participants in the national system. The ultimate aim is to enable the commonwealth to present uniform referral arrangements to all states.

The bill also introduces some minor technical amendments updating references to federal workplace relations laws and industrial instruments in various state acts. Importantly, the bill will have no immediate impact on the operation of the referral from the point of view of Victorian workers or their employers. As the Attorney-General also observed in his brief contribution on the bill, it is very much in the interests of all Victorian workers and employers that the state participate in a national workplace relations system based on the fair work laws.

As we all know, the federal government's Fair Work Bill replaced the Howard government's WorkChoices, which itself came into effect in March 2006. Much has been said in this debate about the demise of WorkChoices. Many might point to the introduction of WorkChoices back in 2006 as the beginning of the end for the Howard government.

I have listened to all of this debate, and it is interesting that none of the Liberals or Nationals in this place, through this or previous debates on workplace relations, have distanced themselves in any way from WorkChoices. I am pleased that the Liberals and Nationals still hold on to WorkChoices. It indicates that they are very much in denial and remain in denial. They cannot accept that WorkChoices was an attack on the Australian values of fairness and equality. This was a point captured magnificently by the Deputy Prime Minister in her second-reading speech to the commonwealth Parliament on 25 November 2008 when she is reported as saying:

> Over a century ago at Federation, Australians decided that we would be different to other nations — democratic, yes, with parliamentary institutions, judicial independence and individual rights similar to those of the other great democracies like the United Kingdom and the United States of America, but without their wide social inequalities.
>
> And our Australian version of fairness began with industrial relations:
>
> > with the concept of the living wage, determined first in the Harvester judgement;
> >
> > with the idea that people's democratic rights don't cease when they step onto the factory, shop or office floor;
> >
> > with the recognition of the need for time for family, relaxation and community; and
> >
> > with an end to divisive industrial conflict.

The Fair Work Act undoes the damage done by WorkChoices, carrying forward the Australian ideal that our democratic rights do not end when we step inside the workplace. It balances fairly the needs of employees, unions and employers in such a way that will allow Australia to continue to be competitive and prosperous.

The Fair Work Act 2009 delivers on key Rudd government election commitments, putting in place a new workplace relations system built on a fair and comprehensive safety net of minimum employment standards; a system that at its heart has bargaining in good faith at the enterprise level; protections from unfair dismissal for all employees; protection for the low paid; a balance between work and family life; and the right to be represented in the workplace. This new workplace relations system will provide a safety net of fair, relevant and enforceable minimum terms and conditions for Australian workers.

The safety net comprises 10 legislated employment conditions covering essential conditions such as maximum weekly hours, leave, public holidays, notice of termination, redundancy pay and the right to request flexible working arrangements. These safety net conditions will apply to all employees in the federal system from 1 January 2010.

Other features of the new Fair Work Act include good faith bargaining at the enterprise level, bargaining assistance to the low paid through Fair Work Australia, clear and tough rules on industrial action, improved right of entry provisions for unions, protections from unfair dismissal for all employees, a right to be represented in the workplace and a move to a new, modern award system. Most importantly, the new Fair Work Act rids our industrial relations framework of unfair Australian workplace agreements.

Predictably there has been some discussion about the role of unions in this particular debate and it is to be expected. Whilst the coalition might sneer at the role of unions, the fact is that they do play a vital role in our Australian democracy. They give voice to workers who cannot speak for themselves or who are afraid to do so. They safeguard the wages and working conditions that have been fought for for over 100 years in this country. The unions have fought for and won key rights such as universal superannuation. Who in this day and age would take that away from any worker?

The unions have also won extensive rights in a whole range of areas including long service leave, sick leave, annual leave, maternity leave, a right to part-time work after a period of maternity leave, maternity leave, occupational health and safety laws, the 38-hour week, regular rest periods and an opportunity to bargain collectively. Importantly, who would have begrudged union representation to those James Hardie workers who were affected by asbestos-related illness and continue to be?

I expect that some members opposite would see no role for unions in a modern society. But I am proud of the work that unions have done through this period. They have restored the balance in this country and they have restored fairness to workers. They have done what has been expected of them. They have encouraged people to turn out onto the street to demonstrate and, importantly, they have changed the political landscape in this country. I take some heart in the fact that those sitting opposite do not seem to have abandoned WorkChoices but are sticking to it, because while they stick to WorkChoices they will remain out of government both at the state and federal level.

In conclusion I want to make it clear that I will support any bill that creates a fair working system for employers and employees in Victoria's workplaces. Whilst technical in detail, this bill reaffirms that the Victorian government supports the commonwealth's Fair Work Act 2009. This act provides workplace relations laws that are fair to working Australians whilst at the same time being flexible for businesses, promoting productivity and economic growth for Australia's future prosperity. I commend the bill to the house.

Mr MORRIS (Mornington) — This must be some sort of record. We only dealt with the original Fair Work (Commonwealth Powers) Bill on 3 June this year, yet here we are, not even six months later, amending the original bill. I think the term that was used was 'this is a refinement' consequent on the decisions of the parliaments of South Australia and

Tasmania to refer powers. 'Refinement' is an interesting term.

It was also interesting to note the words of the minister in the second-reading speech:

> Our referral must be amended to reflect these changes and to enable the commonwealth to present uniform referral arrangements to all states.

I would have thought that if the original legislation was all it was cracked up to be, allegedly pretty good stuff, then the commonwealth and the states of South Australia and Tasmania would have fallen into line. So clearly the original legislation was not up to much at all. We are once again confronted, without debate, with a refinement to the way our federation operates. We have a group of ministers who sit in a room behind closed doors and out of public view, work out the process, work out the legislation, bring it out and bring it into the parliaments and say, 'Here it is. Take it or leave it'. That may be an efficient way to do things, and it may be the least controversial way of doing things in terms of prosecuting your argument. However, it is certainly a most undemocratic process when there is no public view of the debate that goes on; there is no opportunity for interaction between the public and the legislators when it is brought into the Parliament.

It forces us to rely on the very few lines of the second-reading speech. It forces us to try to read between those lines to glean the real intent of the legislation and the real impact of the legislation on the people of Victoria. Apparently — I make this observation in passing — we are now subject to the wishes of the parliaments of South Australia and Tasmania. Some 5.3 million Victorians are being dictated to by 1.6 million South Australians and not even half a million Tasmanians; so 2.1 million Tasmanians and South Australians are telling 5.3 million Victorians how to go about their business.

I raise that concern because I think it really is important that we do, to pick up the terminology, 'refine' the way we deal with these issues. There is harmonisation, to use the other buzzword. Harmonisation is important but it is also important to ensure that we do not have to compromise the interests of the state of Victoria and Victorians in the process. At the moment the process does not allow for that.

The Liberal Party and the coalition have a long record of support for a uniform national system, so I am certainly not arguing against that principle. I am simply indicating differences with the process. I have considerable difficulty with some of the concepts that underlie the bill.

The bill essentially seeks changes to the original Fair Work (Commonwealth Powers) Act, including definitional changes to allow Victorian legislation to mirror the commonwealth act. Those definitional changes are largely unremarkable and I do not propose to go through them in detail. But by virtue of the definition process, we will have inserted in the act the concept of fundamental workplace relations principles, and I will come back to that.

I also note that the definition of 'essential services' is repealed and redefined in section 5 of the act. The bill proposes changes to the termination provisions in relation to the agreement for the commonwealth and also for the states, and for shortened time frames only to be available when there is a breach of the fundamental conditions, coming back from six months to three months. As I indicated, there are a number of concerns with the original act that remain unamended.

The concerns are well known, particularly the difficulties that small business has with the concept of unfair dismissal as it is laid out and the impact on legitimate independent contractors. I know some assurances have been given on this matter, but there is some residual concern. There is the concern of additional cost to business. I am not talking about the cost of wages; I am talking about the very complex arrangements that are proposed. Every time you add any sort of complexity to the process you are adding cost as well, and that means the opportunity to create additional jobs is reduced. That remains a concern. There is also the requirement to deal with a particular union, even if there is only minimal coverage in the enterprise concerned.

I come to this debate from a small business perspective, and that is probably a very different perspective from that of some of the large labour hire firms and so on. You are in the workplace shoulder to shoulder with your employees from day to day, week to week. That is something I have done for most of my working life. With the exception of two years, my working life has all been on that basis, so I come to this with a particular point of view.

Coming back to the fundamental workplace relations principles, my underlying philosophy is pretty simple. The reality is that there are rogues on both sides. There are bad employers, and there are bad unions — or bad people in unions, I should perhaps say, rather than generalising. They are a very small number in each case. Any system that you put in place has to retain flexibility. You need to protect each side of the partnership from the excesses of the other — and if it is going to work properly it has to be a partnership. You

need these rules in place to protect people — employees and employers — from the excesses of the rogues, but they are a very small number. You cannot afford to let that imperative allow you to reduce flexibility as well.

Most employers recognise the importance of adequately rewarding their valued employees. It contributes to the success of the business; it builds success for both the employer and the employee. Most employees understand the importance of the success of their employer's business. If the business succeeds, then there is the opportunity for advancement and to share in the success. On the other side, if the business fails, then clearly they will be out looking for some other way to feed themselves and their family.

Any system deals with exceptions. On that basis I have some difficulty with new section 3A(a)(iii), which is the collective bargaining proposal. There is no provision for individual agreements; it is simply a one-size-suits-all arrangement, and it does not work. Similarly, with paragraph (v), which is the protection from unfair dismissal proposal, unless you have a decent definition of what is unfair and a workable definition of unfair, you are causing difficulties for both sides. Even if it is technically unfair, rogue employees can have a catastrophic effect on a small business, and there needs to be a fair mechanism to deal with that problem.

I make those comments from a practical perspective. I fear that, given the parlous state of the economy at the moment, the legislation may well have a significant impact. Unemployment continues to rise; underemployment is endemic. The timing of this so-called reform is unfortunate, to say the least.

Mr LIM (Clayton) — I am pleased to speak in support of the Fair Work (Commonwealth Powers) Amendment Bill 2009. On this side of the house we welcome the return of decency and fairness to the conditions of working Australians. We rejoice whenever state and federal Labor governments legislate to support Australian working families.

As I pointed out in an earlier debate in June in this house, workers in communities such as the one I represent were treated harshly under WorkChoices. The unskilled or semiskilled migrant workers from non-English-speaking backgrounds and young people in retail were among the most exploited and vulnerable.

I strongly believe that as Australia has a national economy it needs a unified industrial relations system. However, it must be a system that treats its workers fairly and with dignity. That is why, during the dark days of the Howard years and WorkChoices, state Labor did what it could in Victoria to provide some protection to Victorian workers through Victorian legislation. With the dismantling of WorkChoices, in June this year the Victorian Parliament passed the Fair Work (Commonwealth Powers) Bill 2009. That bill provided for a new referral of workplace relations matters to the commonwealth to enable the commonwealth to extend the application of the commonwealth Fair Work Act 2009 and associated legislation — fair work laws — to all Victorian employers and employees, subject to the public sector exclusions from the referral.

When we introduced that bill we advised that some refinements would be necessary as the commonwealth had to finalise arrangements with other states. As we know, South Australia and Tasmania are in the process of making referrals, and later this month the commonwealth will introduce a bill to amend the referral framework in the Fair Work Act to provide for these new referrals.

This bill is mainly technical and makes the necessary changes to accommodate the referrals made by South Australia and Tasmania. As this bill needs to be passed in advance of the federal legislation, I wish this bill a speedy passage in restoring the rights of Victorian workers.

Mr K. SMITH (Bass) — I take up the right to speak on this piece of legislation, the Fair Work (Commonwealth Powers) Amendment Bill 2009, to say that I always have some concerns about legislation put up by a Labor government to give more powers to the unions, to amend minor errors and the to achieve other purposes for which the bill has been introduced.

I came out of the building industry, and I have an understanding of what union thuggery is all about, which is what I am concerned about. One of the strongest industries we have in this country of ours is the building industry, and if ever the country were going to thrive, it would be because building workers were able to work on a building site without getting beaten up and without having to face some of the disgraceful things which are carried out by some of the thugs from Trades Hall Council, particularly here in Victoria. They go out onto those sites and create mayhem to get their own way and to take unfair advantage of employers. All the employers wish to do is employ people on building sites and make sure that they work properly, so that at the end of the day the builders themselves can make a profit, because the only way they can continue to operate is if they make a

profit. But when you get the thugs from Trades Hall coming down — the real dinosaurs — —

Honourable members interjecting.

Mr K. SMITH — I can call them the dinosaurs from Trades Hall Council — I think I used to call them troglodytes in the old days. I have also called them commos, because that is what most of them are. My God, if they were like the communists I saw in China when I was over there, they would be fine, but they are not. These are the dinosaur communists from the Trades Hall Council. We have seen them; we have seen the actions of some of these people and we know exactly what they are about.

I can only say thank God for the Australian building and construction commissioner for at least keeping an eye on them, for at least having people out on sites trying to keep them honest, if it were possible for that to happen. However, it is not happening, because we know those thugs will do anything to take control of building sites so they can get more out of them than they should and so they can get certain conditions.

We always hear about occupational health and safety. I am the greatest respecter of the need to ensure that workers on sites are protected and protected properly. I do not have a hassle with that at all. When I was in the building industry I always ensured that the guys who worked for me always worked in safe conditions and that they looked after themselves. However, when we see some of the conditions forced on the building industry that cost it a huge amount of money in order to try to keep people on site and keep them working, we know what unions do is unfair.

Some of the things that Brian Boyd, who is one of the big thugs from Trades Hall, does in the building industry and the way he works in trying to ensure his workers have all of the rights and employers have none of the rights worry me a little bit. Having known Brian Boyd for a long period of time and knowing the way he works, nothing would surprise me as to what will happen when this legislation passes.

The commonwealth has the powers to make changes to put in its little bit of thuggery. We all know that the federal Rudd government is full of former presidents and secretaries of the Australian Council of Trade Unions. They are all in Canberra making decisions. We have Martin Ferguson, the Minister for Resources and Energy, in the federal cabinet. Who else? We have Simon Crean, Minister for Trade, in the federal cabinet. We have Sharan Burrow hanging around and pushing decisions. My God! It is sort of like letting Dracula into the blood bank. We have unions making all of the decisions about what is going to happen. It really concerns me.

We now have one of the biggest building sites in Australia on the foreshore at Kilcunda and Wonthaggi. It is the desalination plant. Originally it was to have cost $3.1 billion; now it is up to $4.8 billion. That is what the government is going to spend on this water-making plant. The government has created this plant to feed water to the people of Melbourne so the government can prop up its votes in the suburbs of Melbourne and surrounding areas. That is what it is all about. It is going to bring the fresh air down the north–south pipeline to give people country air, because there will not be any water in the pipe. There is no water there now, so I do not know what it is going to pump to Melbourne. Nevertheless it is going to pump water from this massive construction site on the foreshore of Kilcunda and Wonthaggi. People in that area had some expectation that there were going to be jobs made available to local contractors. It is my understanding and my belief that there will not be a lot of jobs made available, even though it is a big construction site.

It is already a union site. It will be no ticket, no start. You will not be able to get onto this site unless you are wearing your hard hat and your orange jacket. The Premier will be pleased. He will be able to wander in there with his hard hat on like he always does. He did not have it on at the golf course yesterday. I am surprised he did not wear his hard hat when he was at the golf with Tiger Woods, a person he brags about. Nevertheless it is all hard hats, orange jackets and work boots that they have to have on site. Their jackets will be issued by the poor old employer that has built into the billions of dollars price the cost of outfitting some of these people who get on site and who try to force their opinions on some of the smaller contractors that we hoped would have got on site.

However, we know they will not get on site; we know the contractors are going to employ people from Melbourne. They are going to bring a lot of tradespeople from Melbourne to work on this site, whether it be the concreters, the plumbers or the electricians. Because it is a big construction site, they are going to bring them down. They are not going to use the little people. They are not going to use the small companies we have on the Bass Coast. They will be employing Melbourne people. They will come down and make all of their thousands of dollars per week that has already been negotiated because of the thuggery of the union in the negotiations with AquaSure — —

Mr Lim interjected.

Mr K. SMITH — The member for Clayton should just relax. He does not have the worries I am going to have in that area with some of these union thugs. We are not happy they are going to take control of that area. We have been used to having a stable workforce; we have been used to having small business people being able to operate properly. Now we are going to have the thugs from Trades Hall. They will probably set up a temporary Trades Hall on the site.

Honourable members interjecting.

Mr K. SMITH — They will do it. Members should believe me!

The ACTING SPEAKER (**Ms Munt**) — Order! The member is to use his last minute of his contribution to address the bill.

Mr K. SMITH — Do I have to? All right! I say to members that I was addressing the bill. This bill is all about trade unionism. This is all about the commos, the thugs and the troglodytes from Trades Hall who are going to go down the Bass Highway and beat the daylights out of the employers, being AquaSure and all of its associated companies. They are going to be giving them a hard time. Without a doubt this legislation is going to put a lot of things in place that will make life difficult for AquaSure. It is going to make life difficult for any of the employees working on the sites. It is going to make it easy for people like Brian Boyd to go wandering there — —

Honourable members interjecting.

Mr K. SMITH — He probably already has a holiday house there somewhere. He will be able to relax there so he can wander down to the site every day and make sure his union thugs are doing their job and making life miserable for the people.

Mr CARLI (Brunswick) — It is always a great pleasure to rise after the member for Bass has spoken, particularly after having heard his general tirade against unions and union thuggery. The point is it is not true. Many times we have heard attacks on the construction industry from the member for Bass. We have also heard them from the member for Box Hill. I often expect more from the member for Box Hill but he equally attacked the construction unions and their supposed thuggery, and the supposed weakness that that causes for the Victorian economy. It is just not true.

In my short contribution today I want to take the opportunity to demonstrate how it is not true in terms of the construction industry, in particular. The construction industry in Victoria is performing very well. In the June quarter construction work in the residential sector rose by 3.4 per cent. This is in the context of the rest of Australia, where we saw a decline in construction activity in the residential sector. However, in Victoria we saw more construction. Not only that, we saw it in the non-residential sector. We saw it as a result of the commonwealth government fast-tracking infrastructure investment through the Nation Building economic stimulus plan, and I should comment on the fact that the conservative parties oppose this plan. Because of the fast-tracking of this project through Victorian infrastructure spending, we have seen an enormous amount of construction activity and very few days lost as a result of disputes.

We have basically secured 35 000 jobs in the construction industry as a result of state and federal intervention in terms of the stimulus package, none of which was supported by the opposition. We have seen a construction sector which has kept Victoria booming at a time of world recession, but also at a time of difficulties faced by the rest of the country. In terms of working days lost, in the June quarter of this year the level of industrial disputation was 4.6 working days lost per thousand employees compared with five working days lost in the rest of the country; so we have had fewer disputes. That has meant more activity, more construction jobs and fewer days lost as a result of disputes.

When were the high days of industrial disputation in Victoria? They were during the Kennett government when we saw a big surge in days lost due to industrial disputes. That was a direct result of the actions of the previous government. At the moment what we see in Victoria is jobs, construction activity and an economy that has performed exceptionally well in the context of what has happened in the rest of the world. We see that there has been a decline in working days lost due to industrial disputes.

What the members for Bass and Box Hill have said is an immense fallacy. They are trying to embarrass and accuse the construction unions of being thugs and communists and of working against the interests of the state, and yet if we look at the facts in Victoria, we have seen a booming construction industry as a result of the cooperation of workers, employers and of governments in Australia, and that really is the test — what is happening in Victoria.

The reality is that industrial disputation is down, construction activity is booming, and we are seeing the

results of this throughout the state of Victoria. I wish this very technical, mechanical bill a swift passage.

Mr SCOTT (Preston) — It gives me great pleasure to speak on the Fair Work (Commonwealth Powers) Amendment Bill. I, too, enjoy following the member for Bass on industrial relations issues. He has an intriguing position. He is a vigorous supporter of unions in the Communist state of China, but not so vigorous in the democratic society of Victoria. There are some dinosaurs in this debate whose views of obsessive opposition to trade unions are not reflective of the views of the broader Australian community.

After every election a study is done by the Australian National University about social attitudes in Australian society. The university has been conducting the research since 1987. One point that arises clearly is that there has been a strong decline in persons concerned about the power of trade unions and an increase in the community's concern about the power of big business. In 1987, 71 per cent of persons thought that unions had too much power. That had declined to 37 per cent in 2007, and if people take the trouble to look at the study, they will see that the decline has been very steady. During the same time there has been an increase from 51 per cent to 69 per cent of those concerned with the power of big business. Those members opposite who are obsessed with the power of trade unions are on the wrong side in this debate.

In terms of support for stricter laws for unions, in 1990 that stood at 68 per cent, but by 2007 it had declined to 42 per cent. Again, it was a very steady decline, which is clearly shown in the data.

I will not take long in this debate as I understand there are a lot of bills to get through today, but I will say that there are dinosaurs in this debate, and they are the people who are obsessed with unions. Those people are not reflective of the Victorian and Australian communities.

Ms KAIROUZ (Kororoit) — I also have great pleasure in contributing briefly to this debate. I have heard opposition members speak today, and it is clear from what they have said that they have not heard the message that was sent to the Liberal Howard government in 2007. That message was that the electorate totally disagreed with what the Prime Minister, John Howard, did to the average Joe Blow, and what WorkChoices did to families across Australia.

This is a technical bill, which was initially introduced in June of this year. This government, along with the commonwealth government, flagged that refinements needed to be made. The bill basically will amend the Fair Work (Commonwealth Powers) Act 2009 to reflect changes to the commonwealth's referral framework which are needed to accommodate the South Australian, Tasmanian and Queensland referrals. It will adopt the same provisions for the termination of references as in the referral bills of other states, and it will address minor technical issues with the drafting of the commonwealth's referral framework and the Victorian referral.

I have heard speakers on both sides of the house contribute to the bill, including the promoted shadow minister's contribution on Tuesday of this week. In that contribution I heard a lot of fearmongering. I do not believe he is well equipped to handle the bill, and he does not really understand what it is all about. He speaks about unions and the construction industry. He says that unions are basically irrelevant and that WorkChoices was wonderful. However, I also note that data from the Australian Bureau of Statistics shows that construction work performed in Victoria during the June quarter in 2009 rose by 3.4 per cent and, despite sharp falls in other states, residential building has continued to increase in Victoria.

Of course in light of the downturn in the non-residential sector we find that the Victorian government has been accelerating infrastructure programs across the state. The government is working with the commonwealth government to fast-track infrastructure investment through the Nation Building economic stimulus plan. This is an $11.5 billion plan, and that funding is to be spent this financial year through the combined investment of both the state and federal governments, and of course other state authorities. It will secure up to 35 000 jobs in the next financial year. At least there is a plan in place here — a plan to secure 35 000 jobs over the next year or so.

But what plan does the opposition have? It does not have one. It keeps talking about a plan, but we certainly have not heard what this plan is. People in the community are asking for it, we are asking for it, but there is no plan in place.

Something the shadow minister should know is that under the Brumby government working days lost due to industrial action remain at historically low levels. In the June quarter 2009 Victoria's level of industrial action was at 4.6 working days lost per thousand employees, which can be compared with the national figure of five days, which means more construction jobs, more activity, a boosted economy and more support for families.

The reality is that since the election of the Labor government back in 1999, industrial disputes have declined in Victoria. In fact the highest level of industrial disputes was during the previous Kennett government. Under the Kennett government the average number of days lost per quarter due to disputes was 112 000, compared to the 11 000 recorded in the June quarter 2009. What we have seen is a significant decline in disruption. The 2008 Victorian workplace industrial relations survey also indicated that 98 per cent of Victorian workplaces had no industrial action.

Where does all this rhetoric and fearmongering that we have heard from the opposition take us? At the end of the day, the opposition is supporting this bill. It is good to see that it is, considering all the rhetoric and fearmonging that it engaged in and supporting this bill. I certainly am supporting this bill and I wish it a speedy passage. I am sure that this federal government and those on this side of the house will continue to improve the lives of every Australian worker and all families and I look forward to seeing this bill passed by the upper house.

Mr KOTSIRAS (Bulleen) — It is a pleasure to stand to speak briefly on this bill. I say from the outset that I find it amazing that government members make personal attacks on the member for Warrandyte without arguing their case. It is a pity that they do not have faith in the legislation on its own but engage in verbal abuse directed at the member for Warrandyte, who I thought did a good job.

I also put on record that I have nothing against unions per se. Unions have a place in the workplace. My father worked on the railways. He could not speak English and he was a member of the union over the fear that he might lose his job. However, government members also have to understand that some unionists are thugs, they intimidate people and are there for their own personal improvement in life. This is what Labor members refuse to understand. We do not want to give unionists the power to go into the workplace and put in place restrictions which will force a business to close. That is something that those on the other side have missed out on. It is important that they realise there are two parts to the equation: there are the workers and there are the employers. If there are no employers, then there will be no workers. Again, it is something that the government has missed the point on.

You have to balance the two parts of that equation. While unions have a place, unionists do not have, and should not be given, the total authority to go into a workplace whenever they want to and put restrictions on people which will make it impossible for a business to operate. It is very important that I put that on the table. I ask that the minister and perhaps the backbenchers think about this and give a fair go to workers and employers and not take just the one-sided view and support the unions at all costs.

Mr PALLAS (Minister for Major Projects) — I thank all participants in the debate for their contributions: the members for Warrandyte, Footscray, Murray Valley, Essendon, Box Hill, Williamstown, Mornington, Clayton, Bass, Brunswick, Preston, Kororoit and Bulleen.

I indicate that the bill before the Parliament, the Fair Work (Commonwealth Powers) Amendment Bill 2009, seeks to make important amendments to workplace relations, particularly in respect of referral to the commonwealth Parliament under the Fair Work (Commonwealth Powers) Act 2009. It reflects proposed amendments to the commonwealth's Fair Work Act 2009 and seeks to address a number of other technical amendments. As such, it reflects this government's continuing commitment both to consistency in the management of fair work practices and our coordination with the commonwealth in respect of these matters. It will provide increased fairness in the workplace. That of course is an underpinning principle that guides this government in our efforts to ensure fairness for all — employers and employees and their representative organisations. On that basis, I commend the bill to the house and wish it a speedy passage.

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

HEALTH PRACTITIONER REGULATION NATIONAL LAW (VICTORIA) BILL

Second reading

Debate resumed from 11 November; motion of Mr ANDREWS (Minister for Health).

Mr LANGUILLER (Derrimut) — It gives me pleasure to rise today to speak in support of the Health Practitioner Regulation National Law (Victoria) Bill 2009. The object of the bill is to adopt the Health Practitioner Regulation National Law hosted by the

Queensland Parliament and set out in the schedule to the Queensland Health Practitioner Regulation National Law Act 2009 which is an appendix to the bill. The national law gives effect to the intergovernmental agreement for a national registration and accreditation scheme for the health professions that was signed by the Council of Australian Governments on 26 March 2008 and establishes a national registration and accreditation scheme for the purpose of the regulation of health practitioners and the registration of students undertaking programs of study that provide a qualification for registration in a health profession or clinical training in health professions.

This is good, modern legislation and this government is proud to sponsor it. In the second-reading speech on 15 October 2009, the Minister for Health stated:

> The national law contains measures designed to protect both the public and practitioners and to facilitate greater workforce flexibility and mobility. It is a contemporary regulatory framework to support standards of excellence in the delivery of services in the Victorian health-care system.

As I said, the bill implements the Health Practitioner Regulation National Law Act 2009. As members know, the national law that will be law in Victoria is hosted by the Queensland Parliament. It sets out the regulatory framework for a national registration and accreditation system for health practitioners, and will commence on 1 July 2010.

It is important to refer to some matters that have been raised in the course of this debate. One of them relates to the effect of the bill: specifically, whether by passing the bill we hand Victorian sovereignty over to the Queensland Parliament. It is important that we place on the record, in response to members on the other side who referred to this matter, that section 13 of the intergovernmental agreement states very specifically that future amendments would need to be agreed by the ministerial council prior to being tabled in Queensland, and if Victoria did not agree to an amendment it would be addressed at that early stage.

The legislative mechanism is then considered to be the most appropriate and efficient way for the national scheme to operate. We are far more likely to not get a national scheme if we require all amendments to the legislation to go through every Parliament around Australia. It would be a complex process and therefore national consistency would be achieved rarely and not in a timely manner.

The approach that was suggested would cause bedlam and render the effective operation of the national scheme impossible. In the very unlikely event that Queensland did act unilaterally — that is, without agreement by the ministerial council — then the Victorian Parliament and other jurisdictions could and would repeal or modify the adopted laws. A nationally agreed approach is the only one that would sensibly deliver a functional scheme for the regulation of Australian health practitioners. This is the way to go, and we think it is important that the opposition in particular have an understanding of the mechanisms by which we will achieve something which is important and which the sector and the industry require — that is, a national law.

The national law states that the objectives of the national registration and accreditation scheme are to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered; to facilitate workforce mobility across Australia by reducing the administrative burden for health practitioners who wish to move between participating jurisdictions or to practise in more than one participating jurisdiction; to facilitate the provision of high-quality education and training of health practitioners; to facilitate the rigorous and responsive assessment of overseas trained health practitioners; to facilitate access to services provided by health practitioners in accordance with the public interest; and, importantly, to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and to enable innovation in the education of and service delivery by health practitioners.

All of these methods are important, and they have all been raised with us as local members again and again by practitioners who wish to move into other jurisdictions across the nation or practitioners who have come from abroad. This scheme will transform Victoria, and indeed Australia, into a modern, uniform and harmonious jurisdiction and nation, ultimately delivering better services to patients, citizens and clients.

In terms of the scope of the bill, the new system will initially create a single national registration and accreditation system for 10 health professions, including chiropractors; dentists, including dental hygienists, dental prosthetists and dental therapists; medical practitioners; nurses and midwives; optometrists; osteopaths; pharmacists; physiotherapists; podiatrists; and psychologists. These are all important professions in the delivery of services to people in the communities. Incidentally this work is now being undertaken by a range of professions that can facilitate the delivery of these services that are so needed in the community.

Another matter I wish to refer to relates to the need to ensure mandatory reporting rules so they do not apply to medical practitioners associated with the Victorian doctors health program. This is another important method I wish to briefly report on. A report is required under the national law when a practitioner has placed the public at risk of substantial harm in the practice of their profession because they have an impairment. This is a higher threshold than that required to trigger a notification in relation to conduct, which is simply a risk of harm. Where a practitioner has agreed to cease or alter practice so they are no longer a risk to the public, and where they have not placed the public at risk of substantial harm, the staff member of the health program will not be compelled to report as the practitioner is not captured by the mandatory reporting provisions under the national law.

If passed, this proposed legislation would better assist doctors by encouraging practitioners to seek help early before there is risk of substantial harm. The national board will develop guidelines to ensure that practitioners clearly understand the reporting obligations. These will be in keeping with the spirit of the legislation, which encourages early access to help for practitioners with impairment while ensuring the protection of the public.

It gives me pleasure to make this contribution because over the last couple of days I have been talking about this very subject in relation to another jurisdiction. It gives me pleasure to place on record that I recently welcomed a delegation from El Salvador, a country in which I have dear friends. We were visited by a member of the newly formed government, David Rodriguez Rivera, and I welcomed him. Together with El Salvador's director of health, the Minister for Health and the Minister for Agriculture, we talked about how we can exchange knowledge and information. I was delighted to work with the Department of Health in providing information about our policies and programs and to have a range of visits on the ground.

It is with pleasure that today I strongly support the Health Practitioner Regulation National Law (Victoria) Bill 2009. I commend it to the house because I am absolutely confident that bringing about national law for the purpose of accreditation of health practitioners will effectively deliver better quality services to all the communities we in this place so proudly represent.

Mr DELAHUNTY (Lowan) — I rise on behalf of the Lowan electorate to speak on this important bill, the Health Practitioner Regulation National Law (Victoria) Bill 2009. It is always good to follow the member for Derrimut; he has a fair bit of passion in relation to this matter. I have to agree that we would all like to have a national accreditation scheme, or a national practitioner regulation scheme, because — and this is particularly significant for those of us who live in country Victoria — we have enormous border anomalies. Doctors are moving across the borders, which these days are getting narrower and narrower. I remember that when I was a kid crossing the Murray River was like going to the other side of the world; today we do it very quickly, and that includes health practitioners.

The purpose of the bill is to give effect to the intergovernmental agreement for a national registration and accreditation scheme for health professions that will take effect in July 2010. As members know, there is a bit of background to this. Over time states have developed their own health profession registration boards, each of which have different accreditation requirements. This has been a source of great frustration to some communities, as health professionals cannot easily move from one state jurisdiction to another.

I remind the house that a few years ago I was The Nationals health spokesperson. In 2005 the Parliament debated the Health Professions Registration Bill. The purpose of that bill was to protect the public by providing for the registration of health practitioners and for a common system of investigations into the professional conduct, professional performance and ability to practise of registered health practitioners; and to repeal various acts. That bill introduced a common approach to all health practitioners in Victoria. That was back in 2005; now we are handing that jurisdiction to a national scheme. Concerns have been raised about that, and I know the member for Caulfield raised some of them in her contribution yesterday.

In 2005 there were 12 separate acts and 11 registration boards relating to health professionals. We transferred the responsibility for the conduct of formal hearings into matters of serious unprofessional conduct from registration boards to the Victorian Civil and Administrative Tribunal. I raised some concerns about this at the time. Some concerns were raised about the powers going to the minister and about the reform of the complaints handling and disciplinary processes of the registration boards to improve accountability and flexibility. The nurses union was concerned about the clarification of the regulation of midwives. Some professionals, in particular psychologists and nurses, and even the Australian Medical Association (AMA) and the pharmaceutical society, had concerns about some aspects of the implementation of the legislation. The main concern shared by all of them was the increase in costs, time and red tape.

Victoria has high standards, and it is reasonable for us to want to ensure that those high standards are not brought down by the national scheme we are introducing. People talk about cooperative federalism, but as a result of a lack of support from both state and federal governments we have seen the closure of the Sea Lake hospital. I must get that concern on the record. I know the member for Swan Hill has been to meetings about that.

The national law we are talking about here today will bring in mandatory reporting; student registration; criminal history and identity checks; community representation on national boards, which we would like to see; and processes for the public to make complaints.

There are some issues with the bill. In particular, part 2 of the bill gives the ministerial council the power to make a direction to a national board in relation to accreditation standards for health professions. As we all know, the AMA has a view on this — that is, that the Victorian minister should agree to a direction only if the proposed accreditation standard will have a negative impact on the recruitment of health practitioners, the direction will not have a negative impact on quality and safety, and the direction is in the public interest. There are some concerns about Victoria handing over all the good controls we have in place.

Concerns have also been raised about the issue of mandatory reporting and the requirement on a spouse to report his or her health professional partner. We are interested to see how that will work.

The major concern raised, in particular by the AMA and some people in Victoria, is that the Victorian Parliament is handing over sovereignty on health practitioner regulation to another Parliament that is not accountable to Victorians. The lead state on this issue is Queensland, and I do not think Queensland — or even New South Wales — has too much to claim in relation to health. Victoria is much further advanced on a lot of these issues. There are many issues of concern to the AMA and people across Victoria.

I finish by saying I hope this does not impact further on the number of health professionals in country Victoria. We have a real shortage of doctors, nurses and other health practitioners. Many country doctors, particularly those in small country towns, cannot get time off on the weekends to spend with their families or just switch off. Chiropractors, dentists — including dental hygienists, dental prosthetists and dental therapists, nurses, midwives, optometrists, osteopaths, pharmacists, psychologists, podiatrists and physiotherapists will all be included in the national registration scheme. In many country towns we cannot get pharmacists and therefore we have to run a different system than the one we have in Melbourne.

We are not opposing the legislation. I trust that the concerns raised by these people will be taken into account, that it will not have an impact on the standard of health practitioners in Victoria and importantly, that it does not impact on the current shortage of health practitioners in rural areas of Victoria.

Mr LIM (Clayton) — I rise to speak in support of the Health Practitioner Regulation National Law (Victoria) Bill 2009. This bill implements the 2008 Council of Australian Governments agreement to bring the registration of health practitioners into a national scheme by 1 July 2010.

The registration of health professionals is one of the most important forms of consumer protection, and that is why it is done by legislation. Registration of health practitioners assures the public — that is, the consumers — that professionals such as doctors and nurses are safe, skilled and competent practitioners. The implications of having registered but unsafe practitioners can be tragic. Therefore the registration of health practitioners is one of the most critical legislative and regulatory responsibilities undertaken by the state.

Registration is much more than just admitting health professionals into practice. Registration needs to ensure that professionals have undertaken the prescribed education and training to achieve registration, but it also needs to ensure they have attained and continue to hold required levels of competencies. Some cases require continuing education, and this should increasingly be the norm. Registration of some practitioners, such as nurses, provides that those who have undertaken specialist education and training will be identified through specialist registration or endorsement. Registration must require health professionals to act ethically, professionally and competently and ensure there are processes for reviewing this, including complaints initiated by the aggrieved consumer, and that sanctions are available, including the loss of the right to practise.

Most groups of health professionals also seek and support a strong system of registration. This indicates to the public that they are a body of professionals with standards of education, competency and ethics. Most health professionals I know are supportive of a strong disciplinary process, as they appreciate that protection of consumers also promotes public confidence in their profession.

The registration of health practitioners has been the subject of several important pieces of legislation in this Parliament under the Bracks and Brumby Labor governments. The Health Professions Registration Act 2005 brought 12 health professions under uniform legislation. Amending bills in 2007 and 2008 took into account the Council of Australian Governments' discussions on a national scheme and, pending this legislation, ensured that Victoria had modern and up-to-date legislation, including strong and effective disciplinary provisions. However, ultimately it makes sense to have national standards and registration for health practitioners rather than having a separate system in each state and territory and the barriers that that puts in place for health professionals.

I will now outline the main provisions of the bill, the first one being to give effect to the intergovernmental agreement for a national registration and accreditation scheme for the health professions, which underpins the national scheme that was signed by the Council of Australian Governments on 26 March 2008. The Health Professions Registration Act applies to the 12 health professions regulated in Victoria; 10 are entering the national scheme on 1 July 2010, and Chinese medicine and medical radiation practitioners will remain under the Health Professions Registration Act until they join the scheme from 1 July 2012. Aboriginal and Torres Strait Islander health workers and occupational therapists will also enter the national scheme from 1 July 2012.

Each national board will need to determine where state or territory boards will be appointed and what their functions will be. The role of these boards will be to oversee registration and complaints processes. The Australian Health Workforce Ministerial Council will initially assign accreditation functions to independent accreditation entities. After this initial assignment, accreditation functions will be a matter for national boards. Mandatory criminal history and identity checks will apply to all health professionals registering for the first time. All other registrants will make an annual declaration on criminal history matters.

Victoria has led the country in regard to traditional Chinese medicine and is the only state where Chinese medicine practitioners are regulated. Earlier Council of Australian Governments discussions did not include Chinese medicine practitioners in the national registration scheme, and I am pleased that they will be included from 2012. Chinese medicine has much to offer Western medicine. While acupuncture is now accepted in the West, it is still used more innovatively and intensely in China. Acupuncture is now being successfully integrated into Western medicine hospitals in China — for example, within hours of admission to hospital stroke patients commence intensive acupuncture. Early indications are that the results are promising. I commend the bill to the house.

Mrs VICTORIA (Bayswater) — I rise to make a contribution to the debate on the Health Practitioner Regulation National Law (Victoria) Bill 2009. Essentially this is what is known as a piece of template legislation — that is, basically something that will be adopted by multiple jurisdictions. In this case it will create one uniform system of accreditation and regulation of health professions throughout Australia.

The bill provides for the implementation of a national law, which is incredibly important and something that a lot of practitioners have lobbied for over many years. This will be known as the national Health Practitioner Regulation National Law, which will be referred to from here on as 'the national law', which at the moment is hosted by the Queensland Parliament. The national law is set out in the appendix to the bill as the Health Practitioner Regulation National Law Bill 2009 of Queensland.

The national law gives effect to the intergovernmental agreement to establish a national registration and accreditation scheme for health professions. Currently 10 professions — and I will go through those in a moment — are proposed to be included and that number will be expanded to 14 in 2012. The agreement was signed by the Council of Australian Governments back in 2008. It is interesting to note that when it was set up there was in fact a body that met to put all this together and the body signed off on this earlier this year — I think in May.

If we take doctors as an example, in the past people would go to university, for example in Melbourne, register here to practice and do their medical training on site. Then they might move to Queensland or the Northern Territory where they would have to go to their boards and re-register. What this bill will do is facilitate practitioners being able to register at one particular level and be recognised at that level nationally.

This replaces Victoria's sovereignty over the regulation of health professionals. Seven clauses clarify what is going on here with the national law. As enforced from time to time, the schedule to the Queensland legislation will apply to the law of Victoria. As I said, the initial piece of legislation passed in Queensland was to set up the national scheme. We were sent a good chart. There is an overarching body that is the ministerial council. Underneath that is the advisory council, the national boards and the agency management committee. They

have subsidiaries, if you like; there are national, state and territory offices of management. Under the boards are the national committees of each of the relative practice areas. Then there are the state and territory boards, committees and panels.

Some of the practitioners who are going to be involved in this area when it comes into effect on 1 July 2010 will be chiropractors; dentists, including dental hygienists, dental prosthetists and dental therapists; medical practitioners; nurses and midwives; optometrists; osteopaths; pharmacists; physiotherapists; podiatrists; and psychologists. Another four will be introduced in 2012. I am delighted that one of the areas that is going to be recognised is traditional Chinese medicine, in which I am a great believer; I am certainly a constant user of this type of therapy. I am a great believer in alternative and complementary medicines, especially when they have had thousands of years to be tested and tried.

We certainly have some good medical practitioners in my electorate and in the nearby surrounding suburbs, including Dr Ka-Sing Chua in Mitcham; Professor Yoland Lim, who is a great advocate for Chinese therapies; and in the brand-new Mountain High shopping centre, which has opened behind my office in Bayswater, we have a fantastic new acupuncturist by the name of Jeff, whom we are delighted to have join our community.

The other professions that will be added in 2012 are medical radiation practitioners, occupational therapists and also Aboriginal and Torres Strait Islander health practitioners. They are all important, and we will welcome them at that time.

There are lots of provisions within the new national law. They relate to things like mandatory reporting, student registration, criminal history and identity checks, community representation on national boards — that is an important one — and processes for the public to make complaints. A couple of issues have been raised. One of them is about mandatory reporting. Some have expressed their concerns about the requirement for a spouse, for example, to report his or her health professional partner if the circumstance arises. The Australian Medical Association is concerned that the Victorian Parliament is handing over our sovereignty in relation to health practitioner regulation to another Parliament which is ultimately not accountable to Victorians because it will sit in Queensland. That Parliament can pass amendments, and the AMA is concerned that we will not have as much control over what those amendments might be as we would have had if it were a local bill or a truly federal bill. The Chinese Medicine Registration Board has also raised issues, and it will be pursuing those federally. It does have a little bit more time because it is not going to be involved until 2012.

This bill is a good step. It is good for health practitioners who want to practise in multiple jurisdictions; perhaps they have multiple places of interest — where they live, perhaps where they visit family for long periods of time, or perhaps where they do community health work. It might be a Victorian practitioner who works around Arnhem Land or that type of thing, and they will not then need to go on to apply for additional registration. There is a great move towards these health practitioners needing to be insured. That is something that one would have expected to have happened before. Certainly this is a terrific move. There will be a two-year grace period for midwives to gain that insurance.

These changes will be operational from 1 July 2010. I do not whether this will have a detrimental effect, but it is certainly not going anywhere towards addressing our shortage of GPs, especially in the outer east. I was disturbed to read in one of the local papers this week that one of our local clinics in Wantirna South — I have some personal dealings with some of the doctors there — is closing. One of the GPs is retiring. We already have a chronic shortage of GPs in the district of Knox. We are hoping the other doctors will then go on to open their own clinics locally. We desperately need more general practitioners in Knox. Certainly the Knox Division of General Practice is being very active in trying to secure more people for our area. Having said that, I am not going to oppose the bill. There are some aspects of this that are certainly very worthwhile.

Ms CAMPBELL (Pascoe Vale) — In this contribution to debate on the Health Practitioners Regulation National Law (Victoria) Bill 2009 I want to take up a number of erroneous claims that have been made by the opposition and some underinformed or downright ill-informed people in regard to this legislation, but before I do I have to make a comment in relation to the last contribution on doctor numbers. The Bracks and Brumby governments made sure that extra funding was put in for the training of more doctors in Victoria. We did it alone; the federal government was not interested in tackling that pressing issue. The Howard federal government in particular was blind to the need for more training for health professionals in Victoria, particularly for doctors. It was our former Treasurer and now Premier who understood the necessity of more funding and made sure that there was extra money and extra places available in our tertiary institutions to ensure adequate training. The member

for Bayswater laments the fact that there is currently not enough doctors in her electorate, but the fact is there will be in future because Labor delivers.

I turn to a couple of points made by members which in my view are totally erroneous. There was a claim made by the previous speaker and others that this bill passes sovereignty over to the Queensland Parliament. That is absolutely incorrect. Section 13 of the intergovernmental agreement on national registration and accreditation states specifically that future amendments will need to be agreed to by the ministerial council prior to their being tabled in Queensland. All the member and others need to do is make themselves informed by doing some in-depth research. The reality is that if Victoria did not agree to an amendment, it would be addressed at that early stage. This legislative mechanism is considered to be the most appropriate and efficient way for the national scheme to operate.

We are far more likely not to have a national scheme if we require all amendments to the legislation to go through all parliaments around Australia. We have seen evidence of that repeatedly, even in this parliamentary time. National consistency would be achieved rarely and not in a timely manner if we took that approach.

It is also unlikely that Queensland would be acting unilaterally. If it did, the Victorian Parliament would repeal or modify its adopting laws. The approach agreed nationally is the only one that will sensibly deliver a functional scheme for the regulation of health professionals. The reality is that health professionals move around this country as do so many other workers, and we are all about making sure that people spend their time delivering health care and not spending excessive amounts of time on unnecessary red tape.

The second point that has been raised by some who are perhaps not as informed as they should be, is about mandatory reporting rules and the Victorian doctors health program. On that point, under the national law a report is required where a practitioner has placed the public at risk of substantial harm in the practice of the profession because the practitioner has an impairment. That would be something that we would expect to occur, and it is covered. This is a much higher threshold than that which is required to trigger a notification in relation to conduct which is simply an at-risk-of-harm classification.

Where a practitioner has agreed to cease practising or to alter their practice so that they are no longer a risk to the public, and they have not placed the public at risk of substantial harm, the staff member of the health program will not be compelled to make a report as the practitioner is not captured by the mandatory reporting provisions under the national law. Hopefully that clarifies some points for members who are a little confused.

The legislation also better assists the health of doctors by encouraging practitioners to seek help early before there is a risk of substantial harm. This is an approach that has been encouraged, not only in this legislation but in so much of the work that we are doing in relation to health and wellbeing, Thankfully there is a bipartisan approach to all aspects of health and wellbeing.

I understand the national board will develop guidelines for practitioners to ensure that they clearly understand their reporting obligations. We all welcome guidelines that make reporting obligations perfectly clear. These guidelines will be in keeping with the spirit of the legislation, which includes encouraging early access to help for practitioners with impairment while ensuring protection for the public. As a party and as a government we never resile from the requirement to ensure that there is protection for the public.

The third area I wish to address briefly is in relation to the national scheme including an accountable public interest test for ministers when they exercise reserve powers regarding accreditation standards. The house might be interested to know that currently the Victorian Minister for Health enjoys broader reserve powers under the Health Professions Registration Act 2005 than those now being proposed. The change means now that ministerial councils will have to first consider potential impacts on quality and safety when exercising a power on an accreditation standard that would have a negative impact on the supply or recruitment of health practitioners. Again, the interests of standards and the provision of health practitioners is being met in this legislation.

Health ministers across Australia are satisfied that the test is balanced and that it requires the necessary weighing up of the important considerations by the ministerial councils before any direction is issued. These decisions are required to be publicly reported. It would not surprise the house, with a government that is open, accountable, transparent and looks forward to ensuring that decisions are reported publicly, that this will occur.

I commend this bill to the house and I trust that members, such as the previous speaker who may have been either ill informed or under informed, are now much clearer on the important role this bill fulfils for all of us.

Mr JASPER (Murray Valley) — I note that the aim of the bill is to provide for the adoption of a national law known as the national Health Practitioner Regulation National Law, which has been hosted and now passed by the Queensland Parliament. This national law is set out in the appendix to this bill as the Health Practitioner Regulation National Law Bill 2009 of Queensland. The national law gives effect to the intergovernmental agreement for a national registration and accreditation scheme for health professionals signed by the Council of Australian Governments (COAG) on 26 March 2008. Currently 10 professions will be included, and the number will be expanded to 14 by 2012,

I will refer particularly to the operations of the national schemes and COAG in my contribution, but I also pay tribute to the former shadow Minister for Health, the member for Caulfield, for the very detailed information she provided in relation to the legislation that is before the Parliament. It is very detailed legislation, as we in this Parliament are very much aware.

I listened with a great deal of interest to the contribution of the previous government speaker on this bill, and I note that she did not refer at all to the *Alert Digest* which was produced by the Scrutiny of Acts and Regulations Committee, and I will refer to that in a few minutes.

The bill before us reflects the progress in achieving national recognition and national law in relation to the health industry, the first phase of which was introduced in the 1990s. The second phase was in 2005 when one act was prepared. This is a third phase in producing national legislation as indicated and approved by COAG.

I bring to the attention of the house my concerns about the changes being introduced in all states of Australia to use national uniform legislation to achieve uniformity across Australia on a range of issues and a range of legislation. I have great concerns about the track we are taking on this issue because of the lack of scrutiny which will be available for state parliaments on the uniform legislation that is currently being developed across Australia on a range of issues which affect us all and affect all acts of the Victorian Parliament.

The Regulation Review Subcommittee of the Scrutiny of Acts and Regulations Committee, of which I am the chair, now has limited opportunities for scrutiny as regulations often cannot be scrutinised by the committee as effectively as they should be on the basis that regulations have been approved through COAG or there is national legislation. I indicate my concern about uniform legislation and the handing of powers to the federal government. We see more and more powers being handed over on the basis of achieving uniformity and on the basis of approval provided through COAG meetings, which are now held on a regular basis.

We in the state of Victoria, and indeed parliaments in all states of Australia, need to be very careful in passing over to the federal government laws which may not be as effective as we would like in the state of Victoria and indeed may not reflect what we as Victorians would see as being in the best interests of those living within this state. These are the concerns I express from the outset.

Many previous contributors on behalf of the opposition have spoken on the details of the legislation, but I want to refer particularly to the *Alert Digest* which was provided to the Parliament on Tuesday of this week. The report on this legislation is the longest report I have seen on any legislation we have reviewed since I have been on the committee, and indeed that I can recall going back a number of years. There are in excess of 10 pages of critical analysis of this legislation, which I believe should be brought before the Parliament and considered. I want to mention some of the issues of concern in the *Alert Digest*. I will not be able to cover all the issues that are raised, but many of them are in relation to the committee's investigation of the legislation and whether it meets the provisions of the Parliamentary Committees Act.

Further, the report contains information as to whether this legislation meets the requirements of the Charter of Human Rights and Responsibilities. This has become an extremely big issue as far as we on the committee are concerned. All acts of Parliament are now reviewed not only through the Parliamentary Committees Act but through the Charter of Human Rights and Responsibilities. Many second-reading speeches provide more information about meeting the requirements of the charter than detail of the bill that is being presented to the Parliament. We find that regulations require huge investigations relating to the Charter of Human Rights and Responsibilities.

I want to deal with some of the areas of concern we raised in the committee's report and during our investigations on Monday of this week. The first relates to information privacy:

> Information privacy — criminal records, identity information, health and professional conduct information and public records — whether provisions unduly require or authorise acts or practices that may have an adverse effect on personal privacy within the meaning of the Information Privacy Act 2000 — Parliamentary Committees Act 2003, section 17(a)(iv)

That is the first criticism that was raised. The direction from the committee was that given the broad ambit of the proposed criminal records check, the scheme proposed as the national law, the committee will seek further advice from the minister as to whether he is satisfied that the laws are appropriately tailored to achieve no more than the legitimate policy objective of promoting and protecting public safety. That is the first issue that we as a committee will be writing to the minister about and seeking a response on. However, the legislation might have proceeded through the Parliament and indeed become law within this state before we have a satisfactory response from the minister. I hope the minister will be able to respond to us as a committee prior to the bill being debated in the other place. Concerns expressed by the committee in relation to the issue of the public register being available for inspection.

The other issue which is of great concern to us is an issue I have mentioned to the Parliament on many occasions. It is the absence of explanatory material and the use of Henry VIII clauses — that is, whether there is inappropriate delegation of legislative power as contained in section 17(a)(vi) of the Parliamentary Committees Act 2003. There is an issue with this legislation, in which delegated power is being provided to the state government and indeed to the federal government through this legislation whereby they would be able to take action without bringing the issues back to the Parliament.

What are referred to by many people as Henry VIII clauses provide that actions can be taken by governments and the executive without reference back to Parliament when changes are needed. We will be drawing that to the attention of the minister as well.

Further, the committee has queries under the Parliamentary Committees Act in relation to whether national scheme legislation insufficiently subjects the exercise of legislative power to parliamentary scrutiny. These are being referred to the minister. Other issues which were raised concerned disallowance provisions, presumption of innocence and rights or freedoms. These are issues which were raised in relation to the Parliamentary Committees Act and our responsibility as a committee in referring these issues to the Parliament. The charter report also raises concerns relating to privacy and the presumption of innocence. The committee has a range of issues which are being raised for the attention of the Parliament and the minister himself. I quote from the summary of the *Alert Digest*:

> The committee draws Parliament's attention to the reduced operation of the charter's provisions on statements of compatibility, review of statutory rules, ombudsman inquiries, interpretation and obligations of public authorities in relation to the proposed Health Practitioner Regulation National Law (Victoria.)

The house should be aware of the concerns that have been expressed by the committee. Here we have this large piece of legislation passing through the Victorian Parliament about which we have massive concerns as a committee, and those concerns must be responded to by the minister. What we see is the passing over of many of the powers we would normally have in legislation being introduced into this house by way of uniform legislation across Australia as a result of COAG direction. I believe it is taking away some of the powers which we would normally have in the state of Victoria. We need to review all the provisions that have been brought forward. I trust that the minister will take note of the 10-plus pages that have been provided by the committee in the *Alert Digest* in relation to its concerns about the implementation of this legislation and its implications for the state of Victoria, albeit it is moving in the right direction in seeking get uniformity across the charter for medical practitioners.

Ms MUNT (Mordialloc) — I am pleased to rise today to speak on the Health Practitioner Regulation National Law (Victoria) Bill 2009. This bill seeks to implement the Health Practitioner Regulation National Law Bill of 2009 and sets out the regulatory framework for the new national registration and accreditation scheme for health professionals under a national scheme.

The national law implements a commitment made by the Council of Australian Governments (COAG) on signing the intergovernmental agreement on 26 March 2008 to establish a national scheme by 1 July 2010. It creates a single national registration and accreditation system for a number of health professions. These include chiropractors; dentists, including dental hygienists, dental prosthetists and dental therapists; medical practitioners; nurses and midwives; optometrists; osteopaths; pharmacists; physiotherapists; podiatrists; and psychologists.

This scheme will also increase public protection with new provisions relating to mandatory reporting, student registration, criminal history and identity checks, strong community representation on national boards and an easier complaints process for the public.

It has come to my attention that this legislation was passed by the New South Wales Parliament yesterday. It has gone through the Queensland Parliament. It is going through our Victorian Parliament right now. So it

will be a truly national accreditation scheme that is put in place.

I have been in the chair for quite some time listening to the contributions of many members who are distressed that Victoria may be losing some jurisdiction in this area of health accreditation. However, it seems to me that if COAG makes an agreement and all the other states and the federal government agree to it and we sit outside that, it puts us at a disadvantage. It also seems to me that if we have one national law for health professionals, that can only increase public protection and it will stop any confusion or slippage of time in addressing any issues that may arise around Australia.

I have also noted a few of the concerns expressed by opposition members about availability of doctors in their local areas and in Victoria overall. I have to say that is not meant to be addressed by this bill. We are talking about apples and oranges here; that is an entirely different area. In any case, any doctor shortages we are now experiencing are a legacy of the former federal Howard government.

I spent time in the last Parliament as a member of the Education and Training Committee. We looked at the availability of university places and the funding arrangements that were in place, which at that time were very poor. That has been addressed by the current federal Labor government. In fact with that extra funding and availability of places for medical students, more than 700 students will graduate by 2012. That will be up from 400 medical graduates in 2006, which was a legacy of the former government. In the next few years, as a result of the investment in medical places by the current federal government, some 300 extra doctors will come into the system. Those doctors will go out and be available for our public health.

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

Mr BLACKWOOD (Narracan) — It is with pleasure that I rise to speak in the debate on the Health Practitioner Regulation National Law (Victoria) Bill. This bill is the result of a request in 2005 by the then coalition federal government that the Productivity Commission examine the issues impacting on the health workforce. The report entitled *Australia's Health Workforce* was published in 2006.

The intergovernmental agreement signed by the Council of Australian Governments (COAG) in March 2008 committed the states, territories and the commonwealth to establishing a single national registration and accreditation scheme for health practitioners.

This legislation is also reflected in changes made to the Victorian Health Practitioners Registration Act (HPR act) in 2007, which saw the creation of one act to register the 12 health professional boards in Victoria and provided for the Victorian Civil and Administrative Tribunal to hear complaints about serious professional matters. This framework and the role of VCAT underpins the operation of the new national registration and accreditation scheme for the health professions.

To implement the national scheme, the Queensland Parliament introduced legislation in two parts, beginning with the Health Practitioner Regulation (Administrative Arrangements) National Law Bill in 2008, known as 'bill A'. The first piece of legislation established the governance and legal structure of the scheme. In particular it established the entities constituting the national scheme to assist the progress of the scheme's implementation in time for its commencement in July 2010.

That bill established the following structures: the ministerial council comprising the federal Minister for Health and Ageing and the health ministers of the states and territories, which sets the policy direction for the national agency and national boards and approves registration standards; the Australian Health Workforce Advisory Council, whose members will provide independent advice to the ministerial council and will be appointed by the ministerial council; the national agency, the Australian Health Practitioner Regulation Agency, which will have responsibility for administering the scheme and assisting national boards to fulfil their functions; the national office, which will be established in Melbourne and will support the operations of the scheme and have at least one local presence in each state and territory; the agency management committee, the Australian Health Practitioners Regulation Agency Management Committee, which will be appointed by the ministerial council to decide the policies of the national agency and ensure that it performs its functions; and a national board for each of the health professions under the scheme, 10 initially, with local offices in each state and territory where the national board decides this is appropriate.

The first bill did not transfer responsibility or authority for registration and accreditation of health professionals. It simply enabled the implementation of the structural basis for the national scheme.

As part of the process, in a communiqué of 8 May 2009, the Australian Health Workforce Ministerial Council announced that following a period of consultation it had reached a national consensus on how the new scheme will work and agreed that the accreditation function will be independent of governments. This had been a major sticking point for the health professions, whose members were of the view that it should not be the role of politicians to set the standards for the accreditation of health practitioners and health professions but that that should continue to be the responsibility of the professions through such bodies as, for example, the Australian Medical Council and the learned colleges of medical practitioners.

The national registration scheme to be established under state and territory template legislation will replace the current state and territory health registration boards, providing a single national registration and accreditation scheme for Australian health practitioners. Initially it will apply to the 10 health professions that are subject to statutory registration in all jurisdictions — that is, chiropractors, dental care providers, medical practitioners, nurses, optometrists, osteopaths, pharmacists, physiotherapists, podiatrists and psychologists.

In July 2012 professions such as Aboriginal and Torres Strait Islander health workers and Chinese medicine and medical radiation practitioners will transition to the national scheme. COAG has agreed that the scheme will be operational by 1 July 2010.

Bill B, which was recently passed by the Queensland Parliament, provides the template legislation for the bill before the house. In Victoria the bill is to be known as 'Bill C1'. Bill C2, a second bill in Victoria to complete the process, will contain all consequential and transitional amendments to complete the application of the Health Practitioner Regulation National Law, and amendments to the HPR act, in the main to allow for the continuation of the Chinese medicine and medical radiation practitioners boards and to provide for the ongoing regulation of these professions until they join the national scheme on 1 July 2012. The provisions of the HPR act that relate only to the professions included in the national scheme from 1 July 2010 will be repealed. The bill also makes consequential amendments to other Victorian legislation which refers to the health professions regulated by the national scheme.

The aim of this bill is to provide for the adoption of a national law, known as the Health Practitioner Regulation National Law, which is in a schedule to a bill hosted by and now passed by the Queensland Parliament. This national law is set out in the appendix to this bill.

A number of organisations raised issues about this bill, but by and large there has been support amongst the health professions for a national registration scheme, which also means there would have to be consistency across the states in relation to accreditation standards. While through the consultation process, and as a result of the cooperation of health practitioner boards and learned colleges, many of the initial concerns were addressed, there are still some matters which remain unresolved.

Concern has been raised about Victoria adopting a bill passed by the Queensland Parliament as a law of Victoria and that this may mean in effect that the Victorian Parliament is handing over sovereignty on health practitioner regulation to another Parliament which is not accountable to Victorians. It is recognised that there are plenty of instances of complementary legislation being passed in this state to provide consistency across the states and territories. It appears that the ministerial council could agree to an amendment that the Victorian minister may not agree to, unless all decisions have to be unanimous, and I understand that is not the case. While I appreciate that the ministerial council would seek to find consensus, we know that may not always be possible.

The question is: is Western Australia being treated differently? Has Western Australia said that it will have to agree to an amendment before it will introduce an amendment? Does Western Australia have the right that has already been exercised by New South Wales when it chose not to adopt part 8 of the national law in relation to complaints? The question therefore is whether or not it would be preferable for Victoria to have the option to agree or not to an amendment before embarking on the process of amending its legislation.

Part 2 of the bill gives the ministerial council the power to make a direction to a national board in relation to an accreditation standard for a health profession if it is of the opinion that the proposed standard will have a negative impact on the recruitment of health practitioners or have a negative impact with quality and safety and is in the public interest. There has been a strong suggestion that a public interest test should also apply before the ministerial council should be able to exercise this power.

The Royal Australasian College of Surgeons has stated:

> The college repeats its longstanding concern that, given the recruitment or supply of health practitioners is by definition

always an issue, this clause could be invoked for political purposes at any time.

In relation to the issue of mandatory reporting the Australian Medical Association has raised concerns about the requirement to report reducing the number of doctors seeking help and support from groups like the Victorian doctors health program. The minister's response pointed out that national boards will be developing guidelines for practitioners to ensure that reporting standards are understood. However, surely the point is that there needs to be enough clarity so that any practitioner needing treatment and support should not be deterred from seeking that treatment and support.

I will not be opposing the bill, but I encourage the minister to look at those issues raised by various groups. Hopefully they can be addressed as the process goes forward.

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

PARKS AND CROWN LAND LEGISLATION AMENDMENT (RIVER RED GUMS) BILL

Second reading

Debate resumed from 11 November; motion of Mr BATCHELOR (Minister for Community Development).

Mr HOWARD (Ballarat East) — I speak in support of the Parks and Crown Land Legislation Amendment (River Red Gums) Bill. In doing so I say that it is important to recognise that in the north of our state our river red gum habitats are very significant. This government asked the Victorian Environmental Assessment Council (VEAC) to carry out an investigation into the river red gum areas in the north of the state to evaluate what might need to be done to ensure their ongoing protection.

This is historic legislation. It acts upon the report brought out last year by VEAC and the follow-up work of the community consultation committee to ensure the protection for many years of significant areas of great biological significance in the river red gum areas. By the creation of four new national parks, as we have heard, by the extension of some of the existing national parks and by the creation of other parks these areas will be protected and valued for some time to come.

It is clearly not an easy decision whenever you evaluate areas of forest in our state which are under a range of uses and then attempt to change the way the forest will be used in the future. The Wombat State Forest is in my electorate of Ballarat East. I was very much a part of discussions some years ago when the government identified that the Wombat State Forest was being overharvested. The harvesting levels in that forest needed to be reduced, and therefore many people who were operating in the timber industry in that location could not continue in that area of employment. They were provided with a range of supports, which I believe were very sound, to find opportunities for new employment. The Wombat forest is now being protected. I am sure this will happen in the case of the river red gum areas that have been identified to become national parks and so on, as a transition and adjustment will be required for some of the timber industries and communities in those areas.

As a member of the country caucus of this government I have met with many timber industry operators, from the Koondrook and Gunbower areas and other areas. I appreciate in part their concerns and certainly want to see that those communities are supported through this transition period. I have visited many of the areas, both recently and in the past. I have camped along the Murray River in some of these areas and I, like so many others who have been into the river red gum areas, appreciate those great trees and, from having read information about it, the delicate nature and special features of the habitats involved.

I believe VEAC has had a challenge, as it always does when it evaluates areas that may need protection, trying to find a balance in terms of an outcome which sees those areas protected and supported but recognises the issues in those communities that may require to be worked on to ensure that they are supported through to new opportunities. Clearly there are great opportunities for enhancing tourism in the area. To ensure that these forests are protected and their values are enhanced we need more Parks Victoria staff. Associated with the legislation, the state government has committed $38 million over the next four years to do a range of things. A $4.5 million assistance package will be provided for timber workers who may not be able to stay in the industry; 30 new jobs will be created in Parks Victoria in this area, at least 10 of which must be filled by people from the timber industry; and there is a range of other funding which will enhance the ecology of the forest areas.

I am clearly disappointed that on this occasion the Liberal Party has acquiesced to The Nationals, a party that has never ever supported national parks while I have been in this Parliament. Every time a plan has been put forward to enhance our national parks or create new national parks, whether they be the marine national parks, the box-ironbark national parks or others, The Nationals have always been consistent in opposing those parks. The Liberals, on the other hand, have generally supported VEAC decisions, but on this occasion they have clearly acquiesced to their partners in The Nationals. That is a great disappointment, and they will have to explain that in their own electorates.

As I view the proposals in this legislation, I believe they provide a balanced approach. The bill does not lock up areas of forest, as some people would want you to believe. The legislation allows for the continuation of many of those uses that take place at the moment, like camping and campfires.

In terms of management, the legislation looks at providing ecological thinnings. As a result of that there is the opportunity for firewood from areas in the forest to be made available for local communities. If the forest thinnings are seen to be in excess of the ecological objectives of the thinning, or if there are associated fire protection issues, then it is possible that firewood would still be able to be provided. A range of other things have been included in this legislation which I believe makes it balanced legislation. I am pleased to support the legislation.

Mr BLACKWOOD (Narracan) — Once again it is a pleasure to rise to speak on a bill; this time it is the Parks and Crown Land Legislation Amendment (River Red Gums) Bill. I will be voting against this bill, and I will outline my main reasons. I am sorry to surprise so many people.

The biggest single issue influencing my decision to oppose this bill relates to the current government's appalling record on public land management. Once this government declares a national park, unfortunately the only action that follows that decision is locking up the park and throwing away the key. This government continues to devote scant resources and totally inadequate management practices to the care of our national parks once they have been locked up.

It is pointless and irresponsible of the Brumby government to lock up more public land until it can manage what it already has under lock and key. It has proven to be impossible for Parks Victoria or DSE (Department of Sustainability and Environment) to conduct the required level of full reduction burning each year or anywhere near an acceptable level of fuel reduction burning that would minimise the intensity of a wildfire event that may endanger communities.

Two proven fire management tools — that is, cattle grazing and timber harvesting — will be completely banned in large areas of this new park. The deliberate build-up of ground fuel will be encouraged to protect wildlife habitats. This will place many Murray River communities at an unacceptable risk during the fire season. In effect this bill will destroy the social and economic fabric of a number of Murray River communities and at the same time expose them to an increasing fire risk.

The potential impact of this bill is well highlighted by the Rivers and Red Gum Environment Alliance. A number of members of this group were in the chamber last evening. I felt sorry for them as they listened to the diatribe of ill-informed contributions from the other side of the chamber. I am proud of the members of that group for the way they kept their composure and their cool and did not react to some of the ridiculous insinuations and statements made by those opposite.

I should say something about the alliance, because it is made up of a reputable group of people. It comprises local government representatives from Gannawarra Shire Council, Murray Shire Council and Wakool Shire Council; representatives from the indigenous community such as the Bangerang People; commercial users such as the Victorian Farmers Federation, the Victorian Association of Forest Industries, New South Wales Forest Products Association, Barmah forest cattlemen's association and red gum timber producers; community and environmental group representatives such as the Australian Environment Foundation, Timber Communities Australia and the Barmah Forest Preservation League; recreational users such as Field and Game Australia, the Sporting Shooters Association of Australia, the Australian Deer Association and the New South Wales Council of Freshwater Anglers.

The Rivers and Red Gum Environment Alliance makes some relevant observations in its report on the recommendations of the Victorian Environmental Assessment Council. VEAC chose to ignore many of those sound observations. The Brumby government, as members know, has implemented most of the recommendations of VEAC in this legislation. The Rivers and Red Gum Environment Alliance said about climate change in its submission:

> The Australian Greenhouse Office acknowledges that managed native forests make a significant positive contribution towards mitigating climate change. This is particularly so in the river red gum forests, because most of

the timber is derived from thinning (selective harvesting) with limited subsequent slash burning.

A desktop study undertaken in 2005 indicated that red gum production in the investigation area results in over 30 000 tonnes of carbon (110 000 tonnes of CO_2) being stored annually in wood products, in situ forest waste and new forest growth. This benefit will not exist if all forests become 'old growth' in 'protected' parks and reserves.

This indicative benefit is conservative because it does not include the effect of the availability of hardwood products on:

reducing demand for less environmentally friendly substitute products such as steel, concrete and aluminium;

reducing demand for imported rainforest timbers and the flow-on effect that this may have on reducing illegal logging and tropical deforestation;

reducing greenhouse gas emissions associated with freighting imported wood products; and

reducing the use of coal-derived energy for home heating in areas where firewood is a viable alternative option (as it is for many within the study area).

VEAC has ignored the climate change benefits of red gum timber production despite being provided with considerable amounts of information by the timber industry. The stronger political imperative to combat climate change that recently developed should now make it impossible to ignore.

With regard to cattle grazing, the alliance said:

Grazing within the investigation area has traditionally been permitted under agistment in state forests as well as under licence on 12 000 hectares of Crown water frontages and unoccupied road reserves. VEAC has proposed that grazing be eliminated from the Barmah forest and other state forests and, over a five-year period, also phased out of Crown water frontages.

The strongest criticisms of VEAC's treatment of the grazing issue are that:

it has continually presented grazing in a worst case context from frequent use of the term 'intensive grazing' when in reality grazing in red gum forests is not intensive, particularly in the Barmah forest which is the focus of most opposition to the practice;

it encourages a simplistic choice between cattle or conservation when in reality the two are not mutually exclusive; and

it has been based on an underappreciation of the benefits to public land management particularly in fire management and weed control, and on Crown frontages.

The Rivers and Red Gum Environment Alliance also has major concerns with the way the process of community consultation was conducted. I would like to raise some of the concerns stated in its report. Their concerns are based around:

Inadequate consultation including:

the failure to table some draft proposals for discussion with the community reference group (CRG) prior to their release. (Note: The Rivers and Red Gum Environment Alliance includes several former members of VEAC's CRG).

The inadequate consultation also included:

ignoring invitations made by community groups to inspect beneficial aspects of current public land management; and

overstating the extent of consultation, community involvement, and support for particular proposals, especially those relating to indigenous participation in public land management.

Further it included:

Seriously flawed assessment of the socioeconomic and environmental implications of their proposals.

Understating the benefits of current public land management to support the case for change.

Disproportionate weight given to the views of the metropolitan Melbourne community which has only a limited understanding of the issues generally shaped by misleading environmental activism.

And we heard plenty of examples of that in the chamber here last night. It also included:

Incorrect assumptions made about the sustainability of traditional land uses and their environmental impacts.

Overreliance on a simplistic 'change-of-land tenure' approach to biodiversity conservation, with little serious consideration given to the potential for improved management under the existing land tenure to adequately address real or perceived problems.

The alliance has not just been negative in terms of its comments about VEAC's proposal. In fact it put forward an alternative management proposal, which was developed by a number of professionals and highly respected community representatives.

I would like to quote from some of those alternative proposals. In relation to indigenous participation:

That the management of public lands in the river red gum forests investigation area continues to be science based.

…

That the responsible land management agencies investigate ways to increase opportunities for indigenous employment in public land management.

In relation to public land tenure it suggested that:

The alliance recommends the creation of a new public land tenure known as a Ramsar reserve, managed to integrate the principles of multiple use with environmental care.

That the management of Ramsar reserves be based around the internationally agreed conservation principles arising from the

Ramsar convention, which provides the framework for the conservation and wise use of natural resources. The Barmah and Gunbower forests have been listed as Ramsar sites since 1982 and have been managed accordingly since then.

It is very disappointing that VEAC, and subsequently the government, ignored most of the suggestions and ideas put forward by the Rivers and Red Gum Environment Alliance, but what is more disappointing is that the bill will in effect consign this very precious area of our state to massive environmental decline.

The Premier has ruled out any extra environmental flows for the region, and the health of the river red gum forests will continue to decline and become more susceptible to fire. But far worse is the impact on the social and economic wellbeing of the communities that will suffer the consequences of such drastically reduced cattle grazing, timber harvesting, firewood availability and increased fire risk.

This bill will not deliver the long-term sustainable environmental outcomes for the river red gum forests; it will deliver unwarranted economic and social pain to communities that have lived beside, worked in, enjoyed and cared for these forests for many years. On that basis I cannot and will not support this bill.

Ms RICHARDSON (Northcote) — I am pleased to speak in support of the Parks and Crown Land Legislation Amendment (River Red Gums) Bill. It provides me with an opportunity to yet again highlight the hypocrisy of members opposite when it comes to issues in respect of what is in the best interests of Victorians, and it also gives me an opportunity to outline why Victorians regard them so poorly.

A cursory glance at what they have announced with respect to this issue, and on the environment more generally, shows them at best to be all over the place and at worst to be environmental vandals. A more detailed analysis of what is going on here reveals something far more sinister at play. What they have done is declare during the course of this debate that the findings and recommendations of the independent body the Victorian Environmental Assessment Council will not be taken into account by the Liberal or National parties, and that they will not be supporting the creation of national parks to protect our precious river red gum forests. As we know, VEAC's inception came out of a Liberal Party position, and since the 1970s both major parties have supported the recommendations of VEAC because we regard it as the independent umpire and the one that knows best about how to protect our precious environment.

Opposition member contributions in respect of this debate have been all about how they would do a better job to protect the environment if they were in government, that they know better than VEAC, that they know better than the Labor Party, that they have the answers about protecting our precious river red gums. This is not a claim that the majority of Victorians support, and it is certainly not a claim that I support.

Meanwhile The Nationals are out there in regional Victoria trying to run the argument that a national park will be a great travesty. Its members say that you can have a protected area and you can still hunt, you can still graze cattle, you can still log trees, you can still burn; you can do all of these things and protect the environment at the same time. It is all ridiculous stuff. But what we are seeing here is a runout of the flawed coalition strategy that we have seen repeatedly run by the opposition, and we saw it of course courtesy of The Nationals and the Liberal Party, where they say one thing to metropolitan Melbourne and another to regional Victoria.

Sitting suspended 1.01 p.m. until 2.05 p.m.

Business interrupted pursuant to standing orders.

ABSENCE OF MINISTER

The SPEAKER — Order! Before calling questions, I advise the house that the Minister for Children and Early Childhood Development is absent from question time today. Any questions for her will be taken by the Minister for Education.

QUESTIONS WITHOUT NOTICE

Police: information and communications technology systems

Mr BAILLIEU (Leader of the Opposition) — My question is to the Premier. I refer the Premier to the chaos, the incompetence, the encryption failures, the security breaches and the financial mismanagement in Victoria Police's IT department, which this government has failed for a decade to fix, and I further refer to the Ombudsman's report into IT services within Victoria Police, which confirms a catalogue of financial breaches, losses, conflicts of interest and incompetence by this government, and I ask: will the Premier finally guarantee to the people of Victoria that the police IT system in this state is now a modern, fully operational, fault-free system, or will he again try to claim that even after a decade of failure there is more to be done?

Mr BRUMBY (Premier) — I thank the Leader of the Opposition for his question. There is not a lot in his preamble that I would agree with, but in relation to the issue of the Victoria Police IT services, the Chief Commissioner of Police has made it very clear today that he accepts fully all the recommendations of the Ombudsman's report and that he is actively working to address all the issues that it raises.

Earlier today I publicly made it clear that the Ombudsman's report raises some very serious issues about the tendering and procurement processes within Victoria Police. The Ombudsman's report tabled in the Parliament outlines these issues and makes recommendations to ensure that the system will be improved.

Victoria Police acknowledges that it needs to make significant improvements to the management and the conduct of its IT department. For anybody who has read the Ombudsman's report, it has clearly highlighted a number of incidents and the apparent failure to observe what are long-established Victorian government policies on procurement.

As I said, the chief commissioner has taken a number of significant steps to ensure that there is a much higher level of accountability and efficiency within the business information technology services department, and this includes the appointment of a new director of infrastructure, who will directly report to the Chief Commissioner of Police and be responsible for managing Victoria Police's IT and business practices.

Mr Baillieu — On a point of order, Speaker, the Premier is debating the question. He was asked whether he would guarantee the condition of the current IT system. All we have had is a litany of excuses and a lack of responsibility.

The SPEAKER — Order! I do not uphold the point of order. The Premier has concluded his answer.

Questions interrupted.

DISTINGUISHED VISITOR

The SPEAKER — Order! I acknowledge the presence in the gallery of Mr David Rodriguez Rivera from the El Salvador Parliament. I welcome him today.

QUESTIONS WITHOUT NOTICE

Questions resumed.

Major events: government initiatives

Mr STENSHOLT (Burwood) — My question is to the Premier — and a very sporting Premier he is, too. 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 to the house how Victoria — and Melbourne — is the sporting centre of the world and the benefits this provides?

Mr BRUMBY (Premier) — I thank the member for Burwood for his excellent question. Everybody on this side of the house and most Victorians know that Melbourne — and Victoria — is the sporting capital of Australia. Throughout the year — —

An honourable member interjected.

Mr BRUMBY — I will come to that in a moment. Throughout the year we enjoy some of the greatest line-ups of sporting events anywhere in the world. The Australian Open — tennis, of course — is in January. The government has made a significant commitment to improve those facilities and keep the Australian Open beyond 2016 by making improvements to the Rod Laver Arena and surrounding areas. There is the Australian Formula One Grand Prix, the motorcycle grand prix, the Australian Football League Grand Final in September, the Spring Racing Carnival — it is the 150th anniversary of the running of the Melbourne Cup next year, and we are working with the Victoria Racing Club to make sure that it is a great event that we can all be proud of — and there are the Caulfield Cup, the Cox Plate and the Boxing Day test. In all these areas we have done extraordinarily well.

Apart from the major investments that we have been making as a state in our sporting infrastructure, we have also had a sensational performance by our sporting teams. I put on the record for the benefit of the Parliament the success this year of Victorian sporting teams. The Geelong Cats won the AFL premiership; Melbourne Victory was the champion of the A League; the Melbourne Vixens were the champions in netball; and Melbourne Storm was the National Rugby League champion. The Victorian Women's Football League won the national championships and the Bushrangers won the Sheffield Shield. This has been an extraordinary year of sporting performance.

We have also been busy investing in our great sporting venues. We improved the MCG, Melbourne Park and Flemington Racecourse. This year Kingston Heath is home to the JBWere Masters. I have been told that Tiger Woods has gone out today in 66, which is 6 under par. Yesterday, which was the pro-am day, there was

more website traffic on the masters site than for the whole of the tournament last year. On radio 2GB in Sydney this morning Ian Baker-Finch was happy to say there were more than 350 million people around the world watching Tiger Woods in Melbourne today. Some people reckon that is a bad event for Melbourne; some people reckon it is bad news for Melbourne; some people reckon we should not have attracted Tiger Woods. I will not let that spoil the experience for me, and neither will the millions watching the event worldwide.

I say to sports fans in Victoria and to many Australians who never got to see Bradman stride out to the middle of the oval, who did not see John Landy run and who never saw Rod Laver with a tennis racquet, that there are tens of thousands of Victorians at Kingston Heath today who have the opportunity to see Tiger Woods, the best in the world.

I have more good news for our state, because overnight there has been more good news for sports fans in Victoria, with Melbourne to be the newest team in what is now the Super 15 Rugby. I just joined four of the junior players down at the rectangular stadium with the head of Rugby League, Gary Gray, and the Minister for Sport, Recreation and Youth Affairs.

An honourable member interjected.

Mr BRUMBY — Head of Rugby. Super Rugby is the most prestigious tournament of its kind in Rugby Union, and now it will be played in Melbourne by a Melbourne team in the new, state-of-the-art rectangular stadium.

This is another great success by our state. It is another example of how we have attracted sporting investment, sporting teams and sporting capital to our state. The rectangular stadium — we were down there in the middle of that stadium — is going to be a sensational arena. I think being 8 metres from the touchline will give everybody the most intimate sporting experience when they are there, whether they are watching soccer or whether they are watching Rugby or whatever other sport is being played. I want to put on the record the great work done by the Minister for Sport, Recreation and Youth Affairs, the Australian Rugby Union and the Victorian Rugby Union in securing Melbourne a spot in this competition from 2011.

Finally can I say in answer to the member's question that overnight we were awarded the gold medal for the best sporting city anywhere in the world.

An honourable member — Gold, gold, gold!

Mr BRUMBY — Gold, gold, gold! We won gold in the SportBusiness awards held at Lord's Cricket Ground in London. We beat Singapore, Berlin and Doha. We are proud of that achievement — proud of what we have achieved by working together with sporting clubs.

One thing that major events and sports do is bring jobs and investment to our state. I put on the record that the labour force figures released today show that Victorian employment has increased this year by 44 000 people, more by far than in any other state in Australia. To put this into perspective, in many other states there have been significant job losses, but we have added 44 000 people, way above any other state in Australia. It is Victoria which has driven the job growth across the nation.

The October data shows that employment has now risen in Victoria for six consecutive months. The reason for our unemployment rate of 5.7 per cent and participation rate of 65.1 per cent is that we put in place the right plans, the right projects and the right budget strategy to bring investment and jobs to our state, and winning this award as the world's capital for sport will bring more of it in the future.

Police: information and communications technology systems

Mr RYAN (Leader of The Nationals) — My question is to the Premier. I refer the Premier to the Ombudsman's report into IT services for Victoria Police, which reveals that for over five years Victoria Police paid more than $80 000 in lease fees for a radio communications facility in regional Victoria which comprised an empty cupboard, and I ask: given that regional police communications at times of emergency are a matter of life and death, can the Premier explain why his government has refused to provide funding for desperately needed police radio communications upgrades in country Victoria, funding desperately sought by police, thereby leaving this state and its police dangerously unprepared for emergencies?

Mr BRUMBY (Premier) — If I recall correctly, I was asked a similar question to this yesterday.

Honourable members interjecting.

Mr BRUMBY — The question was about the budget provisions that have been made for emergency communications. That was the question.

Honourable members interjecting.

Mr BRUMBY — As I indicated yesterday — —

The SPEAKER — Order! Question time is not an opportunity for the Premier and the Leader of The Nationals to have a discussion about what the question actually was. The question was far from succinct but has been deemed in order. The Premier will address the question as asked.

Mr BRUMBY — As I recall, I was asked an almost identical question to this yesterday, and I will put the same answer on the record. We have two emergency services radio networks that operate in Victoria: there is the mobile metropolitan radio system, which is a digital network that operates in Melbourne and Geelong, and we have the StateNet mobile radio network, which is an analogue network that operates throughout the rest of Victoria. Together these networks provide voice communications across 99 per cent of the population and 97 per cent of the landmass.

Since 2001 our government has invested around $440 million as part of the statewide integrated public safety communications strategy. That investment has delivered the new mobile metropolitan radio network for Victoria Police, ambulance and the Metropolitan Fire Brigade; the new mobile data network for Victoria Police and ambulance; the new emergency alerting system pager network for the Country Fire Authority, ambulance and the State Emergency Service (SES); and the refreshed StateNet mobile radio network for regional police, ambulance and the Department of Sustainability and Environment (DSE).

In addition to these investments, which we have made as a government, this year's state budget provided a further $167.1 million to enhance Victoria's emergency services communications capabilities, including improved call taking and dispatch of emergency services, radios for the SES, pagers for the DSE and additional funding for the Victorian bushfire information line. In the 2009 budget we provided a further $56.2 million for the Emergency Services Telecommunications Authority to improve its capacity to manage calls and to dispatch units. I would have thought this represents a very, very substantial investment in communications — a substantial improvement on the communications investment that was in place in the 1990s.

Fire services: funding

Ms GREEN (Yan Yean) — My question is to the Minister for Police and Emergency Services, and I ask: can the minister update the house on what steps the government is taking to ensure our fire agencies are provided with the resources to meet the challenges of this year's fire season?

Mr CAMERON (Minister for Police and Emergency Services) — I thank the honourable member for Yan Yean for the question and for her support for the Country Fire Authority (CFA) as a volunteer and thank all of the 59 000 volunteers across this great state. The Brumby Labor government has provided and provides record resources to fire agencies in Victoria.

Mr Walsh interjected.

Mr CAMERON — The honourable member for Swan Hill disputes that, but when he goes back and has a look, what he will find out — —

Mr Walsh interjected.

The SPEAKER — Order! I ask the minister not to respond to interjections. I also ask the member for Swan Hill not to interject.

Mr CAMERON — The latest Productivity Commission report on government services points out that Victoria spends more per person on its fire services than any other state. That has been the case of recent years.

Honourable members interjecting.

Mr CAMERON — Yes, let us go back to the start. When we came to government we were the second-lowest in Australia. We now employ more full-time career fire staff in absolute terms and also per person than any other state. Certainly the CFA's budget has tripled since we came to government. Since 1999 an extra 700 firefighting appliances have been provided to the CFA in terms of new vehicles. I see honourable members opposite nodding because they recognise that that has been occurring and has been beneficial in their local communities.

I can advise the house that this summer there will also be a trial of a large aircraft tanker, a water bomber. The National Aerial Firefighting Centre had wanted, as part of its business plan, to do a trial in the 2010–11 season. It was the view of the CFA that we should try to have that trial done this year. That was its approach to me. That was also taken up with the Minister for Environment and Climate Change. We spoke to the Premier, who was extremely supportive of that proposition. I spoke to the chairman of the National Aerial Firefighting Centre at the end of September to open up those discussions. They have now concluded, and that procurement will take place. The water bomber is something that we have seen, for example, in North America. We have seen in California that it can lay 1.2 kilometres of retardant 30 metres wide.

Firefighting agencies need to know how this will work in Australian conditions. That is why of course there is always going to be a higher level of discussion amongst fire agencies as to how this will work in Australian conditions, and that is why we have brought this forward. I thank the Premier for giving the all clear to open those discussions, which started at the end of September.

Victoria already has at its disposal some 34 contracted aircraft as well as access to a further 176 fixed-wing aircraft and 38 rotary-wing aircraft, which are on call for when the need arises. We as a government believe it is important to do what we can as much as we can, and that is exactly what the Brumby Labor government is doing.

Electricity: smart meters

Mr O'BRIEN (Malvern) — My question without notice is to the Premier. I refer the Premier to the Auditor-General's damning report on his government's smart meter project and to the Premier's response:

> What the Auditor-General is saying is that governments here across Australia, in the United States and across the world are wrong.

And I ask: instead of attacking the Auditor-General as a smokescreen, will the Premier now accept responsibility for the delays, the $1.5 billion cost blow-out and the $200 annual hike to Victorian families' electricity bills flowing from his government's managerial incompetence?

Mr BRUMBY (Premier) — Peter Costello — —

An honourable member — Aren't you going to thank him for the question?

Mr BRUMBY — I thank him for the question. Peter Costello once famously said that Kelly O'Dwyer was the best staffer he ever had. I am happy to take a question from the — —

The SPEAKER — Order! I ask the Premier not to debate the question.

Mr BRUMBY — I think the member for Polwarth agreed with that as well. On this side of the house we believe climate change is real. We are not in the Nick Minchin school; we are not in the school that the bulk of the Liberal Party is in. We think there are some serious issues for the state, for Australia and for the world to grapple with. One of the things you have to do if you want to seriously address the issue of energy use and energy consumption is put in place over time smart meters so consumers can get more information and more choice about the electricity they are using and when they are using it.

Smart meters were recommended in our state by the Essential Services Commission. That is when they were first recommended as part of a raft of measures about providing choice and information to electricity consumers. It was then recommended by the Ministerial Council on Energy that they be rolled out across Australia for the same reasons and also to tackle the issue of climate change.

It is absolutely true to say that across the world there are 50 million smart meters that have been rolled out, and tens of millions of them are in the United States. When I heard the opposition's comments yesterday it was patently clear that the opposition will never support smart meters; it does not want consumers to have more information and more choice about the power they use and does not want to be part of any effort or any campaign to address climate change. That is where we sit on this side of the house.

I reckon it is part of a legitimate public debate to say whether you believe in smart meters and whether you believe they are important in giving consumers more choice, more information and more competition in the market as well as in tackling climate change. That is what we believe on our side of the house, and I am happy if there is a policy difference on the other side of the house, as was apparent yesterday from the comments — —

Mr O'Brien interjected.

The SPEAKER — Order! I think I have heard enough from the member for Malvern. I ask him to stop interjecting in that manner. The Premier, to conclude his answer.

Mr BRUMBY — In relation to the elements of the question which related to the Auditor-General, it was our government that restored the power and the independence of the Auditor-General and enshrined — —

The SPEAKER — Order! The Premier is debating the question.

Mr BRUMBY — And enshrined his powers in the constitution so that he reports to the Parliament. There is one quote that I can recall. It goes directly to the question, and it is this:

> In my eight years of reporting in the public interest without fear or favour, I view this government action as representing the greatest threat to the independence and even the very

> existence of my role, and to the Parliament's and the community's right to know.

That was the former Auditor-General, on former Premier Kennett's attacks on 21 November 1996.

Bushfires: schools

Mr HERBERT (Eltham) — My question is to the Minister for Education. Can the minister update the house on what steps the government is taking to protect schoolchildren on bushfire risk days?

Ms PIKE (Minister for Education) — I thank the member for Eltham for his question. The government is strongly committed to taking every single step possible to ensure that our schools and children's centres are as fire ready and fire safe as possible.

During Victoria's first ever Fire Action Week the Premier and I had the privilege of visiting Bunyip Primary School to join with the children there as they learnt about the dangers of fire and undertook activities around preparing for bushfire threat. Through Fire Action Week schools right across Victoria were very engaged in preparation for the fire season and awareness-raising activities.

This year the Department of Education and Early Childhood Development has been strengthening its policies, procedures and emergency management arrangements for schools and early childhood centres. This has resulted in a new, pre-emptive school closure policy for schools and children's centres considered to be at risk from bushfires. We have taken the decision that on a day that may be declared a code red fire danger rating, the safest option for schools identified as being at high risk this fire season is to close.

Today we have released the register of government schools, non-government schools and children's centres that will be pre-emptively closing on a day that is declared code red. The register has been developed by the Department of Education and Early Childhood Development, together with the Catholic Education Office and the Association of Independent Schools of Victoria following an assessment program involving around 5000 schools and early childhood facilities. In addition to this assessment, schools and children's centres in the 52 high-risk areas identified by the fire authorities, as well as other schools and children's centres outside the 52 areas that were identified as high risk through the assessments, have also been subjected to independent site audits.

We want to ensure that there are clear procedures and systems in place for this fire season so that every school community that may be affected is fully informed. Schools and children's centres on the register will be notifying parents that their school will be closed if a code red day is predicted. We have established a school bushfire information line to make sure that parents have 24-hour access to information about their school and any planned closures.

This morning I was in Marysville, where I was privileged to be part of the turning of the first sod for the establishment of the new Marysville Primary School. It is part of the Marysville community hub, which will include the primary school, early childhood services, maternal and childhood services, a community health centre and broader community facilities. I know it is very important for them, as it is for other parents and people within the wider community, to know that children's centres and schools are as fire safe and as fire ready as possible.

This pre-emptive closure policy which we have announced and for which we have provided the list today will provide parents with the certainty that will allow them to plan for a bushfire threat and to protect their families.

Victorian Funds Management Corporation: performance

Mr BAILLIEU (Leader of the Opposition) — My question is to the Premier. I refer the Premier to the boast by the Treasurer on ABC TV that the government's great achievement with the Victorian Funds Management Corporation (VFMC) has been to save money for the taxpayer by cutting, I quote:

> … the financial middlemen who achieve large commissions and cost the Victorian taxpayers more.

And I ask: will the Premier now explain why, since it was completely restructured by the Premier in 2005, the VFMC has paid a total of $416 million to financial middlemen in fees and commissions which, despite those middlemen losing billions of dollars from the savings and investments of Victorians, represents almost double the ratio of fees to funds under management paid under the previous government?

Mr Batchelor — On a point of order, Speaker, in his question the Leader of the Opposition attributed to the Treasurer a very long series of words. I would like him to verify the source of these words, to say where they come from and when, so we can see whether they are true on this occasion.

Mr BAILLIEU — On the point of order, Speaker, the 'long series of words' consists of 14 words taken

from a *Stateline* interview aired on 30 October this year.

The SPEAKER — Order! I believe the Leader of the Opposition has verified the statement.

Mr BRUMBY (Premier) — I thank the Leader of the Opposition for his question. As I have pointed out to the house previously, the Victorian Funds Management Corporation was established in the 1990s by the former government. It has served the state well, and it is an appropriate model with an appropriate framework for the investment of moneys by the state. I obviously do not have the detail of the matters to which the Leader of the Opposition refers. I suggest that he should direct detailed questions to the minister representing the Treasurer.

Bushfires: Community Support Fund

Ms D'AMBROSIO (Mill Park) — My question is for the Minister for Community Development. Can the minister outline to the house how the Community Support Fund is assisting bushfire-affected areas?

Mr BATCHELOR (Minister for Community Development) — I thank the member for Mill Park for this question. She continues to provide strong advocacy for assistance to people in need, particularly those in bushfire areas.

Following the fires there was an enormous response from the people of Victoria, who wanted to help the people and communities that were affected by the bushfires. An example of this was the volunteering phone line and website that was established to try to deal with this avalanche of offers of help. It processed some 20 000 offers of help during that time. Community groups and individual volunteers continue to play a vital role in helping people and helping communities recover from this very difficult and tragic time. The Victorian government has assisted that process through the Community Support Fund.

This Community Support Fund was used by the government to provide community groups in particular with assistance that they might need so they could continue to make offers of help to people who were wanting to volunteer to help the community. An example of this was Berry Street Victoria, which received $100 000 from the Community Support Fund to support volunteers and volunteer organisations right across the Murrindindi shire. The Community Support Fund also provided up to $20 000 to other volunteer organisations in the areas affected by the bushfires. The grants covered additional costs that were incurred over and above the routine operating costs — for example, there were costs such as training and equipment replacement right down to the out-of-pocket expenses of the volunteers, assisting them with travel and accommodation, which were the sorts of very practical things required to help volunteers at a time of great need, at a time when the volunteers were especially keen to help those affected by the bushfires. This help also included projects to aid in rebuilding hundreds of kilometres of fencing that was lost during the fire.

Also through the Community Support Fund $100 000 was provided to each of the municipalities of Nillumbik, Mitchell, Yarra Ranges and Whittlesea to enable them to work with community organisations and local volunteer networks. The funds helped the councils respond with volunteer recruitment, training and support needs, deployment and recognition of the great work these volunteers do. To provide absolute transparency for the Community Support Fund, details of hundreds of these grants and many thousands of others are contained on the new website that has been established by the Department of Planning and Community Development.

Given the contribution by the Community Support Fund to the bushfire recovery, I note that the Auditor-General in his report yesterday gave a big tick to the way the fund was managed and the way it was used to strengthen communities.

Honourable members interjecting.

Mr BATCHELOR — The opposition may laugh at helping the people in the bushfire areas, but we think it is important. In his report the Auditor-General examined a period where over 4000 grants were provided from the Community Support Fund. The Auditor-General did not find a single one of those that was not made in accordance with the act. He also found that not one of those 4000 grants was used for a purpose other than what it was approved for.

Mr Baillieu interjected.

Mr BATCHELOR — It is instructive — —

Mr Baillieu interjected.

The SPEAKER — Order! The Leader of the Opposition!

Mr Wells interjected.

Mr BATCHELOR — No, I have the right one here.

Mr Hodgett interjected.

The SPEAKER — Order! I warn the member for Kilsyth. The minister will ignore all interjections. I ask him to conclude his answer, as he has been speaking for longer than 4 minutes.

Mr Ryan interjected.

The SPEAKER — Order! I warn the Leader of The Nationals.

Mr BATCHELOR — The Community Support Fund has demonstrated that it has been used by this government to help communities in need right across Victoria, to strengthen communities and to rebuild in the bushfire areas. Those who have been the beneficiary of this are thankful for the way we have governed this program.

Protective services officers: powers

Mr MULDER (Polwarth) — My question is to the Attorney-General. I refer the Attorney-General to a statement made in this chamber in 2004 by the now Minister for Police and Emergency Services that the courts legislation bill provided for:

> … protective services officers in Victorian courts with the necessary powers to search and remove people from courts in situations which compromise safety or interrupt the orderly running of the courts.

And I ask: does the Attorney-General support protective services officers having the powers needed to protect the public, public officials and state government property, or does he stand by the Premier's comments that they do not have any authority and would just jump on the mobile phone and call the police if an incident occurred?

Mr HULLS (Attorney-General) — I thank the honourable member for his question, and I simply state that it is pretty obvious that we are the party that supports protective services officers (PSOs).

Honourable members interjecting.

The SPEAKER — Order! I warn the member for Polwarth. I warn the Minister for Water. I ask the Premier to cooperate with the smooth running of question time.

Mr HULLS — We are not the party — —

Mr Mulder interjected.

The SPEAKER — Order! The member for Polwarth will cease interjecting in that manner or he will leave question time. He has been warned on a number of occasions this week; he will not be warned again.

Mr HULLS — We are the party that supports PSOs. We are not the party that voted against the Police Regulation Amendment Bill, which sought to remove the current cap on PSOs. We are the party that supported it, as opposed to those opposite, who blocked PSOs from getting defined benefit superannuation like police. It speaks for itself.

Hospitals: emergency preparedness

Mr PERERA (Cranbourne) — My question is for the Minister for Health. Can the minister update the house on actions the government is taking to ensure that our hospitals are ready for emergencies in Victoria?

Mr Seitz interjected.

The SPEAKER — Order! It is always most inappropriate for the Speaker to hear the tones of the member for Keilor when he interjects in that manner.

Mr ANDREWS (Minister for Health) — I thank the honourable member of Cranbourne for his question. As I think we all know, in January and February this year our health services in metropolitan Melbourne and also in a number of fire-affected rural and regional communities performed extremely well, providing dedicated care and attention to, at that stage, some of the most vulnerable patients in our health system. Doctors, nurses, allied health professionals, ambulance paramedics, both on the ground and in the air, as well as almost an army of volunteers supporting our health workforce did a fantastic job providing support during those January and February bushfires.

It is our job as a government to continue to support that fine work and to make sure that all the work that needs to be done is done as we approach a new fire season — indeed we have entered the new fire season. We know that back in January and February that dedicated team of health professionals and the volunteers who supported them dealt with something like 800 fire-related emergency department presentations, admitted around 130 fire-related patients and provided care and support to countless others.

There are many examples of that fine work. During debate on various motions that have come before this house we heard in detail about the great work of that workforce during that time, whether it was providing the world's best burns care to patients at the Alfred or smaller but no less important efforts in country communities and hospitals like Yea, Kilmore,

Alexandra, West Gippsland, Yarram and many others. It is important that we acknowledge the great work of those dedicated professionals. As I said, it is appropriate that we continue to support them.

It is for that reason that my department, the Department of Health, has worked with the Country Fire Authority (CFA) and others in providing the 52 towns and localities that have been nominated as being at highest risk with all sorts of practical support — for example, the provision of an information kit on fire preparedness for health service providers both public and private, particularly in relation to aged care. A number of important issues arose and advice was sought and has been given — practical, sensible assistance and support across public and private settings in those 52 towns and localities.

We have also conducted a number of forums for those in the health sector in at-risk communities. We have provided to the CFA properly approved details and all sorts of other information that it needs to include in the fire awareness material it provides to those communities and to the community at large. We have also provided important resources and support for dedicated web-based tools — websites and things of that nature — so both the health sector and the broader community can be well informed and advised on these critically important issues.

We have made a number of other critical investments in recent times that I think mean we will continue to be well serviced and well prepared in the event of further fires or other natural disasters. These include the $25 million, brand-new intensive care unit at the Alfred hospital, which is a fine and much bigger facility that was purpose-built in a fantastic partnership between the philanthropic sector and our government. It is one of the world's best intensive care or critical capacity settings.

As honourable members will recall, announcements were made at budget time about the upgrade of the burns unit at the Alfred hospital. Tattersall's contributed to that upgrade, and it was completed with some additional money provided by our government, totalling $1.1 million. On from that, at the Royal Melbourne Hospital — our second of three statewide trauma centres — we recently opened the new $56.3 million emergency department. It is the biggest emergency department redevelopment this state has seen. I visited the Royal Melbourne Hospital during the bushfires; it was able to take much of the normal trauma load, the non-fire-related trauma load, during February to allow the Alfred to provide dedicated support and attention for burns victims. I am talking not about individual services but about an integrated health system providing care and support to, as I said, some of the most vulnerable patients in our system at the time.

Right across these investments, right across the provision of important information and ongoing support, the government is doing the work that needs to be done to ensure that our health system is as ready this summer to provide the care and support in the event of a natural disaster as it was so proudly ready to provide during January and February this year, when it did such a fantastic job of providing through the work of our dedicated professionals and volunteers.

PARKS AND CROWN LAND LEGISLATION AMENDMENT (RIVER RED GUMS) BILL

Second reading

Debate resumed.

Ms RICHARDSON (Northcote) — As I was saying before the lunch break, we can regard the opposition's opposing the river red gum proposal with respect to national parks as being in two parts. The first part is that The Nationals have trotted out their ideological position, which is a fundamental opposition to national parks. You can have a Clayton's national park: you can hunt, graze cattle and promote weeds in it. You can do all sorts of things; it does not matter, just as long as you have access to the national park. That is their ideological position, and they have been consistent in that.

However, the position of the Liberal Party in opposing this bill is, 'We actually don't think this bill will protect the river red gums. We think that environmental flows are critical in protecting the river red gums, and that is why we are opposing the Victorian Environmental Assessment Council recommendations and why we are opposing this bill'.

What we are seeing here is quintessentially the strategy the opposition has rolled out on other occasions — that is, of saying one thing to regional Victoria and another thing to metropolitan Victoria. Its strategy is simple, and it is this, as flawed as it is: 'We will try to explain to metro Victoria that we have environmental credentials'. I listened to the Deputy Leader of the Opposition try to trot out those credentials, as I listened to the new shadow minister for environment try to trot out those credentials. She let The Nationals take her place and lead on this bill, but nonetheless she tried to trot out those credentials. Basically their entire

argument was, 'We are actually better on the environment than the VEAC, we are better on the environment than Labor and if in government we would do a better job in protecting the river red gums'. That was the message that came from the Liberal Party yesterday.

We have seen this particular strategy before. We have seen it at play most spectacularly on the north–south pipeline. The Nationals were out there openly campaigning against it in regional Victoria. But the Liberals were silent in regional Victoria, and they used a failed Liberal Party candidate to run their shabby campaign against the north–south pipeline. All of this was done to leave regional Victorians with one impression about their policy on the north–south pipeline and voters in metropolitan Victoria with another impression about what their real policy position is, just as they are doing with the river red gums policy.

Of course it all blew up in their faces, did it not? It all turned to tears. At first the Deputy Leader of the Opposition said that the pipeline would never be used and not a drop of water would ever be taken from it. Then pressure built on the Liberal Party, and within I think six days they turned around and said, 'Well actually, no, we will not plug the pipe'.

The SPEAKER — Order! The member needs to come back to the bill.

Ms RICHARDSON — In doing this they revealed that in regional Victoria they have one position and in metropolitan Victoria it is something entirely different, just as they do on river red gums.

All this leads to the conclusion that when you look at the concern of The Nationals in particular for regional Victoria, you see it is all humbug. The reason it is humbug is that everybody in Victoria knows that in government The Nationals versus the Liberal Party MPs will not have the numbers and The Nationals will be rolled.

The SPEAKER — Order!

Ms RICHARDSON — On this issue — —

The SPEAKER — Order! No. The member does need to come back to the bill.

Ms RICHARDSON — The Nationals will be rolled on this issue of river red gums, as they have been on every other issue they have brought before the coalition partners.

I look in particular at their statements yesterday about this bill. They talked about the need for water flows. They consistently talk about the need for increased water flows, and they wrap themselves up in the idea that they will protect the environment with increased water flows. As the member for Mordialloc said yesterday, I too do not know how not creating a national park actually increases water flows to the river red gum system. I do not understand that, and in the debate yesterday no-one from the other side explained how they would actually achieve that outcome.

As for me, I am extremely proud to be part of a government that is supporting the creation of yet another national park. This government has created more national parks than any other Victorian government, and we are to be congratulated for that. It has been done in spite of opposition from members opposite. This is another significant step in protecting Victoria's environmental heritage.

I point out that in taking this step, since we were elected we have produced outcomes in the Great Otway National Park and Otway Forest Park, the Point Nepean National Park and the Cobboboonee National Park and Cobboboonee Forest Park. All these things were commitments by Labor. We did not say one thing in metropolitan Melbourne and another in regional Victoria, but across the whole of Victoria we had a commitment to the environment and it stood up and said, 'In government we will deliver'. That is precisely what we have done: we have delivered with this bill before the house.

In respect of this bill, prior to the last election we gave a commitment that we would implement any recommendation on national parks that came out of the VEAC, and that is precisely what this bill does. There will be four new national parks: the Barmah, Gunbower, Lower Goulburn and Warby-Ovens national parks. With this bill the government has also created three other new parks: the Gadsen Bend, Kings Billabong and Nyah-Vinifera parks. The bill also expands six existing parks in the region.

The bill clearly demonstrates, yet again, which party in this state makes commitments on the environment, delivers on those commitments and is clear in the delivery of those commitments. It does not say one thing to regional Victoria and another thing to metropolitan Melbourne on the management of our environment.

I conclude by saying that the bill is very much welcomed by the majority of Victorians. It is only those opposite who seek to derail Labor's attempts to protect

and further enhance our natural environment. It gives me great pleasure to support the bill before the house.

Mr INGRAM (Gippsland East) — I rise to make a contribution on the Parks and Crown Land Legislation Amendment (River Red Gums) Bill. Many people may say, 'You are a long way away from the river red gums, being in Gippsland East', but I have followed this debate with an enormous amount of interest, and some of that interest is personal. I have spent a fair amount of time in the areas under investigation and the proposed national parks — mainly as a recreational user, I might add. I am one of the people who will be caught up with some of the recommendations in this legislation.

I believe I have a strong understanding of the challenges facing our national park system. My electorate of Gippsland East has some of the state's best national parks, and they are extremely large national parks. The headwaters of the Murray River are in my electorate. Most people would not realise where the headwaters of the Murray are. All that Alpine National Park is either within my area or on the boundary of my area. There are some large areas — —

Mr Tilley interjected.

Mr INGRAM — It is. There are areas like the Snowy River National Park, the Avon Wilderness Park and the Croajingolong, the Mitchell River and the Lind national parks — and they go on and on. One of our challenges is to make sure that we have the resources to manage them. I will use the Snowy River National Park as an example. It is one of the larger national parks in the state. For most of the time I have been in this place only one ranger has managed that entire area. That national park is well over 100 000 hectares in size and has some of the most isolated and spectacular wilderness in this state. Recently an extra ranger was put on there, so there are now two rangers covering that national park. They cover part of the Errinundra National Park and the Snowy River National Park.

Getting the resources to manage these national parks is important. Biodiversity is important. It is important to protect those significant areas of natural landscape and the biodiversity and species that are there not only for future generations but also for the use and enjoyment of current generations. I suppose that is why I look closely at legislation like this.

I have spent some time in a number of these areas. I am particularly fond of the Ovens River area; I have spent a fair amount of time fishing and camping in what are currently state forests in the areas around Warby Ovens National Park and Peechelba. It is a significantly important state forest area. I am someone who passionately supports native fish. That area contains a good population of trout cod, which is a threatened species. Knowing that area fairly well, I looked closely at the investigation which is the basis of this legislation. There are some real challenges in that area.

Whilst historically there has been grazing, timber harvesting and other things in that area, the red gum forest in the main is in pretty good condition. There are some areas which are clearly and significantly damaged. Most of them are the frontage areas where there is intensive grazing. I have to say it is a disgrace the way a minority of farmers are managing their frontages. I listened to some of the debate yesterday, and I have to disagree with some of what was said. Enormous damage has been done to some of these river systems, where cattle and sheep grazing has posed intensive pressure on frontages. The damage to that river system in those areas in particular is quite significant. Most of the property owners along the river do the right thing, but a minority is clearly not doing so. That is the challenge for legislation like this to meet.

There is another issue regarding that area. When I camp in that area I light a wood fire — I am glad that issue has been addressed in this legislation to allow that — and I am typical of people who camp there. I also comply with the law regarding the size of the fire and other requirements. On a recent camping trip to an area where I have traditionally camped over a number of years, I saw that previous visitors to that area had left it in an absolutely disgraceful condition. All their rubbish was left behind. They had done damage to the area. They had used motorbikes and other wheeled vehicles inappropriately. That is why debates on these issues occur. One of the challenges is that we try to legislate for the lowest common denominator. We try to legislate for those individuals in our community who should be penalised to the nth degree because they downgrade the experience for everyone else no matter whether they do it in the red gum areas or elsewhere.

As I said, I have spent a bit of time along the Murray River. I have camped around Mildura and the Hattah-Kulkyne National Park. I had a spectacular Murray River experience. I have been to Barmah and other areas. I think I have a reasonable knowledge of these areas just as a visitor, like everybody else who uses those areas. It is important we make sure our national parks are for the people. If you look at the preamble of the National Parks Act, you see it is clear that parks are not just for the protection and preservation of natural assets and spectacular areas we have, they are also for people's enjoyment and use. That bit gets forgotten sometimes, not just during

debate in this place but in the provision of services and access. It is important that we make sure we can enjoy these magnificent areas.

I noted with a fair amount of interest some of the comments made in debate. In the executive summary of the report, one of the most important points was about environmental water. One of the reasons most of these red gum forests are degraded is the lack of overbank flooding. Overbank flooding maintains the viability of these forests into the future. This is a big challenge. I have been involved in the environmental water debate. I note with a great deal of interest the commentary of Nationals members. Anyone would think from their comments that they support the 4000 gigalitres of water for environmental flows. I know that — —

Dr Napthine interjected.

Mr INGRAM — In this place you cannot have it both ways. Members can choose to support the need for environmental water. Members cannot say, 'We want that bit, but we do not want other environmental water'. If there is a need to improve the environmental watering of red gum forests, then we need to be clear about how much water is needed and make sure we have a provision that will ensure the delivery of water needs to the red gum forests in the long run.

I want to make some comments about how we should move forward on some of the issues. I know there has been a fair amount of commentary about the impact of timber harvesting and grazing in some areas. I note there has been a fair amount of commentary about the use of fire. Fire is an important tool in all of these forests. I know there is a fair amount of criticism of one fire which got a bit hotter than it should have. This is one of the real challenges about getting fire management right — how do you return a natural fire regime to these areas? Fire has historically been part of not just red gum forests but the Hattah-Kulkyne National Park and all of those parks in the Mallee area. Fire is an important part of the history of these areas. Returning that fire to those areas in a way which maintains the biodiversity and the ecological function of those areas is important.

Grazing can be used as a tool in maintaining vegetation in those areas, but the most important thing is returning the natural fire regime to those areas. That would have a better long-term ecological outcome. You cannot have it both ways. You cannot criticise when a fire gets a bit hot or jumps out of the control lines.

The terminology is very important. We need to know what we are managing. In national parks, in my view, fire needs to be managed as an ecological tool. It is an ecological burn, not a fuel reduction burn or anything else. With those words, I will be opposing the bill.

Mr FOLEY (Albert Park) — It gives me great pleasure to make a few brief comments in support of this important bill. In so doing I note that the performance of the Liberal Party is a great disappointment. As the member for Northcote accurately described it, the coalition's position on this, and particularly the Liberal Party's, is to say one thing to regional Victorians and another to metropolitan Victorians. This is the same Liberal Party that introduced the Land Conservation Council in the 1970s — the forerunner to the Victorian Environmental Assessment Council — as the science-based, evidence-based expert advisory guide for land use planning and decision making in this state. This is now a position that it has formally buried and entombed for good, along with its previously shaky environmental credentials.

But should we be surprised by this disappointing result from those opposite? This is the party of climate change sceptics that opposes the emission trading scheme as the basis for a national approach to our responsibilities for global warming. This is the party of hard-hearted paternalists who would deny traditional owners in the area proposed by the legislation a chance to participate in park management. This is the party of bitter and twisted arch conservatives, now officially a creature of those ideologically driven neoconservatives and political fringe dwellers who deny the challenges facing our river red gums and their ecosystems, and who will deny the benefits and opportunities the bill will bring regional Victorians.

Members do not just have to take my word for it. They can take the word of the Victorian National Parks Association on this issue, which said:

> Ted Baillieu's Liberal Party has now set an extraordinary precedent by failing to support legislation to protect forests, threatened species and create jobs, which is very disappointing.

And they go on:

> By not supporting this bill, the Liberal Party is also opposing a historic and positive step on reconciliation and empowerment of traditional owners.

These quotes are from a media release which was issued today, headed 'Liberal Party conservation credentials shattered'. I call upon the Liberal Party representatives in the other place, once we see this bill safely through this house, and particularly the two Liberal Party members representing the area of

Southern Metropolitan Region, of which my district is a part, to be extremely consistent in how they approach this bill. We will be watching and ensuring that the community is well aware of their continued complicit relationship and approach on this issue. I watch with great interest their support or otherwise when this bill comes up, knowing the incredible amount of support that exists within my electoral district, and of course that makes up part of their Council region, for this bill. It is with great pleasure that I wish this bill a speedy passage through the house.

Mr CRISP (Mildura) — The history of this bill has been well dealt with by the member for Swan Hill and subsequent members from this side of the chamber. Therefore I will restrict myself to four main points. The first of those is the dispersed camping issue which arose during the first Victorian Environmental Assessment Council report, and I congratulate the people of Mildura who stood up to have that dispersed camping issue changed. When VEAC came along it was not going to allow dispersed camping, but by the time it came to the second report, at least that idea of VEAC's was gone.

Secondly, looking at the Victorian estate, we just cannot look after what we already have, and yet now we are going to add to that estate. The example I wish to raise is that of the dwarf cherry. It is a parasite plant which gets onto the roots of river red gums. I am advised that it is controlled in only two ways — and I thank Vic Eddy, a red gum forester, for his advice on this matter: by flooding or grazing. This parasite will take trees to their death, and there is no better example of this than a laneway near Piangle, which has been grazed on one side, and on the other side it has remained ungrazed. There is a significant difference in the health of the gum trees. Nowhere in this report do I see anything that tells us how we will manage this parasitic problem, and it will destroy the river red gums if it is not managed. Where will the resources come from to treat this? It is either water or stock. Nothing else has worked. I see no evidence that this will occur.

I now move onto what Aboriginal elder Rex Harradine said in 2007 in Mildura, when he was extremely concerned about the structure and resourcing of these parks. He said that having a majority of Aboriginal people on the boards of management — something that I think is normal practice in parks — is a concern if they were not sufficiently resourced, because the wider community would see the parks deteriorate and hold responsible the Aboriginal people, who were the managers of the parks, rather than the government, which is supposed to be supplying the money to do this. He saw this as a divisive action. Nowhere in the bill do I see that issue addressed. The Aboriginals will be the public face of these parks, and if the parks start to decline we will then have Aboriginal people in a far more difficult situation, trying to explain the government's inability to manage the estate.

Finally, I would like to talk about land-holders. West of Mildura there are three land-holders who will be left with a large problem. They have significant leases which have red gums on one small portion down by the river, but also a large amount of what we call red rising country is a significant part of their pastoral holdings and is suitable for grazing. It appears, on the maps provided in this VEAC debate, that they will lose all of that land, which will significantly impact on their properties; in fact one is for sale at this moment because of those issues. Yet we also read that the boundaries are not defined for the park, particularly the Murray section where this problem arises. I call on the minister to deal with these three families — the Piper, Robertson and Harmer families — whose properties are adversely affected by this measure. They have yet to survey the boundaries. There is a mail route through the property, which roughly divides the river red gum country from the red rising country. Let us survey those leases and allow those people to continue to have their living and not have it taken away. I hope when the minister sums up he will deal with the resources issue to allay the concerns of my Aboriginal community and also deal with the dwarf cherry issue so that the red gums will survive and not be taken over by this parasite. I oppose the bill, along with The Nationals and the Liberal Party.

Mr HERBERT (Eltham) — It is a pleasure to support the Parks and Crown Land Legislation Amendment (River Red Gums) Bill because it is a really important piece of legislation. I pay tribute to the Minister for Environment and Climate Change, Gavin Jennings, for the work that he, his department, and his office have done in pulling together the whole process and for this legislation, which I think is long overdue and will add considerably to the state's amenity.

This legislation comes on top of a raft of legislation that has been introduced under the Labor government to protect our native places and our special and significant cultural places. New park additions were made in 2000. New and expanded box-ironbark parks and a world-class representative system of national parks and marine sanctuaries were added in 2002. New parks and reserves were created in 2004. The Great Otway National Park and the new Point Nepean National Park were added in 2005 and the quarantine station was recently added to Point Nepean. We have also had the green wedge legislation that has protected a lot of land on the peripheral of the electorate of Eltham — land that people out my way regard as very special.

Those acts have considerably protected for future generations really special parts of the state, and now on top of that we have the river red gum park. It is a testament to the tenacity of the Brumby Labor government that we are determined to leave a strong environmental legacy for future generations of children in this state, a legacy that now sees the majestic red gums join the old growth forests, the pristine reefs, the tall ash, the delicate desert regions — all of which enjoy protection against the elements and the demand for natural resources.

As others have said, this legislation has its origins in a three-year Victorian Environmental Assessment Council investigation into the river red gum forests that highlighted the need for protection. It comes after the council's final report relating to what the needs were — the council was chaired by Mr Duncan Malcolm — and after recommendations by a community engagement panel chaired by Mr Craig Cook. I would just like to congratulate Mr Cook on his efforts in that community engagement; it was probably a very difficult process with many contentious views put. He has done an excellent job weeding through that whole community engagement process and coming up with recommendations that genuinely protect this special place for future generations. It adds to Mr Cook's legacy of actions which have improved Victoria for many generations in many different areas.

I am particularly pleased to speak on this bill because as a child I regularly went fishing up Gunbower way with my uncle and my cousin, Greg Davis, who is still a keen fly fisherman. We would spend long, hot summers fishing on the banks, and we would spend many days wandering the banks, ambling through the red gum forest and just having a lot of fun; it was a special time for me. Occasionally we would catch a fish: Murray cod, redfin, the odd yellow belly — they went out for a while but they came back. It was a special place for me, and I am pleased we are going to leave that legacy for future generations to be able to go up there and camp, fish, canoe and wander through the forest; it is a terrific thing.

It is a pity that those opposite do not also show that desire to leave a legacy. I understand The Nationals. They have a long history of kowtowing and catering to very small sectional interests, but what a shame the Liberals have been dragged along. Sure, they are in coalition, but in any strong coalition you should be able to get rid of the cringe mentality and stand up for what you think is really good for Victoria. In this case it is absolutely clear they have not.

I do not know about the factions in the Liberal Party, but it is like the Nick Minchin faction has suddenly taken over the entire Victorian branch. What we are seeing is a very redneck, anti-environment approach taken on this legislation. It is a pity because large amounts of those majestic river red gum forests along the banks are dying or are dead and they need protection; they need the $38 million that this government has put aside to shore up those parks to help make them really terrific places for people.

It is interesting that in the $38 million, there is $400 000 for the Sporting Shooters Association of Australia to control pests. I know Bernie Finn, a member for Western Metropolitan Region in the other place, would be absolutely delighted to see that $400 000 of the $38 million to protect and establish this park will go to the Sporting Shooters Association of Australia; I think that will be a good thing in terms of making that whole area less pest ridden.

In conclusion, I will not say much more because there has been a lot said on this bill. It is a travesty that the Liberal-Nationals coalition is opposing this bill. It is a shame, because it brings the majestic red gums into a sophisticated protection system for very special places in Victoria. It will go a long way to protecting our state for future generations, and I commend the legislation to the house.

Mrs FYFFE (Evelyn) — I am pleased to rise to speak on the Parks and Crown Land Legislation Amendment (River Red Gums) Bill 2009. Yesterday, Acting Speaker, when you were speaking on the bill you referred fondly to childhood memories of camping and having holidays in the Barmah forest with your family. My childhood was spent in slightly different parks — probably very different parks — in Buxton and Dovedale. I also spent a lot of my childhood in woodlands, which you would probably call minor forests, playing, collecting firewood and just generally enjoying that environment.

When I came to Australia and was taken into the forest around Healesville, my mind was blown away with the smells, the sounds, the birdlife, and just the very difference of the light; I immediately fell in love with the Australian bush. Like you, Acting Speaker, I have also camped on the Murray and spent time there with my family. I remember spending one whole night sitting up with a troubled teenager. We watched the dawn break, and as we were sitting there on the banks of the Murray an eagle swooped down and took a fish. I remember that moment; it was almost like a turning point in his life. As you can see, I have a great love for the Australian bush and for the Murray red gums.

Acting Speaker, you also referred to your grandfather who was a woodcutter in the Echuca region. I know many timber-getters, having lived at Yarra Junction for the number of years I did. It had a very active timber industry and so I got to know them very well. I also got to know their pride and love for the bush. They would guide us around and point out where their fathers and grandfathers had logged and how the trees had grown again so that you could not discern where they had been. They were always the first to respond to bushfires, the first to come out with their very valuable equipment and machinery to help other people.

The Environment and Natural Resources Committee (ENRC) inquiry that I was involved with gave me great experience in visiting and seeing the various areas that had been burnt. Forests and national and state parks have to be managed and managed well. Taking a parcel of land and locking it up, excluding Victorians and not allowing the water that is needed is not the way to do it.

Parks around the world are managed for the environment and for the people. One very different park is the Redwood National Park in California, which is still logged and has camping sites in the park. Thousands upon thousands of visitors each year love and enter the Redwood National Park. In actual fact, as an aside, I have in my garden a redwood because some previous owners had the foresight over 100 years ago to plant an American redwood. I understand it will be 400 years before it reaches maturity.

Dr Napthine — That is like you!

Mrs FYFFE — They say some of the survivors in California's Redwood National Park are estimated to be 2000 years old.

The parks in England are also very different. Due to historical ownership, a lot of them are under private ownership. They are well used and much loved, and when I walked with my family in Dovedale, once again in remembrance of my mum, I found them still as beautiful as ever. In fact I would go so far as to say the parks have improved. They are still protected. They still have biodiversity, but they are used by a wide range of people. The bridlepaths are still well used, you still have sheep grazing, you still have deer, you still have everything that I had as a child. I think the member for South-West Coast was trying to imply that I had been around for centuries — it is not quite that long! Over this long period there have been thousands and thousands of visitors, as there have been to the Redwood National Park. They are parks that belong to the people.

During ENRC's inquiry into bushfires, evidence was presented about how the lack of care, the lack of maintenance of tracks, the closing of many fire access tracks and the proliferation of weeds had contributed to the intensity of the fires. The loss of flora and fauna during bushfires is heartbreaking. At some of the hearings we sat there and were barely able to contain our tears as strong men who had worked in the bush all their lives talked about the animals that they had seen dead, the birds that had fallen out of the sky because of the heat and the vegetation that could not regrow because of the intensity of the heat.

As we went around and looked at areas where the fires had been through 12 months before, there were blackberries growing — there was no maintenance and they were taking over. Blackberry patches of course are ideal hiding places for foxes that come out and kill all the native animals that are returning to these previously burnt areas. There is no funding and no management to get rid of those blackberries. We have seen jobs lost because costs have been cut across parks. Costs have increased, but funding has not increased to the same level.

We have promises of employment in tourism. Get real! My life was in tourism. Certainly there are jobs in tourism, and very strong professional jobs in tourism, but a lot of these workers are not going to be taken up. It takes specific skills to work in tourism and hospitality. There are not jobs for a bloke or a woman whose fingers are like sausages; they are not going to be able to serve Devonshire teas. Nor are they the type of people who want to sit and converse with people. They are people who work in the bush because of the beauty and the isolation. How can you expect them to turn overnight into a tourism operator or a tour guide or an employee in a tourism establishment? As I said, get real. It is like telling those of us who sit in here with soft hands and weak muscles that our jobs are finished today and tomorrow we will be going out labouring on the roads or working in the forests. We would not be able to do it, and yet the government expects people who have worked in this area their whole lives to change their careers.

The taking out of cattle will not protect the parks, and we have seen that in the high country. It will not protect them, and it will in fact make the red gum parks worse. Unless these four-legged lawnmowers are allowed to stay, this government will have a disaster on its hands. Red gums are fire sensitive, and these forests are very different to the mixed-species forests that can be controlled by prescribed burns. Any burn in a red gum park has to be cold, otherwise those magnificent trees

burn. Cattle grazing has also kept down the spread of the cherry parasite.

Former premiers Henry Bolte and Rupert Hamer both knew that resources had to be provided to support national parks. Jeff Kennett established parks. I am fortunate enough to live with beautiful views of the Yarra Ranges National Park. However, funding is needed to maintain them. We have seen the horrific fires that went through that area. We have seen the lack of maintenance. We have seen the undergrowth become so deep that the intensity of the heat made the fires build up their own speed. If we cannot look after what we have got, how can we look after more? Under Mark Birrell, when he was the Minister for Conservation and Environment, much was done to maintain and improve the parks. We have gone backwards since then. In actual fact funding for parklands was not cut back under the Kennett government — this was possibly one of the few areas in which funding was sustained during the time the coalition government was paying off the previous government's debts.

This government is seen as the neighbour from hell. It does not control weeds and vermin; it does not control the wild dogs, cats and foxes in the parks; it is not acting on some of the very good recommendations from the Rivers and Red Gum Environment Alliance. When I see firsthand the heartache of wildlife carers, who are struggling to cope with orphaned and injured animals, I wonder how we will cope if these declared parks go through. We cannot take on more parks until we can change and manage what we have.

I love the Australian bush. Every time I see, visit and enjoy the parks we have, I always appreciate their value, serenity and beauty. But as I look around at the poor stewardship of the parks we have, at the proliferation of weeds, at the build-up of fuel, and given the fact that the Premier has said no to water to save the red gums and is instead sending it down to the Murray, I cannot support this legislation.

Ms GRALEY (Narre Warren South) — It is a great pleasure this afternoon to speak on the Parks and Crown Land Legislation Amendment (River Red Gum) Bill 2009. It is an important piece of legislation. I have listened with great interest to the contributions from both sides of the house. Many of us have recalled our great affection for the Barmah forest. Like the Acting Speaker, nearly every year I spent my school holidays up in the Barmah forest. I remember with great affection sitting out there around the campfire, reading those great novels of Ivan Southall, and thinking that being in the Australia bush with its freedom and its great camping and fishing traditions was a fantastic way to experience childhood. However, when I recently visited the forest, I noticed how it had deteriorated since my times there as a child, seeing the obvious effects of the removal of the gums and of overgrazing.

I would also like to say that I am a great supporter of that particular area of Victoria, thinking again of my times there as a child and especially of the way I have tried to bring up my children — that is, by attending and camping and recreating in many of the national parks that governments of all persuasions have created over time. So it is that this afternoon I express great disappointment about the opposition's stance on this issue. I find it very disappointing that with this bill there is an opportunity to establish another four great national parks, and the opposition is opposing it. But then I think about it again and remember that these are the same people who tried to sell off Point Nepean and the same people who tried to commercialise the great national park at Wilsons Promontory. The opposition has some bad form on this.

The river red gums are a very special part of our heritage and, as I said earlier, they are under threat. The new parks will assist in protecting this iconic ecosystem and will complement and reinforce the efforts to improve its condition through environmental watering. The parks will increase the number of visitors, and that is a great thing. The more people who visit our national parks and have the experiences so many of us have had and have wanted for our children, the better. This is a major step in the right direction.

I would like to put on the record — as I have heard some disparaging comments about this — that there is a $4.5 million assistance package for timber workers affected by the changes to the river red gum timber industry, and that is a very good thing. There will be new employment opportunities — and in fact there are already, through the creation of 30 new Parks Victoria positions and the employment of at least 10 affected forest workers.

I would like to finish by commenting on the traditional owner aspect of this bill. The creation of the traditional owner land management boards for the Barmah National Park and the Nyah-Vinifera Park is a significant development that will increase the involvement of traditional owners in the management of public lands and help to meet their long-held aspirations to care for the country. This is a first for Victoria and a very good step in the right direction.

I would like to read the words of Jonathan La Nauze, Friends of the Earth red gum campaigner, as reported on the 'Save Victoria's red gum' website on

15 October. Jonathan applauded the historic step to create Victoria's first ever co-managed national park. He said:

> For the first time in Victoria, the Brumby government is establishing parks in partnership with traditional owners. Indigenous co-management will deliver not only the best environmental outcomes, but important social and economic outcomes for the Yorta Yorta and Wadi Wadi peoples.

Honourable members interjecting.

Ms GRALEY — It is an absolute disgrace to hear the member for Mildura speak in such paternalistic tones about the traditional owners and their capabilities to manage these important national parks.

I finish by quoting a media release of 15 October from the Australian Conservation Foundation, Friends of the Earth, the Wilderness Society, the Victorian National Parks Association (VNPA) and Environment Victoria — that is, all the major environmental groups in Victoria — describing the commitment we are making on this side of the chamber as 'one of the most significant in Victoria's history' and calling on the opposition to support the legislation in the upper house. The opposition should support it in this house as well. I quote from the media release:

> 'The creation of the parks is one of the most significant conservation commitments ever made in Victoria and we congratulate the government for its far-sighted decision', VNPA spokesperson Nick Roberts said.

I urge the opposition to reconsider its two-faced attitude to the bill, put the future of the national parks movement ahead of its own interests and vote with us on the bill. In my favourite episode of the *West Wing* Jed Bartlet sits and talks about the great national parks movement. We on this side of the chamber will be able to sit back and talk to future generations about what we did to establish these parks. This is an important bill, and I wish it a speedy passage.

Mr TILLEY (Benambra) — I rise today to make a brief contribution to the second-reading debate on the Parks and Crown Land Legislation Amendment (River Red Gums) Bill 2009. Straight from the get-go, I say there will be no hypocrisy and no backflipping. The opposition is strongly opposed to the bill, and there will be no change on that whatsoever.

Principally the bill amends the National Parks Act 1975 and the Crown Land (Reserves) Act 1978 to facilitate the establishment of several national, state and regional parks throughout northern Victoria. The bill also amends several other acts, provides for the establishment of several traditional owner land management boards, eliminates cattle grazing in new park areas and amends other acts in relation to how the community can access these areas and use them into the future.

I must say from the outset of my contribution that I, along with my coalition colleagues, find this bill terribly disappointing. The bill is half baked and half formed. It has been presented by the government with the promise, 'We will do the work later; just give us the authority today'. Labor has had years to get this right, but it is rushing to push through changes to public lands in the north of Victoria without proper consideration of the consequences.

I am an avid user and supporter of our parks. I am aware of and understand the fact that in the community today there is a diverse range of opinions on environmental management of parks and public lands, the role that parks and public lands play in the community, the economic impact of the proclamation of national and state parks on working families and the communities of which they are part, as well as what is considered proper when it comes to the access and use of our national and state parks. However, by any objective measure Labor has got land management wrong for 10 years. Unfortunately this bill clearly demonstrates that Labor has not learnt from its public land management mistakes of the past decade.

In the past decade we have seen the lock-it-up-and-leave-it mentality shape Labor's public land and environmental management policies. This mentality has in no small part contributed to the terrible condition of Victoria's national, state and regional parks — which in turn contributed to the ferocity and intensity of the bushfires Victorians faced in 2003, 2006 and 2009 — and led to a decline in native flora and fauna health. Noxious weeds have been left to grow rampantly, strangling native flora, and out-of-control feral animal populations have decimated native fauna. Over the last couple of days we have continually heard that if members of the government were to travel out of the suburbs of metropolitan Melbourne and have a look at these areas, they would clearly see that those best placed to manage the land are those who live, work and raise their families there. The bill before us confirms that the lock-it-up-and-leave-it mentality still drives Labor policy today.

Focusing on the bill in greater detail, it seeks to amend the National Parks Act 1975 to create the Barmah, Gunbower, Lower Goulburn and Warby-Ovens national parks. It would also amend the act to establish the Gadsen Bend, Kings Billabong and Nyah-Vinifera parks, as well as expanding the existing Hattah-Kulkyne, Mount Buffalo, Murray-Sunset and

Terrick Terrick national parks, the Leaghur State Park and the Murray-Kulkyne park.

There are several major concerns I have with the creation of these parks. Firstly, the bill fails to address the issue of environmental water required for the red gums. The Premier has ruled out any additional water allocation prior to the publication of the Victorian Environmental Assessment Council report. Without the proper allocation of water, these parks might contribute to the bushfire risk as some of these trees may perish and add to the already dangerous fire fuel problem, especially as ground fuel.

It should not be forgotten that this government is ripping water from northern Victoria with the north–south pipeline, about which Labor members should hang their heads in shame. We have heard this from the member for Benalla day in and day out, every day the Legislative Assembly sits. He should continue that strong fight.

I should also mention the mountain cattlemen, as I am also a strong advocate of this issue. The banning of cattlemen from all new parklands continues the government's blatant discrimination against cattlemen. Cattlemen care for the country which sustains their livelihoods. Such blatant discrimination also has a negative effect on bushfire preparedness, as cattle grazing is an effective tool in minimising fire danger, as has been widely reported.

What is most concerning is that the Brumby Labor government has proven time and again that it cannot care for the parks and land already there. The addition of future parks without any requisite change in attitude and commitment by the government only fuels the bushfire problem throughout the state. Our parks are in poor shape, and this was highlighted in my recent bushfire fuel reduction watch report — and I still have not heard back from the Premier, the Minister for Police and Emergency Services or the Secretary to the Department of Sustainability and Environment. Hopefully they will get around to it soon and I will get a response.

The bill also amends the Crown Land (Reserves) Act 1978 to facilitate the establishment of the Kerang and Shepparton regional parks and establish the Murray River Park. This brings me to the most worrying aspect of the bill, which is that the final boundaries of the Murray River Park have yet to be established due to the incomplete surveying. This is despite the many years the government has had to get the job done.

Clause 30 of the bill inserts new section 47BA into the Crown Land (Reserves) Act 1978. Cutting to the chase of that particular section, what the government is saying in effect is, 'Trust us. We have done only half the job, but if you pay us in full now we will be back next week to finish the job'. Northern Victorians will not fall for that, north-eastern Victorians will not fall for that and I have no doubt that people in the rest of Victoria will not fall for that either. What certainty and clarity does this provide land-holders who at this stage may or may not know if their land will be affected? What certainty does this provide the communities that could be affected by the partitioning of land for this park? Certainly there are likely to be continuing concerns about the scale of local job losses and the number of jobs created through additional park management staff and tourism-related industries.

Grovelling to low-rent chardonnay socialists and the lowest common denominator of latte-sipping lefties in Melbourne may at this time be an electoral priority for the Labor Party, and this Premier is leading into the election next year. However, let it never be forgotten that sometimes for those in rural and regional Victoria poor management of land means the difference between life and death or whether your home will remain standing after a bushfire, nor let it be forgotten that it is in rural and regional Victoria where the elimination of forestry and agricultural livelihoods will be felt at the dinner table.

For the sake of creating a compelling narrative the Labor Party is putting the hammer to rural and regional Victoria. This is a government desperate to attract Greens votes and preferences in Melbourne. But believe me, when these changes hit rural and regional Victoria they will be more than just words or a political narrative. They are about food on the table and understanding that your neighbour is prepared for a bushfire and that your safety is not in jeopardy because you can trust that your neighbour manages their land properly.

Ms CAMPBELL (Pascoe Vale) — I rise to make a brief contribution to the debate on the Parks and Crown Land Legislation Amendment (River Red Gums) Bill 2009. There are a couple of points I would like to take up from what the previous speaker said and from claims made by the opposition. The first is in relation to workers. The workers who are currently engaged in industries around the river red gums have been identified and are being looked after by this government. Let us look at how many workers will receive assistance from the River Red Gum Forest Workers Assistance Package: 32 workers have received industry restructure payments and they will continue to

be supported as part of the program for 12 months from the date of acceptance of the program; and
21 businesses are receiving assistance as part of the package.

Another claim was that this park would not be managed. In fact, the Victorian Labor government has shown over and over again that it is capable — as are its workers — of managing our great parks. Let us look at how many people will be engaged in managing the new parks. Some 30 new Parks Victoria positions, including 14 indigenous positions, are being created. At least 10 former timber workers will be employed in the active forest health program; currently nine former timber workers have taken up positions. Additional local Department of Sustainability and Environment staff will also be transferred to Parks Victoria. In fact, Parks Victoria employs 51 staff in work centres that manage parks within the river red gum area. Many of these will be involved in the management of the new park areas, as well as having responsibilities for other areas, such as box-ironbark parks and the existing areas of the Murray-Sunset National Park.

This is good legislation. We have shown that we can manage parks. We show over and over again that we are a party that establishes new parks and manages them well. With those few words, I will leave enough time for the minister to sum up.

Mr JASPER (Murray Valley) — I am pleased to join the debate. I indicate my total opposition to the legislation that is before the Parliament. I do not want to repeat what members of the opposition said earlier about this legislation, because it is legislation that really is not appropriate.

I want to briefly go back in history. In the 1980s I saw a map indicating the extension of national parks which was to be undertaken in Victoria and New South Wales. When I saw that map, I said, 'It will never happen. They will never get these national parks'. But over the years we have seen the extension of the national parks: in the 1980s by the Labor party in government and in the 1990s, when we saw even the coalition extend these national parks. Now we are seeing totally inappropriate extensions to national parks. Why are they inappropriate? Because the government cannot manage what it has to manage now. Without looking at these additional national parks, I invite members to consider the box-ironbark national parks which have been extended. The lack of support that has been provided is a damned disgrace!

I listened to the member for Pascoe Vale. I suggest that she come up to northern Victoria and talk to the people. She will hear what people have to say. I think it is important to understand what they say, which is that the parks are not being managed properly. I had a look at the area of the one that is proposed in my electorate, the Warby-Ovens National Park, extending from the Warby Ranges near Wangaratta right to the junction of the Ovens and Murray rivers. The government is proposing to take over land that will never be managed. It will never manage it properly.

Tom Cameron's family have managed river frontage land along the Ovens River for 100 years. They look after it, they manage it, they put cattle on it to keep the grass down, take the cattle off at appropriate times and put them back on when the land needs further grazing. The government will take that land over and it will not be managed properly.

In the last week Michael Boothby wrote to me. Recently he took me out in his area to land that he had leased for a long time and that the government had taken over. The grazing licence was taken from him and the land is now part of the state forest at Peechelba East. He has sent me pictures of the lack of management of this particular piece of land. I have here the pictures that show precisely what has happened. There is grass 5 or 6 feet high. He says it is so high that even the kangaroos cannot jump through it. It is an absolute disgrace.

Mr Batchelor — You wouldn't be able to see over it.

Mr JASPER — I cannot. You are dead right. Here are the maps. I will pass them on to the minister. He can look at the maps. I cannot see over the grass and even he would not be able to see over it.

Quite frankly, what we need is better management. It is okay for the government to take over land for national parks, but what we need is proper management of the parks that we have. The government should not worry about getting new parks. What is proposed along the Murray River and the Ovens River is an absolute disgrace.

We will see worse management than we have ever had before. The people who had this land looked after it; they have prepared it and looked after it over the years. What we will see is a lack of management and an inappropriate — —

Mr Batchelor — You couldn't see.

Mr JASPER — That is precisely right. That is what is going to happen with these parks if the government's proposal goes ahead. As far as we are concerned, most

of the speakers on this bill who represent metropolitan Melbourne do not really understand what is going on. They should come up and get a true picture not only from the members of Parliament but also from the people who live in the area.

As far as I am concerned, the Minister for Community Development should take note of these maps and the information I have here. I have them to present to the Parliament. I hope they can be incorporated into *Hansard*. This is typical of what is happening in northern Victoria. You have only to talk to the people who live in these areas and have managed them for decades to understand how angry they are about what is going on and the proposal contained in these reports. Yes, we have put in hundreds of thousands of dollars to prepare these reports. The government is defending the reports and saying what it is doing is great for northern Victoria. It will not be; in the longer term, in decades and years to come, we will find that it is totally against the principles of what we need to do to protect these lands. The government should look after what it has at present and try to act more appropriately in the management of it. It needs to make sure that we go forward into the future looking after what we already have. We need to make sure we do not inappropriately manage these national parks in the future.

I listened carefully to the previous speakers — the Deputy Leader of The Nationals, the member for Rodney and others who represent electorates that bound the Murray River and understand these areas. The people from those particular areas have spoken to them about what is happening and they have said that the changes will be totally inappropriate for the management of the parks in the future. Unfortunately the government is pressing on with this, and what we will see is the continued mismanagement of these areas, despite the comments that have been made that there will be additional funding provided to assist with management, tourism and other areas to promote and maintain employment in the northern parts of the state.

Mark my words, we will see a lack of management, as is evidenced by the pictures I have here. I would like to get them incorporated into *Hansard*. I will certainly give them to the Minister for Community Development so he can see what is really going on in this part of the state.

Business interrupted pursuant to standing orders.

The ACTING SPEAKER (**Mrs Fyffe**) — Order! The time set down for consideration of items on the government business program has arrived, and I am required to interrupt business.

House divided on motion:

**Ayes, 49*

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

Noes, 32

Asher, Ms	Napthine, Dr
Baillieu, Mr	Northe, Mr
Blackwood, Mr	O'Brien, Mr
Burgess, Mr	Powell, Mrs
Clark, Mr	Ryan, Mr
Crisp, Mr	Shardey, Mrs
Delahunty, Mr	Smith, Mr K.
Dixon, Mr	Smith, Mr R.
Fyffe, Mrs	Sykes, Dr
Hodgett, Mr	Thompson, Mr
Ingram, Mr	Tilley, Mr
Jasper, Mr	Victoria, Mrs
Kotsiras, Mr	Walsh, Mr
McIntosh, Mr	Weller, Mr
Morris, Mr	Wells, Mr
Mulder, Mr	Wooldridge, Ms

*[Originally reported as 50. Division corrected after the Speaker informed the house that the Clerk had identified a discrepancy between the number of votes cast by the Government Whip and the number of government members actually present. Upon investigation it was found that the government votes cast for the 'Ayes' should have been 49 rather than 50.]

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

STATE TAXATION ACTS FURTHER AMENDMENT BILL

Second reading

Debate resumed from 10 November; motion of Mr BATCHELOR (Minister for Community Development).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

CONSTITUTION (APPOINTMENTS) BILL

Second reading

Debate resumed from 10 November; motion of Mr BRUMBY (Premier).

Mr McINTOSH (Kew) — The Constitution (Appointments) Bill 2009 corrects a significant problem we have in our state Constitution Act and that significant problem is sought to be cured by this bill. For the bill to pass this chamber and another place, it requires a special majority, which in this place requires some 53 members assenting to the bill. From the outset I advise that the opposition will support this bill because, especially in the other place, that special majority would not be achieved without the support of the opposition.

As we demonstrated earlier this week by giving leave to the Premier to second-read this bill to facilitate its quick passage, the opposition has agreed to expedite the bill through both houses as quickly as possible. That does not mean there are not a number of unanswered questions, or that we are completely satisfied with the briefing, although both briefings I have had from the Department of Premier and Cabinet and other officers have been freely given. There have been detailed briefings about this bill, but there are a couple of unanswered matters that I will put on the record, although that will not impede our support, or the expedition of this bill.

The bill seeks essentially to correct an oversight that has existed for about the last 25 years. With the passage of the Australia Act in 1986 — one of the documents that forms the constitutional matrix of the commonwealth — there were also impacts upon our own constitution in Victoria. That impact has significant consequences if it is not addressed at this stage and, to put it bluntly, potentially many acts that have passed this Parliament between 1986 and 2006 — and I will return to that in a moment — could possibly be held to be invalid. Issues concerning executive council decisions, appointments and orders could likewise be held to be invalid simply by virtue of the fact that, in the absence of the Governor, the Lieutenant-Governor of the state in presiding over the executive council or providing royal assent to bills from the Parliament may not actually have been correctly appointed in accordance with our constitutional matrix.

Under the Victorian state constitution, the appointment of a person as Governor shall be during Her Majesty's pleasure by commission under Her Majesty's sign manual and the public seal of the state. Accordingly the Lieutenant-Governor is also appointed in accordance with our constitution in a similar manner, which means that it is an appointment made by Her Majesty.

The Australia Act contains a provision that does not directly talk about the appointment of a Lieutenant-Governor, but impacts upon this constitutional matrix. In section 7(2) of the Australia Act it states in part:

> … all powers and functions of Her Majesty in respect of a State are exercisable only by the Governor of the State.

The problem is that our constitution provides for the Lieutenant-Governor to be appointed by Her Majesty by way of commission, but what the Australia Act says is that the Governor, once in place, does the rest and he has to make that appointment. We have had many fine Lieutenant-Governors, and indeed I had the pleasure of working for 12 months with Sir John Young who served the state as a Lieutenant-Governor for over 20 years and took on the role of administrator of this state — another matter that has to be corrected — for a period of some three months following the resignation of Sir Brian Murray.

Having said that, what is really at issue is the correct appointment of a Lieutenant-Governor and an administrator because, according to the Australia Act, the only person who can appoint the Lieutenant-Governor or administrator is the Governor. The Australia Act does not actually talk about that, and that is clearly one of the problems.

The significant disparity between our state constitution and the Australia Act was only discovered in 2006, as I understand it, and the solicitor-general, who was alerted to this matter, provided the government with advice that threw into question a number of actions, both

legislative and executive, that could be deemed to be invalid. One of the problems we were informed about at the briefing early this morning is that, when you look at the details, you see it could have a significant impact. Since 1986 there have been some 892 days on which the Lieutenant-Governor, whoever it may have been, served in this capacity. It could impact directly upon over 2700 bills or acts that have passed through this Parliament and been submitted to the Lieutenant-Governor for royal assent.

It also impacts on decisions of the executive council, and at the briefing we were told that could include as many as 160 000 pages of executive council minutes and some 3600 commissions of appointment by the executive council. Members can see that there is a significant number and range of activities of the government and the Parliament that could be impacted by this possible invalidity. As I said, we were briefed this morning and then we asked the obvious question which was, 'Why did it take so long, when the problem was first identified back in 2006, until the end of 2009 for this bill to come into the Parliament?'.

The explanation for that was that not only is Victoria but many of the states would be impacted, if not every other state. Similar legislation has already been introduced into the New South Wales Parliament. I have been alerted by my colleague the member for Box Hill that, while all parties supported a similar amendment in New South Wales, the Attorney-General in New South Wales did not agree with the Victorian opinion. He believed New South Wales did not have a problem, but in an abundance of caution was prepared to pass similar legislation.

It is that disparity of views across six different states and trying, in the words of the Leader of the House, 'to line up all the ducks in a row' that has taken a considerable amount of work on the part of many officers in respective states. In the foreseeable future both South Australia and Tasmania will introduce similar legislation. Queensland and Western Australia are still considering their position.

We are now at the point where this legislation is before us. It is a simple piece of legislation that essentially does two things. It does not deal with the validity of the appointment of the respective people, but it makes a change to our constitution to bring it in line with the Australia Act to make it perfectly clear that the Lieutenant-Governor and administrator will now be appointed by the Governor in accordance with the provisions that are outlined in the Australia Act.

The second thing it will do is to retrospectively validate all the relevant actions that may have been taken during that time that have been brought into question with this issue. As we heard in the briefing this morning and at other times, the second most important thing is that any other question of validity that may have existed independent of this particular problem about the appointment of the Lieutenant-Governor can still be made by a person, or may still exist, and it is not touching that matter. It is only insofar as the inability would be based upon the incorrect appointment of a Lieutenant-Governor. That is the only issue that is being rectified by this legislation.

The opposition asked for a full list of every single act that would be impacted by this bill and a list of all the decisions of the executive council. Because of the extensive nature of that list — indeed the Leader of the House indicated that it will probably take a number of public servants three or four weeks to compile that exact list — there could possibly be bills that relate to our constitution. There could be bills that relate to things that we are diametrically and politically opposed to. There could be acts from the period of the former Kennett government that the Labor Party would be implacably opposed to as well. However, that is not the issue; the issue is that they were passed through the Parliament, and for all intents and purposes they were passed in Parliament in the appropriate way. It is just this technical deficiency that may exist about the valid appointment of a Lieutenant-Governor exercising the powers of the Governor to provide royal assent and preside over the executive council.

As I said, the opposition asked for a list of every act impacted by this bill. It was not forthcoming. We accept that it is perhaps just being a bit churlish, given the complexity of it. However, I formally ask whether, most importantly, there are any bills that impact directly upon the Victorian constitution and changes that have been made over the years. Could those that are impacted upon be identified by the government while the bill is between the houses to enable proper consideration? It is an appropriate question to ask. What the government is asking us to do is to retrospectively change the position in relation to validity of legislation. It would be quite appropriate, if it was a few bills, to find out exactly what is being done by virtue of this bill.

Retrospectivity is not something we do lightly and should not do lightly. It was quite an appropriate request from the opposition to ask to be provided with a list. We understand the complexity of that issue. As I said, the opposition does not want to be seen to be churlish in this matter, but certainly, insofar as it deals

with the very fabric that constitutes this place and our system of constitutional government here in Victoria, I think we are entitled to ask for a list of those constitutional amendments that may be validated by virtue of this legislation.

As was identified by the member for Box Hill, the very controversial constitutional amendments that went through in 2003 were not impacted because royal assent was provided by the then Governor of Victoria, John Landy. That obviously does not fall within the ambit of what we are curing today.

The legislation does those two things: it provides to retrospectively validate the actions taken by a Lieutenant-Governor appointed since 1986, and it provides an amendment to our constitution to bring it in line with the Australia Act. As I said, the opposition supports those changes.

I will just make a couple of points in passing. Our constitution is the very act that governs the constitution of this Parliament and our system of constitutional government, our courts and the role of the executive government through the executive council. Most importantly, it is a precious document and should not be treated lightly or flippantly by anybody in this chamber. It is more than just a normal act of Parliament; it provides the very constitutional matrix by which we operate as members of Parliament and by which the executive government and the judicial wing through their constitutional provisions operate.

Our constitution was originally drafted in the 1850s by the great Sir William Stawell, who was in fact a resident of Kew; his house still survives in Kew to this day. It was a beautifully drafted liberal document. I do not mean liberal in a political sense; it was just a beautiful, liberal document that served this state for an extensive period. Yes, it has been amended from time to time. Unfortunately it was significantly amended in 2003, when a number of provisions were entrenched in the constitution. Now, rather than being able to change our constitution by way of an ordinary act of Parliament, we have to have special majorities and in some situations a referendum is required to pass amendments to it.

This highlights the particular problem with entrenching provisions in our state constitution. It is different from the Australian constitution, which was debated up hill and down dale for years and years. Drafts were put before the Australian people by way of referenda before agreement was reached on its final form. It then went to the British Parliament where it was passed, bestowing a constitutional matrix for the commonwealth of Australia.

As I said, it was pored over for years and is a document to which changes have been made, although very rarely. The capacity to change the commonwealth constitution by way of referendum has always been fraught and there have been far more occasions when referenda have been defeated by the people of Australia than carried. It is something we rarely do and it costs a significant amount of money and also a significant amount of political capital.

In the past it was possible to change the Victorian constitution without following that process. That is not the case now. It highlights that if this particular provision had been entrenched in our constitution — that changes could be made only by way of referendum rather than through an ordinary act of Parliament — there would have been a significant political problem. Change would have been effected only through the very costly exercise of holding referenda, with no guarantee of success. It is for this reason that the opposition parties opposed amendments to the legislation in 2003. We just do not think that parties should be fiddling with our constitution and then, by an ordinary act of Parliament, entrenching provisions that make it extremely difficult for further changes to be made.

This particular bill will require a special majority to pass and this requires us to provide that support. Its passage will not be that of a normal bill. It is not so much dependent on support in this chamber, but in the Legislative Council it will require the support of the Liberal Party to be passed. With those few words, the opposition supports this legislation and is pleased to be able to expedite its passage through both houses of Parliament.

Ms THOMSON (Footscray) — I rise to speak very briefly on the Constitution (Appointments) Bill. The member for Kew has gone through the bill at great length. It is not a very long bill at all. Let me reassure the member for Kew that the government does not take the constitution lightly. We see it as the fabric of our democracy and a determinant for the way that Parliament operates.

That is why when we moved the changes to the constitution in 2003 we did so after long consideration and consultation with the community at large. It is intrinsic to ensuring that this place runs properly and that the people of Victoria and their wishes are respected. However, this is not a reform bill. What we did in 2003 was reform the constitution to bring it up to

modern standards so that it represented society as it is and how it works now. This is not that kind of legislation. This is practical legislation that recognises and respects that the Governor appoints the Lieutenant-Governor; it brings the constitution into alignment with the Australia Act, which is the supreme act in relation to how the commonwealth relates to the states; and it recognises the decisions that have been made by the Lieutenant-Governor since 1986.

It is a simple piece of legislation to that extent. It does not fundamentally change any of the practices that have been followed until now. The decisions that were made by the Parliament were made by the Parliament and the decisions that were made by the executive council were made by the executive council. Nothing changes. All we are doing is ensuring proper recognition of what we have all taken for granted right up to the point when we realised the existence of the anomaly with the Australia Act. I commend the bill to the house.

Mr CLARK (Box Hill) — It appears that the issue which this bill seeks to address was first identified back in 2006, apparently as a result of a point that was raised at a legal conference and that was taken on board by the Victorian solicitor-general who, upon assessment of it, concluded that there was a problem. In any event, it appears that the appointment as Lieutenant-Governor of Chief Justice Marilyn Warren on 7 April 2006 was carried out in a way that did not create a constitutional issue in relation to the Australia Act through Chief Justice Warren being appointed by the Governor rather than by the Queen.

However, the existence of this legal issue was not made public at that time or indeed at any other time up until the introduction a few days ago of the bill which we are now considering. The question may well be asked: why has there been such a delay since 2006? We were told at the second briefing with which we were provided by the department together with the Minister for Energy and Resources that was in effect because the affected states were seeking to act at the same time and find a window of opportunity in which they were all able to act at the same time. It has taken until now to find that window of opportunity.

Certainly no other light was shed on the situation in the second-reading speech that the Premier gave to this house. I was therefore rather disconcerted to read, following the second briefing with which we were provided by the department, that in fact there was another reason for the delay which had not been disclosed to us but which was freely disclosed in the second-reading speech in the New South Wales Parliament — namely, there appears to have been an attempt amongst a number of states to obtain unanimous agreement of all the states to request that the commonwealth amend the Australia Act to resolve this issue. That is something which has come to light to us only through what was said in New South Wales. We still have had no further explanation of it.

I have to say that the fullness and frankness with which this issue was canvassed in the second-reading debate by the New South Wales Attorney-General, Mr Hatzistergos, is in stark contrast to the truncated and terse account that we were given in Victoria by the Premier. It is no wonder that members on the opposition side of the house view with great suspicion initiatives with which we are asked by the government to cooperate, when we find late in the piece that there has been this lack of frankness in what we have been told.

The New South Wales debate also makes clear that there is a range of views as to whether there is a problem. The view expressed by the New South Wales government was that there is uncertainty and that the position is arguable but the New South Wales government does not necessarily agree with the view that has been taken by the states of Victoria, South Australia and Tasmania.

My counterpart in New South Wales, the shadow Attorney-General, Mr Greg Smith, made an excellent contribution to the debate there, which I commend to all honourable members, in which he discussed the history of the issue. From what he told the New South Wales Parliament, the situation with the Lieutenant-Governor was recognised at the time of the passage of the Australia Act and certainly in New South Wales it was consciously concluded that there was not an issue with continuing to have the Lieutenant-Governor appointed by way of commission by the Queen.

Greg Smith outlines the argument, certainly available under the New South Wales constitution, that 'Governor' is defined to include any person for the time being administering the government of the state, which may include the Lieutenant-Governor. However, it is arguable that that extends to the Lieutenant-Governor only while administering the government of the state; it does not extend to the Lieutenant-Governor at the time of his or her appointment.

At the end of the day there is no quarrel with the fact that these issues need to be put beyond doubt, but we could have got to that position a lot more directly than we have here in Victoria. A question has arisen as to what acts are affected by this. We were told it would

take a considerable amount of work by a number of public servants over a period of time to compile a list. To compile an accurate and totally signed off list may well take some time. However, I have to say that a Google search of terms such as 'Lieutenant-Governor' and 'royal assent' on the votes and proceedings of the Parliament can generate a pretty comprehensive list fairly quickly. I have documents with me which cover about a third of the outcome of the Google search I undertook.

The key issue that remains unresolved as we speak is whether there is something that goes to the constitutional legitimacy of this Parliament. Clearly if there has been a failure in relation to something that goes to the legitimacy of the current Parliament, then we as a Parliament are not in a position to remedy that deficiency. That remains the major issue that, although partially and perhaps to a large extent resolved, is not completely resolved.

The Constitution (Parliamentary Reform) Bill of 2003 was assented to by the Governor rather than by the Lieutenant-Governor. That is the bill which as an act has reconstituted the Legislative Council. However, there is a range of other constitutional amendment bills and we would seek, before this legislation is debated in the other house, an indication from the government as to whether any of those that have not already been identified were assented to by the Lieutenant-Governor before 7 April 2006, and whether that has any implications for the legitimacy of this Parliament.

I will briefly mention two other matters. Yet again the infamous charter has reared its head. The statement of compatibility states:

> The bill does not engage and therefore does not limit any human rights contained in the charter.

There are no human rights engaged by the bill! I will be interested to see the report of the Scrutiny of Acts and Regulations Committee (SARC) on this issue. Off the top of my head I would submit there may well be an argument that the charter right of not being subjected to a greater penalty than applied at the time of the offence could be engaged, if acts imposing greater penalties since 1986 have not been validly assented to. But I will let SARC deliberate and advise on that point.

That leads to my final point, which is that this bill is yet another demonstration of the folly of the impetuous and ill-considered hard-wiring into our constitution of complex and detailed constitutional provisions. We can all be thankful that the provisions of the constitution that we are now amending were not made subject to a requirement for a referendum to amend them, as so many of the other provisions that were inserted without referendum in 2003 now require, because if this provision could only be amended by referendum we would have grave difficulties indeed.

A similar point applies in relation to arguments for bills of rights. We can only ask ourselves how British, and therefore Australian, constitutional history would have been different had the entirety of the Bill of Rights of 1688 been hard-wired into the British, and therefore into the Australian, constitution. Over time we find that concepts which seem appropriate in one era change in other eras. We have in that respect had a narrow escape in relation to this bill in that the provisions now being amended were not made subject to a referendum requirement in 2003.

We will await further information from the government to confirm that there was nothing that was assented to by a Lieutenant-Governor that could affect the constitutional standing of this Parliament to remedy the matter. Subject to that, we believe it is necessary to put the issue beyond doubt. That is why we have been pleased to facilitate the debate of this legislation in the Parliament.

Mr INGRAM (Gippsland East) — I will make a brief comment on the Constitution (Appointments) Bill 2009. Like the opposition, I was given the opportunity of a briefing on the bill and the reasons that it was to be brought before the Parliament. I attempted to look at some of the potential impacts of this myself, and that was an extremely difficult thing. It would have taken a long while to look at the number of executive councils that have been overseen by the Lieutenant-Governor or the administrator.

As a member who has been in this place for a number of years, I know there have been many occasions when messages from the Lieutenant-Governor have appeared and appropriation for bills have been provided. If you look at the potential impact of challenges to those decisions by previous lieutenant-governors, they would potentially bring an enormous cost to the state and could really undermine the position of this Parliament in passing laws. Whilst retrospectivity is something we should carefully handle in all instances, in this case that could be used to go back and ensure that the decisions taken by the Parliament to pass legislation through both houses, whether it was supported by me or by either side of this place, are respected. That is why I will be supporting the legislation. That is important, because the impact of not doing that could potentially seriously undermine the position of this Parliament and the position of government in Victoria.

Mr BATCHELOR (Minister for Community Development) — In summing up this important bill before the house, I would like to thank those members who have made a constructive contribution to the debate. In particular the members for Kew and Box Hill have gone into the issues that are of concern and importance to them in great detail. There are a couple of comments I would like to make in relation to that.

Firstly, during a briefing that was given today by officials from the Department of Premier and Cabinet to a significant number of opposition members and staff from other government offices, which I also attended, a request was made about the nature of the constitution reform bill in 2003 and confirmation sought as to whether that involved the Governor or the Lieutenant-Governor. As the member for Box Hill confirmed, that involved the signature of the Governor, John Landy, at the time. From the advice I have been given, and I have a copy of the *Victorian Government Gazette* attesting to that — that was the specific request that was made to us this afternoon — through his own endeavours but also through the endeavours of the Department of Premier and Cabinet I can confirm that that was in fact the case.

Additionally the opposition has asked for information relating to other changes to the constitution. I can give an undertaking to the member for Kew and the member for Box Hill that we are working through that process and we will make that available to them. At first blush that exercise has identified that there are some, there are not many, and they are not of any major consequence. We want to satisfy the request with the degree of thoroughness that has been attached to it. We need some extra time to be able to do that, and we will, and I will undertake on behalf of the government to make that available to the member for Kew and the opposition. As I say, the first-blush analysis is as I have described. We hope that assists the understanding of opposition members and provides the confidence to them that their supporting this is not only the right thing to do but is justified in terms of the context and the concerns that they expressed in the briefing and have articulated here today.

In summary, and just to remind members, the bill provides for appointments of lieutenant-governors and administrators to be made by the Governor in Victoria. Secondly, the previous actions by the lieutenant-governors and administrators appointed by the Queen between the commencement of the Australia Act and the commencement of this bill will be made valid. That is what this bill sets out to do. In essence it is to give validity and certainty to those bills which have become acts and other instruments to make sure they stand and have the necessary validity. It will cover a range of political circumstances over the years.

As the member for Kew pointed out, due to the swings and roundabouts and the passage of time, I am sure members on both sides of the chamber would like to see various bits and pieces. However, what we are agreeing to do is sensible, logical and pragmatic — that is, the operations of the Parliament during the totality of that period will not be questioned because of some administrative quirk or oversight that was introduced in the past.

I thank those members who have made a contribution to this debate either in the chamber or in the preceding parts of the dialogue that has been necessary to bring this debate to a conclusion. We wish the bill a speedy passage through the other chamber.

Motion agreed to.

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

Third reading

The ACTING SPEAKER (**Ms Campbell**) — Order! I advise the house that I am of the opinion that the third reading of this bill requires to be passed by special majority. As there is not a special majority in the house, I ask the Clerk to ring the bells.

Bells rung.

Members having assembled in chamber:

Motion agreed to by special majority.

Read third time.

BUSINESS OF THE HOUSE

Division list

The SPEAKER — Order! I inform the house that in the division that took place today on the question that the Parks and Crown Land Legislation Amendment (River Red Gums) Bill 2009 be read a second time, the Clerk has identified a discrepancy between the details of members recorded as present and the total number of votes that were actually cast. Upon investigation, it was found that the votes cast for the ayes should have been 49 rather than 50. The Clerk will make the necessary correction to the record of the division.

SUMMARY OFFENCES AND CONTROL OF WEAPONS ACTS AMENDMENT BILL

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Summary Offences and Control of Weapons Acts Amendment Bill 2009 (the bill). In my opinion, the bill, as introduced in the Legislative Assembly, is partially compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

1 Overview of bill

The bill amends the Summary Offences Act 1996 to enhance police powers to tackle violence and disorder. It confers on police a new power to direct people to move on from an area if they are, or are likely to become, involved in a breach of the peace or threat to public safety.

The bill also creates a new offence of disorderly conduct, empowers the police to arrest and lodge in safe custody a person who is found drunk and disorderly in a public place, and expands the list of offences for which infringement notices can be issued.

The bill amends the Control of Weapons Act 1990 to clarify and strengthen the existing power to search a person for weapons on reasonable suspicion that the person is carrying a weapon in a public place. It also provides the police with a new power to search persons for weapons in public places within temporarily designated areas. This new power is not premised on the police first forming a reasonable suspicion that the person to be searched is carrying a weapon. The bill regulates in detail the way in which the new search powers are to be exercised (and includes special protections as to the circumstances in which, and manner in which, strip searches can be conducted).

2 Human rights issues

The amendments to both acts raise a number of issues in terms of compatibility with the charter. In this statement, I deal first with the issues raised in respect of the Summary Offences Act 1966 because that conforms with the structure of the bill. In my view, however, the most significant charter issues arise in relation to the amendments to the Control of Weapons Act 1990.

***Summary Offences Act 1996* — new police powers to move on**

Clause 3 of the bill inserts new division 1A into part I of the Summary Offences Act 1966 to provide police with a 'move on' power. This power permits a member of the police to give a direction to a person or a group of persons to leave a public place or a part of a public place if the member suspects on reasonable grounds that the person or group of persons is breaching the peace or likely to breach the peace; that the person is endangering or likely to endanger the safety of any other persons; or that the person's behaviour is likely to cause injury to a person or damage property, or otherwise constitute a risk to public safety.

Section 12 — freedom of movement

Section 12 of the charter provides that every person lawfully within Victoria has the right to move freely within Victoria. As clause 3 allows police to compel a person to leave a public place and creates an offence for failure to comply, the right to freedom of movement is limited. However, I consider this limitation to be reasonable and justifiable under section 7(2) of the charter for the following reasons.

(a) the nature of the right being limited

It is generally recognised that the right to freedom of movement can be subject to restrictions. For example, the International Covenant on Civil and Political Rights expressly recognises that the right may be subject to restrictions that are necessary for the protection of national security, public order, public health or morals or the rights and freedoms of others.

(b) the importance of the purpose of the limitation

The purpose of the power to issue a 'move on' direction is to reduce violence and disorder. It is aimed at protecting public order and the rights and freedoms of others, including the rights to life, to security and to enjoyment of one's property. These are important objectives that are sufficient to justify limiting a charter right.

(c) the nature and extent of the limitation

The direction can only be made to members of the public reasonably suspected of breaching the peace, endangering safety or damaging property, or where there is a likelihood of one of those things occurring. The definition of 'breach of the peace' is settled at common law and contemplates situations where harm is done or likely to be done to a person or their property or where a person is in fear of being harmed through an assault, an affray, a riot, unlawful assembly or other disturbance.

Once a direction is given, the person or group of persons will be compelled to leave the place for period of time not exceeding 24 hours. Anyone who fails or refuses to leave that place or part of that place is guilty of an offence carrying a maximum penalty of 5 units (the current value of a penalty unit being $116.82). The offence will also be enforceable by infringement notice with a penalty of two units.

(d) the relationship between the limitation and its purpose

The 'move on' power provides police with a pre-emptive tool to diffuse dangerous situations and to ensure the peaceful enjoyment of public spaces by the citizenry. In this way, there is a clear and rational connection between the limitation on the right to freedom of movement and the purpose of the provision.

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

Clause 3 is carefully tailored. The 'move on' power is only triggered if there is a reasonable suspicion of a breach of the peace, threat to safety, or threat of injury or damage (or of a likelihood of one of these things occurring) and is in effect for a limited period of time. Additionally, subclause (5) specifies

that the power does not apply in relation to a person who is: picketing a place of employment; demonstrating or protesting about a particular issue; or speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publicise the person's view about a particular issue. This means that activities with a high expressive content will generally be exempted from interference.

In the light of these limits on its operation, clause 3 restricts the right to freedom of movement no more than reasonably necessary to achieve the legislative purpose.

Section 15 — freedom of expression

For similar reasons, clause 3 does not breach section 15 of the charter. The exemption in subclause (5) for picketing, political demonstrations or protests and other attempts to publicise a viewpoint ensures that most behaviour with a high expressive content cannot be targeted. I accept that it is possible that some conduct targeted by clause 3 may nevertheless have an expressive content and thus engage the right to freedom of expression in section 15(2) of the charter. However, section 15(3) provides that the right to freedom of expression brings with it special duties and responsibilities and may be subject to lawful restrictions that are reasonably necessary to respect the rights and reputation of other persons or for the protection of national security, public order, public health or public morality. Accordingly, a provision such as this one that is carefully tailored to respond to behaviour that gives rise to a reasonable suspicion of a disruption or impending disruption to public order does not breach section 15.

Section 16(1) — peaceful assembly

Section 16(1) of the charter provides that every person has the right of peaceful assembly. The right of peaceful assembly encompasses the right to privately and publicly gather or associate with others to attain a particular end and the right to organise and to participate in public demonstrations and marches. As is apparent from the terms of the right itself, it only protects participation in activities that are intended to be peaceful. Assemblies that are not peaceful or that lose their peacefulness through the use or threat of force do not fall within the protective scope of right. In my view, because the 'move on' power is targeted at breaches or anticipated breaches of public order, the right to peaceful assembly is not engaged.

***Summary Offences Act 1996* — new offence of disorderly conduct**

Clause 6 of the bill inserts new section 17A into the Summary Offences Act 1996, which creates the offence of behaving in a disorderly manner in a public place. The offence carries a maximum penalty of five units, and can also be enforced through infringement notices carrying 2 penalty units.

Section 15 — freedom of expression

As disorderly conduct can have an expressive component, clause 6 clearly engages section 15(2) of the charter. It is well recognised that the right to freedom of expression protects the expression of ideas that offend, shock or disturb and covers behaviour that is irritating, contentious, heretical, unwelcome or provocative — provided, at least, that it does not tend to provoke violence.

As has already been noted, however, section 15(3) of the charter provides that the right to freedom of expression can be subject to lawful restrictions that are reasonably necessary to respect the rights and reputation of other persons or for the protection of national security, public order, public health or public morality. The offence of behaving in a disorderly manner places limits on acceptable behaviour in public places in order to serve the legitimate purpose of protecting public order and the rights of others to the peaceful enjoyment of public spaces. The right to freedom of expression means that those limits should be generous ones that do not, for example, restrict a person's behaviour simply because it offends or annoys others. However, the language in which the offence of behaving in a 'disorderly manner' is cast is malleable, allowing for it to be interpreted and applied narrowly so as to ensure consistency with the human rights framework. So, for example, the New Zealand Supreme Court recently considered the meaning of the equivalent New Zealand offence in the light of the right to freedom of expression found in the New Zealand Bill of Rights Act 1990 (*Brooker v. Police* [2007] 3 NZLR 91). Each member of the court formulated, in slightly different language, a test that he or she considered sufficient to protect the right — for example, behaviour that is 'seriously disruptive of public order', that creates a 'clear danger of disruption rising far above mere annoyance' or that causes 'anxiety or disturbance at a level which is beyond what a reasonable citizen should be expected to bear'. It is to be expected that the Victorian police and, if necessary, the judiciary will likewise interpret and apply the new offence in a manner that is consistent with section 15(3) of the charter and that does not penalise behaviour simply because it annoys others.

Accordingly, I conclude that clause 6 does not breach section 15 of the charter.

Section 16(1) — peaceful assembly

In the majority of circumstances in which the new offence of behaving in a disorderly manner applies, the right to freedom of peaceful assembly in section 16 of the charter will not even be engaged. This will be either because the particular assembly is not 'peaceful' or because the people who are assembled have not come together for a common purpose (which is generally thought to be a precondition of the right of peaceful assembly).

It is possible, though, that there will be some cases in which the offence of disorderly conduct will nevertheless limit the right of peaceful assembly. That is because the concept of 'disorderly' is probably not synonymous with lacking 'peacefulness'. Its ambit is somewhat wider and may include behaviour that causes a high degree of anxiety or disturbance but that is not violent.

I consider, though, that any limit on the right of peaceful assembly is justified under section 7(2) of the charter for the following reasons.

(a) the nature of the right being limited

The nature of the right to freedom of peaceful assembly has already been outlined.

(b) the importance of the purpose of the limitation

The purpose of the limitation is to protect public order and the rights of others to use and enjoy public spaces. This is an

important objective — though it is to be expected that any interference with the rights of others would need to reach a threshold of seriousness before it could be sufficient to justify limiting the right to freedom of peaceful assembly. As discussed above, the language in which the offence is cast is sufficiently malleable to allow the courts to ensure that an appropriate threshold is adopted, and there is case law from other jurisdictions to guide the Victorian courts in doing so.

(c) the nature and extent of the limitation

The measure will only limit a small category of behaviour coming under the rubric of 'peaceful assembly', that is, behaviour that is peaceful but nevertheless disorderly.

(d) the relationship between the limitation and its purpose

An offence of behaving in a disorderly manner will clearly assist in protecting public order and the rights of others to the peaceful enjoyment of public spaces.

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

There is no obvious less-restrictive means available for providing the police with a general power to respond to behaviour that causes a high degree of anxiety or disruption to other citizens. Offences concerning disorderly conduct are found in a number of other common law jurisdictions. As discussed above, the malleability of the language in which the offence is cast ensures that it can be interpreted in a manner that intrudes no more than is necessary on protected rights, and there is guidance from other jurisdictions such as New Zealand as to how to do so.

***Summary Offences Act 1966* — offences of drunk in a public place and drunk and disorderly**

Section 13 of the Summary Offences Act 1966 makes it an offence to be found 'drunk in a public place' and section 14 makes it an offence to be found 'drunk and disorderly in a public place'. As the law currently stands, a person who contravenes section 13 may be arrested and lodged in safe custody. Clause 5(1) of the bill amends section 14 to similarly empower police to arrest and lodge in safe custody a person who contravenes section 14.

In practical terms, this amendment does not empower the police to do anything that they cannot already do. This is because any person who has contravened section 14 will also have contravened section 13 (and therefore already be eligible to be arrested and lodged in safe custody for that offence). The amendment will provide consistency between the two provisions. Nevertheless, as the amendment to section 14 provides the police with an additional power, I consider the charter issues raised by the provision briefly below.

Section 21 — liberty and security

Clause 5(1) engages the liberty rights found in section 21 of the charter and, most pertinently, the right not to be 'arbitrarily' arrested or detained (section 21(2)). The prohibition on 'arbitrary' interference has sometimes been said to require that a lawful interference must be reasonable or proportionate in all the circumstances; and has also been said to incorporate elements of inappropriateness, injustice and lack of predictability (United Nations Human Rights Committee, general comment 16, paragraph 4; *Toonen v. Australia* (communication no. 488/1992); *Van Alphen v. The Netherlands* (communication no. 305/1988)).

In my view, the power to arrest a person who is found drunk and disorderly in a public place and lodge them in safe custody is not arbitrary. It is for the legitimate purpose of protecting the safety of both the person themselves and others in the community by placing them in a safe environment until they have sobered up. Implicitly, it must be exercised for this purpose, and the person must not be detained for longer than is reasonably necessary for this purpose. A parliamentary report into public drunkenness in 2001 noted that the time taken depends on the level of intoxication but is usually for a period of four hours. The Victoria Police manual also contains detailed guidance for police about protecting the safety and welfare of persons who are drunk while in custody.

In deciding that this power is not arbitrary, I have also taken into account the fact that section 16 of the Summary Offences Act 1966 creates an offence of, while drunk, behaving 'in a riotous or disorderly manner in a public place'. That offence attracts the more serious penalty of 10 units or imprisonment for two months. Further, the police have the power available to them (under section 458 of the Crimes Act 1958) to arrest a person for an offence against section 16. Such an arrest would not have the protective purpose of an arrest for lodgement in safe custody under section 14. Accordingly, in many cases, it will be in the interests of the drunk person for the police to have this less serious intervention available to them.

Section 15 — freedom of expression

Clause 5(1) also engages the right to freedom of expression in section 15 of the charter. That is because, as discussed above, 'disorderly' behaviour can have an expressive content. Clause 5(1) creates a detriment for a person who is found 'drunk and disorderly' by empowering the person's arrest and lodgement in safe custody. Additionally, the bill increases the penalty units for the offence from 1 to 5 units (clause 5(2)). However, it also makes provision for the offence to be dealt with by infringement notice with a maximum penalty of 2 units (clauses 7 and 8).

I have already concluded above that the more serious new offence of behaving in a disorderly manner (new section 17A) is compatible with the right to freedom of expression. It follows that clause 5(1) is also compatible. As just mentioned, it provides police with a significantly less intrusive power for dealing with disorderly conduct than arresting and charging the individual with an offence against section 16.

***Control of Weapons Act 1990* — new search powers**

Part 3 of the bill amends the Control of Weapons Act 1990 to enhance the powers available to police officers to search for weapons in public places.

As currently enacted, section 10 of the Control of Weapons Act 1990 empowers police officers to search members of the public without a warrant where they suspect, on reasonable grounds, that the person is carrying a 'prohibited weapon' a 'controlled weapon' or a 'dangerous article'. Clause 9 of the bill amends section 10 in order to address efficacy problems that have arisen due to uncertainty over whether police officers are empowered to seize a suspicious object if it is concealed beneath clothing (and therefore cannot be positively identified or recovered as a result of a pat down

search) or if the officer is unsure which of the three categories of weapon the article falls into. As amended by clause 9, section 10 empowers a police officer to conduct a search if he or she reasonably suspects that the person is carrying a 'weapon' (defined as an object falling into any one of the above categories) and to seize any object that he or she reasonably believes to be a weapon. This means that it is no longer necessary for the police officer to positively identify which category of weapon the object falls into. Additionally, the amended section 10 (read together with new schedule 1 to be introduced by clause 13 of the bill) empowers police, where necessary in order to uncover a suspicious article, to proceed beyond a pat down search or search of a person's outer clothing to a strip search.

Clause 12 extends the police's search powers by empowering the police to stop and search persons and vehicles in public places that fall within areas that have been temporarily designated. This new search power is not premised on the police having first formed a reasonable suspicion that the person is carrying a weapon but is premised, instead, on there being a likelihood of weapons-related violence occurring in the designated area.

New sections 10D-10F (as inserted by clause 12) empowers a senior police officer (ranked inspector or above) to declare an area to be a designated area for a maximum period of 12 hours. There are two forms of designation — 'planned designations' and 'unplanned designations'. Planned designations may be made where there has already been more than one incident of weapons-related violence or disorder in the proposed area over the last 12 months, or where weapons-related violence or disorder has been associated with a particular event or celebration on previous occasions (section 10D). Additionally, the officer making the designation must be satisfied that there is a likelihood that such violence will recur. Unplanned designations are to deal with the situation where the police receive intelligence that an incident involving weapons-related violence has occurred or is about to occur. An unplanned designation can be made where the officer is satisfied that it is likely that violence or disorder involving weapons will occur in the area and that it is necessary to designate the area for the purposes of enabling the police force to exercise search powers to prevent or deter the occurrence of that violence or disorder (section 10E).

New sections 10G-10L authorise the police, in public places that fall within a designated area, to stop and search for weapons: persons and things in their possession or control (section 10G), and also vehicles (section 10H). The police are empowered to seize any item detected during the search that they reasonably suspect is a weapon (section 10J).

Clause 13 inserts new schedule 1, which provides detailed instructions to police on the manner in which searches of the person under sections 10 and 10G are to be conducted. In the case of searches within designated areas under section 10G, police are to begin with a search using an electronic metal detection device (schedule 1, clause 3) and to progress to a pat down search, search of outer clothing and close examination of the person's belongings only if, as a result of the initial search, the member considers that the person may be concealing a weapon (schedule 1, clauses 4 and 5). In the case of a search on reasonable suspicion under section 10, the member may proceed immediately to a pat down search, search of outer clothing or search of belongings without being required to first utilise an electronic metal detection device. In either case, however, the police can only proceed to a 'strip search' if, having conducted the less intrusive search, they form a reasonable suspicion that the person has a weapon concealed on them; and they believe on reasonable grounds that it is necessary to conduct a strip search for the purposes of the search and that the seriousness and urgency of the circumstances require the strip search to be carried out (schedule 1, clause 7). The power to 'strip search' enables the police to move beyond a search of outer clothing and to take the minimum measures necessary to recover a suspicious object that appears to be concealed underneath the person's clothing. Consistent with the principle of minimal intrusion reflected throughout the bill (for example at schedule 1, clause 9(4) and (14)) it is highly unlikely that, in the majority of cases, this phase of the search will require the person being searched to remove all of their clothing. Schedule 1 also provides extensive protections with respect to the conduct of all searches, which I outline further below.

New section 10K (as inserted by clause 12) requires individuals who are subject to a strip search to disclose their identity.

New section 10L (as inserted by clause 12) makes it an offence for a person, without reasonable excuse, to obstruct or hinder the police in the exercise of their search powers or to fail to comply with a relevant direction.

Section 13 — the right to privacy

Section 13(a) of the charter provides that everyone has the right not to have his or her privacy unlawfully or arbitrarily interfered with.

In considering whether the new search powers breach section 13(a), the first question is whether the amendments empower the police to interfere with a person's privacy. If so, then the second question is whether that interference is 'unlawful' or 'arbitrary'.

The concept of 'privacy' defies precise definition but at its most basic, is concerned with notions of personal autonomy and dignity. It has been said that the right to privacy contains several spheres, including 'spatial, personal and informational' spheres, and that it includes the right of the individual to determine for himself or herself when, how and to what extent he or she will release personal information about himself or herself (*R v. Dyment* [1988] 55 DLR (4th) 503 at 520; *R v. Duarte* [1990] 65 DLR (4th) 240 at 252).

It is clear that, in general terms, a search of a person is an intrusion on a person's privacy. However, it is also clear from the case law in other jurisdictions that intrusions on privacy must pass a threshold of seriousness before the privacy right can be said to be engaged. Trivial intrusions will not amount to an interference with privacy for the purposes of section 13(a). It is possible that the power to conduct an initial search of a person solely by use of an electronic metal detection device under new schedule 1, clause 3 does not amount to a sufficiently serious intrusion to engage the section 13(a) right. In *R (Gillan & Anor) v. Commissioner of Police of the Metropolis & Anor* [2006] 2 AC 307, the House of Lords went further and held that a power to conduct pat down searches and to search bags within designated areas did not engage the right in article 8 of the European Convention on Human Rights to respect for 'private life'. Bearing in mind the different language of the European Convention ('private life' rather than 'privacy') and the special context in which

the Gillan case arose (it concerned a counter-terrorism measure) the safer conclusion, in my view, is that the power in schedule 1, clauses 4 and 5 to conduct pat down searches and to search outer clothing and belongings does amount to an interference with the right to privacy in terms of section 13(a) of the charter. This is consistent with the weight of authority from other jurisdictions. Given that conclusion, it is unnecessary to decide whether an electronic metal detection device search, without more, engages the section 13(a) right.

Undoubtedly, the power to conduct 'strip searches' (schedule 1, clause 7) and the power to search vehicles (new section 10H) amount to interferences with the right to privacy.

The key question, therefore, is whether the interferences with privacy authorised under any of these provisions can be said to be 'unlawful' or 'arbitrary' for the purposes of section 13(a). A 'lawful' interference is one that is authorised by a positive law that is adequately accessible and formulated with sufficient precision to enable a person to regulate his or her conduct by it (*Sunday Times v. United Kingdom* (1979) 2 EHRR 245). The bill provides detailed guidance as to the circumstances in which the new search powers will be exercised and the manner of their exercise so there is no question of the resulting interferences with privacy being 'unlawful' in this sense.

The meaning of 'arbitrary' has been touched on above. The prohibition on 'arbitrariness' has been said to require that a lawful interference must be reasonable or proportionate in all the circumstances; and has also been said to incorporate elements of inappropriateness, injustice and lack of predictability. I give separate consideration below to two situations contemplated by the new search powers. First, I consider the powers that are being given to police to search persons and vehicles in public places within the designated areas, even if the police have not formed a reasonable suspicion that the person or vehicle is carrying a weapon. Secondly, I consider separately the power that is being given to police to 'strip search' individuals. This power only arises if a police officer has formed a reasonable suspicion that the person is carrying a weapon.

The power to search without suspicion within the designated areas

I accept that the power given to police officers by clause 12 of the bill to search persons and vehicles in designated areas even though the police officer has not formed a suspicion on reasonable grounds that the person or vehicle is carrying a weapon is an unusual one that warrants careful scrutiny in order to determine its level of consistency with charter values. There are two significant reasons to proceed with introducing random stop and search powers in designated areas, as provided for in the bill. Firstly, the detection of and prevention of weapons-related offending poses significant challenges for Victoria Police and the new search powers will provide a valuable tool for them in trying to meet those challenges. Secondly, the legislation has been carefully tailored to ensure that it provides significant safeguards whilst providing the police with an effective tool to meet those challenges.

The bill provides the police with a tool to assist them in meeting the challenges faced by patterns of offending in particular areas by enabling them to target particular geographical hotspots through the designation process. The bill also enables the police to target particular events (such as New Year's Eve and the evening of the AFL final) which draw particularly large crowds onto the streets and therefore pose special policing challenges.

Having regard to the unusual and intrusive nature of the new search powers, the legislation has been carefully tailored to limit the reach and impact of the power to search without suspicion and to protect against inappropriate use. For example, the legislation includes the following features:

Designations can only be made in the limited circumstances set out in new sections 10D(1) and E(1) as already outlined. Those circumstances link the grounds for making a designation to the patterns of weapons-related offending just discussed and to a likelihood of weapons-related violence occurring;

The designations must be geographically limited to an area that is no larger than is reasonably necessary to effectively respond to the particular threat (new sections 10D(2) and 10E(3));

Each designation only operates for a limited time. In addition to the maximum durations of 12 hours, the period of operation of a designation must be for no longer than is reasonably necessary to enable the police to respond effectively to the particular threat (new sections 10D(3) and 10E(4));

In the case of planned designations, notice of the designation must be given to the public through the *Government Gazette* and through daily newspapers (new section 10D(4) and (5)). This will enable at least some members of the public to moderate their expectations and to avoid travelling through the designated areas if they are sufficiently concerned about the impact on them of the search power;

In accordance with schedule 1, any search of a person under section 10G must be graduated, commencing with the least intrusive form of search available, that is, a search by the use of a metal detection device and only proceeding to a pat down search and search of outer clothing if, as a result of the initial search, the member considers that the person may be concealing a weapon;

New section 10I provides written and oral notice requirements that apply once any person or vehicle is detained for the purposes of a search. They ensure that the person is informed of the reason for and authority for the search and, if they wish to know it, the identity of the police officer.

The government intends to proceed with this legislation notwithstanding the conclusion that it is incompatible with section 13(a) of the charter. There is considerable concern in the community about the pattern of weapons-related offending with which this legislation is concerned. I am unwilling to reduce further the operational scope of the legislative response to that threat. In particular, the government is very concerned that the carriage and use of weapons by people in public places should be prevented, or at the very least, deterred.

As I am entitled to do, I make this statement indicating that the legislation is partially incompatible with the charter to the extent that it provides powers for police to randomly search persons and vehicles in public places within the designated areas, even if the police have not formed a reasonable

suspicion that the person or vehicle is carrying a weapon. The government intends to proceed with the legislation in its current form.

The power to strip search

I have given separate consideration to whether the more serious interference with privacy arising from the provisions in the bill that empower the police to 'strip search' individuals is arbitrary in terms of section 13(a). The bill provides for this power to be exercised in one of two circumstances. First, as amended, section 10 of the Control of Weapons Act 1990, read together with new schedule 1, makes clear that the section 10 power to search on reasonable suspicion may, in certain circumstances, include the power to strip search. That power is not limited to designated areas. Secondly, section 10G, read together with schedule 1, makes clear that the power to search in designated areas can also, in certain circumstances, include a power to strip search.

A strip search is one of the most serious forms of invasion of privacy and I accept that such a power requires a correspondingly high level of justification. I am satisfied that high level of justification is present in both the above circumstances because the power is contingent on two preconditions. First, it is only available if a police officer, having conducted a less intrusive search, has formed a suspicion on reasonable grounds that the person has a weapon concealed on his or her person (section 10 and schedule 1, clause 7). I am satisfied that the standard of reasonable suspicion is sufficient. That is because of the serious and immediate public safety concerns that arise where the suspicion is that the person is carrying a weapon in a public place.

Secondly, a number of provisions in the bill ensure that a strip search can only be conducted if less intrusive measures will be insufficient to meet the exigencies of the situation. For example, new section 10G(3) provides that a police officer must conduct the least invasive search that is practicable in the circumstances, and schedule 1, clause 7 provides that a police officer can only conduct a strip search if it is necessary for the purposes of the search and if the seriousness and urgency of the circumstances require it.

I am satisfied that a strip search conducted on the grounds of reasonable suspicion and in accordance with the necessity principle just articulated would not be arbitrary per se. However, the experience in other jurisdictions indicates that such a search might nevertheless be rendered arbitrary if it were not conducted in a manner that maximised, as far as possible, the dignity of the individual. The bill contains a general stipulation that the search must be conducted in a manner that preserves the dignity and self-respect of the person being searched (schedule 1, clause 9(5)). Additionally, the bill contains substantially more specific protections designed to maximise individual dignity:

> Police must conduct the least invasive kind of search that is reasonably necessary and the search must not involve the removal of more clothes than is reasonably necessary (schedule 1, clause 9(4) and (14)). It is likely that in some cases, the 'strip search' may entail an intrusion as minimal as the person being asked to lift their shirt to reveal a concealed object;
>
> Before the search begins, the police officer must inform the individual of his or her identity and of the reason for and authority for the search (schedule 1, clause 8(1)). He or she must inform the person whether the person will need to remove clothing during the search and, if so, why; and must also ask the person to cooperate (schedule 1, clause 9(2) and (3)).
>
> Police must conduct the strip search as expeditiously as possible and must use as little force as possible (schedule 1, clause 9(7) and (8)).
>
> The search must be conducted in a private area and in a way that provides reasonable privacy for the person being searched (schedule 1, clause 9(6)). It must be conducted by someone of the same sex as the person being searched. It must not be conducted in the presence or view of a person of the opposite sex, nor in the presence or view of any person whose presence is not necessary for the purposes of safety (schedule 1, clause 9(9)– (11)). It must involve no more visual inspection than is reasonably necessary ((schedule 1, clause 9(15)). It is anticipated that the police will conduct the strip searches in mobile police vehicles which will be kept nearby for that purpose.
>
> Searches of the genital area or breasts must not be conducted unless the police officer suspects on reasonable grounds that it is necessary to do so; and searches of body cavities are absolutely prohibited (schedule 1, clause 9(12) and (13)).
>
> Special protections apply to persons with impaired intellectual functioning (schedule 1, clause 12). The situation of children is discussed separately below.

In the light of all of these factors, I conclude that the power provided for in the bill to strip search individuals where there is a reasonable suspicion that they are concealing a weapon does not amount to an arbitrary interference on a person's privacy in terms of section 13(a) of the charter.

Section 21 — liberty and security

Section 21(1) of the charter provides that every person has the right to liberty and security, and section 21(2) provides that a person must not be subjected to arbitrary arrest or detention.

Clause 9 of the bill inserts into section 10 a power for a member of the police to detain a person for so long as is reasonably necessary to conduct a search under that section (new section 10(6)). Additionally, the power to search within designated areas in new section 10G includes the power to detain a person for so long as is reasonably necessary to conduct a search under that section.

Case law from other jurisdictions diverges markedly as to when a 'detention' occurs in fact. Until the Victorian courts develop an approach to this question, the safe assumption is that whenever the police make clear to an individual, either vocally or through their actions, that the individual is not free to go, the person is detained.

I have concluded above that the search powers contained in section 10 (as amended) and new section 10G do not amount to arbitrary interferences with liberty. For those powers to be effective, police must be able to place whatever restraints on the liberty of individuals are necessary in order to ensure that they receive cooperation for the duration of the search. That is probably, in any event, implicit in the grant of a power to search a person. The new powers to detain in sections 10(6)

and 10G(4) are strictly limited to what is reasonably necessary to conduct the search. In my view, therefore, those sections are not incompatible with the section 21(2) right not to be subjected to arbitrary detention.

New section 10I contains notice requirements that ensure that any person who is detained is informed of the reason for the search in compliance with section 21(4) of the charter — the right of persons who are detained to be informed of the reason for the detention.

Section 20 — property rights

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

The bill allows for seizure of a person's property where the police reasonably suspect that the person is carrying a weapon in a public place. There are two provisions in the legislation to guard against any permanent interference with property where no offence has been committed.

First, new section 10J stipulates that, if a member of the police seizes an item and then determines after examination that it is not a weapon, the member must return the item to the person from whom it was seized. Secondly, the existing forfeiture regime in section 9 will apply. It ensures that where a weapon has been seized in relation to an offence under the act, it must be returned to the person if proceedings for that offence are not commenced within three months or if a decision is made not to bring proceedings. I would expect that the words 'in relation to an offence' will be interpreted liberally to ensure that any person who has an item seized under sections 10G or H will be entitled to reclaim that item if no proceedings are commenced against them.

In my view, there is no inconsistency with section 20 of the charter.

Section 17(2) — children's rights

I have already determined that sections 10G and 10H of the Control of Weapons Act 1990 are incompatible with the charter in relation to section 13(a). Similarly, I have determined that they are incompatible with section 17(2).

However, the government believes this legislation is important for preventative and deterrent reasons, including the protection of children.

Section 25(1) — the presumption of innocence

Section 25(1) of the charter provides that any person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. This means that it is the responsibility of the prosecution to prove each element of the offence to the standard of beyond reasonable doubt.

The bill contains four offence provisions which allow a defendant to escape liability if he or she has a 'reasonable excuse'. Specifically, a person commits an offence if, 'without reasonable excuse', he or she:

> contravenes a direction given by a police officer to move on from an area under new section 6 of the Summary Offences Act 1966 (clause 3);
>
> fails or refuses to comply with a request to disclose his or her identity under new section 10K of the Control of Weapons Act 1990 (clause 12);
>
> in response to such a request to disclose his or her identity, gives a name that is false in a material particular or is an address other than the person's full and correct address;
>
> obstructs or hinders the police in the exercise of their search and seizure powers under section 10 and new sections 10G, 10H and 10J of the Control of Weapons Act 1990 or fails to comply with a direction given by a member of the police to accompany the member to a place for the purposes of a strip search under schedule 1 (new section 10L, inserted by clause 12).

Pursuant to section 130 of the Magistrates' Court Act 1989, the effect of these provisions is to require the accused to present or point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish a lawful excuse. If the defendant discharges this 'evidential burden', the onus reverts to the prosecution to prove absence of lawful excuse beyond reasonable doubt. It is questionable for that reason whether provisions of this kind amount even to a prima facie breach of the presumption of innocence. In any event, any limitation on the right is reasonable and demonstrably justified.

In each case, the lawful excuse 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 excuses by requiring the defendant to put in issue the precise excuse that he or she wishes to rely on. All the defendant must do is to provide sufficient evidence to cloak the excuse with an air of reality (for example, by taking the stand and giving his or her side of the story), but the burden remains with the Crown to disprove its existence to the ordinary criminal standard.

Conclusion

I consider that the majority of 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.

However, I consider that the bill is incompatible with the charter to the extent that it limits rights under sections 13(a) and 17(2) in providing powers for police to randomly search persons (including children) and vehicles in public places within designated areas, even if the police have not formed a reasonable suspicion that the person or vehicle is carrying a weapon. The government intends to proceed with the legislation in its current form as there is considerable concern in the community about the pattern of weapons-related offending with which this legislation is concerned.

Bob Cameron, MP
Minister for Police and Emergency Services

Second reading

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

That this bill be now read a second time.

As part of its commitment to tackling the growing incidence of drunkenness, disorderly behaviour and violence involving the carrying and use of weapons in the Victorian community, the government is introducing the Summary Offences and Control of Weapons Acts Amendment Bill 2009. The bill will amend the Summary Offences Act 1966 and the Control of Weapons Act 1990 to give police stronger powers to combat violence and antisocial behaviour.

This bill was foreshadowed by the Premier on 9 August 2009, when he announced that the government will fund 120 additional full-time police officers on the street to help make the Victorian public safer. The Premier announced the government would introduce the following new police powers:

tougher random search powers for weapons in designated areas;

a power for police to direct people to move on from a certain area where there is a fear there will be a breach of the peace;

a new offence of disorderly conduct; and

for the new offence of disorderly conduct, and for existing offences of drunk and disorderly and drunk, there will be on the spot penalties with a fine of $234.

Drunk and drunk and disorderly offences enforceable by infringement notice

The bill amends the section 13 offence in the Summary Offences Act 1966 of drunk in a public place to carry a maximum penalty of 4 penalty units, which is enforceable by means of an infringement notice with a penalty of two penalty units.

For the section 14 offence of drunk and disorderly, the bill specifies a maximum penalty of five penalty units, with an infringement amount of 2 penalty units.

The amendments form part of a specific package of reforms aimed at addressing the problems of violence, the carrying and use of weapons and public disorder, at least some of which is alcohol related. There are strong and justifiable public interest grounds for enabling drunk and drunk and disorderly offences to be enforceable by means of infringement notices. The new infringement penalties should act as a deterrent, punish the offender and be a suitable justice system denunciation of public drunkenness behaviour.

I am advised that the chief commissioner will issue instructions that will apply to operational members in the use of the power to issue infringement notices. This will be especially important as the power will apply to circumstances where notices may be given to drunken or drunken and disorderly persons who have not been arrested and detained as well as to persons who are detained. The chief commissioner's instructions will direct that members should only issue infringements for these offences to drunken persons who have been detained in police custody or who have been escorted home by police.

The legislation will not preclude infringement notices being given on multiple separate occasions to the one person, should they continue to reoffend. Police will establish guidelines to assist operational members in determining when it is appropriate to issue court proceedings, instead of an infringement notice.

Detention power for offence of drunk and disorderly

Section 13 of the Summary Offences Act 1966 explicitly enables Victoria Police to arrest a person found drunk in a public place and to lodge the person in safe custody. An explicit power to detain is not currently included in section 14 for the offence of drunk and disorderly. A percentage of the annual attendances for arrest/drunk (drunk in a public place) are cases where drunkenness is accompanied by disorderly behaviour. However, at present, to secure the safe custody of an intoxicated person, even where their behaviour may also be disorderly, police will generally arrest and detain the person under the section 13 drunk in a public place offence. The bill therefore inserts into section 14 the same arrest and detention power that is used in section 13.

A new offence of disorderly conduct

The bill inserts a new offence of disorderly conduct into the Summary Offences Act 1966. The new section 17A offence of disorderly conduct provides that any person who behaves in a disorderly manner in a public place is guilty of an offence. The maximum financial penalty for this offence is 5 penalty units, with an infringement penalty of 2 penalty units. The penalty is consistent with the proposed amended penalty for the offence of drunk and disorderly. The existing definition of 'public place' under the act applies to this offence.

Move-on powers

The government has made a commitment to give police the power to direct people to move on from a certain area where there is a fear there will be a breach of the peace. The introduction of this new power will bring Victoria into line with every other jurisdiction in

Australia. All jurisdictions have given their police forces the power to issue enforceable directions to individuals and groups, in public places, to move away or disperse from an area.

A move-on power is a pre-emptive tool designed to diffuse a situation and to ensure the peaceful enjoyment of public spaces by the citizenry. Police, in all states and territories, have long endeavoured to maintain public order through informal and unenforceable requests to persons in public places to refrain from engaging in certain activities or to move away from an area. Having regard to the increase in disorder and related behaviours in public places in Victoria, especially in the CBD and entertainment areas, it is now appropriate to give Victoria Police enhanced powers to ensure that members of the public can peacefully enjoy these spaces.

The bill inserts a 'move-on' power into the Summary Offences Act 1966. This gives police the power to direct a person, or a group of persons, in a public place to leave the public place, or a part of the public place (as 'public place' is already defined in the act), for a period of up to 24 hours if the officer suspects on reasonable grounds that:

the person, or the group of persons, is breaching the peace or is likely to breach the peace; or

the person is endangering or is likely to endanger the safety of any other person; or

the person's behaviour is likely to cause injury to a person or damage property or is, otherwise, a risk to public safety.

The bill makes it an offence to contravene a direction without reasonable excuse, which carries a maximum penalty of 5 penalty units with an infringement penalty of 2 penalty units.

The bill contains exclusions so that the move-on power may not be exercised where a person, whether or not in the company of other people, is:

picketing a place of employment; or

demonstrating or protesting about a particular issue; or

speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publicise the person's view about a particular issue.

Enhanced police powers to search for weapons

The government is committed to reduction and deterrence of violence involving the carrying and use of weapons in the community. Therefore, the government is of the view that it is appropriate to provide Victoria Police with additional powers to search for weapons when it is believed that violence or disorder involving prohibited weapons, controlled weapons or dangerous articles has taken place, or will take place, in an area. These new powers will enable Victoria Police to act to address the risk that violence or disorder involving weapons will occur or recur.

The bill establishes two grounds for conducting searches for weapons in a public place without warrant. Firstly, there will remain the existing power under section 10 of the Control of Weapons Act to search a person in a public place, without warrant, on a reasonable suspicion that the person is carrying a weapon. Secondly, the bill creates a new power under new section 10G to search any person, without warrant, in a designated area.

The bill provides that police will only be able to exercise the new power to search any person without warrant in public places which are in an area specifically designated for the purposes of this search power under the Control of Weapons Act 1990. 'Public place' will be defined in the same way that it is already defined in the Summary Offences Act 1966.

It is proposed that an area may be designated in either of two ways. Firstly, a planned designation may be made with public notice. The chief commissioner must designate an area and publish a notice, including a map and a description of the designated area, in a newspaper generally circulating in the state of Victoria, and if the area is in rural Victoria and the area has a daily newspaper generally circulating within it, in that daily newspaper. A notice to the same effect must also be published in the *Government Gazette*. In both cases, the publication must occur no less than seven days prior to the designation taking effect.

Secondly, there may an unplanned urgent designation of an area that will not require publication in a newspaper and may take effect immediately.

The power to designate an area (planned or unplanned) may be exercised by a member of the police force at the level of inspector or higher. A planned designation will take effect from the date and time stipulated in the publication and will remain in force for no longer than 12 hours. The duration of an unplanned designation will

be no longer than 12 hours from the time that the inspector (or higher) makes the designation.

To make a planned designation of an area, the inspector (or higher) must believe that violence or disorder involving prohibited weapons, controlled weapons or dangerous articles has taken place in the area and there is a risk that such violence or disorder may recur.

To make an unplanned designation of an area, the inspector (or higher) must believe that it is likely that violence or disorder involving prohibited weapons, controlled weapons or dangerous articles will take place in the area. The police member must also believe that it is necessary to designate the area for the purposes of police exercising search powers to prevent or deter the occurrence of such violence or disorder.

Where an area has been the subject of a planned designation, no further planned designation of that area may take effect until after the expiry of 10 days after the previous planned designation has ceased to be in force.

In the case of an unplanned designation of an area, it is likely that the urgency of the designation will arise from information/intelligence obtained by police of the possibility of some incident at a particular place. This will enable police to act quickly to establish an unplanned designation of an area. It will not be practicable in such circumstances for police to provide clear identification of the area as being designated for the benefit of members of the public. The clear identification of an area's designation would also risk the potential for persons who might be illegally carrying weapons to avoid the 'designated area' and thereby avoid the search process.

Information, including a notice, will be provided to all persons who police search in a designated area. The information provided will include details of the designated area, the time over which the designation applies, together with an explanation of the powers.

The bill contains detailed provisions regarding the manner in which searches for weapons by police are to be undertaken.

I appreciate that there will be a range of views about human rights when a random search takes place. In particular, there are likely to be a range of views regarding the ability of police to conduct random searches of adults and children for weapons using the new powers. I have considered the human rights engaged by the bill in detail in my statement of compatibility and reiterate that the government is extremely concerned that the carriage and use of weapons, particularly by children, should be deterred and prevented to the greatest extent possible. Therefore, although the bill is partially incompatible with the charter, the government is of the view that it is necessary and appropriate to provide police with these powers to address the community's concerns regarding weapons-related offending.

I commend the bill to the house.

Debate adjourned on motion of Mr TILLY (Benambra).

Debate adjourned until Thursday, 26 November.

SERIOUS SEX OFFENDERS (DETENTION AND SUPERVISION) BILL

Statement of compatibility

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

In accordance with section 28 of the Charter of Human rights and Responsibilities, I make this statement of compatibility with respect to the Serious sex Offenders (Detention and Supervision) 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 bill and charter of compatibility

Purpose of the bill

The main purpose of the bill is to enhance community safety by requiring offenders who have served custodial sentences for serious sex offences and who pose an unacceptable risk of harm to the community to be subject to either a supervision or detention order. The secondary purpose of the bill is also to facilitate the treatment and rehabilitation of such offenders so as to reduce their risk of harm to the community.

Legislative context

This bill will repeal the current Serious Sex Offenders Monitoring Act 2005 and replace the scheme which operated under that act with a new detention and supervision scheme. This new scheme will create two types of orders to better protect the community and to tailor the level of protection to the level of risk presented by the offender.

Key features of the bill

The bill establishes a two-tier scheme, with one tier for the post-sentence detention of high-risk sex offenders and a second tier providing supervision for high risk offenders who can safely be supervised in the community. A court will be able to impose on an eligible offender in respect of whom an application has been made:

a detention order — for offenders who cannot safely be supervised in the community; or

a supervision order — for offenders who can safely be supervised in the community but who require post-sentence supervision. These offenders may, in appropriate cases, be directed to reside at a residential facility in the community or other accommodation in the community.

The new scheme is not punitive in nature, but ensures that the orders effect the minimum level of limitation upon rights necessary to ensure community safety. It is a civil scheme rather than a criminal scheme and it effects prevention, protection and rehabilitation, rather than punishment.

In order to achieve these purposes, the bill establishes a scheme whereby the secretary to the Department of Justice (the secretary) can apply to the Supreme Court or the County Court in respect of an eligible offender for a supervision order; and the Director of Public Prosecutions, on the recommendation of the secretary, can apply to the Supreme Court for a detention order.

In making a supervision order, the court must be satisfied that the offender poses an unacceptable risk of reoffending if the order is not made and the offender is in the community. In making a detention order, the Supreme Court must be satisfied that the risk of reoffending would be unacceptable unless the order is made, and if it is not so satisfied, may make a supervision order. In either case, the evidence justifying the decision must be cogent and the court must be satisfied by that evidence to a high degree of probability.

The court retains discretion as to whether or not to make any order. It may take account of any matter in exercising this discretion.

If a court decides to make a supervision order, then all core conditions must be imposed and the court has discretion to impose suggested or discretionary conditions, provided that they represent the minimum interference with the offender's liberty, privacy or freedom of movement that is necessary in the circumstances to adequately ensure the purposes of the conditions, and are reasonably related to the gravity of the risk of the offender reoffending. These twin requirements provide substantial safeguards against any arbitrariness and ensure that limitations upon rights are proportionate to the risk of reoffending.

Engagement of charter rights

The key rights limited by the new scheme under the bill, and the imposition of detention and supervision orders under the scheme, are the right to liberty (section 21 of the charter), the right to privacy (section 13 of the charter) and the right to freedom of movement (section 12 of the charter).

Other rights which are also engaged by the bill are the right not to be subjected to medical treatment without consent in section 10(c) of the charter, the right to freedom of association in section 16 of the charter, the right to a fair trial (section 24) and the right to humane treatment when deprived of liberty (section 22).

In my view, the criminal process rights (section 25), the right to be protected against a retrospective penalty (section 27) and the right not to be punished more than once (section 26) are not engaged by the provisions of the bill, as the scheme is protective and not punitive. This will also be discussed further below.

Overall assessment of compatibility

In my view, the bill is compatible with the charter for the following reasons:

the bill contains transparent, accessible and predictable criteria governing the imposition of any limitations upon rights;

a court cannot impose a detention or supervision order unless such an order is necessary to prevent an unacceptable risk of further offending;

the court must be satisfied, by acceptable, cogent evidence, and to a high degree of probability, that the evidence is of sufficient weight to justify the making of an order;

the court has a discretion, notwithstanding the satisfaction of this test, as to whether or not to make any order;

if the court decides to make a supervision order, then the court has a discretion to impose suggested or discretionary conditions, again subject to satisfaction of the relevant tests;

the suggested or discretionary conditions imposed by a court on an offender must be appropriately tailored, in that the conditions must be reasonably related to the gravity of the risk of the offender reoffending, and must constitute the minimum interference with the offender's liberty, privacy or freedom of movement to ensure the purposes of the conditions;

if the Adult Parole Board is authorised by the court to give directions to an offender in relation to the operation of any condition, the board will also aim to ensure that its directions are reasonably related to the gravity of the risk of the offender reoffending, and constitute the minimum interference with the offender's liberty, privacy or freedom of movement to ensure the purposes of the conditions;

both detention and supervision orders are subject to mandatory reviews at defined intervals by the court that made the order;

an offender may seek court review in respect of both the court's order and the conditions imposed; and

an offender is given an opportunity to be heard and may appeal any orders made.

In my view, these safeguards adequately protect an offender's right to liberty, privacy and freedom of movement and ensure that limitations upon these rights in each case are appropriately limited to what is necessary to achieve the stated purposes. These rights and the other rights engaged by the bill are considered in further detail below.

Human rights issues

Right to liberty (section 21)

This right relevantly provides that:

(1) every person has the right to liberty and security;

(2) a person must not be subject to arbitrary arrest or detention;

(3) a person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law.

Detention orders obviously engage the right to liberty and a condition requiring an offender to reside in a residential facility under a supervision or interim order may, in a particular case depending on all of the circumstances and the range of conditions imposed also engage the right to liberty.

The right in section 21 requires that any interference with liberty must be in accordance with procedures established by law. The bill meets this requirement as it contains accessible and appropriately stated legislative tests.

There must be sufficient access to courts in relation to decisions which amount to detention, in order to ensure that the detention is not arbitrary. Further, the Human Rights Committee has said that in order to avoid a characterisation of 'arbitrary' detention, it should not continue beyond the period for which a state party can provide appropriate justification.[1] As stated above, under the bill both detention and supervision orders are subject to mandatory reviews. Additionally, an offender can seek leave to apply for a review of a detention or supervision order. These requirements ensure that orders will not continue beyond the period for which there is appropriate justification, and that appropriate procedures are available to ensure that the question of the continuing justification for the order is brought back to the court if circumstances change during the period of the order.

Further, the liberty right requires that a determination by the court leading to detention must be attended by safeguards to preclude arbitrariness. The bill contains a number of such safeguards. Further, in my view, the fact that any conditions and authorised directions issued to an offender must constitute the minimum interference with the offender's liberty, privacy or freedom of movement necessary to reduce the risk the offender presents to the community, and must be reasonably related to the gravity of risk, are important safeguards preventing arbitrariness.

For these reasons, in my view any restriction on liberty which occurs as a result of the imposition of a supervision or detention order will not be arbitrary.

Interim orders

Part 4 enables interim detention or supervision orders to be imposed where an application for a detention or supervision order has been lodged with the court and, inter alia:

> it appears to the court that the documentation supporting the application would, if proved, justify the making of a supervision order; and
>
> it would be in the public interest to make the order having regard to the main purpose of the bill and the reasons why the applications will not be determined before the expiry of the offender's custodial sentence.

Interim orders can include the same restrictions on an offender's freedom of movement as final orders.

In my view, interim orders are not arbitrary given the detailed factors the court must consider under clauses 53 and 54 of the bill and the fact that they cannot exceed four months (unless the court making the order considers that exceptional circumstances exist).

Right to privacy (section 13)

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

Under international law and within Europe and the United Kingdom, the right to privacy has been interpreted as applying to a vast array of circumstances which affect both family life and a person's personal integrity and identity.

Limitation of the right to privacy arises only where there is firstly an interference with the right, and secondly that interference is either unlawful or arbitrary. The United Nations Human Rights Committee has said in general comment 16 that the term 'unlawful' as applied in the ICCPR means that no interference can take place except in cases envisaged by the law; and that in order to avoid a characterisation as 'arbitrary' the law itself 'must comply with the provisions, aims and objectives of the [ICCPR]'. Further, it is said that even interferences provided by law should be 'reasonable in the particular circumstances'.[2]

There are a number of clauses in the bill which permit an interference with offenders' privacy. In particular:

> clause 107 (and 108(2)), which states that the secretary may direct an offender to attend a specified medical expert for an examination for the purposes of making an application under the bill;
>
> clause 84 provides that the court to which an application is made may order an offender to attend for a personal examination by a medical expert or any other person for the purpose of enabling the person to make a report or give evidence;
>
> part 3 of the bill, under which an offender may be subject to a detention order, and thus be committed to detention in a prison for the period of the order (clause 42) — although this is dealt with in detail in relation to the liberty right;
>
> division 3 of part 2, which sets out the various core, suggested and other discretionary conditions of a supervision order (or interim order) permits conditions to be made that involve interferences with offenders' privacy. In particular, the suggested conditions can relate to treatment or rehabilitation programs that the offender must attend, types of employment in which the offender

[1] See *D & E v Australia*, Human Rights Committee, Communication no 1050/2002, UN Doc CCPR/C/14/D/27/1977 (9 August 2006).

[2] *General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation* (art. 17) : 08/04/88.

must not engage, and electronic and other forms of monitoring;

part 4 of the bill, which allows for the imposition of interim detention and supervision orders, which may interfere with an offender's privacy for the same reasons as detention and supervision orders;

part 12 imposes restrictions on an offender's ability to obtain a change of name through the registrar of births, deaths and marriages;

division 3 and division 4 of part 10 include provisions dealing with the management of offenders on supervision orders, and enable, for instance, search and seizure powers to be exercised in certain circumstances (including in relation to visitors) in relation to where offenders are residing;

part 13 governs the restriction and sharing of personal and health information about the offender with 'relevant persons' and other persons who have responsibilities under the scheme of the bill or who may be associated with the offender;

clause 4 of schedule 3 amends the Surveillance Devices Act 1999 so that the installation, use or maintenance of a tracking device in accordance with a supervision order does not breach the Surveillance Devices Act 1999.

Detention, supervision and interim orders — parts 2, 3 and 4 of the bill

I have already discussed the compatibility of detention orders and the condition on a supervision order requiring an offender to reside in a residential facility in relation to the liberty right. I have also set out above the safeguards in the scheme in relation to the process by which detention and supervision orders are made and the evidence required by the court to justify the decision.

In this section, I want to draw attention to the conditions on a supervision order that can interfere with an offender's privacy, particularly those that relate to treatment or rehabilitation programs that the offender must attend, types of employment in which the offender must not engage, electronic and other forms of monitoring, and persons with whom the offender must not have contact.

In my view, the ability to impose these kinds of conditions is compatible with an offender's right to privacy because the conditions are made at the discretion of the court and must be tailored to the offender's risk of reoffending, in the sense of constituting the minimum interference with the offender's privacy. This is set out in clause 15(6) of the bill. Further, part 5 of the bill provides for reviews of conditions, which can be initiated by the offender with leave, and part 7 provides for appeals by offenders relating to conditions. This oversight by the court is a very important safeguard in ensuring that the interferences with privacy will not be arbitrary and will be no more than is necessary to achieve the legislative purpose.

Search and seizure — part 10 of the bill

Clause 142 provides that an officer in charge of a residential facility may give an order, if the officer reasonably believes that the order is necessary, to search a residential facility; a supervision officer, offender or other person in the residential facility, or require a person wishing to enter a residential facility to submit to search and examination of the person and anything in the person's possession or control.

The officer must believe that the search is reasonably necessary for the good order of the residential facility, for the safety and welfare of offenders or of staff of the facility or of visitors to the facility, or because the search is necessary to monitor an offender's compliance with a supervision order or interim supervision order or where the officer reasonably suspects the offender of behaviour or conduct associated with an increased risk of reoffending.

Similarly, clause 143 allows for a supervision officer to seize any thing found in a residential facility for similar reasons to those needed to justify a search.

While clause 142 does interfere with the privacy of persons who are subject to a search under this clause, the interference will not be arbitrary for the following reasons: the officer must reasonably believe that the search is necessary; the circumstances in which a search can occur are clearly specified in the legislation and tailored to ensure the power is not applied arbitrarily; the nature of the search is proportionate to the aim in being restricted to a garment or pat down search; and finally, in relation to an offender's correspondence, the provision excludes the power to read letters in a range of important circumstances.

I also draw to Parliament's attention the more minimal search and seizure powers in relation to the management of offenders at other locations in clauses 152 and 153. In my view, these provisions are also compatible with the privacy rights of the offender and I rely to the extent relevant, on my reasoning above.

Change of name — part 12 of the bill

Part 12 interferes with an offender's personal autonomy by placing restrictions upon an offender's ability to change his or her name. However, the interference is not unlawful or arbitrary, as it is a reasonable restriction (given the importance of the Adult Parole Board effectively supervising offenders) and the restrictions will only occur in a clear and predictable manner in accordance with the provisions of part 12.

Information sharing — part 13 of the bill

Part 13 also imposes appropriate restrictions on the sharing of information, including that the information can only be divulged or communicated if the person disclosing the information believes on reasonable grounds that it is necessary to do so to enable a person to carry out a function under the bill, or any other act, including specified acts. The inclusion of these safeguards ensures that any information exchanges under the scheme will not be arbitrary.

Right to freedom of movement (section 12)

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 they live.

An offender's right to freedom of movement will be limited by the imposition of detention, supervision and interim orders under parts 2, 3 and 4 of the act.

A detention order imposed under part 3 restricts where a person can go by requiring them to be detained in a prison.

A supervision order imposed under part 2 will have core conditions attached to it under clause 16 which limit section 12 of the charter, such as the condition that an offender attend any place as directed by the Adult Parole Board. Further, a court may also choose to attach suggested conditions to an order, such as a condition in relation to where an offender may reside, times at which the offender must be at home, and places or areas that the offender must not visit which also limits an offender's right to freedom of movement.

However, I consider that the limitations to an offender's right to freedom of movement under section 12 of the charter are reasonably justified under section 7(2) of the charter, having regard to the following factors:

The nature of the right being limited

The right to freedom of movement is not an 'absolute right'. Under international law the right has been characterised as one that has inherent limitations. Subsection (3) of article 12 of the ICCPR (the equivalent right) relevantly provides:

> The [rights to liberty and freedom of movement] shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present covenant.

This wording acknowledges the fact that a restriction on freedom of movement is sometimes a rational solution to the problem presented by, for instance, threats to public health and safety.

The importance of the purpose of the limitation

The purpose of imposing orders generally under the scheme, including detention orders, is to enhance the protection of the community by reducing the risk of relevant offending to an acceptable level.

The purposes of the conditions of supervision orders is to reduce to an acceptable level the risk of reoffending by serious sex offenders including through the promotion of the rehabilitation and treatment of offenders; and to provide for the reasonable concerns of the victims of the offenders in regards to their own safety and welfare.

These are important and legitimate purposes, safeguarding the rights of others.

The nature and extent of the limitation

The extent of the limitation of the right in relation to the imposition of detention orders is severe and for this reason, is better dealt with in relation to the liberty right as set out above.

The nature of the restrictions on freedom of movement can include suggested conditions on supervision orders as to where an offender may reside, times at which the offender must be at home, and places or areas that the offender must not visit.

In imposing these conditions, the court must ensure they constitute the minimum interference with the offender's freedom of movement that is necessary in the circumstances to ensure the purposes of the conditions, and is reasonably related to the gravity of the risk of the offender reoffending.

The relationship between the limitation and its purpose

The above provisions ensure that any limitation of the offender's freedom of movement will be proportionate to the purpose of the limitation.

Any less restrictive means reasonably available to achieve its purpose

Any restrictions to an offender's freedom of movement will represent the minimum interference necessary to give effect to the protective and preventative purpose of the scheme. Accordingly, no less restrictive means are reasonably available.

Right not to be subjected to medical treatment without consent (section 10(c))

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

Clause 17 includes a suggested condition of 'treatment or rehabilitation programs or activities that the offender must attend and participate in'. This could include 'medical' treatment.

To the extent that a person is required to be subjected to medical treatment without his or her consent, that person's right under section 10(c) is limited. I consider that the limitation is reasonably justified under section 7(2) of the charter, having regard to the following factors:

The nature of the right being limited

The purpose of this right is to protect people from medical or scientific treatment without their full, free and informed consent. It is directed at such experimentation or treatment of any kind, even that which is beneficial to the individual. The right expresses the fundamental value of the personal dignity and integrity of the individual, the autonomy of the individual, as well as the authority of people to make decisions in matters that affect themselves and the importance of such decisions being full, free and informed.

The importance of the purpose of the limitation

If a court were to impose a condition upon an offender that he or she be subject to medical treatment without his or her consent, the court would do so on the basis that such an order was necessary for the purpose of protecting the community by reducing the risk of the offender committing a relevant offence.

Accordingly, the purpose of the limitation to section 10(c) is legitimate and important.

The nature and extent of the limitation

If a court were to impose a condition upon an offender that he or she is subject to medical treatment without his or her consent, an offender would be required to undergo treatment

against his or her will, which would compromise the personal autonomy of the offender. This could constitute a relatively severe limitation to an offender's human rights.

However, the severity of the limitation is lessened as a result of clause 160(2) of the bill, which provides that it is not a breach of a supervision order if an offender fails to comply with a condition relating to medical treatment. Thus, there is no sanction for non-compliance with this condition. In *R(H) v. Mental Health Review Tribunal* [2007] EWHC 884 Admin, the English High Court found that a condition of release from detention that the patient shall comply with a medication regime was not unlawful because there was no sanction for non-compliance.

The relationship between the limitation and its purpose

As discussed above, a court would only impose such a condition if such a condition were necessary to reduce the risk of reoffending by the offender and was reasonably related to the gravity of risk of reoffending presented by the offender. Consequently, the limitation is closely linked to the purpose of reducing the risk that an offender poses to the community.

Any less-restrictive means available to achieve the purpose of the limitation

No less-restrictive means are reasonably available, given that the court will only impose such a condition if it is necessary to reduce the risk of reoffending and it is reasonably related to the gravity of risk of reoffending. Further, the court has discretion as to whether or not to impose this suggested condition.

Right to freedom of association (section 16)

The right to freedom of association is potentially engaged by the following suggested conditions of a supervision order, namely conditions that relate to:

> community activities in which the offender must not engage and
>
> classes of person with whom the offender must not have contact.

The compatibility of those conditions with the right is set out below.

The nature of the right

Whereas the right to privacy in section 13 of the charter encompasses a right to individual identity and personal development as well as to establish and develop meaningful social relationships, the right to freedom of association in section 16 is arguably more targeted at protecting the freedom of persons to formally join together in groups to pursue common interests and goals. Some examples of such groups include political parties, non-government organisations, professional or sporting clubs, trade unions and corporations.

Although in New Zealand, the right has been interpreted as going further to encompass the right of an individual to associate with another individual, New Zealand's Bill of Rights Act does not contain a right to privacy or autonomy like section 13 of the charter. The authors Butler and Butler argue that 'in other human rights systems a narrow view of the ambit of free association is acceptable since the right to associate with other individuals in an informal, disorganised way would be likely to be protected by a right to privacy or autonomy (at paragraph 15.7.2). Consistently with this, the scope of the right to freedom of association in article 11 of the European Convention presupposes a voluntary grouping for a common goal (see for example, *Anderson v. United Kingdom* [1998] EHRR CD 172 and *McFeeley v. United Kingdom* (1980) 20 DR 44).

Accordingly, a number of suggested conditions on supervision orders have been analysed against the privacy right instead of the right to freedom of association.

The importance of the purpose of the limitation

As with the right to freedom of movement, the limitation is imposed for the important purpose of community protection.

The nature and extent of the limitation

The suggested conditions might prevent the offender from joining certain groups or engaging in certain community activities, for example because they involve children.

The relationship between the limitation and its purpose

The conditions must be the minimum necessary to achieve the legislative purposes and must be reasonably related to the gravity of the risk of reoffending.

Any less-restrictive means reasonably available to achieve its purpose

As set out above, given the relevant legislative tests which ensure that conditions are appropriately tailored and related to the gravity of risk of reoffending, I believe the limitation is within the range of reasonable solutions to the risk posed.

Right to a fair trial (section 24)

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

Applications for supervision orders and detention orders (and reviews and appeals) will be heard by a competent, independent and impartial court. Additionally, various safeguards apply throughout the bill to ensure fairness in the procedures adopted as regards imposition, review, appeals and in the implementation of the orders.

Exclusion of evidence

Clause 81 provides that the court may exclude evidence from disclosure under this part if the court is satisfied that it is in the public interest not to disclose it to the offender; the material cannot be suitably redacted or communicated to the offender in a way that would not prejudice the public interest; and the making of the order in the circumstances would not lead to significant unfairness to the offender.

As the power to exclude evidence can only occur in circumstances where it is in the public interest to do so and it would not lead to significant unfairness to the offender, in my view this power does not prejudice an offender's right to a fair trial.

Attendance of offender at hearing

Clause 85(2) provides that if an offender acts in a way that makes the hearing in the offender's presence impracticable, the court may order that the offender be removed and the hearing continue in his or her absence. This clause is the equivalent to section 18P(4) of the Sentencing Act 1991 which provides that if an offender acts in a way that makes a hearing in the offender's presence impracticable, the court may order that the offender be removed and the hearing continue in his or her absence.

The right in section 24 of the charter requires a party to be given a reasonable opportunity to be heard. However, the United Nations Human Rights Committee has said that if there are exceptional circumstances and it is in the interests of justice, even criminal trials (which this is not) may be held in the absence of the accused (in absentia) but there should nevertheless be a strict observance of the rights of the defence. Clause 85(3) establishes safeguards in relation to proceedings where the offender is absent, namely, the court may only proceed if it is satisfied that:

(a) doing so will not prejudice the offender's interests; and

(b) the interests of justice require that the hearing should proceed even in the absence of the offender.

Having regard to the above, clause 85 does not limit the right to a fair hearing in section 24(1) of the charter.

Victim submissions

Clause 95 provides that victim submissions are not to be released to the offender without consent, but introduces a procedure whereby victims are given the option to consent, amend or withdraw their submission if the court determines that release of the submission is essential in the interests of fairness and justice. If consent is not forthcoming and the submission is not amended or withdrawn, the submission may nonetheless be considered by the court. In these circumstances, the following safeguards apply:

the court will have the discretion to take reasonable steps to disclose to the offender or the offender's legal representative the substance of the victim submission to the offender as long as this will not lead to the identification of the victim; and

the court may reduce the weight which it otherwise would have given to the submission.

Having regard to the above, clause 95 does not limit the right to a fair hearing in section 24(1) of the charter.

Right to humane treatment when deprived of liberty (section 22)

Section 22(2) provides that a person detained without charge must be segregated from persons who have been convicted of offences, except where reasonably necessary.

Clause 42 provides that the effect of a detention order made under part 3 is to commit the offender to detention in a prison for the period of the order. This results in offenders who are subject to detention orders being detained in prison. However, clause 115(2) provides that an offender in custody in a prison must not be accommodated or detained in the same area or unit of the prison as persons who have been imprisoned for the purpose of serving custodial sentences.

There are exceptions to this, which I believe fall within the scope of the right because they are reasonably necessary. These exceptions are for the purposes of rehabilitation; the safety and welfare of the offender or security and good order of the prison; or at the offender's election.

Accordingly, as offenders will not be detained with convicted persons except where reasonably necessary, the right in section 22(2) of the charter is not limited.

Criminal process rights (section 25), the right not to be punished more than once (section 26) and the right to be protected against a retrospective penalty (section 27) — not engaged

It is important to highlight that the detention and supervision scheme is civil rather than criminal. Its purposes and effects are geared toward prevention, protection and rehabilitation rather than the punishment of the offender. Further, the scheme is based on the risk of reoffending, rather than the fact of a person having been convicted, or on any particular event that may have taken place in the past. Whilst a conviction may be a 'trigger' for eligibility, whether an order is imposed is based on an assessment of future risk.

Accordingly, in my view the new scheme does not engage the criminal process rights (under section 25 of the charter), or the rights to be protected against a retrospective penalty or double jeopardy (under sections 27 and 26 respectively of the charter).

In considering this issue, I have relied on the jurisprudence of the High Court of Australia and in particular, the decision of *Fardon v. Attorney-General for the State of Queensland* (2004) 223 CLR 575, which dealt with relevant human rights issues in the context of the post-sentence management of high-risk sex offenders. A number of judges addressed whether the relevant law in Queensland was punitive or protective in nature. Callinan and Heydon JJ considered that:

> The act … is intended to protect the community from predatory sexual offenders. It is a protective law authorising involuntary detention in the interests of public safety. Its proper characterisation is as a protective rather than a punitive enactment.

Furthermore, Gummow J said:

> It is accepted that the common-law value expressed by the term 'double jeopardy' applies not only to determination of guilt or innocence, but also to the quantification of punishment. However, the making of a continued detention order with effect after expiry of the term for which the appellant was sentenced in 1989 did not punish him twice, or increase his punishment for the offences of which he had been convicted. The act operated by reference to the appellant's status deriving from that conviction, but then set up its own normative structure.

I have also had regard to the jurisprudence of the United Nations Human Rights Committee, and the courts in Canada, the United Kingdom, Europe and the United States, where schemes for supervision and/or detention of high-risk sex offenders have been considered. Whilst each scheme is to be assessed on its own merits, the approach taken by the High

Court of Australia in its characterisation of whether a scheme is punitive is consistent with the courts in other jurisdictions. It should be acknowledged that the judgement of the New Zealand Court of Appeal in *Belcher v. Chief Executive of the Department of Corrections* [2006] NZCA 262 takes a different approach and reaches a different result from these courts, where schemes have been considered under human rights instruments. But in my view, the approach of the High Court of Australia is the most persuasive in considering the post-sentence management of high risk-sex offenders in this jurisdiction.

Bob Cameron, MP
Minister for Corrections

Second reading

Mr CAMERON (Minister for Corrections) — I move:

That this bill be now read a second time.

There are few crimes in society that cause such pervasive and enduring harm to individuals and to families, as those which fall into the category of serious sexual offences. Sexual crime causes not only obvious physical damage, but it often inflicts lifelong damage to victims' emotional wellbeing and their ability to conduct meaningful relationships. Most often, the most vulnerable in our community — children and women — are the targets of these terrible crimes. The community as a whole is also scarred by the knowledge of such criminal acts damaging our sense of safety — something we can legitimately expect in a civilised society — and our ability to place our trust in others. Sexual offending is therefore something for which this government has zero tolerance.

It should be remembered that although the numbers of serious sexual offenders who chronically re-offend are not high when compared to other areas of recidivism — such as drug offences — the nature and gravity of these types of crimes requires that where the government is aware of the risks posed by certain individuals, all possible steps should be taken to reduce those risks and to prevent such enduring harm.

Since 2005, the Serious Sex Offenders Monitoring Act 2005 ('the monitoring act') has provided a vital measure of protection for the community against known sexual predators, by enabling the courts to impose on them extended supervision orders for up to fifteen years, with regular court reviews.

In many of the cases we have seen so far, it is clear that without extended supervision, further crimes would have been committed. Many of these offenders have little insight into or control of their offending, or empathy for their victims, and it is foreseeable in these cases that they will go on to offend again, in the absence of adequate supervision. While reoffending by individuals when in the community cannot be totally prevented, this scheme will contain their risks.

Protection against sexual offending, especially where children may be harmed is not something that should be left to community members; nor should offenders who have demonstrated a real proclivity toward sexual offending be entitled to unqualified liberty, whereby they are entrusted to regulate their own behaviour. Not where they have proven incapable of doing so in the past, where their moral compass is so clearly damaged, and where so much is at stake for our community.

Overview

With the Serious Sex Offenders (Detention and Supervision) Bill 2009, the government has now strengthened and improved upon the existing extended supervision scheme of the monitoring act, which it replaces.

It does this by including several new features, such as the element of continued detention and the ability for courts to direct offenders to reside at a residential facility; and by providing greater transparency and accountability in the management of serious sex offenders.

The main purpose of the bill is to enhance the protection of the community by requiring offenders who have served custodial sentences for certain sexual offences and who present an unacceptable risk of harm to the community to be subject to ongoing detention or supervision. It is also the purpose of the bill to facilitate the treatment and rehabilitation of such offenders.

The bill establishes that an offender is eligible for a supervision order or detention order application where they are serving a custodial sentence for a serious sexual offence, committed against a child or adult victim. 'Serious sexual offences' are those which are also listed in the schedule to the Sentencing Act 1991.

The bill also establishes that offenders currently subject to an extended supervision order or interim supervision order under the monitoring act are eligible offenders. These offenders will be subject to orders under the monitoring act until they are brought before the court upon their scheduled review or as a review or renewal application is made, or on an appeal. At this time, the offender will be subject to the new detention and supervision scheme, and all that it entails.

Supervision orders

As with the monitoring act, post-sentence supervision orders can be imposed on offenders by the sentencing court for up to 15 years, with court reviews every three years; or with the court's leave on the application of the offender or the secretary to the Department of Justice, who is the applicant for such orders; or at any other juncture the court so orders.

However, as a mark of distinction from the monitoring act, this bill provides that the court that makes the supervision order is also responsible for controlling the conditions of the order. This ensures that to the extent that offenders' rights are limited by supervision order conditions, these are subject to the control and supervision of courts and the attendant court processes which afford offenders natural justice.

In addition to 'core' or mandatory supervision order conditions, such as the requirement that offenders do not leave the state of Victoria without permission, 'suggested conditions' include conditions relating to where offenders may live; the hours they must be at home; the persons or classes of persons with whom they must have no contact; and treatment and rehabilitation programs in which they must participate.

The court may also impose any other condition it sees as appropriate in order to manage the specific risks posed by an offender; to promote the offender's rehabilitation and treatment; or to provide for the reasonable concerns of the victims of the offender.

If an offender breaches a supervision order condition without reasonable excuse, then the bill provides that this is an offence, punishable by imprisonment. Breaches of supervision order conditions can also be managed by way of reviews of conditions or an application for a detention order, where it appears that the supervision order is not sufficient to manage and contain the risk of reoffending.

In addition to an arrest power in respect of this offence, Victoria Police will also have a holding power under the bill, to detain offenders for up to 10 hours where there are reasonable grounds to suspect that a breach of a supervision order condition is imminent, such as where an offender is found checking in at an airport.

Management of offenders on supervision orders — residential facility

As noted, under the conditions made by the court, offenders may be directed to reside in the community at a specialised residential facility for sex offenders, if no other suitable accommodation is available.

The purpose of a residential facility is to provide for the supervision and case management of offenders; the safe accommodation of offenders; the protection of the community; and support to offenders to assist them in complying with conditions of supervision orders.

If directed to reside at a residential facility, offenders will be free to come and go from the facility or to receive visitors at the facility, subject to the particular conditions of their supervision order; and any restrictions necessary to ensure the good order and safety of the residential facility and the safety of any person at the facility.

The commissioner for corrections will be responsible for the management and good order of a residential facility and will be responsible for giving effect to the courts' conditions in respect of each offender, including providing the offender with any necessary treatment or rehabilitation services.

Offenders at a residential facility will be subject to the directions of supervision officers. The bill makes it clear that all offenders, whether residing at a residential facility or at other accommodation in the community, may be subject to search and seizure powers where there is a reasonable belief that an offender has breached conditions of their supervision order; or is about to commit a further sexual offence; or where other safety concerns arise in respect of a residential facility.

Role of APB

Under this scheme, the court also has the discretion to authorise the adult parole board to give directions to an offender subject to a supervision order or interim supervision order. This builds on the strong expertise the board already has in directing offenders under the existing monitoring act.

In emergency situations, the adult parole board will also be empowered to direct offenders in a manner that is inconsistent with, or not covered by, the conditions set by the court. This will enable the scheme to be responsive to changing circumstances, such as where an offender's court-ordered accommodation suddenly becomes unavailable; or where an offender is at risk of committing a further sexual offence. The board will then advise the secretary, who will be required to report to the court or apply to the court for review of the offender's conditions to enable the changes in the offender's management to continue if deemed appropriate by the court.

Another new feature of the bill, in contrast to the monitoring act, is the ability for the offender or the

Secretary of the Department of Justice to apply to the court to review supervision order conditions. Again, this will enable the scheme to be responsive to changing circumstances while it will also ensure that there is accountability to the court in respect of the way in which supervision order conditions are administered.

The test for orders

While the test for extended supervision in the monitoring act turned upon a definition of the likelihood of an offender reoffending, this bill introduces a new, qualitative, 'unacceptable risk test' for both supervision orders and detention orders. This invites courts to consider not only the risk of sexual reoffending of the particular offender; but also the nature and gravity of the offences the offender may commit in the future. In making its assessment, the court will have regard to clinical assessment reports and any other relevant report or matters presented.

Clinical assessments of offenders are based on a combination of actuarial risk assessment — which looks at the statistical probability of reoffending — and empirically guided clinical judgement on the part of the clinical expert — which takes into account an individual's circumstances. The ultimate assessment necessarily accommodates any dynamic factors that might increase or decrease an offender's risk level, and as such, a precise mathematical estimate of likelihood of reoffending is not generally possible. However, the clinical assessment in and of itself is not determinative of the 'unacceptable risk' test.

The test for the imposition of a supervision or detention order is ultimately a matter for judicial determination, taking into account a range of relevant matters. The judicial officer must be satisfied by acceptable, cogent evidence, and to a high degree of probability, that the evidence is of sufficient weight to justify the decision. The standard of a high degree of probability would not require the court to be satisfied beyond reasonable doubt which is the criminal standard, given this is a civil scheme. A similar test, with analogous evidentiary provisions, is also utilised in the Queensland continued detention legislation, which was upheld by the High Court in *Fardon v. Attorney-General for the State of Queensland* [2004] HCA 46.

The bill also makes clear that the test for supervision and detention does not require that the offender is 'more likely than not' to commit another sexual offence. In some cases the gravity and nature of that possible offending and its impacts on the community and possible future victims may satisfy the judicial officer that even a small likelihood of reoffending is an unacceptable risk and is sufficient to warrant the imposition of a detention order or supervision order.

Detention orders

As noted, the bill introduces the new additional feature of continued detention for serious sexual offenders — a measure of community protection already utilised in other jurisdictions such as Queensland, New South Wales and Western Australia.

In particular, the bill enables the Director of Public Prosecutions to apply to the Supreme Court to impose a continued detention order of up to three years for serious sex offenders effectively where their risk of sexual reoffending would still be 'unacceptable' if they were subject to a supervision order. Applications are made at the discretion of the director on the recommendation of the Secretary of the Department of Justice.

A continued detention order will mean that the offender in question is detained in prison. Where possible, the offender is housed in separate accommodation from prisoners serving a sentence while being provided with the opportunity to engage with ongoing rehabilitation and treatment programs. This recognises their status as an unconvicted prisoner. Continued detention orders can be renewed indefinitely; however, they are subject to annual reviews by the Supreme Court or on the application of an offender or at any other juncture ordered by the court.

Restriction and sharing of information

The court relies upon information contained in clinical assessment reports in determining whether a supervision or detention order should be made. These reports contain very detailed information on the past sexual offending of the individual, their victims and the factors contributing to the offending behaviour. To protect victims and other persons (other than the offender) and ensure the high quality necessary for such assessments, the bill provides for the protection of this sensitive information. Under the monitoring act, the court on all but one matter, has ordered that these reports were protected from publication.

Separate to this, an offender who seeks to have their identity or whereabouts suppressed must apply to the court which may make an order if satisfied that it is in the public interest to do so.

In making decisions in respect of the suppression of publication of information, the court must have regard to whether the publication would endanger the safety of any person; the interests of any victims of the offender;

and whether the publication enhances or compromises the purposes of the bill.

The protection of the community; and management of offenders subject to detention or supervision orders requires the input and expertise of a range of government services to ensure the best opportunity for treatment and rehabilitation and to best manage the risk they present. The bill includes provisions to facilitate appropriate information sharing between government agencies tasked with responsibilities for offenders. It is intended that the broad powers are exercised flexibly, so that concerns about the privacy of individuals does not override the core purpose of this bill, which is the protection of the community.

Safeguards

The bill includes several procedural safeguards, including a right to review of orders and conditions of supervision order conditions; restrictions on information sharing under the scheme; and the requirement that all orders made under the scheme are proportionate to the risk that the offender presents.

The scheme also ensures that offenders are provided with treatment, specialist case management and intensive support to address their offending behaviour.

When developing legislation in the area of community protection the human rights of victims and of community members are at the forefront of the government's thinking. These rights include the right to liberty, the right to life, equality, freedom of movement, protection of families and children and protection from torture and cruel, inhuman or degrading treatment.

The offenders' human rights must also be considered and the government is mindful of comments made by the courts and other stakeholders in relation to the Monitoring Act, which concern the impact of extended supervision orders on offenders and what is at stake for offenders if they are subject to such orders once they have completed a sentence of imprisonment.

While it is acknowledged that extended supervision orders have an impact on the liberty of offenders subject to such orders, the human rights of any member of the community cannot be considered in isolation. It is the government's view that a curtailment of offenders' liberty in the form of supervision orders or detention orders is a reasonable limitation of their right to liberty, where they have demonstrated serious sexual offending and continue to present a real, ongoing risk of harm to the community that cannot sensibly be ignored.

In this regard we are confident that this bill strikes the right balance between the rights of community members and the rights of offenders.

This legislation is the necessary measure of protection we need against serious sex offenders, no more, no less.

I commend the bill to the house.

Debate adjourned on motion of Mr TILLEY (Benambra).

Debate adjourned until Thursday, 26 November.

MELBOURNE CRICKET GROUND AND YARRA PARK AMENDMENT BILL

Statement of compatibility

Mr MERLINO (Minister for Sport, Recreation and Youth Affairs) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Melbourne Cricket Ground and Yarra Park Amendment Bill 2009.

In my opinion, the Melbourne Cricket Ground and Yarra Park 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 main objective of the bill is to transfer committee of management responsibility for Yarra Park from the City of Melbourne to the Melbourne Cricket Ground Trust ('the trust'). The status of Yarra Park as a public park reserved under the Crown Land (Reserves) Act 1978 remains unchanged.

The bill states that the trust must develop an annual management and improvement plan (MIP) for Yarra Park for approval by the ministers for sport, recreation and youth affairs and environment and climate change. The MIP will be required to address a range of considerations including strategies to support major events, community access to the park, the amenity of the park and improvements to the health and sustainability of the park and its trees.

The bill provides for Yarra Park to continue to be used for car parking for major events held at the Melbourne Cricket Ground (MCG) and in the Melbourne and Olympic Parks (MOP) precinct. It also allows the trust to provide limited parking on paved areas of Yarra Park for the management, use and enjoyment of the MCG and Punt Road Oval and parking for purposes consistent with the reservation. Commuter car parking will not be permitted in Yarra Park.

It is a key objective of the bill to facilitate consultation and engagement with the City of Melbourne and the community

on the management, operation and improvement of Yarra Park in the context of planning for parks across the municipality. The bill establishes a Yarra Park Advisory Committee to achieve this objective.

The bill provides for regulations made under the Crown Land (Reserves) Act 1978 in relation to Yarra Park Reserve to carry higher penalties than the maximum penalties prescribed under subsections 13(5) and 13(6) of that act. The increase in penalties from a maximum of 2 penalty units up a maximum of 20 penalty units is designed to make the penalties more effective and comparable with those provided under local laws. The offences will be able to be enforced through infringement notice regulations under the Conservation, Forests and Lands Act 1987.

In addition, the Minister for Environment and Climate Change will be able to make regulations for Yarra Park under the Melbourne (Yarra Park) Land Act 1980 in relation to matters including traffic and parking, advertising and soliciting and commercial activities. These regulations will also include penalties up to a maximum of 20 penalty units and will be able to be enforced through infringement notice regulations under the Conservation, Forests and Lands Act 1987.

Regulations made under both the Crown Land (Reserves) Act 1978 and the Melbourne (Yarra Park) Land Act 1980 for Yarra Park, along with related infringement notices made under the Conservation, Forests and Lands Act 1987, will be developed compatibly with the charter. Regulations will be developed with consideration of all relevant charter rights, including the distinct cultural rights of Aboriginal persons, to ensure that any limitation of rights is justifiable in accordance with section 7 of the charter.

The proposed bill will establish a process to increase the amount of open space that is permanently reserved as Yarra Park and tidy up some longstanding anomalies in the boundaries of the park.

The bill includes relevant transitional provisions including preservation of a lease and several licences and contracts.

Human rights issues

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

The rights under the Charter of Human Rights and Responsibilities Act 2006 upon which the bill would have an impact are identified as follows:

Section 12: freedom of movement

Every person lawfully in Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

The right to freedom of movement will not be limited by the change of committee of management for Yarra Park. There is no change to the reservation of Yarra Park as a public park and it therefore remains available for public access at all times subject to the relevant regulations.

Clause 8 of the bill, which inserts provisions allowing car parking for certain purposes in Yarra Park (new section 10) does not limit the right to freedom of movement because people will still be able to move freely in the park even on days when parking is being provided.

The power in clause 8 of the bill to make regulations under the Melbourne (Yarra Park) Land Act 1980 in relation to traffic and parking, advertising and soliciting and commercial activities will not have an impact on freedom of movement. Regulations that apply to traffic and parking will not prevent people from walking freely in the park.

The increased penalties for contravention of regulations made under the Crown Land (Reserves) Act 1978 in relation to Yarra Park in clause 8 of the bill will apply to regulations that control access to particular areas in parks at particular times but will not limit the right to freedom of movement. Park regulations typically allow the committee of management to set aside restricted areas, but do not prevent people from generally moving about or through the park. Areas can be set aside for a range of reasons including, for example, regeneration of flora and carrying out of works and improvements.

Section 15: freedom of expression

Every person has the right to hold an opinion without interference. Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria and whether orally, in writing, in print, by way of art or in another medium chosen by him or her.

The power in clause 8 of the bill to make regulations under the Melbourne (Yarra Park) Land Act 1980 in relation to advertising and soliciting and commercial activities may engage the right to freedom of expression because regulation of such matters will include a requirement to obtain a permit from the committee of management.

Similarly, the increased penalties for contravention of regulations made under the Crown Land (Reserves) Act 1978 in relation to Yarra Park in clause 8 of the bill will engage the right because they will apply to regulations that impact upon freedom of expression such as limitations on noise.

(a) The nature of the right

The right to freedom of expression is an important right and is an essential foundation of a democratic society. It may be engaged when a restriction is imposed on what a person may say, write or communicate or when a person requires prior approval before expression may lawfully occur. This list is not exhaustive.

(b) The importance of the purpose of the limitation

The purpose of the limitation of the freedom of expression is to protect the character of Yarra Park as a place of recreation and ensure that incompatible activities such as making excessive noise or undertaking opportunistic commercial activities can be regulated. Yarra Park is particularly vulnerable to such commercial activities because large numbers of people visit the park in order to attend events at the MCG and Melbourne and Olympic Parks and because the MCG is a landmark building. If such activities occur in Yarra Park they are likely to adversely affect a larger number of people than if they occur elsewhere.

(c) The nature and extent of the limitation

The nature of the limitation is that a permit will be required for a range of activities such as advertising, selling, taking photographs for commercial purposes and making significant noise. Regulations of this type are common in relation to public parks. Some activities such as making excessive noise may be prohibited in the park.

The limitation is expanded by the increased level of penalties for offences against regulations made under the Crown Land (Reserves) Act 1978 for Yarra Park from a maximum of 2 penalty units up to a maximum of 20 penalty units.

(d) The relationship between the limitation and its purpose

There is a rational and proportionate relationship between the limitation imposed by the bill and the purposes of the limitation. The limitation on freedom of expression is specifically and precisely directed towards controlling inappropriate activities and behaviours that are highly likely to occur in Yarra Park because of the large numbers of people who congregate there to attend events at the MCG and at Melbourne and Olympic Parks.

The increase in penalties that apply to regulations made under the Crown Land (Reserves) Act 1978 for Yarra Park is designed to create a more effective disincentive to such activities in view of the likelihood and consequences of their occurrence and to match the existing penalties for comparable offences under local laws.

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

There are no practicable less-restrictive means available in order to achieve the desired purpose.

For these reasons this limitation is considered reasonable and, therefore, compatible with the charter.

Section 20: property rights

A person must not be deprived of his or her property other than in accordance with law.

This right is potentially engaged because the revocation of the appointment of the City of Melbourne as the committee of management for Yarra Park Reserve under clause 7 of the bill has implications for a lease and several licences and contracts that the City of Melbourne has entered into in relation to Yarra Park. There will not, however, be any deprivation of property as a result of the revocation because new provisions included in clause 8 of the bill (new sections 19–21) save these existing arrangements, to the extent that they relate to Yarra Park, as if they had been entered into by the trust. Further, the lessee, licensees and contractors are all corporations and therefore do not have rights under the charter.

Clause 8 of the bill establishes processes whereby the boundaries of Yarra Park are improved. Specifically it provides for a government road to be reserved as a public park and added to Yarra Park. Clause 8 (new sections 14–16) also establishes a process to revoke the anomalous reservation for the purpose of a public park of land and stratum located on Brunton Avenue and land used by VicTrack south of Brunton Avenue. None of the changes made by the bill in relation to these parcels of land deprives any person of property and therefore does not limit the property rights under the charter.

For these reasons, it is not expected that this bill will deprive any person of property. Accordingly, there will not be any limitation of the property rights protected under section 20 of the Charter.

Conclusion

I consider that the Melbourne Cricket Ground and Yarra Park Amendment Bill 2009 is compatible with the Charter of Human Rights and Responsibilities because any limitations on the human rights protected by the charter are reasonable and proportionate in light of the objectives of the bill.

James Merlino, MP
Minister for Sport, Recreation and Youth Affairs

Second reading

Mr MERLINO (Minister for Sport, Recreation and Youth Affairs) — I move:

That this bill be now read a second time.

Yarra Park is a very important park in the heart of Melbourne. It is a large area of open parkland with exotic and Australian trees including plantings of London plane trees, Dutch elms, oaks, desert ash and eucalypts. It encompasses a number of irregularly shaped lawns bordered by tree-lined paths and internal roadways that cross the park, including the Queens Walk which is shaded by an avenue of English elms. The park has views across to government house and two trees over 300 years old which have ‘scars’ from where Wurundjeri people of the Kulin nation removed bark to make canoes.

Yarra Park has a long and distinguished association with the Melbourne Cricket Ground — the MCG. The histories of Yarra Park and the MCG have been intertwined since the mid-1800s. The MCG was permanently reserved as a metropolitan cricket ground in 1861 and Yarra Park was permanently reserved as a public park in 1873, but the origins of both the MCG and the park, along with the Melbourne Cricket Club, were even earlier.

Today Yarra Park serves a range of functions. It is used by pedestrians and cyclists, often while travelling to the city, and is enjoyed by local residents as a place to walk their dogs and enjoy informal recreation.

It is also the gateway to the MCG for thousands of spectators who attend Australian football, cricket and other events at the ground. It is still the case that a significant number of visitors to the MCG need to drive their cars and park in Yarra Park.

Results from a survey conducted in 2008 by the Melbourne Cricket Club indicated that 76 per cent of MCG patrons who park in Yarra Park for AFL matches travelled more than 20 km to attend the event with 45 per cent travelling greater than 40 kilometres.

Parking has been allowed in Yarra Park for over 80 years for events at the MCG and for over 20 years for events at Melbourne Park. A large number of Victorians have parked in Yarra Park at some stage. There is a wide range of reasons for people to park in Yarra Park. For many, including families from country Victoria and the outer suburbs of Melbourne, parking in Yarra Park is an affordable and convenient way to travel to events at the MCG and Melbourne and Olympic Parks.

The ability to provide parking in Yarra Park is important to the continued viability of the MCG and Melbourne and Olympic Parks and the outstanding events that are held there. This will continue to be the case as the Melbourne rectangular pitch stadium is opened next year and with the proposed redevelopment of Melbourne Park in the future.

A range of other options for parking near the sporting precinct have been explored but there are no viable options to provide the volume of parking that is required.

It is true that Yarra Park faces significant challenges. Like many other parks, Yarra Park has suffered from the drought. Many of its magnificent trees and lawns have experienced significant distress.

This bill seeks to provide enhanced support to Yarra Park in a range of ways. The key to this, and the main focus of the bill, is to transfer committee of management responsibility for Yarra Park from the City of Melbourne to the Melbourne Cricket Ground Trust ('the trust'). Accordingly, part 2 of the bill, which amends the Melbourne (Yarra Park) Land Act 1980, revokes the appointment of the City of Melbourne as committee of management for Yarra Park Reserve under the Order in Council dated 9 October 1917 and provides that the trust is taken to be appointed under the Crown Land (Reserves) Act 1978 as the committee of management.

The trust is a highly respected public body whose members are appointed by the Governor in Council.

The bill requires the trust, as committee of management for Yarra Park Reserve, to fulfil a range of responsibilities over and above the responsibilities that committees of management for Crown land are normally required to undertake, in order to ensure that Yarra Park will gain the maximum benefit from the change of management.

Most importantly, it states that the trust must develop a management and improvement plan for Yarra Park each year and that the trust must submit the plan to the minister responsible for the Sport and Recreation Act 1972 and the minister responsible for the Crown Land (Reserves) Act 1978 for approval. The management and improvement plan will be required to include a statement of intent and to address a range of considerations including strategies to support major events, support community access to the park for a range of community purposes including informal recreation, improve the health and sustainability of the park and its trees, and enhance the amenity of the park.

The trust will be required to account separately for all income from Yarra Park and may only spend such revenue for the purposes of the operation, management, maintenance and improvement of Yarra Park, thereby ensuring that the park is supported by appropriate expenditure and investment.

The bill will also benefit Yarra Park by facilitating a close and productive relationship between the trust, the City of Melbourne and the community in relation to the management, operation and improvement of Yarra Park.

The bill establishes a Yarra Park advisory committee to achieve this objective. The role of the committee will be to advise the trust on the operation, management and improvement of Yarra Park and to suggest matters for consideration in the preparation of the management and improvement plan.

The Yarra Park advisory committee will have up to seven members appointed by the Minister for Sport, Recreation and Youth Affairs, including:

a member of the trust, who will be the chairperson;

a representative of the MCC (the CEO or his nominee);

a person nominated by the council of the City of Melbourne to represent the council;

up to two persons nominated by the council, in consultation with the minister, who the council considers:

have regular use of public parks within the city of Melbourne;

have knowledge of the issues involving the management and use of public parks within the city of Melbourne;

have an understanding of community needs for public parks; and

can demonstrate community support for their nomination; and

other persons the minister considers appropriate.

The most practical benefit of the change of committee of management, however, is that it will enable additional water to be applied to the park to improve its amenity, health and sustainability.

Water will be provided as a result of a significant investment by the Melbourne Cricket Club (MCC). The MCC, which has been based at the site of the MCG since the 1850s, and which manages the MCG on a day-to-day basis on behalf of the trust, will also have a key role in managing and nurturing Yarra Park through the implementation of a Yarra Park master plan under the new arrangements. The MCC will invest an estimated $22 million into the park, including $16 million of its own funds and up to $6 million provided by the state government.

The centrepiece of this program of investment will be a wastewater treatment plant that will treat waste from a nearby sewer and produce class A water suitable for watering turf and trees. In addition to assisting Yarra Park, this will enable the MCG to save large volumes of potable water. The bulk of the water treatment plant will be located below ground, to protect the amenity of Yarra Park.

The water treatment plant is expected to produce approximately 130 megalitres of class A non-potable water per year. Approximately 75 megalitres of this would be used to water Yarra Park and around 40 megalitres would be provided to the MCG to reduce its consumption of potable water. Subject to detailed confirmation of the capacity of the plant and the volume of water required for Yarra Park, it may also be possible to provide some treated water to Punt Road Oval to reduce its consumption of potable water.

The provision of approximately 40 megalitres of non-potable water to the MCG would roughly halve its potable water usage and establish the MCG below the City West Water authority's mandatory reporting threshold of 50 megalitres, effectively removing it from the list of Melbourne's top 100 water users. This would be an outstanding example of recycling and responsible use of water.

Without the provision of non-potable water to Yarra Park, the Melbourne Cricket Club has advised that Yarra Park will continue to deteriorate, making it increasingly unreliable as both a park for local residents and a car park for users of the MCG and the Melbourne and Olympic parks.

In addition to providing increased water, the MCC will apply its high level of expertise in turf management to the challenges facing Yarra Park. Because of this initiative, it is expected that the condition of the park will improve substantially in the long term.

The bill also includes a process to increase the amount of open space that is permanently reserved as Yarra Park. It establishes a process by which an unused road reservation to the north of the park can be permanently added into the area taken to be reserved for a public park under the Crown Land (Reserves) Act 1978. This is an area of open space that includes a playground enjoyed by families and it is a great initiative to reserve this land as part of Yarra Park for the future.

The decision to appoint the trust as the committee of management for Yarra Park is part of a landmark agreement between the government, the trust, the MCC and the AFL about the future of football in Victoria.

As part of this agreement, the MCC will also provide greater match-day financial returns to the AFL clubs that play their home games at the MCG. Improved returns to these clubs will assist them to become more financially viable.

AFL clubs playing home games at the MCG will receive at least an additional $4.6 million a year — or $100 000 a game — for the next 10 years from revenue from matches played at the MCG.

The new arrangement for home games at the MCG also includes a new attendance incentive arrangement under which clubs will receive additional revenue for attracting larger aggregate crowds.

This additional revenue will allow Victorian-based AFL clubs to invest in football departments and facilities, expand their community activities and help secure their financial futures.

The agreement also includes a commitment to substantially improve the facilities for all patrons in the Great Southern Stand, including the AFL members reserve.

The government has committed up to $30 million for a redevelopment of the Great Southern Stand and a detailed scoping study will conclude before the end of

the year. The scoping study will investigate how best to revitalise some of the entry points to the ground including a more streamlined ticketing area, as well as upgrades to food and beverage areas and basement floor food courts. Replacement and upgrades to seating, public concourses and amenities will also be considered, along with a refurbishment of function and dining rooms.

In addition, the AFL has committed to hold the AFL Grand Final at the MCG for a further five years until 2037. This confirms the MCG yet again as the spiritual home of football.

With this range of benefits to AFL clubs and fans, the agreement between the government, the AFL, the trust and the MCC is undoubtedly a deal that puts football fans and clubs first.

I now turn to the provisions of the bill in relation to parking.

A more resilient park will be better able to withstand continued car parking. The bill specifically provides for Yarra Park to be used for parking for major events held at the MCG and at Melbourne and Olympic parks, for the management, use and enjoyment of facilities at the MCG, and for purposes related to Punt Road Oval and the park. It is an objective of the bill to put parking in Yarra Park on a clearer and more secure basis in view of its importance to the sports facilities located near to Yarra Park.

The bill preserves current car parking entitlements and will not reduce car parking in Yarra Park for major events. It continues the principle of maximising car parking for major events that underpins the Yarra Park parking agreements agreed to by the council.

At the same time the bill seeks to establish parameters for parking that are broadly consistent with current arrangements. It sets out criteria that the trust must consider before allowing parking in Yarra Park, which are very similar to key provisions of the Yarra Park parking agreement. In making decisions to provide car parking for major events, for example, the trust must have regard to a range of matters including:

the expected demand for the use of Yarra Park for car parking for major events;

the extent and pattern of previous use of Yarra Park for car parking for major events;

assessment of the effect of car parking on the condition of the surface of Yarra Park;

assessment of the effect of parking on the condition of the soil and level of sub-surface water content;

assessment of the effect of parking on the condition of the trees;

the need to rotate parking to minimise excessive damage or wear to the surface;

the safety of pedestrians and car parking attendants; and

the protection of public and private property.

The bill authorises parking in Yarra Park for the management, use and enjoyment of facilities at the MCG on the paved areas in the immediate vicinity of the MCG. This reflects current arrangements.

This parking is required because the MCG is a very busy place even when no major event is being held. There is a range of reasons why people choose, or need, to visit the MCG.

The bill also specifically authorises parking for the purposes of management, use and enjoyment of the facilities at Punt Road Oval, using the car park adjacent to Punt Road Oval, and parking for purposes consistent with the reservation of Yarra Park. This reflects parking that already takes place, particularly in the car park adjacent to Punt Road Oval.

The bill is very clear, however, that parking for other purposes, such as commuter car parking, will not be permitted in Yarra Park.

Regulation is another key issue in the bill.

The bill addresses the need for the trust to be able to regulate Yarra Park effectively. Regulations will be made under section 13 of the Crown Land (Reserves) Act 1978, which is normal practice for Crown land reserves. However, penalties under this act are relatively small compared to penalties under the local laws that currently apply in the park and under other legislation. Local laws will generally not be applicable after the change of committee of management, thereby leaving a gap in regulation and enforcement arrangements. To address this, the bill provides for regulations made under the Crown Land (Reserves) Act 1978 for Yarra Park reserve to carry higher penalties than the maximum penalties prescribed under subsections 13(5) and 13(6) of that act. Penalties will be up to 20 penalty units.

In addition, the Minister for Environment and Climate Change, as the minister administering the Crown Land

(Reserves) Act 1978, will be able to make regulations for Yarra Park under the Melbourne (Yarra Park) Land Act 1980. This will ensure that there is a clear power to make regulations about parking and traffic, advertising and soliciting, and commercial activities. It is crucial for the trust to be able to regulate these matters effectively. The trust needs to be able to ensure that parking occurs, and only occurs, in accordance with its decisions to provide parking under the act and that it occurs in a safe and orderly manner. There is also a need to regulate advertising and soliciting and commercial activities carefully because of the potential for opportunistic commercial activities that exists in Yarra Park.

Part 4 of the bill amends schedule 1 to the Conservation, Forests and Lands Act 1987 to make the Melbourne (Yarra Park) Land Act 1980 a relevant law under that act. This will enable the regulations made under the Melbourne (Yarra Park) Land Act 1980 to be enforced through the provisions of the Conservation, Forests and Lands Act 1987 including the provision of infringement notices as an alternative to prosecution. The same enforcement regime will apply to regulations for Yarra Park made under the Crown Land (Reserves) Act 1978.

The bill tidies up some longstanding anomalies in the boundaries of the park by clarifying the status of a small section Brunton Avenue and a sliver of land used by VicTrack. These areas are still formally reserved as part of Yarra Park but ceased to be part of the park in any meaningful sense many decades ago. The bill includes a process to remove these areas from the reservation.

The bill includes transitional provisions to save a range of existing arrangements entered into by the City of Melbourne including the lease over Punt Road Oval and several licences and contracts. The trust takes the part of council in relation to these transactions to the extent that they relate to Yarra Park. The bill also makes consequential amendments to the Melbourne (Yarra Park) Land Act 1980 to reflect the change of committee of management. It revokes any regulations made under the Crown Land (Reserves) Act 1978 to the extent that they apply to Yarra Park and provides that the Yarra Park parking agreement ceases to have effect.

Finally, part 3 of the bill makes a number of amendments to the Melbourne Cricket Ground Act 2009 to complement the amendments to the other legislation.

The function of being the committee of management for Yarra Park Reserve is added to the functions of the trust under section 6 of the Melbourne Cricket Ground Act 2009.

The provisions of the Melbourne Cricket Ground Act 2009 that authorise the trust to delegate its functions to the MCC, and the MCC, with the approval of the trust, to delegate to another person, are amended to ensure that they apply to the trust's role as committee of management. Similarly, provisions that require the trust or its delegate to implement the policies of the trust are also amended to apply to the trust's role in relation to Yarra Park.

Amendments are made that create links between the management and improvement plan and the trust's business plan and annual report. The business plan is required to include key performance measures and targets from the management and improvement plan and the annual report must include an explanation of whether the performance measures and targets were met. This will ensure that the trust will be accountable and transparent about its management of Yarra Park.

Summary

As I have outlined, the bill includes a comprehensive range of measures to ensure that the trust, with the assistance of the MCC, will manage Yarra Park in a balanced and sustainable way, at a high standard, on behalf of the whole community. The new arrangements will give Yarra Park a new lease of life.

I commend the bill to the house.

Debate adjourned on motion of Mrs POWELL (Shepparton).

Debate adjourned until Thursday, 26 November.

Remaining business postponed on motion of Mr WYNNE (Minister for Housing).

ADJOURNMENT

The SPEAKER — Order! The question is:

That the house do now adjourn.

Melbourne Convention and Exhibition Centre: future

Ms ASHER (Brighton) — The matter I raise is for the attention of the Minister for Tourism and Major Events, and the action I seek is for the government to fund the expansion of the Melbourne Convention and Exhibition Centre in Labor's 2010-11 state budget. I now put the case to the minister that has been put by the

Melbourne Convention and Exhibition Trust for many years for the economic need to expand what is colloquially known as Jeff's Shed.

In the annual report of the Melbourne Convention and Exhibition Trust handed down recently, the chairman, Robert Annells, said:

> In looking to the future the need for additional exhibition space remains of importance to the trust. Certainly the economic environment has slowed the growth in demand; however, from the end of 2011 it is projected that there will be little exhibition space available to meet the growth in demand that will occur by then.

It is very clear that the trust itself wishes the centre to be expanded. The bad side of this is that the government has received warnings from the trust since 2001 that this is a much-needed process.

I refer to the trust's 2000–01 annual report in which Robert Annells said:

> These studies support the trust's view that for Melbourne to remain competitive as a major national and international convention and exhibition destination such expansion is required over the next three to four years.

The chairman was arguing for expansion over the next three to four years as early as 2000-01. The government has been incredibly tardy on this issue. At that time Mr Annells also said that detailed proposals were available at that stage and whilst he argued for the convention centre to be expanded, and I acknowledge the government's efforts there, he also argued for further expansion of exhibition space, which is what we are talking about here.

Likewise, in last year's annual report, Bob Annells made a similar comment when he said:

> … one of the significant challenges facing the trust for the future relates to increased exhibition space.

I have argued on many occasions in this place that the government has been told since 2001 that this is a necessary project for tourism. The government needs more exhibition space, it needed more exhibition space in the year 2001 and I am calling on the government to fund this expansion of the exhibition centre in the budget when it is brought down next year. I hope the government will then finally fund the expansion.

Small business: bank charges

Ms DUNCAN (Macedon) — The matter I raise is for the Minister for Small Business, and the action I seek is for the minister to ensure that small businesses are able to make comparisons and informed choices about their business finance.

I have recently had a number of businesspeople contact me expressing their concern about quite sudden and dramatic increases in bank charges, particularly fees for overdrafts. We know small businesses are finding it particularly difficult in these economic times and to experience these increases in fees and charges makes it that much harder. As a government we appreciate the role played by small businesses in the economy of Victoria and the number of people they employ, and so we have taken action to try to support small businesses as much as we can, but these sorts of cost increases make it so much more difficult for them.

It does not improve the reputation and the perception people have of banks when these sorts of increases are imposed on businesses with, I understand, no notice. While many banks are required to give 30 days notice, in some instances this was not given. If banks want to improve their profile in the community, actions like this are not helping their image. There may be reasons for these increases. We know that the cost of financing has increased, and it may well be that this action is necessary for the banks, but the way in which it has been done leaves a lot to be desired. The quantum of the increases is in some cases quite dramatic.

My request of the Minister for Small Business is for him to do what he can to help small businesses to make informed choices about where they can get their finance and provide easy ways for them to compare the costs imposed by different banks and different financial institutions. I make this request in order that small businesses can continue to thrive in Victoria.

Housing: Mooroopna tenants

Mrs POWELL (Shepparton) — I raise a matter for the Minister for Housing, and I am pleased to see the minister is at the table. It concerns complaints about the tenants and management of a public housing property in Mooroopna which is one of two units on one block of land. Unit 2 is owned by my constituent, who is making the complaint. She lives behind unit 1, which is owned by the Office of Housing. The action I seek is for the Office of Housing to purchase unit 2, which would allow the office to own both units. I understand the property has been offered for sale to the Office of Housing.

My constituent was told to document the antisocial behaviour she complains of. The condition of unit 1 has devalued her property and the neighbouring properties. There have been many complaints since the Office of Housing has owned the unit. The office has known about the problems with the former and the current tenants of unit 1 for at least two years. My constituent is

so frustrated, stressed and angry that, while she has lived in unit 2 since it was new and previously enjoyed living in it, she now wants to sell and move out because of the problems since the Office of Housing bought it in 2006.

Neighbours have watched this once well-presented and well-maintained home deteriorate into an eyesore, a fire hazard and a health hazard. Now they are having to contend with dog faeces emitting a foul stench, which means that the people cannot open windows or doors to get fresh air. The smell is much worse in the hot weather. There are many other problems with the current tenants, who are the third lot of tenants to occupy this unit. They moved in on 17 June, and the problems started a couple of days later.

As I said, my constituent was told to diarise the complaints. There were many incidents of domestic violence at all hours of the day and night. In fact the police attended one incident. There was screaming from a young female, the yelling of abuse, the use of bad language and the slamming of doors. There was loud stereo music played adjacent to my constituent's bedroom window. There were barking dogs. There were three dogs — two vicious pit bull terriers and a Staffordshire terrier — in a small backyard. I wonder whether the Office of Housing has a policy about the number of pets that are allowed on its properties.

I gave the Minister for Housing a copy of the letter and photos on 17 September. He was going to try to resolve the matter, but I have had no response yet about what is happening to the tenant. My constituent was advised by the Office of Housing that it would carefully choose the next tenants occupying unit 1, given the dreadful experience she has had in unit 2. I wonder why the Office of Housing has put tenants with social problems in that unit. In response, yesterday I received a letter from the Office of Housing, which states:

> There are a number of issues that the housing office are attempting to address by connecting the tenants with support and conducting regular home visits. The housing office has made a referral to a social advocacy and support program, and they have also engaged youth justice and child protection.

I understand the Office of Housing has a duty of care to public housing tenants, but I also believe it has a duty to the neighbours of its properties.

Rail: Epping–South Morang line

Ms D'AMBROSIO (Mill Park) — My request is to the Minister for Public Transport. My request is for her to do everything that is feasibly possible to provide a positive solution to matters that have been raised by certain members of my community during the community consultations that have been held recently by the Department of Transport regarding the South Morang rail project. This terrific project has been well received by members of my local community. It will provide a first-class, state-of-the-art dual rail line extension to South Morang, a new station and significant upgrades to the existing stations and rail lines between Keon Park and Epping stations.

I commend the minister for overseeing a very strong grassroots community consultation process regarding some of the key design features of the project, including issues to do with access and the amenity of the areas surrounding the rail reserve. It has been a very intensive community consultation process, and it has been very well taken up by members of my community and neighbouring communities. Pockets of the community at particular points along the rail reserve have taken the opportunities presented to them by the community consultations to raise issues of amenity and safety of the potential design of the future rail project. I understand that the department will soon be returning to the community with feedback before moving to the next stages of the project.

I have been personally involved in discussions with these pockets of the community regarding some of the concerns or fears they have about the potential difficulties surrounding access, amenity and safety that the project may represent. I am also very heartened to know that the minister is well aware of these concerns, because she has been happy to meet with representatives of the community to go through some of the issues that have been raised. I am very confident that she is fully abreast of these concerns. I am certainly hoping that many of them, if not all of them, will be given careful and thorough consideration by the minister in light of all the options available with an eye to delivering the best project outcome for all concerned. I am hoping that we will have some positive news on that front in the next short while so that we can go ahead and meet the government's program of starting construction sometime next year.

Health: Caulfield electorate constituent

Mrs SHARDEY (Caulfield) — The issue I raise is for the Minister for Health. The action I seek is for him to investigate the lack of health services for a constituent of mine, who I understand has written to him. I also ask that the minister ensure that this constituent receives appropriate medical treatment for his health problems. I will provide the minister with the details of the constituent; in fact I will give them to the

Minister for Housing, who is at the table today. Suffice it to say that the constituent's first name is Grant.

Grant claims in his letter to me that he has faced a number of health problems but has not received hospital treatment for any of them. Grant, who is 47 years of age, wrote that in 2001 he was granted a disability pension because he suffers from a degenerative disc disease, which he claims could have been rectified by his having a spinal fusion operation. However, as a public patient he had to wait to go onto the waiting list and his back problems have never been treated — in other words, he is still waiting. He has written that now, in 2009, he is what you would call a legally prescribed junkie, as he exists on a plethora of addictive prescribed drugs, because of the failure of the health system. Grant has also written that he has now been told by leading doctors there is nothing that can be done for his back and it will only get worse as he gets older.

He has also been waiting more than a year for a colonoscopy even though there is a strong family history of cancer. I would have thought that if there was a strong family history, he would be a category 1 patient and therefore should have had this procedure by now. He has been waiting for that procedure to be carried out by the Alfred hospital.

Finally, Grant details a visit to his general practitioner for a growth which he has been told is a melanoma and for which he cannot get timely treatment. He claims that because he does not have private health insurance and he is a public hospital patient, he is not receiving treatment. He finishes his letter to me by asking: how many people have to die, be incapacitated or go without before you take a good look and fix the system which is failing in every way, before you take notice? I know that sounds a little confused; it was a quote for the minister. I call upon the minister to address the situation. This man is obviously suffering a great deal.

Consumer affairs: Aastra

Mr STENSHOLT (Burwood) — My matter is directed to the Minister for Consumer Affairs and the action I seek is that he investigate the actions of telephone plan providers who may be making misrepresentations when delivering a pitch to customers to change their provider. A local resident has raised this matter with me, and I will describe the interaction they had with the provider who was seeking to convince them to change their plan.

On 10 November the resident was called on their fixed line number by a representative of Aastra. The representative said that she was ringing Telstra customers to offer them a new plan. The resident thought that it was Telstra calling them to change their Telstra plan. The representative asked the resident if they spent $80 to $90 a month on phone calls and said that they could save the resident about $30 a month on a new plan. The resident became a little bit suspicious because if it was someone from Telstra, they would know exactly how much was spent on their monthly telephone calls and that they spend more than that.

The resident asked the representative from Aastra if it meant changing providers. Her response was that they would keep the Telstra connection and have the same Telstra service. The resident was persistent and asked whether they would need to change providers. The representative said no, they would not have to change their connection; the service would be just the same but on a new plan. The resident insisted on an answer to her question and was put onto the supervisor.

The resident went through the same questions and answers with the supervisor. The supervisor said they would be still be a Telstra customer with the same Telstra service but on a new plan. The resident then asked whose name would be on the bill, so she was obviously a little bit savvy. At this point the supervisor said the bills would come from Aastra and that Aastra was a reseller and wholesaler. The resident said that would mean they would be no longer be a customer of Telstra but would be an Aastra customer, to which the supervisor agreed. The resident then told the supervisor he had misrepresented what Aastra was doing and the supervisor hung up.

I am asking the minister to investigate the people who are ringing from Aastra. Under the consumer affairs legislation this may be a case of unconscionable conduct in the way that this provider is pursuing potential customers to change their plans. I would like to report back to my resident.

Lilydale: quarry

Mrs FYFFE (Evelyn) — My adjournment matter is for the Minister for Energy and Resources and it is regarding the Lilydale quarry of Unimin, which is a supplier of lime-based mineral products. The action I seek is for the minister to meet with residents and Unimin on site to ensure all efforts are being made to comply with its work permit and that it does not contravene Environment Protection Authority guidelines and to endeavour to bring back the overburden dump permit height from 180 RL (reduced level) to 165 RL.

The Unimin quarry was established 131 years ago in 1878 and occupies 41 hectares of land. Unimin and previous owners of the Lilydale quarry have been good corporate citizens of the shire and have contributed to the community. Issues are now arising with the increase in the height of the overburden dump, which has a current height of 145 RL. The current plan will add approximately 20 metres in two 10-metre layers. I understand the first 10 metres may be near to completion.

Over the years housing has crept closer and closer to the quarry and now is right up to the boundary. The people at Unimin are working to a work authority that was approved in 1999 and permits the height to go to 180 RL. Residents are concerned about dust and shadowing and the fact that even though the current planned height is 165 RL, the dump will, over the next few years, go to the permitted 180 RL.

Unimin has dust sensors on the site and is increasing water truck patrols. It is also researching coagulants to seal the dust more quickly. Unimin assures me that once this is completed there will be less activity on the overburden dump, that it will not get any closer to homes than it currently is and that only the height will change. What has activated the residents at the moment is the fact that in September 2008 there was a failure causing a slip whereby limestone toppled. This meant that Unimin had to make a cutback along the eastern side to mine out the slip and access limestone. That 27-metre-wide section contains approximately 3 million tonnes of overburden, hence the increase in the height.

St Georges Road, Northcote: tram stops

Ms RICHARDSON (Northcote) — The matter I raise is for the Minister for Public Transport and it concerns the safety of students from Northcote High School and other pedestrians who use tram stop 27 on St Georges Road. The tram stop is extremely popular and struggles to deal with a large number of students using the stop, particularly at the end of the school day. I call on the minister to upgrade the tram stop to improve safety for all tram users.

In my earliest discussions with Northcote High School about the safety of its students, which occurred just after I was elected as the member for Northcote, the school community raised with me its concerns about the roundabout on St Georges Road. I shared its concerns and the school community immediately joined the campaign to upgrade this intersection. I am very pleased to say that this intersection has now been upgraded and safety has improved for all. Thanks again to the Minister for Roads and Ports for listening to our concerns and responding with over $5 million to improve this busy intersection.

Another area of concern for the school community is the tram stop on St Georges Road outside the school. Over the past 10 years improvements have been made to this stop but it is clear that the stop landings are not wide enough to accommodate the large number of students entering or exiting the trams. Initially I asked the Minister for Roads and Ports to investigate changes that could be made to St Georges Road itself to improve safety. VicRoads, to its credit, conducted a survey to determine vehicle numbers and movement patterns.

Meetings between Kate Morris from Northcote High School, my office, VicRoads and Yarra Trams were then convened to try to address the concerns over safety. In August, in response to my letter to the Minister for Public Transport, I was advised that tram stops 26 to 33 on St Georges Road were being considered for upgrades to comply with the disability standards for accessible public transport. In other words, tram super-stops were being considered all along St Georges Road from Clarke Street in Northcote to Hutton Street in Thornbury, including tram stop 27. This is great news for tram users on St Georges Road and is part of Labor's strategy to improve access to our public transport system.

The Department of Transport has met with Kate Morris to discuss any changes that may need to be implemented to the proposed super-stop design. I have written to the Darebin council about cyclist numbers and have asked for warning signs to be put in place to alert cyclists along St Georges Road that they are approaching a school.

Tram stop 27 manages a very large number of passengers in this busy section of St Georges Road, and I share the concerns raised by the school community. The upgrade to this tram stop will greatly improve safety for all, and I therefore call on the minister to ensure improvements are made as a matter of priority.

Koo Wee Rup bypass: construction

Mr K. SMITH (Bass) — The Minister for Housing will be very pleased this is not an issue for him. Tonight I wish to raise an issue for the Minister for Roads and Ports, and I ask him to show some leadership in directing VicRoads to commence the Koo Wee Rup bypass. This disgraceful performance by the management of VicRoads in delaying the finalisation of the bypass route around Koo Wee Rup can be seen as

nothing short of incompetence. They are stalling and denying the people of Koo Wee Rup a peaceful life in their town which has been ruined by hundreds, if not thousands, of large trucks rumbling through what was once a peaceful town — and that happens every day.

This government and VicRoads were warned when the Pakenham bypass was first mooted that motorists would use the Pakenham–Koo Wee Rup road as a rat run, and this has happened big time. The truck numbers have increased, and they will increase more with the development of the desalination plant at Wonthaggi.

I am grateful to the minister for coming to meet with me some months ago and travel with me and two of the regional directors from the eastern metropolitan and Gippsland offices as we looked at this problem. Plans were produced, and we had discussions on where the bypass could go. I was told then that the plans would be made available for public perusal in August. Here we are in the middle of November and still nothing has happened. I ask the minister and VicRoads: what is going on? Why the delay? Why the continuation of the disruption of people's lives? The most recent debacle is that the government is going to spend $700 000 putting traffic lights at the intersection of Rossiter Road and Station Street in Koo Wee Rup, which will not help the situation; in fact it will only exacerbate the situation. On a busy weekend traffic can be up to 2 kilometres long from the South Gippsland Highway, running right through the town and out the other side of the Koo Wee Rup township.

This is very wrong and it is unfair. Does someone have to actually be killed before the minister or VicRoads will do something? Trucks and cars are doing rat runs through the side streets of Koo Wee Rup to try to dodge the traffic that is banking up because the road has not been upgraded and the bypass has not been put in. It is putting the lives of kids and the elderly at risk.

I say to the minister that the government and VicRoads were warned, yet they have blatantly ignored the pleas of the council, the community and landowners in this area, who cannot sell because no decision has been made on where the bypass will run. Can the minister show the people of Koo Wee Rup that he has some balls to stand up to VicRoads management and get this problem fixed — and fixed as soon as possible?

Education: international students

Mr PERERA (Cranbourne) — I wish to raise a matter for the attention of the Minister for Skills and Workforce Participation. The action I seek from the minister is to ensure that the Brumby government strengthens the international education industry in Victoria. It is my understanding that the international education industry has greatly increased in our state of Victoria and more and more international students have been enrolling at our fine further education institutions over a long period of time. Overseas students from India in particular and Asia in general play a vital role in Victoria's international education industry and the Victorian economy.

I am honoured to be the secretary of the Victorian Parliamentary Friends of India. This group is bipartisan, and one of the many initiatives that the group is driving is to encourage the development of friendly relations and ties between the Victorian Parliament, parliaments across India, the people of India and Victorians of Indian ancestry. Recently I had the pleasure of attending the Diwali Festival of Lights, which was held at Sandown Racecourse. I took part in the harmony walk and I also had the pleasure of communicating with key Indian officials in relation to developing ties.

I congratulate the Brumby Labor government on developing a new exchange scholarship program for Indian students and also on its stance on violence against our international students. Our international students bring so much to Victoria as a whole. These students not only support our economy but they leave a lot behind, such as their family and friends, to come to a country like ours to give their all in developing their further education.

This state is well recognised as a world leader in education and has earnt a reputation for providing high-quality educational opportunities in a safe and healthy environment. The state of Victoria has the second-largest education system in Australia and one of the most advanced education systems in the world. It is no wonder students across the oceans are attracted to education here. It is in the best interests of all Victorians to promote international education. I ask the minister to ensure that our international education industry in Victoria is strengthened.

Responses

Mr WYNNE (Minister for Housing) — The member for Shepparton and I have been in some dialogue in relation to the matter she raised. I have had representations from her, which I have responded to only fairly recently. The member catalogued a number of issues that pertain to a particular property in the Shepparton area where the Office of Housing owns one of two premises on the site of a dual occupancy. There have been a significant number of incidents involving previous tenancies on that site. The former tenants have

left the property and, as the member for Shepparton indicated, two young tenants have moved into the premises. I acknowledge the concerns that her constituent has raised with me, particularly in relation to some issues of behaviour, the maintenance of the property and the housing of a number of dogs on the site.

The Office of Housing has made a number of contacts with the tenants at this site. I will say that the member for Bass has privately provided me with some information today at the table in relation to issues around peaceful enjoyment of property. We take our responsibilities as landlord seriously, and where there are breaches of the Residential Tenancies Act and when, after subsequent counselling, people continue with such behaviour, we will not only seek to breach people's tenancies but we will take action in the Victorian Civil and Administrative Tribunal to terminate their tenancies.

In the context of the matter the member for Shepparton has raised with me, she is quite right to say that there are a number of support services that have been put in place around this couple. She is also right that the young woman involved very recently had a baby. Obviously further supports will need to be provided to her. I can assure the member for Shepparton that we are very closely monitoring this situation and that an extensive range of support services are being put in place.

In relation to the other requests the member has raised with me, as to whether the Office of Housing is prepared to purchase this property, I will have to take that matter on notice. I understand the request that her constituent has made. I am conscious of our responsibilities in this area. Peaceful enjoyment is a fundamental right of people, and we have to recognise that there are checks and balances in this. We obviously house people who have a range of often difficult behaviours and a range of health issues, but that should not preclude the right of people to live in a harmonious neighbourhood environment. We take our responsibilities seriously, and I will ensure that I come back in a formal sense to the member for Shepparton in relation to the specific request she has made about the potential to purchase this property.

I say to the member for Bass, who has also provided me with some correspondence on a separate matter, that, as I have always done with him, I will engage with him actively on those issues.

The member for Brighton raised a matter for the Minister for Tourism and Major Events in relation to seeking support in the next budget for the expansion of the Melbourne Convention and Exhibition Centre at Southbank. I will make sure that the minister is aware of that matter.

The member for Macedon has sought the further advocacy of the Minister for Small Business in relation to concerns expressed by her constituents about pressure being placed on them by lending organisations, particularly in relation to overdraft penalties, which go straight to the bottom line of these small businesses. I will make sure the Minister for Small Business is aware of that matter.

The member for Mill Park raised a matter for the Minister for Public Transport seeking her support for a continuing dialogue with her constituents regarding the implementation of the much-anticipated South Morang rail project. I will make sure the minister is aware of that request.

The member for Caulfield raised a matter for the Minister for Health seeking the minister's intervention regarding a constituent of hers named Grant. She has provided me with the contact details for this person. I will make sure that matter is brought to the attention of the minister.

The member for Burwood raised a matter for the Minister for Consumer Affairs seeking the minister's intervention in relation to telephone plan providers allegedly misleading and undertaking unconscionable conduct in relation to their activities. The member for Burwood has specifically indicated an organisation called Aastra, which allegedly is undertaking these activities. I will make sure the minister is aware of that matter.

The member for Evelyn raised a matter for the Minister for Energy and Resources seeking further interventions regarding the Unimin quarry in Lilydale, particularly in relation to the conditions of the dumping permit and the height of overburden. I will make sure the minister is aware of that request.

The member for Northcote raised a matter for the attention of the Minister for Public Transport seeking an upgrade of tram stop no. 27 outside Northcote High School. I will make sure the minister is aware of that matter.

The member for Bass raised a matter for the Minister for Roads and Ports seeking the minister's advocacy and support for the funding of the Koo Wee Rup bypass — —

Mr K. Smith interjected.

Mr WYNNE — Perhaps some further dialogue with the good folk at Koo Wee Rup in relation to the bypass proposal is needed. The member for Bass would like to get that funded.

The member for Cranbourne raised a matter for the Minister for Skills and Workforce Participation in relation to international students. A specific matter he has raised is about Indian students in Victoria. I will make sure the minister is aware of the continued support for our international students from the member and the Parliament.

The SPEAKER — Order! I believe the member for Bass used an unparliamentary term during his contribution. I simply ask him not to use such a term again. The house is now adjourned.

House adjourned 6.11 p.m. until Tuesday, 24 November.