PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 8 May 2008

(Extract from book 6)

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By authority of the Victorian Government Printer

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Legislation Committee — Mr Atkinson, Ms Broad, Mrs Coote, Mr Drum, Ms Mikakos, Ms Pennicuik and Ms Pulford.

Privileges Committee — Ms Darveniza, Mr D. Davis, Mr Drum, Mr Jennings, Ms Mikakos, Ms Pennicuik and Mr Rich-Phillips.

Select Committee on Gaming Licensing — Mr Barber, Mr Drum, Mr Guy, Mr Kavanagh, Mr Pakula, Mr Rich-Phillips and Mr Viney.

Select Committee on Public Land Development — Mr D. Davis, Mr Hall, Mr Kavanagh, Mr O'Donohue, Ms Pennicuik, Mr Tee and Mr Thornley.

Standing Committee on Finance and Public Administration — Mr Barber, Ms Broad, Mr Guy, Mr Hall, Mr Kavanagh, Mr Rich-Phillips and Mr Viney.

Standing Orders Committee — The President, Mr Dalla-Riva, Mr P. Davis, Mr Hall, Mr Lenders, Ms Pennicuik and Mr Viney.

Joint committees

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

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

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

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

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

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

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

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

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

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

Heads of parliamentary departments

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

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FIFTY-SIXTH PARLIAMENT — FIRST SESSION

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Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Theophanous, Hon. Theo Charles	Northern Metropolitan	ALP
Kavanagh, Mr Peter Damian	Western Victoria	DLP	Thornley, Mr Evan William	Southern Metropolitan	ALP
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Kronberg, Mrs Janice Susan	Eastern Metropolitan	LP	Viney, Mr Matthew Shaw	Eastern Victoria	ALP
Leane, Mr Shaun Leo	Eastern Metropolitan	ALP	Vogels, Mr John Adrian	Western Victoria	LP

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THURSDAY, 8 MAY 2008

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Thursday, 8 May 2008

The PRESIDENT (Hon. R. F. Smith) took the chair at 9.35 a.m. and read the prayer.

SELECT COMMITTEE ON GAMING LICENSING

Final report

Mr RICH-PHILLIPS (South Eastern Metropolitan) presented final report, including appendices, extracts from proceedings and minority reports, together with transcripts of evidence.

Laid on table.

Ordered that report be printed.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I move:

That the Council take note of the report.

The report is the culmination of substantial work undertaken by the Select Committee on Gaming Licensing. The committee received its brief from the Council in February 2007 to inquire into and report on a range of issues arising from the lotteries licensing process then under way: the proposals for electronic gaming machine operations in Victoria after 2012, the measures to address the issue of gambling-related harm and the overall operation of the Community Support Fund.

The select committee conducted an extensive inquiry and looked at these issues. One of the key areas the committee inquired into was the circumstances surrounding the lotteries licensing process, which was the subject of a great deal of media speculation and was one of the key reasons that the Council resolved to establish the select committee in February 2007.

In chapter 3 of the report the committee has detailed the nature of the matters that were the subject of the inquiry. They related to a number of allegations of impropriety with respect to the lotteries licence process that was then under way relating to alleged inappropriate contact between the government, the then Premier Steve Bracks and Tattersall's in the lead-up to the commencement of the lotteries licence process; allegations of inappropriate contact between Tattersall's, its lobbyist Hawker Britton, the Honourable David White who is a former member of this chamber, and the government during the lotteries licence process; suggestions or allegations that Tattersall's was the recipient of information from the government ahead of other bidders for the lotteries licence and ahead of the public release of that information; and a suggestion that Mr White, while acting for Tattersall's, fed information to the Victorian Commission for Gambling Regulation which tainted its reports to the government in assessing ultimately two applicants for the lotteries licence — namely, Tattersall's and Intralot.

It is a matter of record in this place that the government consistently opposed this inquiry from the time of its establishment. A number of motions to that effect were moved in this house, and in the first interim report of the select committee the government sought to block access to relevant documentary evidence that the committee sought in order to discharge its inquiries into the lotteries licence process.

The house, on a number of occasions, sought documents from the government and prosecuted that matter through the chamber, resulting in orders being made for the government to produce certain documents. Those orders were not complied with and still have not been complied with. The house sought the attendance of relevant members of the Legislative Assembly before public hearings of the select committee to give evidence. It sought the attendance of the then Premier; the then Treasurer; the former Minister for Gaming in the other place, the Honourable John Pandazopoulos; and the Minister for Roads and Ports, the Honourable Tim Pallas, in his former capacity as chief of staff to the then Premier.

That request for those members to be granted leave to appear was rejected, as this house knows, so the committee was unable to take evidence from the government members in the other place who were relevant to the inquiry. As the house will note, the committee did not receive the documentary evidence that it sought from the government, either under summons or through a resolution of this chamber. In its findings the committee notes that those matters relating to the relative powers of the committee and the Council to request documentation, and the government's refusal of documentation, remain unresolved. It is the committee's view that those matters will only be determined by judicial determination.

It was in that context of a lack of documentary evidence from the government that the committee was required to undertake its inquiry. It was a similar circumstance with respect to evidence the committee sought from third parties. The committee sought evidence from obviously the relevant parties in Tattersall's and Intralot, and associated third parties, such as the probity

auditor from Pitcher Partners; again because of interference by the government, much of that evidence sought was not forthcoming.

The Minister for Gaming in the other place issued a blanket certificate which sought to restrict access to a very wide range of documents. In essence the minister deemed that it was not in the public interest to have released to the community anything related to the government's consideration of a lottery licence. The details of that certificate are contained within the report. Neither government witnesses or related third-party witnesses were willing to provide that evidence to the committee. That was the context in which the committee was required to undertake its investigations.

As to the specific allegations that were made of impropriety involving Tattersall's, its lobbyists and the government, the committee heard a variety of evidence. The committee heard evidence from Tattersall's former trustees, from Tattersall's executives, from the chairman and the chief commissioner of the Victorian Commission for Gambling Regulation, and also from Mr White.

The evidence available to the committee was inconclusive. There was certainly evidence from the trustees that supported the thrust of the allegations that had been made. Mr White, during his appearance, attempted to refute the evidence provided to the committee by the trustees. It is worth noting that, although some of the relevant evidence from Tattersall's trustees was a written account of meetings that took place between Mr White and the trustees of Tattersall's, Mr White refuted those written claims.

At the same time, Mr White was unable to provide any written evidence to support his claims, and equally he went on to say in his evidence that any notes that he made of any of these matters were shredded at the end of every week. It is in that context that Mr White would not provide any written evidence to support his claims that the committee had to consider the position put by Mr White.

The allegations of impropriety that were investigated by the select committee were similar to those that were considered in the Merkel review, which was established by the Minister for Gaming last year as an effort and an attempt to short-circuit the inquiry that the select committee was undertaking. The Merkel review had access to the documents that the government refused to provide to the Council and to its committee, and in examining those documents and undertaking its inquiry the Merkel review voiced similar concerns to the allegations that this committee was required to look at to the extent that they were relevant to the terms of reference for the Merkel review. Where they were beyond the Merkel review, they were not investigated, and Mr Merkel notes that in his report. It is worth putting on record that those similar issues that were subject to this inquiry were also commented upon by the Merkel review and expressed to be of concern to the Merkel review.

On the basis of the evidence available to the committee, the committee has entered an open finding with respect to the allegations against the government, Hawker Britton and Tattersall's. It has done so on the basis that the evidence provided to the committee by the government and third parties was insufficient to prove the allegation that had been made. However, the committee was equally reluctant on the basis of the limited and insufficient evidence available to it to disprove those allegations.

On multiple occasions the committee sought evidence from Steve Bracks, the former Premier, following his resignation as the member for Williamstown and as the Premier. As a private citizen Mr Bracks was invited to give evidence to the committee. He declined to do that on two occasions. It was the committee's view that his evidence was central to the allegations which were made surrounding the relationship between the government and Tattersall's in the lead-up to the lottery licensing process. Mr Bracks, for his own reasons, refused to attend the committee and give evidence. On that basis, and in that context, the committee was not able to fully investigate what did or did not occur between Mr Bracks and Mr White during meetings with Tattersall's and the subsequent private meetings that happened in the lead-up to this process.

Another aspect of the lotteries matter is the role of the probity auditor. The gambling licences review (GLR) appointed Geoff Walsh of Pitcher Partners as a probity auditor of the gambling licences review process. Through the period when this committee was undertaking its investigations and in the lead-up to its establishment, the government and the former Minister for Gaming in the other place repeatedly relied upon the sign-offs of the GLR probity auditor as a basis to say that there were no grounds for this committee to undertake its investigations.

The Merkel review reported to the government last year. It noted that the multiple signs-offs by the probity auditor do not extend to the matters which were referred to this committee. The evidence from the probity auditor which was contained in the Merkel review was that the probity auditor's role extended only to considering matters which were contained in the

probity plan that was drawn up by the gambling licences review. The probity plan extended only to activities undertaken by the gambling licences review and, as such, it did not extend to any of the external allegations relating to the conduct of Tattersall's, Mr Bracks and Mr White that were the subject of this inquiry. Therefore it is not appropriate for the government to rely on the sign-offs by the probity auditor and say that the issues which were subject to inquiry by this committee were not relevant. That was a finding of the select committee and was also referred to by the Merkel review in its first report to the government.

In addition to the lottery licences inquiry, the committee also undertook inquiries into the prospective electronic gaming machine (EGM) arrangements, problem gambling and the Community Support Fund. That was undertaken as a separate section of the committee's inquiry. We took evidence from a wide range of witnesses; some 48 witnesses appeared in a series of hearings and 50 submissions were received with respect to those terms of reference.

It is clear that the decision announced by the government in early April to dispense with a dual operator system for electronic gaming machines in Victoria is going to usher in an entirely different model relating to EGMs in this state. The committee received evidence that advocated for both the removal and retention of the two operators. Because the government has taken that decision, it is now appropriate to look at the issues that arise with respect to the abolition of the two operators.

A number of concerns were raised with the committee with respect to how such a model would operate. This is a model that is in place broadly in New South Wales, where individual gaming venues, pubs and clubs own the licences for the EGMs they operate and own the machines they operate, which is substantially different to the current operations in Victoria, where machines are owned by either Tattersall's or Tabcorp under a licence held by Tattersall's and Tabcorp and are placed into the individual venues. The concerns raised with this committee and expressed in this report relate to the capacity for the Victorian Commission for Gambling Regulation to provide appropriate oversight to ensure the integrity of the gaming system once it has devolved from two operators.

Currently the requirements imposed on the VCGR in terms of maintaining the integrity and probity of the system relate to its ensuring that the two licence-holders, Tattersall's and Tabcorp, uphold their probity and integrity requirements. It is a condition of their licences that they then ensure that the 525 separate venues in Victoria adhere to similar probity and integrity requirements. With the abolition of the two operators, the requirement to oversee individual venues will fall to the VCGR. This is going to be a substantial shift in operations for the VCGR, and it will require a substantial increase in resources for the VCGR to ensure that the probity and integrity of that system is maintained beyond 2012. It also gives rise to concerns as to the capacity of the VCGR, or the government, to roll out whole-of-network initiatives relating to problem gambling. Under the current model these are rolled out through the two operators; post-2012 it will be a requirement for the VCGR to roll out and ensure the implementation of all those programs across the entire network, which, as I said, currently stands at 525 separate venues. The shift to a venue model is going to create substantial challenges for the VCGR in resourcing and in its capacity to monitor and oversight a network substantially more complex than the one it is currently required to oversee.

In the area of problem gambling, measures to reduce gambling-related harm were considered at some length. The committee took evidence with respect to trials in Nova Scotia in Canada and legislative models in New Zealand that provided substantial data on means of addressing gambling-related harm. In particular the committee took evidence concerning a trial of precommitment technology in Nova Scotia whereby people who wish to use electronic gaming machines are required to obtain a personalised card before being able to do so. Without the personalised card, the electronic gaming machines will not work. This card can be used to store preset time limits and preset spending limits and also to track the player's spend, so that at any one time an individual player will know exactly how much time they have spent on gaming activities and exactly how much money they have spent on gaming activities. If they so choose, they can also set limits either in dollar terms or in time terms beyond which they cannot continue to play, with the capacity to set lockout periods. If they have played up to their limit of 5 hours, for example, they will not be able to play again for a predetermined period; it may be two days before they are able to play again.

The results from the trial in Nova Scotia were very positive. It was the committee's view that, short of mandating the use of this technology, the committee would endorse a proposal that the technology be made available in electronic gaming machines post-2012 and that the government should review the Nova Scotian model and trial, with careful consideration being given to whether mandated use of that technology should also be introduced.

The committee heard substantial evidence of community concerns at the lack of transparency of the Community Support Fund. The Community Support Fund was established with the introduction of gaming machines in 1992 to provide a mechanism for some of the revenue from gaming machines to be returned to communities. Under the model that currently operates in Victoria, electronic gaming machines in hotels are required to contribute 8.3 per cent of net losses into the Community Support Fund, and gaming machines in clubs are required to make a community benefit statement attesting to their contribution to the community, which must also equal at least 8.3 per cent of the net proceeds from the gaming machines in their venue.

In relation to the Community Support Fund, the committee heard evidence that the fund is not transparent. There has only been one formal audit of the fund since it was established in 1992, and in recent years we have seen that fund used less for community purposes and more for funding of activities that were otherwise funded through consolidated revenue. The Parliament has established the Community Support Fund under the Gambling Regulation Act specifically to address community needs. The revenue is hypothecated directly from the Consolidated Fund, and as such it was clear when the legislation was established that it was the intention of the Parliament that that fund be used for specific community purposes. It is not appropriate that it has been used for purposes that were traditionally funded through the Consolidated Fund, and it is a finding of the committee that that fund should not be used for those purposes and should only be used for community purposes as defined in the Gambling Regulation Act.

As to the issue of the transparency of the fund, the committee was concerned at the lack of auditing of that fund and has recommended that the fund be subject to formal audit. Under the current arrangements some details of funding from the Community Support Fund are published in the annual report of the former Department of Victorian Communities, now the Department of Planning and Community Development. Under the recommendation of the committee, in future that fund would require full financial statements, including the recording of opening and closing balances, inflows and outflows and allocations to specific projects each financial year, with those statements to be subject to a financial audit by the Auditor-General. That would substantially increase the accountability of the fund and ensure that it is used for the purposes laid down in the Gambling Regulation Act and not for purposes otherwise funded from the Consolidated Fund.

This has been an extensive and wide-ranging inquiry by the select committee into these gaming matters. As I said, the evidence in some areas was inconclusive and the committee has found accordingly. In other areas there was overwhelming evidence to support the conclusions that the committee has reached. In closing I would like to thank the committee for its hard work and commitment to the task over the last 15 months. I would also like to thank those parties who made submissions to the inquiry and who provided documents under summons, as well as the people on the extensive list of witnesses at the hearings that took place over the last 12 months. Finally, on behalf of the committee I would like to express our thanks to Richard Willis, the secretary to the committee, and Anthony Walsh, the research assistant, who undertook an enormous amount of work in preparing for and arranging the hearings and preparing for and collecting all the documentation that came into the committee, and doing the final work that was required in preparing this report. On behalf of the committee, I thank them for their hard work, and I commend the report to the house.

Mr VINEY (Eastern Victoria) — I apologise if there was some confusion about an earlier conversation, but I think it is important that we have the government's response in relation to this report. This inquiry has gone on now for some 15 months. There has been evidence taken in hearings by the committee over some 12 days totalling over 44 hours from some 58 witnesses.

We have had documents subpoenaed and provided to the committee; they total in excess of 80 arch-lever folders, which take up almost an entire wall of an office of this Parliament. The cost of this inquiry could reasonably be put at well over $2 million, taking in public service time, the time of the Parliament, the engagement of the secretariat and the cost to the business community of its participation. In all of the 12 days of taking evidence from 58 witnesses over 44 hours, and among the many reams of paper and documents, there was not one single piece of evidence to sustain the peddled rumours and allegations of the opposition on this matter.

The point is that the committee, in all of that time, says in chapter 3 it was unable to make any finding. It had an open finding, but not an open finding against any individual. It is a generic open finding against the government and two companies. In all of that, the committee was not prepared even once to say it had any evidence to establish any improper behaviour by any single person; not once has it been able to establish that.

The committee process took hours and hours of parliamentary time and cost the taxpayer millions of dollars, yet it made not one single finding of improper behaviour by anybody. Not only that but when the committee knew there was no evidence to convict anybody of anything or to find even any shred of improper behaviour by anybody — —

Honourable members interjecting.

Mr VINEY — The committee did not have the courage — —

The PRESIDENT — Order! I know this is an emotional matter for both sides of the house. However, I remind the house that the previous speaker was heard in relative silence, which I think we all appreciated. I understand Mr Viney's personal feelings about this and the emotive content of his current delivery. However, I would ask him to try to tone it down a little and not provoke the other side. I say to the other side that it should extend to Mr Viney the same courtesy it extended to the first speaker and let him be heard in relative silence.

Mr VINEY — Let us not kid ourselves about what this was about. From the very beginning the establishment of this select committee was an attempt to smear former Premier Bracks. That is what the whole process was about.

Mr Drum — What a load of rubbish!

The PRESIDENT — Order! Mr Drum!

Mr VINEY — I will respond to the interjection from Mr Drum, President, because it is important. Members should look at the speech of Philip Davis, when Leader of the Opposition, in February last year and understand the tone and intent of his speech when he said that the highest charge on a member of Parliament is to act with probity, integrity, uprightness and honesty. Who does he quote? Who does he name? Which member of Parliament did Philip Davis, in moving to establish this committee, name? He actually named former Premier Bracks.

He named him; he quoted his inaugural speech; he referred to the relationship between Mr Bracks and a former member of this place, the Honourable David White; he referred to *Herald Sun* articles discussing that relationship; and he talked about improper behaviour and private dinners. In a comment to the Leader of the Government, Mr Lenders, he went on to say as reported in *Hansard*:

> … I ask the minister, and he can respond when he has his turn later: if you see a crime being committed, do you wait until after the execution of a bank robbery, a house burglary or a personal assault before you intervene to ensure that justice is done?

That is what Philip Davis put, after all the innuendo in his speech about Mr Bracks. It is a joke that the opposition should now pretend that the committee's inquiry was never about Steve Bracks — because it was all about Steve Bracks! It was all about an attempt to smear the former Premier.

In my view when a select committee undertakes such an inquiry, and after spending 44 hours taking evidence from 58 witnesses resulting in many reams of documents that fill an entire wall of a parliamentary office finds that there is not one bit of evidence to support its original accusation, the committee is duty bound to say it had no evidence to sustain any allegation of improper behaviour by former Premier Bracks. If you look in the proceedings extract in the report, you will see that that is the motion Mr Pakula moved and I supported, and that motion was supported by Mr Kavanagh.

That brings us to the structure of the committee. If this committee had been properly constituted to reflect the actual nature of this house, then the findings of the report would have been very different. The Greens need to think about this, and their supporters need to think about this. Their supporters need to think about why on earth their party would support a coalition domination where 15 Liberals and 2 Nationals get 3 members on the committee and 19 government members get 2. The only reason for establishing that the coalition outnumbered the government when it has fewer members in this house but one more on the committee was to make sure that they were able to get the numbers to get through what they wanted or to block what the government was intending to do.

Honourable members interjecting.

The PRESIDENT — Order! I have made the point already. I remind the house that interjections are disorderly, and whether you are a speaker who wants to contribute or not, if you interject I will remove you.

Mr VINEY — What we know is that if this committee had been properly constituted, the finding that there was no evidence to sustain any allegation of improper behaviour by the former Premier, Mr Steve Bracks, in any way would have been a part of this report. Unfortunately the Greens, as is shown in the proceedings extracts, chose not to vote that way. I think their members and their supporters will be absolutely

horrified that the Greens conspired with the Liberal Party and The Nationals in this way to manipulate the report. As I said, if the committee had no evidence whatsoever, particularly on a former member of Parliament and a former Premier, to sustain the original allegations, it had a very solemn duty to say so. The failure to do that condemns this report.

I heard Mr Rich-Phillips talking earlier about the government's refusal to participate and provide documents, and we can have that argument as we have had dozens of times in here about the proper structure of this house, but what he cannot say is that the government members on the committee in any way attempted to obstruct anything the committee wanted to do. We in no way attempted to obstruct the committee whenever it wanted to call a witness. We might have disagreed with the manner of it, but we never attempted in any way to obstruct the processes of this committee. We participated every step of the way in this whole process, and I think in that context the committee had an obligation to find, particularly in relation to the former Premier, that there was no evidence to sustain any allegation of improper behaviour.

In relation to some of the committee's other findings — as I said before, it is an open finding not against any particular individual but against the government and two companies, Hawker Britton and Tattersall's — what we also have is a classic attempt to smear Mr White in relation to his position. Finding 3.18 says:

> The gambling licences review team did not investigate public allegations of prohibited contact.

It goes on to say:

> If these allegations were true they constituted a breach of the terms of the brief.

If David White pulled out a gun and shot someone in the head, he was guilty of murder — if that is true. But there is no evidence that he did that. There was no evidence that he breached the brief, and the committee did not have the courage to say it had no evidence. It sets up a situation of, 'If this happened then it might have been an offence'. Everyone can agree that if it happened, it might have been. No-one can dispute that. How can you find that? How can you vote against a finding like that? If someone did something then they committed an offence. But there was no evidence to establish that Mr White did. In fact in relation to the allegations that appeared in the media, that Mr White had somehow smeared another bidder, not one single person came before the committee and said that that occurred — not one person. There had been some suggestions in the media, but not a single person came before the committee and made that allegation. Not even Intralot made that allegation in its evidence. So when you do not get any evidence of something, but say that if it had happened then it would have been a breach, clearly it is a classic attempt to smear someone when you do not have any evidence.

I will go through a number of matters in the detailed findings. There were rumours about whether or not it was proper or improper for the Premier to meet with the board of Tattersall's on 19 February 2003. Firstly, let us understand: this was one year and seven months before the new lottery tender process commenced, and the evidence to the committee was that the Tattersall's board had not previously met with the Premier of the day. It had met with the previous Premier, Mr Kennett, but had still not met with the Labor Premier in the government's second term in office.

So it asked for a convivial lunch, to have a meeting. It made the invitation, the Premier accepted, and the evidence before the committee was that the Premier's office established some very strict protocols about the way that meeting should be conducted. It said that no discussion should take place on the licence tender — there could be some discussion about the generalities of consultation and how the process might take place, but no discussion in relation to the details of the tender process.

Mr Fischer, a former chief executive officer of Tattersall's, gave evidence to that effect — that he invited the Premier and informed the board, the trustees, of the requirements of the Premier's office in relation to the meeting. Mr Hornsby, one of the trustees, confirmed that there were no undertakings or suggestions of preferential treatment made by the former Premier at that meeting. Only one person said he had left with an impression that they might have some preferential or favourable treatment, and that was the former trustee, Mr Peter Kerr. But by his own admission he could not say that the Premier specifically said anything. He simply said he left with a feeling.

It is a little bit like that quote from the movie *The Castle*: 'It's Mabo; it's the constitution; it's the vibe'. He walked out saying, 'It was a feeling I had. Just an impression. A feeling that we were going to be looked after'. There was not one single word that the former Premier, Steve Bracks, said at that meeting that Mr Kerr could use to establish his Mabo-type feeling. Mr Kerr of course, as a former trustee of the board, is an experienced lawyer. If Mr Kerr, as an experienced lawyer, had any view that something improper occurred at that meeting, that somehow or other a nod or a wink

or an impression was passed at that meeting, he had an obligation to report that to someone.

He could have reported it to the Victorian Commission on Gambling Regulation. He could have reported it to the Auditor-General or the Ombudsman. He could have reported it to the cops, I suppose. He could have reported it to the Australian Securities and Investments Commission. I am not a lawyer, but I am sure there are a raft of places where he would be obligated to report that something improper had happened, particularly if he were a director of a company or, in this case, a trustee. But not once did he do it. The first time he aired publicly, by his own name, that he had some concerns was at these committee hearings, years after this took place. Never once earlier had he done that.

You have to wonder what this was all about. Firstly, it was an impression. He had no specific knowledge, no specific words were used, it was just an impression. Secondly, he never reported it to anyone, not even to his fellow trustees and colleagues. Mr Hornsby never indicated that Mr Kerr had any doubts or concerns about that board meeting. Mr Hornsby thought the board meeting was pretty good and appropriate, as did Mr Fischer. What we know is that subsequent to that meeting, Mr Kerr was in dispute with Tattersall's over his discharge as a director; we know he was in a dispute which was before the courts, but at no point did he refer his concerns to anyone.

The next considerable allegation was about whether the government had indicated some requirement for Tattersall's to publicly list in order for it to be able to retain its lotteries licence. This was the second key allegation — there was a raft of things around this. The evidence that the committee got, overwhelmingly, was that a number of factors were at play in the pressure on Tattersall's and the Tattersall's trustees to list as a public company on the Australian Stock Exchange.

What we heard from Mr Hornsby, one of the trustees, was that there was pressure from the beneficiaries — that is, the people who for generations have benefited from George Adams's will. We heard that a number of those beneficiaries wanted to get access to the capital value of their beneficial interests. Therefore they wanted Tattersall's to become a publicly listed company so they could sell some shares and get access to the capital value of those beneficial interests. In Mr Hornsby's view that pressure came to a head in about 2000 and 2001.

Mr Fischer, the former chief executive officer of Tattersall's, indicated that this pressure went back as far as 1994 in his experience, and that the corporatisation of Tattersall's in 1998 under the previous government, which involved some legislation, was a step in that process to public listing. That subsequently led to some further pressure in 2000 and 2001 when there was an attempt to publicly list the company, and the beneficiaries really put the pressure on. However, it did not succeed at that time. Mr Fischer indicated that it was his strong view that Tattersall's ought to be a publicly listed company and that he had consistently advised the trustees, as the board of Tattersall's at that time, to that effect.

What we also know from evidence is that there had been a longstanding Labor Party policy, from our time in opposition, which preferred Tattersall's to be a publicly listed company. The evidence we got is that that was the view of the Labor Party in opposition, expressed in the debate on the corporatisation of Tattersall's in 1998 by the now Attorney-General in another place, Rob Hulls. That was consistent Labor Party policy, and in government that policy view continued: that Tattersall's ought to be publicly listed. It is clear that that information added to the view of the trustees that they ought to go down the path of public listing.

It did not become clear, however, at any point that Tattersall's was told by anyone that it was a requirement that it publicly list. That was the view expressed by Mr Fischer — that it was never put to him — and the view expressed by Mr Hornsey was that it was not the view put to him. But they understood that in the long term it was a government policy, and they were cognisant of it. That leads to the issue of the dinner with Mr Bracks and Mr White — the much-reported dinner in Lorne.

Mr Pakula — And their wives.

Mr VINEY — That is right; and their spouses were there too. This has been probably one of the most reported dinners in Victoria for many years. I think we got out all the information about what happened at the dinner from various people who were not there, but we did not establish what the people at the dinner ate or what wine they had or what took place. However, we had lots of speculation about what might or might not have happened at that dinner.

The committee heard principally second-hand evidence from people who were not witnesses of the dinner but who thought they knew about it — mainly Mr Kerr. Mr Kerr said that Mr White came to a meeting of the Tattersall's board of trustees and, towards the end of his report on this dinner, said Tattersall's had to publicly

list. Mr Kerr described this as a bombshell, which gave the *Herald Sun* a great headline for the next day.

In fact, however, you need to look carefully at Mr Kerr's evidence — and I invite members interested in the details to look carefully at it — because Mr Kerr also indicated in his evidence that he knew it had been a longstanding Labor Party and government policy preference that Tattersall's publicly list. Mr Kerr gave evidence to that effect, and then said that when Mr White told him that the government preference was for Tattersall's to publicly list that was a bombshell out of the blue. His evidence is completely contradictory. There has clearly been — and the trustees knew for a considerable period of time that there was — a preference on the part of the government for Tattersall's to be a publicly listed company. The government's view was that in that case there would be greater transparency.

This view of Mr Kerr's was not supported by Mr Fischer. Mr Fischer did not believe that Mr White had reported this as a direct conversation with Mr Bracks at that dinner — nor in fact did Mr Hornsby, a fellow trustee of Mr Kerr's. In his evidence Mr White — the only person of course who was a direct witness to the meeting — said that he had merely confirmed with Tattersall's what Tattersall's had known for a number of years: that it was the government's preference that Tattersall's be a publicly listed company.

Finally, there were some allegations about prohibited contact. The committee took evidence from 18 witnesses specifically on the lotteries licence, and each one was asked about the possibility of a smear campaign being undertaken by Mr White on behalf of Tattersall's. The committee received no evidence, as I said earlier, that Mr White engaged in any such activity. The committee members should also note that the Merkel review found that there was 'no suggestion, nor is there any evidence, that Mr White could have had any influence upon any of these processes'.

What we have here today is a report that is the conclusion of some 15 months of long and arduous processes, both in the committee and in this chamber, where there have been incredible debates about not only the original allegations but also the procedure and the role of both houses. We have had, as I said, 12 days of public hearings, 44 hours of evidence, 58 witnesses and over 80 folders of documents, and in all of that the committee was unable to find any evidence to sustain any allegation of improper behaviour by any individual. The committee took an absolutely weak cop-out in chapter 3 of the report and made an open finding against the government and two companies. In the entire process the committee found nothing, but it did not have the courage — the guts — to say, 'We found nothing'.

Whilst we did not agree with chapter 3, I just want to say this: Mr Pakula and I voted to adopt each of the other chapters of this report, and if the committee had had the courage to make the proper finding that there was no evidence to sustain any allegation of improper behaviour by any individual, we would have adopted that chapter as well.

Mr Drum interjected.

Mr VINEY — Mr Drum can laugh, but he participated in the gerrymandering of this committee. The Nationals are great at gerrymanders, and that is what they did again here, gerrymandering with the Greens, in relation to the structure of this committee. If it had not been so gerrymandered, this committee would have made the finding I referred to.

If the committee had had the courage to find what the evidence, or the lack thereof, actually found — that there was no evidence — there would have been no need for a minority report, and we would have been able to adopt chapter 3 as well. But we cannot adopt a report that fails to honour the committee's fundamental obligation. As a member of Parliament I understand there is a political process and a bit of fun and sport, but ultimately, as Mr Davis said, as members of Parliament when we undertake an investigation we have a fundamental obligation for probity and honesty. I agree with that. I do not disagree with what he said at all. Part of that obligation of probity and honesty, part of that integrity, requires us as members of Parliament when we undertake an investigation like this, when we undertake a select committee inquiry like this, to report the truth and make a finding on the facts, to consider the evidence and make a finding that is proper, right and fair.

Chapter 3 of this report does not do that. It should have found that there was no evidence to sustain improper behaviour, but it did not. Instead the committee copped out and made an open finding. The whole report ultimately stands condemned by the fact that the committee was set up as a political process and it continued as a political process. As we have always said, it was set up as a witch-hunt and it continued as a witch-hunt, and chapter 3 confirms that is what it always was. The members of the committee that voted the way they did in relation to those fundamental findings in chapter 3 are condemned for continuing that witch-hunt in this report.

Mr DRUM (Northern Victoria) — I apologise for my earlier interjection, but that was one of the hardest speeches from a government member I have ever had to sit through because it was so blanketly incorrect. Mr Viney has stood up and effectively said that there was no evidence that suggested any improprieties, or any lax breaches of probity, for one reason only: every time the questioning got anywhere near the sensitive issues, witnesses would simply plead the fifth amendment and refuse to answer on grounds that the government had forced witnesses who had a position of public office to claim executive privilege.

From the very outset Mr Viney said he did nothing to hinder the progress of this report. That is an absolute untruth, because at every turn he and his government tried to diminish the investigative powers of this committee. There is no other way of saying it but to say that the government made sure through its processes that we were not able to hear the witnesses that we wanted to hear or to get the evidence we wished to get from the witnesses we did have. The witnesses were compromised, the evidence was compromised and the documentation that we required was also compromised, because the government produced its broad-based claim in finding 2.2 that these documents were going to be a breach of executive privilege. We were simply at loggerheads in that regard.

You, President, went off as the President and a member of the Labor Party and got the legal opinion that you thought would best solve the impasse between the Legislative Assembly and the Legislative Council — —

Ms Broad — Why don't you move a motion against the President?

Mr DRUM — I accept what the President did as being the right and honourable thing. Why would I move a motion against the President, Ms Broad?

Ms Broad interjected.

The PRESIDENT — Order! Through the Chair.

Mr DRUM — Why would I move a motion against the President when I believe what the President did was the right and honourable thing? There was an impasse. The President went away and got legal opinion. The fact is that your party did not like the legal opinion he was able to get, so you went away and got some more. I do not know, but you probably got some more, and got some more, and got some more until you finally got some legal opinion you liked, and then you brought that back.

Ms Broad interjected.

Mr DRUM — You are a joke.

Ms Broad — The President did, did he?

Mr DRUM — No, the President did not.

Ms Broad — Good.

The PRESIDENT — Order! I am in the chamber.

Mr DRUM — Anyway, that is what we are up to with this government and this inquiry. We just heard Mr Viney spend 90 per cent of his time talking about a few very small issues. First, he was saying that there was no problem with Mr Bracks having a meeting with Tattersall's. That is fine; there was no problem. He said there was no problem with Mr Bracks having a dinner with Mr White. Again, there was no problem. And he says there was no problem with the government supposedly pressuring Tatts to go public. I agree, there was no problem.

What Mr Viney failed to tell us was we spent about 10 or 15 per cent of our investigation time in the committee worrying about these issues. We spent 80 per cent of our time trying to find out what it was within the Victorian Commission for Gambling Regulation (VCGR) renewal teams that would have their reports to the minister effectively ruled unsuitable or incomplete. The actual process was the renewal team was given 6 to 12 months to prepare the initial report. Before it gave the report to the minister, effectively it was judged to be unacceptable. It was told to go away and do the work again. We simply wanted to know why it was unacceptable. It went away and did it again. It came back a second time, and again this report is still effectively incomplete and unacceptable, and the minister cannot accept it. Now the government has sacked the team and introduced a new team to effectively compile a report.

Trying to get to the bottom of that report is where we spent 70 to 80 per cent of our time in the committee. This idea about being a witch-hunt after former Premier Bracks is simply not the case. Mr Viney, in his 30-minute contribution in this chamber, has effectively given us an insight into his own mind about this 15-month investigation. He was obviously sitting there concerned about the integrity of Mr Bracks and felt that he had to somehow protect the reputation of the government. It is so far from the truth that it creates concerns about what Mr Viney thought we were trying to get to the bottom of. We asked Mr Bracks to give evidence, which he refused to do under executive privilege that was afforded by his government. Even

after he left the Parliament he was able to do that. That was entirely a decision Mr Bracks could make of his own doing.

There were serious concerns raised throughout the inquiry about the probity of Mr Duncan Fischer, and at one stage we heard conflicting evidence as to when Mr Fischer actually received his probity checks and was granted probity in his role as chief executive officer of Tattersall's. There was conflicting evidence that we were not able to get to the bottom of. We also heard conflicting evidence as to what action Pitcher Partners were able to take to receive a $350 000 success fee. We heard evidence that was in a sense quite unbelievable, but again we were unable to get to the bottom of that because the witnesses refused to answer questions, and so it goes on.

An enormous number of the findings in the report have been left open simply because, without an ability to ask definitive questions and receive definitive answers, we were left with no option other than to bring down an open finding. However, it must be said that after 15-odd months of interviews we certainly developed opinions. If opinions count for anything, then it is well within the realms of probability to suggest that whatever those breaches were within the process of the Victorian Commission for Gambling Regulation licence renewal teams, they were significant breaches, because the government would not otherwise have gone to the extreme lengths to which it went to block the evidence and documents coming before the committee.

The government would not have gone to the extreme measures of claiming executive privilege and refusing to allow the appearance of the then Minister for Gaming in the other place, Mr Pandazopoulos, who went public on this inquiry saying, 'I am going before that committee and I am going to set the record straight in relation to the renewal process'. Three or four days later his government said, 'Mr Pandazopoulos will not be appearing at the committee'. Effectively he was nobbled in trying to set the record straight. All the public servants, the VCGR team, were made to claim the fifth amendment, and effectively whenever questioning centred around what it was within these reports that would make them unacceptable to the minister then they were unable to answer any of those questions. It was a frustrating inquiry.

We have not spoken much about the Community Support Fund. The finding is simply that the Community Support Fund suffers from a lack of transparency and it needs to become more transparent. If any member of the public wants to find out how that $130 million is being spent every year, they certainly will not be able to work that out. You might be able to get the funding of a small portion of it three years after the event. That is the way that is currently hidden at the moment. I do not want to talk too much more about it, but I want to say that the government did everything within its power to shut down the investigative powers of the select committee. This is the government about which we often hear the Treasurer saying in this house that it is too open, too transparent.

I thank the chair, Gordon Rich-Phillips, for his handling of the sometimes testy environment within the committee. I thank Mr Richard Willis and Mr Anthony Walsh for their work as executives. I also thank Mr Viney and Mr Pakula for their participation, and specifically Mr Kavanagh and Mr Barber, who, along with all of us from this side of the Parliament, including Mr Guy, were able to view each of the issues, findings and witnesses with an open mind.

While it was a very interesting process to go through, possibly the most interesting evidence was that of the two witnesses who had been gambling addicts. They were able to take us through a short precis of the time when poker machines had ruled their lives for a period of about three years. They told us how they manipulated their lives and the lives of those around them so they could free up their entire days to play poker machines and put through something in the vicinity of $40 000 and $60 000 over that period. One lady lost her marriage. The other lady was lucky enough to have a husband who was able to hang in there with her so they could work their way through it. They talked to us about the addictive aspects of the near-miss technology that currently exists in gaming machines. They spoke to us about the possibility of what is going on in Nova Scotia being a way through, with the smart-key precommitment loss limits that are set with that sort of smart-key technology. It will be interesting to see what direction this government takes with that technology into the future.

They were the two witnesses who made the whole committee sit up and realise that this problem ruins many lives, causes depression and can lead to suicide. We need to be very aware of that. They were witnesses of genuine interest. The memories of that evidence will live with the committee members who heard it.

In concluding my comments on this report, I again want to thank the members of the inquiry. I want to thank all of the witnesses who came before the inquiry, even though some of them were less believable than others. Hopefully these transactions in the future will be handed in a more professional manner.

Mr BARBER (Northern Metropolitan) — Members should read the report and its findings and dig further into the evidence on which the findings were made. For my part, there are three pieces of unfinished business regarding this report. I hasten to say that the Greens did not get involved with the writing of this report with the aim of expressing our world view on everything. We treated it as more of an exercise in seeing how much agreement we could get from as many members as possible on as many matters as possible rather than simply saying, as I could have, 'This is the Greens party policy on this aspect of this inquiry, so I am going to try to move that through'.

I was somewhat surprised that the ALP and the Democratic Labor Party inserted minority reports without ever flagging during the committee stage that they intended to do so — and they could have done that easily. Once you start talking about transparency, it needs to be an iron rule that you live by. Never mind! Those who are interested can consider this my minority report.

The first piece of unfinished business is the activity of Hawker Britton, a firm of lobbyists, and the capacity of the process to withstand lobbyists doing what they are paid to do. From documents we obtained from Tattersall's, we know that just before the formal tender process started and during the time when rules were being set Hawker Britton was pitching to Tattersall's a detailed plan about how it was going to influence the government's attitude towards Tattersall's.

Hawker Britton presented that information in a PowerPoint format which listed a number of key targets, which were ministers and their staff, and a number of key messages it wanted to get across. There were also other bits and scraps of material, and some of Tattersall's documents were handwritten, which made it clear that those who were involved on the side of Tattersall's understood who was likely to be involved and the fact that a cabinet subcommittee generally deals with important decisions like this one.

There were even notes that said something along the lines of 'We had better leave this meeting and place a call to Tim Pallas', who is the former chief of staff of former Premier Bracks and is now the Minister for Roads and Ports in the other place — 'to find out what the government's thinking is regarding this issue'. All of that documentation was available and indicated what Hawker Britton might have been intending to do on behalf of Tattersall's to earn its fees.

Hawker Britton appeared before the committee and denied that any of those issues were ever implemented. But it is an established fact that Hawker Britton has members who are incredibly close to a whole range of key government figures. They have worked together in the past, they have worked for the government and so forth. We heard evidence that Hawker Britton's raison d'être in life and the reason it is effective is that it has close personal relationships that give it a ringside seat into the mind of the government.

At the end of the process we also had the issue of a $350 000 success fee for Hawker Britton if Tattersall's was to secure the licence. That was a concession given to the lobbyists when the tender was effectively in the hands of the tender panel. If there was any reason to offer them extra remuneration for their efforts, it could only have been because they had some kind of magic formula. Despite that evidence, Hawker Britton came to the committee and talked down its value, its role and what it does for its clients while also having been caught out talking that up in the past.

The issue is about prohibited contact. The tender brief made it clear that contact by any persons associated with bidders with any persons on the government side would have been prohibited. The penalty for that could have been the tossing out of that bid by the minister. In other major contracts, such as the EastLink freeway, versions of the prohibited contacts clause have been there but are not as strong and as tightly defined as in the lotteries contact clause.

It is my view and my finding that these issues of prohibited contact need to be much stronger and more tightly regulated than simply having wording in a particular tender brief. Some sort of legislation which defines the way tenders are run with respect to prohibited contact would be valuable. After all, prohibited contact, if it occurs, will occur with government members, yet the government would have to make the decision to nullify someone's bid. That leaves everybody in a difficult position. It is much better if the rules for contact regarding a tender process were in some independent piece of regulation or statute, so that they would be separately enforceable, rather than relying on someone who may have been part of the issue to enforce them. I cannot say much more about that issue.

The coalition is always chasing David White; he is their great white whale. They are always after him, but they never seem to catch up with him. But for my part — and this is really for the benefit of Mr Viney in light of his earlier comments — if one or more of the cabinet ministers who were thought to be the targets of this lobbying strategy had sat in the committee, looked me in the eye and said, 'There was no prohibited contact',

then I would really have been forced to conclude that there was none. Sure, Hawker Britton came in and said there was none, but the Hawker Britton witnesses came in and said what they had to tell us, and they also quite happily told us what they were not going to tell us.

Mr Drum interjected.

Mr BARBER — As Mr Drum said, they took the Fifth on a number of matters, and that is fine for them. But for the government, which after all needs the clarity of knowing this was a clean tender, it certainly would have served it well to simply come before the committee and say, 'There was no prohibited contact'. If everybody was saying that there was none, then I could not have reasonably concluded that everybody was lying, and I just would have had to say, 'Everybody said there was none'.

Mr Viney — There was no evidence.

Mr BARBER — No, certainly. Through you, Acting President, to respond to Mr Viney, nobody had to prove evidence. People simply had to state, 'This is what happened'. Certainly ministers appearing before parliamentary committees should be given the benefit of the doubt when they say that X has happened. That is their burden of proof. If they are parliamentarians, the presumption is that they are honest and ethical people, and if they appear before a committee and give evidence, that itself is prima facie; it is as good as it gets. That was the issue in regard to the role of lobbyists. Hopefully along the way we will see tighter regulation around lobbyists, and we will possibly avoid some of these problems.

The second issue that I think emerged during the committee stage — some of it as a result of the work of the Merkel review, which the Greens supported by voting for the government's legislation — was the role of the Victorian Commission for Gambling Regulation and particularly the issue of its independence. The VCGR, according to the legislation that set it up, is independent of the government in that those sections of the Public Service Act that would normally allow a minister to give direction to a public servant do not apply to the VCGR to that extent, and the VCGR is usually titled the independent gambling regulator.

However, the independence in my view broke down to some extent — to the extent to which we have to qualify that term 'independent'. The way it happened — and this is a shorthand description; it is detailed much more in the Merkel report — was that the VCGR came up with a finding in relation to its role, which is to ensure the probity of bidders. The solicitor-general had doubts about the legal sustainability, let me say, of that finding, and the government found itself in the position where it had legal advice that in order to have the matter re-examined by the VCGR it had to actually get new commissioners. The worst way to look at this is that the VCGR came up with a finding that the government did not agree with, and therefore it was replaced by new commissioners, who I believe came up with a new finding. That shows that the VCGR's independence is not absolute; it starts to break down in these situations.

The second issue there is that while the solicitor-general's advice was being looked at, that advice, on the evidence of Merkel, was circulating amongst a fairly large group of people — a number of cabinet ministers, staffers and so forth — and that advice, from what I have read, disclosed who some of the bidders were and what some of the issues were. In the middle of a tender, which was meant to be closed to those who were reviewing the tender, you had a number of members of cabinet reviewing issues and receiving information coming out of that tender. There may not have been any choice for government at that stage, but it nevertheless shows that there are some potential breakdowns. That, I think, is unfinished business and an undetermined question in terms of how we are going to move forward and what the role of the VCGR is to be on an ongoing basis.

The third issue for me is the evidence that the committee received on the extent and nature of gambling-related harm in Victoria — that second part of our terms of reference that was not in relation to a specific tender. I know that members who were on the committee were strongly influenced in various ways by the evidence they heard. While most of us may have had a view on gambling and particularly poker machines when we joined the committee, I think everybody's view has shifted even a little bit more since then.

We received testimony that the clinical evidence on poker machines is that they are addictive, and not only that they are addictive but that anybody who plays them — I emphasise 'anybody'! — for an extended period experiences some loss of control with respect to time and how much they are going to gamble. That makes all those players vulnerable, because they are already experiencing the addictive effects of a poker machine even though they may not have flipped right over and lost control of their lives, and that group of people represents a pool of people who, given some other factor or some other vulnerability, could, often without warning, flip over into becoming what are understood to be full-blown problem gamblers.

An example that I have heard of was one case study where a woman played the pokies casually but regularly, usually with a group of friends. The woman experienced a tragedy — I think it was the death of her son — and from that point on she suddenly found herself getting deeper and deeper into the poker machines, playing more and more, not doing it with her friends and in fact ignoring her friends. That is the devilish aspect of these machines and their addictiveness.

We heard that evidence from problem gamblers, we heard it from those who assist problem gamblers, we heard it from experts who study the field, and in a funny way we even heard it from Tattersall's and Tabcorp. When their executives had that question put to them, they behaved for all the world like United States tobacco executives and just completely denied that there could be anything addictive about their product. They said, 'It's all a bit of harmless fun. If people stuff their lives up, it's probably because of those people. They would have found some other way to do it if they had not used our machines'.

That, I think, was just one front-page headline too many for the government, and, as we know, Tattersall's and Tabcorp will not be continuing in this industry in their current position of some power. Someone should write up a case study of what happens to corporate cowboys who simply say, 'We'll obey the law to the extent to which we are forced to obey the law, and that is the absolute bare minimum of social responsibility we'll take in regard to our product or our activities'. Tattersall's and Tabcorp are an absolutely brilliant case study of how what is ethical and what is legal are not the same thing for a corporate entity, and that gap in between is where they need to put some real attention.

With all that in mind, it is clear that the no. 1 solution to reducing gambling-related harm is precommitment technology. It is being trialled, but it is being trialled in a significant way in some Canadian provinces where the government is the owner and operator of gambling, and so they are in a position to simply implement an operational trial inside their own facilities. It is clear to the Greens that a compulsory precommitment system — effectively a smartcard that you will have to plug into a poker machine that will be linked to every other poker machine at every other venue in Victoria — is essential, because it will allow you, before you sit down at the machine and before the machine starts to work on you, to decide how much you are going to gamble and how long you are going to stay there, which are the two most important aspects of gambling-related harm in the first instance.

I know that the Labor and Liberal members of the committee did not support my proposed finding on that. I just hope that they will continue to be active within their own parties to try to bring their parties as a whole to that point of view. They need to do that because in fairly short order we will again be legislating on this issue and there will be a bill before the house. After all, one of the main purposes of these committees is to inform us in our work as legislators, so I think this committee has been effective in that.

During Mr Viney's contribution he paid particular attention to the Greens and our role in setting up the committee, and he even referred to our supporters as if he has some particular insight into people who vote Green. I mean, our vote has tripled in as many elections, and I do not think anyone on the Labor side or Mr Viney saw that coming. Maybe others on the Labor side saw the rise of the Green vote, but it certainly militates against his having any real understanding of Greens supporters and why they vote Green.

Mr Viney interjected.

Mr BARBER — That is a good point from Mr Viney. He has been a pollster in a previous life, so he has some insight into the voters. But maybe he thinks the Greens are the soft touch. Maybe he thinks we are the ones who can be chipped off when it comes to the role of this Parliament in scrutinising the government of the day, but I can assure him that we are 10 times as gung-ho as the opposition when it comes to chasing every rabbit down every hole. Normally this would have been a personal comment, but I will say it across the chamber: every time you come out against us on these sorts of issues of accountability you are actually feeding us political energy.

Just to wind up now, obviously the establishment of this select committee and the way it went about getting evidence and then the evidence itself were quite controversial but a lot of that was to do with its novelty. This was a select committee that was set up just as Parliament was really getting to its feet under a new voting system with a new make-up. I actually think that select committees like this one will over time become quite routine, and maybe they will not attract the same sort of intense media interest that this one did. Its terms of reference were to look into the 'conduct, processes and circumstances' of a particular tender. It was not an inquiry like the former Select Committee on the Urban and Regional Land Corporation Managing Director, which was addressing a specific allegation.

Those allegations were out there in public, but if the Select Committee on Gaming Licensing did not exonerate Mr Bracks of any wrongdoing, it is because the terms of reference did not inquire into any wrongdoing. The terms of reference quite appropriately inquired into the conduct, processes and circumstances of a particular tender, and that sort of brief is no different to the brief that the Auditor-General writes for himself all the time, and the government welcomes Auditor-General inquiries. It probably goes berserk internally when they are announced, but it does not go externally berserk the way it did when this one arose. The government just needs to come to the understanding that sometimes you do need to be inquired into by your worst political enemy. That is permissible. That is actually the strength of the system we operate in. When the most partisan, biased, unrelenting political opponent of yours runs an inquiry into you and produces their finding, that underpins the confidence the community has in this system. Leaving aside all the issues of this inquiry that are still unresolved this morning, that is nevertheless the outcome of this exercise.

I add my note of thanks to all members of the committee and the chair with a qualification perhaps for that member of the committee who early in the piece was leaking every deliberative decision of the committee to the media, but that stopped pretty quickly. I look forward to many more routine select committees into aspects of the government about which there is, rightly, public concern.

Mr PAKULA (Western Metropolitan) — As Mr Barber pointed out, the government members of the committee produced a brief minority report which puts the government's views about a particular part of the report succinctly, and I will likewise try to be succinct. Mr Barber made a point about the fact that the government did not flag its intention to produce a minority report, and I can inform him that the reason we did not is that we did not intend to produce a minority report until the deliberations on chapter 3 were concluded. I can further inform him that the outcome would have been different if there had been one finding in the report that the government sought. He knows the finding I am talking about, the finding I moved:

> In relation to the former Premier, Mr Bracks, the committee has not received any direct evidence to sustain any allegation of improper conduct.

That is a finding of fact. If Mr Barber had supported that finding, there would not have been a minority report.

Five of the six chapters of the report, as Mr Viney has pointed out, were endorsed by the government, despite some misgivings in regard to some of them, I should say. We had some misgivings about a couple of the findings and a couple of the paragraphs in chapters 2 and 6 in particular. We voted to endorse them anyway, because we did not think those misgivings were sufficient to warrant our not endorsing those chapters. The minority report Mr Viney and I prepared was necessitated only by chapter 3, and importantly the findings contained therein.

I think it is important for the sake of this debate to do as Mr Viney did and go back to the formation of the committee and particularly to the speech in the Parliament by Philip Davis, the then Leader of the Opposition in this house in February 2007. I will not go into the detail of that speech — Mr Viney has done it — but it was all about the former Premier and all about his relationship with Mr White. Throughout that period of time there was media comment from Mr Baillieu, the Leader of the Opposition, and Mr O'Brien, the member for Malvern in the other place, which focused almost entirely on the then Premier's conduct, and the term 'raise the spectre of corruption' was used.

To deny that this inquiry was, at its very heart, about Steve Bracks is to insult the intelligence of MPs. We know that there were other elements of the inquiry, but we also know that if there had not been those media reports that were fed out by aggrieved parties in a court case — reports that talked about the former Premier, about his conduct, about the boardroom lunch and about the dinner at Lorne — there would never have been a select committee established. It was all about Steve Bracks and it was fundamentally political from its outset.

It does not mean that the committee did not examine other things; it did. And there was some good stuff in there — stuff on electronic gaming machines (EGMs) and stuff on problem gambling. I agree with Mr Barber and I think I speak for all of us when I say that the committee's eyes were opened to many other factors about EGMs in particular. But in the eyes of the opposition those were peripheral matters. That was demonstrated last year when the government in this place moved to defer the discussion about the lottery licences until the end of the tender process and bring forward the discussion on problem gambling and EGMs. That motion was defeated in this house by a coalition of the Liberal Party, The Nationals and the Greens. We sought to bring those other items forward, and that did not occur. That combination which defeated that resolution was the same coalition which

voted to inflict finding 3.24, to which we take such exception. As we say in the minority report, we find that finding 3.24, the open finding, is an absolute abrogation of the committee's responsibilities. You cannot look at finding 3.24 without considering paragraph 191, which says:

> … the committee is not satisfied that it has sufficient evidence to disprove the allegations.

We have a suspension of the rules of natural justice in the Legislative Council, a reversal of the onus of proof, an acknowledgement by the committee that it does not have evidence to sustain allegations, but there is a get-out clause and a refusal to exonerate the former Premier by using the term 'we do not have evidence to disprove the allegations'. In what other forum is that the standard of proof? In no other forum is that the standard of proof.

Mr Guy interjected.

Mr PAKULA — I am going to come to that, Mr Guy.

Mr Guy — You have got 4 minutes to go.

Mr PAKULA — It was a flexible 10 minutes, Mr Guy. Despite all of the cover that the other terms of reference were designed to provide, this inquiry was about an attempt to score a political hit on Steve Bracks. As I say, his name was dragged through the mud by Mr O'Brien and Mr Baillieu. There was the way that Mr Guy questioned the witnesses, particularly Mr Fischer, trying to find out whether there was a social relationship between Mr Fischer and Mr Bracks and whether there was a relationship between Mr Fischer and Mr Bracks's wife, Terri. He was relentlessly endeavouring to find a skerrick of evidence, not about the process but about Steve Bracks. Through 18 such witnesses, through hours of evidence, there was not a single shred of evidence to suggest that any wrongdoing was committed by Steve Bracks. There was certainly no evidence to sustain an allegation of impropriety, which is why I say that the amendment that I moved is an amendment of fact and an amendment that should have been carried. The committee did not have the decency to say that there was no evidence to sustain an allegation of impropriety.

The conclusion I draw from that is that the committee was political at its birth and it was political at its death. The coalition of the Liberal Party, The Nationals and the Greens that came together at the start of the committee to create it came together again at the end to deny the former Premier a finding that cleared him and that he was entitled to. Because that was not the headline that they wanted today — 'Bracks exonerated' — and it was the only headline that would have been appropriate, given what we heard. At the end of the day politics trumped fairness, politics trumped respect and politics trumped decency. That is the difference between the opposition and Steve Bracks. Steve Bracks was a fundamentally decent man, and the people of Victoria always knew that.

The finding that there was no evidence to sustain an allegation of improper conduct against the former Premier was, I would submit, the only finding that this committee absolutely had to make. That was the one finding that this committee absolutely had to make, and that it did not. I was going to say it is beneath contempt; it may be above contempt, but really only barely. Then we had the circus on the last day of deliberations of Mr Guy moving amendments to the findings that were drafted by his Liberal colleague, the chair.

Mr Guy — It is meant to be impartial. What a stupid comment. What a ridiculous comment.

Mr PAKULA — Obviously Mr Guy thought some of the draft findings were too fair.

Mr Guy interjected.

The PRESIDENT — Order!

Mr PAKULA — And what we got as a result were findings that are just absolute nonsense findings. We now have finding 3.17, which throws into doubt the probity of the entire process because Tattersall's got a government information pack a couple of hours before its public release. The finding says that the probity of the whole process is in doubt because it got a government information pack a couple of hours before its public release. As Mr Viney pointed out, finding 3.18 is about allegations of prohibited contact, but at finding 3.20 there was an acknowledgement that there is no evidence that such contact actually occurred. But still there was the insertion of the words that if it happened it was 'a breach of the terms of the brief'. There was an acknowledgement that there is no evidence that it happened, but we had to get those words inserted anyway. As Mr Viney said, why stop there? Why not just say 'and if you shot someone, that is murder'?

Mr Guy interjected.

Mr PAKULA — Both propositions, Mr Guy, suffer from the same deficiency — a lack of evidence!

Mr Guy interjected.

The PRESIDENT — Order! This is the last warning to Mr Guy. He has his turn coming. He can rebut or question or make any statement he likes when he gets his turn. Any more interjections and I will remove him.

Mr PAKULA — I said that both propositions suffer from a lack of evidence; in fact there has been no evidence for any of the stories that the opposition pushed, that it peddled that it backgrounded the media about. But then Mr Rich-Phillips and Mr Drum came in here with their catch-all defence: 'Aha, but you claimed executive privilege. Aha, but Mr Bracks did not show up'. I have to say that in a way it is lucky for the opposition, because if it was not for that the opposition parties would have absolutely nothing to talk about this morning. They would just have to admit that they got it wrong and cop it sweet. But all the way through the report they have been able to hang their hats on the executive privilege claim and the fact that Steve Bracks declined the invitation of the committee to attend. That is okay; we can focus on what they did not get. But let us focus on what the committee actually did. Let us focus on who the committee still got to interview. The committee got to interview two former Tattersall's trustees; two Tattersall's chief executive officers — the current CEO and the former CEO; a range of other Tattersall's' executives — Mr Boon, Mr Gunston, Mr Mangos; the Victorian Commission for Gambling Regulation — both Mr Dunn and Mr Cohen; Mr Sheehan from Intralot; the probity auditor; a range of public servants; Mr Pearson; and Mr White.

And what evidence of wrongdoing did they get from all that and from all those witnesses — 18 in total? Nothing. And do members of the opposition not think that, if there was anything there, something might have come up? It is easy to focus on who was not interviewed and what they did not get, but there were still 80 folders and 18 witnesses, and they did not get a single skerrick of evidence against anyone.

As for the former Premier not attending the hearings, the report itself acknowledges that there was not a single, specific allegation made against him that he would have been required to rebut in any case. What would have been added by his attendance? He would have been asked to rebut exactly what? Nothing — because nobody said he did anything. Nobody suggested that he did anything.

So there you have it. This committee sat for 15 months; 7 MPs were involved; 58 witnesses were called, 18 of them specifically on the lottery licences; there were dozens of meetings; and there were 80 folders of documents. And what was discovered? Two things were discovered: that the former Premier and his wife caught up with an old mate and his wife at a dinner in Lorne. They had a bit of dinner and a chat. And once upon a time the same former Premier went to a boardroom lunch at Tattersall's and said exactly nothing that he was not supposed to. Quite frankly those words 'once upon a time' should be the opening line of this report, because it is a fairytale. It has been a fairytale from the start. There was never any evidence received by the committee to suggest any wrongdoing, and if people take objection to that, there was certainly no evidence to sustain an allegation of wrongdoing. The opposition could have redeemed itself by admitting as much. It had the chance to do the decent thing and say that there was no evidence against the former Premier sufficient to sustain any allegation. But in the end, rather than do that, the opposition with the support of The Nationals and the Greens decided to squib it and say nothing at all.

On a happier note, having said all that let me say — like the chair and other speakers — on behalf of Mr Viney and myself that I thank Richard Willis and Anthony Walsh for the power of work they did. I do not think members in the chamber can comprehend how much paperwork and other hard work those gentlemen had to go through to assist us as a committee in our deliberations. I also want to thank all the members of the committee. I want to make particular reference to Mr Viney. When I went onto this committee I was, as people know, a brand-new MP. It would have been very difficult for me without his support and guidance. I want to thank Mr Viney.

I also want to thank the chair, Mr Rich-Phillips. Despite all the words that have been said in this debate both today and on all the other occasions that have gone before and despite the government's view about the committee, I think the chair handled a difficult job with great tact, aplomb and fairness throughout all the hearings. I am the first to admit that Mr Drum is not an easy person to handle, but I am also prepared to admit that at various times throughout the hearings neither was I — nor was Mr Guy or Mr Viney. Mr Kavanagh and Mr Barber were generally pretty quiet and respectful, so I do not think the job of chairing those gentlemen was quite the same as dealing with Mr Drum, Mr Guy, Mr Viney and me. I want to thank the chair for the way he conducted himself, particularly at the hearings and throughout the deliberations on the report. With that I will now conclude.

Mr GUY (Northern Metropolitan) — I want to begin where Mr Pakula ended and open my remarks by saying how much I would like to place on record my appreciation for the work of Richard Willis and

Anthony Walsh in relation to the secretarial work for this committee. As Mr Pakula said, it was a committee that was full of emotion, and some of the hearings and some of the deliberative meetings were not the easiest to comprehend or to establish exactly what was or was not being voted on and discussed at the point in time. Both Richard Willis and Anthony Walsh did an exceptional job, and that should be placed on record.

I would also like to mention the chair, Mr Rich-Phillips. Like Mr Pakula, when I joined this committee when it was established last year I was a brand-new member of Parliament, and to say that Mr Rich-Phillips was a tremendous chair is an understatement. He handled himself magnificently. He was always impartial in how he managed the committee. He gave everyone a fair chance to discuss all the issues they wanted to discuss and raise the questions they wanted to raise. He managed the committee in a very genuine manner. I place on record my thanks to him. I also place on record my thanks to all the other members of the committee: Mr Barber, Mr Kavanagh, Mr Drum and yes, Mr Pakula and Mr Viney. While we obviously came to the committee with different ideas as to how we would manage ourselves, we have not necessarily come out of it any differently.

I want to say, however, in relation to the report before us today that the substance of the report and the findings goes right back to where we started when the motion first came to this chamber early last year. I believe the government's behaviour towards the committee — and indeed today on the findings of the report — has been absolutely scandalous. When I say the government's behaviour has been scandalous, I do not mean just the elected Labor Party politicians who are part of the government, I mean a range of public servants and government employees who appeared before this committee. Their behaviour was scandalous.

The committee was established with a very clear role to determine a set of transparent, open and accountable findings into what had occurred in relation to the gaming licensing process. At almost every turn the committee was hindered and hampered and there were attempts to constrain it by the government, whether through public servants or elected Labor Party politicians. That is a fact. The government vehemently opposed the establishment of this committee; it has relentlessly rubbished the committee in the media; it has refused to hand over documents that it had handed over to the Merkel inquiry; and it has refused to cooperate with the committee throughout all the legislative steps and in many ways through the committee itself.

I found it interesting that Mr Viney came into this chamber and said that the Labor members of the committee — Mr Pakula and he — had never voted not to allow the committee to call certain people, any people, to give evidence to the inquiry.

On page 173 of the report the question was put that a message be sent to the Assembly requesting that the then Premier, Mr Bracks; the then Treasurer, Mr Brumby; Mr Andrews, who was then the gaming minister; Mr Pallas, the Minister for Roads and Ports; and Mr Pandazopoulos appear before the committee. Four members voted in favour of the motion and two people voted against. The members voting in favour of that motion were Mr Barber, Mr Drum, Mr Guy and Mr Kavanagh — not the chair, of course — and those voting against the motion were Mr Pakula and Mr Viney.

Mr Viney — It is different from obstruction.

Mr GUY — Mr Viney, with respect, you came into this chamber not 1 hour ago and said that you did not vote against the committee bringing any witnesses before it.

Mr Viney — Check *Hansard*.

Mr GUY — You said you did not vote against anyone being allowed to come before this committee. In relation to your own credibility, I recommend that you check *Hansard* and that you also check the committee's report, because you did that on a number of occasions.

Members of that committee know that in effect there have been two committees: a committee which has been trying to get the answers in line with the terms of reference provided; and two other members who have sought to hinder the committee's getting those answers in line with the terms of reference, both the latter members ably assisted by Labor Party ministers such as the Attorney-General. Indeed the interim report contains copies of the Attorney-General's letters back to the committee in relation to public servants, to ministers and to members of Parliament. Those letters either refused the right for those people to attend or said that if those people attended they would be bound by executive privilege, thus any mention of topics relating to what was involved in the terms of reference would be prohibited.

As I said to members opposite in debate in this place 12 months ago, if they had nothing to hide, if the process was fine, as they say it was, if there had been no wrongdoing, if there had been no impropriety whatsoever, then the government would not have had to

gag its public servants, nor would the government have had to refuse to allow a former minister to appear before the committee, even though Mr Pandazopoulos was fine about coming. The government would not have had to refuse its ministers the right to come before the committee; they would have been present to put their case. Mr Pakula said it himself at the end of his speech in relation to Mr Bracks. He said that had Mr Bracks appeared he would have had nothing to rebut. That is obviously subjective, but the point was that, if the government felt there was nothing to hide, its ministers should have appeared. Therefore our question today remains: 'why did they not appear?'.

It is very difficult for a committee to do the work set out in its terms of reference if it is being denied the opportunity to take evidence, if it is being denied information, if it is being denied access to the people involved and if people involved in the process are being bullied or are being inadvertently threatened with the loss of their job. And that is what happened with this committee.

There was more information presented to the Merkel inquiry, which had similar terms of reference in some respects to the select committee, than was presented to the select committee of the upper house, a committee of elected parliamentarians of which the Labor Party is a part. It is astounding that the government was keen to provide selected information to Merkel but to provide nothing to the select committee.

I heard Mr Barber comment about minority reports, and I agree it would have been preferable had the preparation of minority reports been flagged when the committee met on Tuesday for its final deliberations. I found a number of points in the minority report of Mr Viney and Mr Pakula to be astounding. The committee had discussions and debate all the way through the hearings, particularly in relation to the float of Tattersall's. The government is trying to pass this off as if the floating of Tattersall's was always public knowledge and that everyone in the state knew this.

Apparently anyone who lived within the boundaries south of the Murray River or east of the South Australian border knew it was Labor policy that Tattersall's should be a publicly listed company. In fact the board minute presented to the select committee by Tattersall's said very clearly that the feedback the board received from the then Treasurer, now Premier, and the then Minister for Gaming was that the government wanted Tattersall's to be a publicly listed company.

The Tattersall's board felt that if it did not become a publicly listed company, there would be retribution or problems for that company in future business affairs in Victoria. That was what they felt and what they minuted. There was no reference to, 'We understand that this is Labor Party policy and has been for a decade, therefore we will follow the Labor Party policy'. That may have been the evidence of Mr Fischer, whom I will come to in a moment, but it was certainly not the view of the Tattersall's board in the minute presented to this committee. Yet it is a critical piece of evidence which the Labor Party claimed was known by all. No, it was not!

I want to refer to the participation in the committee's work of a number of witnesses who gave evidence to the committee. The first is a former minister of this place, Mr David White. He approached the committee with a degree of hostility and suspicion, as one would have expected from any former Labor member of Parliament.

Mr Barber — Cocky.

Mr GUY — Yes, Mr Barber, 'cocky' is another word I would use. He tried to claim to the committee that all his notes over the last five or six years about gaming licensing had been shredded; he said every single page at the end of every single day had been shredded. That was Mr White's version of events: that at the end of every day, he would take his Spirax notebook, which he would carry around with him quite religiously, and would rip out the pages and shred the lot. Therefore there was not a skerrick of evidence, there was nothing he could give the committee — because it had all been shredded.

Mrs Kronberg — Why take notes in the first place?

Mr GUY — I guess there are three points on that, Mrs Kronberg: why would he take notes in the first place? If he had those notes, why would he shred them immediately on the same day? And if they exist, where are they and why were they not provided?

It was exceptionally unbelievable for anyone sitting in that room and listening to Mr White's evidence to believe him when he said he shredded every piece of information in relation to lotteries licensing when he worked for Hawker Britton, which was working for Tattersall's. That was not credible and not believable.

Mr Pearson, his colleague, also came to the committee with hostility and suspicion, and with an incredible attitude that he felt he had to answer to no-one. He felt he did not have to answer to the select committee, which was a group of members who were not members of the Labor Party. Why should he answer? This was not a faction meeting or a meeting of his mates; he had

no interest in answering questions put by the committee, and his testimony speaks for itself. I will not go over it, but Mr Pearson's evidence, as with Mr White's evidence, was highly questionable.

Dick McIlwain came from Tattersall's and behaved like a street sheriff with his side arm, coming out with all guns blazing. He declared that he had contempt for committees, contempt for lobbyists and contempt for everyone. I guess he now has contempt for government, given that his business is about a billion dollars poorer as a result of a recent decision about gaming machines.

Penny Armytage, the Secretary of the Department of Justice, is a very important public servant in Victoria. She was very keen to provide half answers and to plead the fifth amendment, as Mr Drum put it, to provide only information that was selective and along the lines of what her Attorney-General would have approved.

Duncan Fischer, the past CEO (chief executive officer) of Tattersall's, was an interesting witness. As I said, he was the CEO of Tattersall's, but he seemed not to know when he was deemed to have met the probity requirements. The average person might ask, 'What does that mean and is that important?'. You would expect that anyone in Mr Fischer's position as the CEO of a billion-dollar lottery company would have been subject to the appropriate background checks as to whether they were the right person to run that company and whether they had the right character to run that company. Mr Fischer claimed that he received probity clearance in July 1992, which is interesting because a fellow he later employed, David White, was the gaming minister at that time. We had evidence from Mr Cohen, who, following questioning from Mr Viney, stated that his probity clearance was received in 1995. Mr Cohen then went to the *Herald Sun* and questioned Mr Fischer's evidence of his probity clearance being received in 1992. We have no idea when his probity check was conducted.

Mr Pakula — You're 5 minutes over.

Mr GUY — You went for 15 minutes.

We had the chief executive officer of Tattersall's providing evidence to this committee, yet we are left in the dark as to his attitude, the information he provided to the committee and the credibility of his evidence to the committee if he cannot tell us when his probity was established. This is like asking a footballer when he received his first draft pick. It is like asking a politician when they got elected. We asked the CEO of Tattersall's when he achieved probity clearance and he did not know. Either he knew and he did not want to tell us or the regulator is wrong and he stood by being wrong. We still have not found an answer to that important question. It is a fundamental question, because it is fundamental to the credibility of the evidence given by one person to this committee. It is still unresolved.

As I said at the very start, there is a real smell about a government that tries to hinder the work of a committee. All the evidence the government presented to the committee was sanitised, gagged and regulated. All the witnesses were 'advised', and I use the term loosely, that they needed to be careful about what they said.

I think one of the most salient pieces of evidence the committee received, and it is one of the findings in chapter 3 of the report, related to Mr White's success fee. That was hotly discussed at deliberative meetings and open meetings. The simple question is: why would you pay someone a success fee of $350 000 if they were there to surf the internet? That was his job description. Mr White tried to claim that he was there to surf the internet, to check *Hansard* and to provide information to his master in Tattersall's — Duncan Fischer — about what was happening in Parliament at the time. I find it astounding and smelly that we could have evidence presented to the committee in relation to this success fee and somehow government members can stand up today and defend that and say it is completely honourable. They have suggested that there is nothing at all untoward about someone being paid a $350 000 success fee to do work on a tender process, that work being against the terms of the brief and thus illegal, that work being contrary to the terms of the brief and therefore properly resulting in a penalty of disqualification, when that $350 000 was only payable for him to surf the internet.

As I have said from the very start, the government's behaviour on this committee has been scandalous. How the government tried to subvert this committee from the very start was scandalous, as is how it treated its public servants who were willing to appear or did appear before the committee. The behaviour of people linked to this who appeared before this committee was scandalous. An open finding is one that I personally believe is light considering the evidence presented to the committee. It is a finding that, in my view, leaves a lot of questions still to be answered. I believe there are still unanswered questions about this entire process, about breaches of the process, about witnesses before the committee and about the government's appearance and handling of itself before the committee. I believe evidence has shown that there are issues that remain unresolved.

I simply say in conclusion that it has been a unique experience to be a part of this committee. It was a unique experience to see the behaviour of a range of public servants, industry people, government members and ministers towards a select committee of the upper house and their attitude to the right of the upper house, the right of the people of Victoria, to legitimately ask questions about a tender process that has left many questions still to be answered.

Mr KAVANAGH (Western Victoria) — The Select Committee on Gaming Licensing was established largely because of concerns held by the opposition and speculation in the media about the lotteries licensing process. In general terms it seems to me that the evidence before the committee of any irregularities in the licensing process was very weak and inconsistent and was indeed contradicted by other evidence.

In Australian culture we naturally tend to sympathise with the underdog. It is a part of who we are. That is not a bad characteristic to have. However, I think in defending the low we should also bear in mind that we have responsibilities of fairness and justice to the high. I have to agree with the members of the government who consider that finding 3.24 and paragraph 191, although technically correct, do not fulfil our obligation to Mr Bracks or other people to be fair and just.

However, our commitment to the truth means that we should emphasise and underscore the government's hostility to the committee and its lack of cooperation throughout the 15 months of the committee's investigations. From the beginning the government, it seemed to me needlessly and wantonly, interfered to prevent the committee uncovering evidence. Indeed in the process it ignored independent legal evidence obtained on behalf of this house. Victorians should be concerned about this, because if this attitude towards investigations by the government is to continue, it will mean that the role of this house in reviewing and scrutinising the government will be diminished. That should be a matter of concern for all Victorians.

In addition to the investigation of the licensing processes, the committee considered, among other things, problem gambling and methods of minimising the harm done by problem gambling. It seemed to me that that was an extremely important aspect of the committee's work. In the course of that investigation we heard testimony from people who have had problems with gambling. The evidence they gave us was quite harrowing. It pointed to personal despair of a profound nature.

In addition to hearing from the sufferers of the problem, we also heard from experts who spoke about their efforts to treat and help people with this problem. We found that particular problems included financial, health, social and personal aspects. We heard, for example, of a family whose members did their grocery shopping for the week, after which they went off to play the pokies. They came back later to the supermarket saying, 'We have lost all our money at the pokies. We want a refund. We want to cash our groceries in'.

We also heard from one problem gambling help organisation that its staff hear about six times a year of someone they have dealt with killing themselves. These people commit suicide because of problems arising from the use of EGMs (electronic gaming machines). That organisation covers a small part of Victoria, and indeed probably only deals with a small part of the problem within that particular region. The problem is huge and profound. I think it justifies the conclusion that pokies really are a scourge in our society.

The committee considered measures for dealing with problem gambling and to address the harm done by it. It seems to me that while there are worthwhile measures in the report, they do not go far enough. The state profits from this dangerous activity, and it seems that we are obliged to do everything we reasonably can to warn people so that Victorians who use EGMs do so after being warned soberly and on the understanding that they are very unlikely to win money in the long term.

The committee considered the introduction in the near future in Victoria of precommitment technology, as announced by the government. The government has not announced whether that will be optional or mandatory, and it seemed to me — though not to a majority of the committee — that the government should work towards making the technology mandatory. We also heard from a leading problem gambling expert from New Zealand whose evidence was very powerful. It showed us that Victoria has a lot to learn from New Zealand.

I would like to thank the chairman of the committee, Mr Gordon Rich-Phillips, who did a really great job for the whole 15 months. He was fair, he kept the process moving and did a pretty good job of preventing some of the disputes degenerating to an unseemly level. Thanks also to Mr Richard Willis and Mr Anthony Walsh, both of whom at all times were helpful, courteous, cheerful and professional in everything they did for us.

Motion agreed to.

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Financial and performance outcomes 2006–07

Mr PAKULA (Western Metropolitan Region) presented report, including appendices, together with transcripts of evidence.

Laid on table.

Ordered that report be printed.

Mr PAKULA (Western Metropolitan) — I move:

That the Council take note of the report.

In doing so, I will confine my comments significantly, given the amount of time we have just spent on the previous report. I note that other members of the Public Accounts and Estimates Committee would like to say a few words. I simply want to make the point that, as members of the Council will note, this is an extensive report which goes into the outcomes of each department of government over the last financial year.

The report was in large part the work of Ian Claessen, Joe Manders and Kris Waring. On behalf of the committee I place on record my appreciation for the job they did in putting the report together. I obviously also want to thank Valerie Cheong, the executive officer of the committee, and Karen Taylor, its administrative officer, for all their support and assistance in the compilation of the report. I also compliment the committee chair, Mr Stensholt, the member for Burwood in the other place, and all members of the committee because the deliberations on the outcomes report comprised a very smooth process attended by a large amount of goodwill on the part of all members of the committee and an absence of rancour and disagreement. Both the chair and committee members deserve commendation in that regard. On that note, I simply commend the report to the house.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I join Mr Pakula in commending this report to the house. It is a report on the outcomes from the 2006–07 financial year and is the follow-up that the committee does to the budget estimates reports it produces every year. It is often of a lower profile in the Parliament's perception of the work of the Public Accounts and Estimates Committee. However, this report, following up on what was achieved and not achieved with respect to the concluded financial year — in this case, 2006–07 — contains substantial data on the performances of departments and departmental agencies.

This report expands the format from previous years and is framed under the government's Growing Victoria Together framework in terms of service delivery areas the government has described in its *Growing Victoria Together* document. The report picks up that framework in describing the performance of the government and relevant departments. The committee has also expanded its consideration of outcomes to include non-departmental agencies.

The committee has undertaken a review of a range of non-departmental agencies that are picked up in the report and will do so on an ad hoc basis in ongoing years with different agencies in different years. The report contains substantial data on the performance of those agencies. As such, I would commend it to the members of the house for a better understanding of the performance and operation of government, both departmental and broader. In conclusion I join Mr Pakula in thanking the staff of the committee under Valerie Cheong and the research staff who put substantial effort into this report. I commend the report to the house.

Mr DALLA-RIVA (Eastern Metropolitan) — I also rise to comment on the report as detailed by the other members. It is the detailed report about the performance of the government over the 2006–07 year and the preceding year, reporting on the 2004–05 budget outcomes in terms of the government's follow-up. I also want to put on the record my appreciation for the work of the staff. I understand from talking to one of the executive officers that they were up until 4.00 a.m. today trying to get this sorted out. That shows their dedication. I express my appreciation to Valerie Cheong, the executive officer; Karen Taylor, the administrative officer; and Ian Claessen and Kris Waring, the research officers, for their input in providing, coordinating and collecting all the information.

There were 88 recommendations in the report. Many of them relate to the failure of some of the departments in providing information, in particular some of the key findings in chapter 12 on page 283, where we actually had some of the departments questioning the usefulness of our questioning them on their performance. It seems amazing in particular that the former Department of Infrastructure, which in the 2006–07 year spent $84.7 million, and the Department of Innovation, Industry and Regional Development, which spent $52 million on its administration, questioned the usefulness of the analysis between direct service delivery and administration. I think those who are in service delivery would like to have an open-ended chequebook in terms of providing their administration costs without being

accountable. The indications are that that needs to be a lot better. The report card by departments on portfolio outcomes is a very detailed report; it goes into a lot of outcomes. It really is just copied from what the departments provided, but it is a very useful document in that respect.

Finally, I will just mention chapter 14 which refers to the performance targets of the various departments. Again, one of our key findings on the all-party committee found that the majority of departments provided details of performance against output measures. However, it is stated that four departments failed to provide a full account of their performance in relation to all of the output performance measures identified in the 2006–07 service delivery budget. It is interesting because you would expect that governments would have some measure of output performance, but clearly four of those departments as identified in that chapter did not do so. The most concerning point is that the committee found that the Parliament and the public may be inadvertently misled into making wrongful assumptions about the Parliament's performance. That is a very concerning issue in this very detailed report. Apart from those concerns that I personally have, it is a very detailed report and I commend it to the house.

Mr BARBER (Northern Metropolitan) — I would just like to draw the attention of the house to one particular aspect of this report. In recent times the government has taken to disclosing environmental performance indicators in its various annual reports. It is a long way from triple bottom-line reporting, but I think it very worthwhile that the committee staff went to the effort of collating that information from the various reports and giving some environmental performance indicators that are somewhat comparable across departments. That is something the Greens are very appreciative of.

Motion agreed to.

PAPERS

Laid on table by Clerk:

Statutory Rules under the following Acts of Parliament:

County Court Act 1958 — No. 33.

Subordinate Legislation Act 1994 — No. 34.

Subordinate Legislation Act 1994 — Ministers' exception certificates under section 8(4) in respect of Statutory Rule Nos. 33 and 34.

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Budget: regional first home bonus

Mr D. DAVIS (Southern Metropolitan) — My question is to the Treasurer, and I refer to the record-taxing 2008–09 budget. Can he confirm that he has set aside only $3 million in the budget to fund the $3000 regional first home bonus?

Mr LENDERS (Treasurer) — I am absolutely delighted to again be taking questions on the budget in this question time and that Mr Davis starts question time by referring to an initiative which affirms regional Victoria as a great place to live, work and raise a family. That initiative by the government says, 'We affirm that young working families should be encouraged to buy new homes and to buy new homes in regional Victoria'. I am absolutely delighted that David Davis starts question time talking about growing Victoria, growing regional Victoria and showing that regional Victoria is the beating heart, not the toenails, of our state.

I am delighted that David Davis has asked that question. We have made provision in the budget for the first year based on what we think the uptake will be. I hope our estimate is wrong. I hope even more people want to settle in regional Victoria, even more young families want to buy homes and create jobs and even more people want to add vibrancy. I grew up in Gippsland, and I lived in a number of small towns. During the 1990s the Latrobe Valley saw a population reduction of almost 3000 because the policies of a previous government gutted regional Victoria. My home area of the Latrobe Valley has grown by that same number of people through deliberate, well-founded initiatives since. I hope regional Victoria grows more. I welcome the question and reaffirm that first home bonuses for regional Victoria will make regional Victoria even stronger and a better place to live, work, build a home and raise a family.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — I thank the Treasurer for his answer, even if it was only mildly informative. This paltry $3 million for a policy that is supposed to be so important in getting people to move to regional Victoria proves what a total hoax the bonus really is. How will a bonus which runs for only one year and which can benefit only a maximum of 1000 people in any way represent a sustained effort to encourage people to move to regional Victoria?

Mr LENDERS (Treasurer) — How out of touch can the member be! If I were starting up my family in Echuca, in Trafalgar, in Willow Grove, in Warragul or in any of the towns I grew up in — not Echuca, the other ones in Gippsland — and was part of a young working family starting life, I would be insulted to hear David Davis say $3000 is a paltry sum when the government is trying to do everything it can do to make housing more affordable for young people in regional Victoria.

If Mr Davis thinks $3000 is paltry and will not be of assistance to battling families who are under pressure from interest rates and petrol prices, it just goes to show how out of touch he is and how the Liberal Party has not changed from the neglectful days of the Kennett government when it treated regional Victoria with contempt.

Budget: housing affordability

Mr PAKULA (Western Metropolitan) — My question is also to the Treasurer, and in congratulating him on the delivery of his first budget I ask: can he outline to the house how the Brumby Labor government is taking action by delivering greater housing affordability to all Victorians?

Mr LENDERS (Treasurer) — I thank Mr Pakula for his question and for his positive focus on Victoria as a great place to live, work, build a home and raise a family. Home ownership is one of those values that young Victorian families aspire to. In fact all Victorians aspire to it, but for young working families more than any others it is an aspiration and a dream. Across this country home ownership is declining. We are giving a boost to Victorians to encourage home ownership and to make housing more affordable.

As I said in the house yesterday, my colleague Minister Madden has led the way nationally in streamlining planning to provide more land availability or supply, which is such a critical part of assisting families to afford their own homes — more supply makes housing more affordable. In addition, on the initiative that David Davis thinks is paltry, working families in regional Victoria would welcome the $3000 of assistance newly announced in the budget and also the existing $12 000 of assistance that was put in place previously. They would also welcome the cut in stamp duty announced yesterday, and they would certainly appreciate that Victoria uniquely has no stamp duty on new houses as part of off-the-plan housing purchases. A young family in Echuca, in the centre of northern Victoria, who buys a block of land for $100 000, pays about $2000 in stamp duty and builds a house on that land will then get a $15 000 contribution from the state government to start up their own home. We work — and Mr Pakula knows this — to make housing more affordable for young families.

We have also upped the threshold of the assistance we give to pensioners. We have upped the thresholds and also reduced the top rate of land tax, which all flows through, including targeted stamp duty cuts. Housing affordability involves a mixture of areas that come together to assist young working families to buy their own home. By the government's action of greater land availability, reducing some of the impost on housing and freeing up housing in tough times nationally when interest rates are high, Victoria is doing its bit to take off some of the pressure that is there.

It is also worth noting that if we compare Melbourne, which is this part of Victoria, to Sydney, we find our median house price is lower; if we compare Melbourne to Brisbane, our median house price is lower; and if we compare Melbourne to Perth, our median house price is lower. It is not great comfort to a young working family trying to buy their own home to know that, but it should be comfort to members opposite to know that this government's policies are working in that direction.

In response to Mr Pakula's question, a great package in this budget that takes pressure off working families in combination with Minister for Planning's innovative, radical and successful proposals will make Victoria an even better place to live, work and raise a family.

Budget: regional development

Mr DRUM (Northern Victoria) — My question is to the Treasurer. Yesterday when answering a question asked by Candy Broad the Treasurer spoke about the benefits of the budget to regional Victoria. How does the Treasurer explain to regional Victorian working families why he has reduced the funding for regional development by 40 per cent?

Mr LENDERS (Treasurer) — If Mr Drum actually reads the budget papers and refers to budget paper 3 in relation to the outlook for the Department of Innovation, Industry and Regional Development, which is Mr Theophanous's department, and he actually reads the footnote to the relevant table, he will know that his matter is a cash phasing issue. This government has actually brought in the Regional Infrastructure Development Fund (RIDF), which relates to the cash phasing issue he talks about. His party voted against the fund that he is now saying is not large enough. The opposition only supported the motion when it was shamed by regional Victoria to say why it would not

support a Labor government initiative to set up a Regional Infrastructure Development Fund. This fund is an outstanding success of this government. It has invested in regional community after regional community to assist them with infrastructure that makes a difference.

Mr Pakula will be very interested in that. Whether it be infrastructure around the food industries in northern Victoria, whether it be urban planning areas in regional cities, whether it be farming areas, whether it be the cattle overpasses that Philip Davis loves so much or whether it be the on-farm support that Mr Vogels knows about and had raised as an issue in the Legislative Assembly in the 54th Parliament — whether it be in any of these areas — the RIDF is a branded image of this government. For the first time a Victorian government intervened directly in regional Victoria to create job support in communities. That is why — and Mr Drum knows this — the action of this Labor government has reduced the gap.

Regional unemployment was 3 per cent higher than unemployment in Melbourne under the Kennett government, and this government has brought it down. That means jobs for young working families in regional Victoria. If we want our kids to stay in regional towns, firstly we need to provide jobs, and we need to assist with housing and we need the services that the RIDF offers.

Mr Drum should look at budget paper 3; he should look at the overview of the Department of Innovation, Industry and Regional Development; he should look at the table in relation to that department; then he should look at the footnote, and that will answer his question.

Supplementary question

Mr DRUM (Northern Victoria) — I thank the Treasurer for his answer. When looking at the footnotes, they suggest that the reduction is due in part to the cessation in funding for drought. Does the Treasurer know something that we do not?

Mr LENDERS (Treasurer) — I have answered the question.

Budget: A Fairer Victoria

Mr SCHEFFER (Eastern Victoria) — I also congratulate the Treasurer on bringing down his first budget yesterday. I would like to ask: can the Treasurer inform the house of how the A Fairer Victoria initiative demonstrates that the Brumby government is taking action by delivering for all Victorians?

Mr LENDERS (Treasurer) — I thank Mr Scheffer for his question about what A Fairer Victoria is doing, where it is going and the fundamental difference it is making to many Victorians. This government believes very much in a triple bottom line. We operate in the economic area where we create the jobs that take Victoria into the future. Of course David Davis and Mr Drum do not like talking about jobs, but under this government we have created 400 000 more jobs in Victoria than when we inherited government from Jeff Kennett and his Liberal and National party team. So we are seeing and have triple bottom line economics; we have led the country on environmental issues.

But Mr Scheffer is asking specifically about social issues. A Fairer Victoria is the flagship of this Labor government's initiatives in the area of social policy. Today, arising from the budget, we saw a further launching of A Fairer Victoria initiatives. That was clearly spelt out to the community sector whose representatives were in room K in Parliament House today. What we saw there was an explanation — a very succinct explanation — by real people benefiting from A Fairer Victoria as to what the billion-dollar boost in this budget has actually done for the disadvantaged and for our communities to assist them in capacity building.

For the benefit of Mr Scheffer and the house, I am delighted to say that the government has been focusing on A Fairer Victoria and that it will be focusing on the four priority areas in A Fairer Victoria from here on. We have a strong focus on giving all Victorian children a better start in life and providing the critical education backing to that early childhood development. We have a focus on improving education itself and on helping people get into work by improving their skills, and we have a focus on improving health and wellbeing. That is a very important mixture for reducing disadvantage and making our society a better place. We also have a focus on the strengthening of neighbourhoods and the growth of communities. We value communities, whether they be, again, small country towns, whether they be suburban hubs in Melbourne or whether they be just groups of people in the community.

This budget delivers a package of $1 billion for A Fairer Victoria. I commend the document to the house. I congratulate my colleagues the Deputy Premier and in particular the Minister for Community Development in the other place, Mr Batchelor, for leading on this in this budget. It is a great outcome for Victoria, and it is a great outcome to reduce disadvantage. I would urge every member in the house to read *A Fairer Victoria* and to discuss the document in their communities, because it is the sort of thing that makes Victoria a

much better and fairer place to live, work and raise a family.

Budget: infrastructure program

Mr RICH-PHILLIPS (South Eastern Metropolitan) — My question is to the Treasurer. The funding for the government's infrastructure program is based on 64 per cent surpluses and depreciation and 36 per cent borrowings, which requires roughly $6.2 billion in borrowings. Will the Treasurer therefore explain why the budget estimates call for budget sector borrowings of more than $8.4 billion?

Mr LENDERS (Treasurer) — I am happy to take questions from Mr Rich-Phillips at any time on the budget.

Hon. T. C. Theophanous — The real shadow Treasurer!

Mr LENDERS — The real shadow Treasurer. I am delighted that he is doing that, and it would probably be very good for the Leader of the Opposition, Mr Baillieu, to think of a minor reshuffle at the moment. To address what is underpinning what Mr Rich-Phillips is asking, let us go right back to basics and start off there so I can put it in a macro and then respond to him in a micro. Governments have an obligation to deliver services, they have an obligation to deliver the infrastructure so services can be delivered, and they have an obligation to legislate to do the things governments need to do to in a minimalist way to regulate society to take it forward, and the budget programs will be service delivery and infrastructure delivery.

To do that you have a number of choices: you can have a disciplined approach, whereby you bring things all together working for the long term, or you can have a scattergun approach promising all things to all people, whereby in one community you promise a school, a road, a fire station or a hospital, and then you go around the corner and promise to cut taxes. You say to one community, 'Surpluses are terrible things; you should spend them on something', and you say to the next community, 'Don't spend anything; you will go into debt'.

The premise of Mr Rich-Phillips's question is: is it appropriate for government to in any way make borrowings to deliver on services? That is a very valid question, and it should be debated in the Parliament, but in one camp you will have people who put these things into context and in another camp you will have people who shamelessly say, 'Debt is bad, borrowing is bad and spending taxes is bad, but you also must deliver more services and you must deliver more infrastructure'. That is voodoo economics, and that is what Mr Rich-Phillips and Mr Wells, the shadow Treasurer in the other place, espouse.

Supplementary question

Mr RICH-PHILLIPS (South Eastern Metropolitan) — The actual premise of the question was: why does the Treasurer say he needs $6.2 billion in borrowings but actually record $8.4 billion in new borrowings? Will the Treasurer assure the house that all proposed increases in general government sector borrowings will be used for infrastructure investment?

Mr LENDERS (Treasurer) — Yes.

Budget: surplus policy

Mr THORNLEY (Southern Metropolitan) — My question is for the Treasurer. Can the Treasurer outline to the house how the Brumby Labor government's new budget surplus policy allows Victoria to better withstand economic uncertainty and contribute to tomorrow's investment?

Mr LENDERS (Treasurer) — I thank Mr Thornley for his question — a perfect segue from the one before, I might say — and for his interest in a balanced, disciplined, macro and long-term approach to budgeting, unlike others who shall remain nameless but who live in the electorate of Scoresby and in the South Eastern Metropolitan Region. I am not referring there to my colleague from that region the Minister for Environment and Climate Change, of course, or to yourself, President, or Mr Somyurek or Mr Guy.

What I say to Mr Thornley is this: we are here now, in the beginning of the 21st century, and this is a time when governments know that, if we have any responsibility to the future and if this society is to move forward, we must have a disciplined and targeted approach to delivering critical infrastructure. Mr Thornley knows this better than most people, and he knows the importance of synchronising this with the national initiatives and the national reform agenda for building human capital and critical infrastructure. Doing so does not work just by going to your recipe book and looking for a magic pudding, which some aspire to, and it does not mean getting a ticket to la-la land and looking for something there. What it involves is disciplined, hard budgeting and focusing, which coincidentally and deliberately are found in budget papers 1, 2, 3 and 4 and in the budget overview.

What Mr Thornley points out is the dilemma we have in this society about how to do all these things. We do them in a twofold way. We have a very solid investment into the future, and we deal with that by a mixture of prudent borrowings, existing depreciation and budget surpluses. What we need to do to sustain infrastructure is to run budget surpluses.

The budget surpluses are interesting as a concept. We have a budget of $37 billion a year — and this is an important message for some in the chamber; not Mr Thornley, but some in the chamber — we have a revenue base of about $37 billion, and we operate a budget surplus of 2 per cent, which we factor into these budgets. Those opposite normally say we are conservative on this. One day they say that we hide big surpluses and the next day they say we hide big deficits, but we are budgeting for a surplus of 2 per cent. Again, to the citizen of Echuca, this 2 per cent is a buffer for tougher economic times, which any Victorian citizen would understand. A 2 per cent surplus buffer in your household budget or your business budget is not unusual, and it is not excessive, but it is necessary.

In addition, what we do as a government is ensure that any surplus becomes next year's investment in infrastructure. Our ongoing investment in infrastructure draws on a number of revenue sources, and one is the budget surplus. We go forward knowing that today's surplus will be tomorrow's schools, hospitals, roads, trains, police stations, hard infrastructure in ports and hard infrastructure in water — the infrastructure that will make this economy grow and create jobs for the next generation of young Victorian working families.

What I say to Mr Thornley is that this budget has that strategy right. This budget relies on surpluses, and it is very sad when opportunists go forward, see a surplus which will be next year's schools, hospitals and roads, and try to acquit it by saying, 'Give it away in a tax cut. Give it away in this and give it away in that for the short term', and then they come back and say, 'Where are tomorrow's ports, schools, roads, hospitals et cetera?'.

Mr Guy — Who are you talking about?

Mr LENDERS — Mr Guy asks who I am talking about. I am talking about his leader, his shadow Treasurer and his whole team, who have no vision for the future.

Planning: residential zones

Mr GUY (Northern Metropolitan) — My question is to the Minister for Planning. I refer to the government's new residential zone proposal and to the public comments in opposition to the removal of third-party appeal rights — a feature of that proposal document — by the lower house Labor member for Essendon and now the Labor member for Mordialloc as well, and I ask: can the minister inform the house whether it is now government policy to go against what is contained in its own document and to keep appeal rights intact, or are his colleagues wrong and rights are to be stripped away?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's question. I welcome it because it is not dissimilar from a question he asked a week or two ago — it is not the same question, but it is not dissimilar. As I said in answer to that question some weeks ago, this is, as Mr Guy rightly pointed out, a discussion paper. When we have discussion papers and when we consult, we listen to the community. I can understand why Mr Guy might be concerned, because the opposition's interpretation of a discussion is completely one-sided from its point of view. Our interpretation of a discussion is sitting, listening and reflecting on the views of the community.

I look forward to responding to that discussion paper, and I also look forward to hearing the views of the broader community and of my colleagues. I am also interested, unusually in this circumstance, in the views of the opposition, because for the first time in a long time they seem to be engaged in a space which puts up a proposition of policy. They might have to resolve this issue and provide us with some discussion and an impression of their views. I look forward to responding to that in the fullness of time, to reflect a way of consistently improving the planning system in this state to give more people certainty and to provide more housing to the community.

Supplementary question

Mr GUY (Northern Metropolitan) — Noting that the minister's colleagues in Mordialloc and Essendon have raised serious concerns about the loss of third-party appeal rights, can the Minister for Planning now give the house a guarantee that he will not embarrass his colleagues and that he will not proceed with the removal of the longstanding right to appeal or object to a development?

The PRESIDENT — Order! I have some concern about that supplementary question on the basis that questions cannot contain arguments. I am going to let this one go through to the keeper, but I remind members that questions or supplementaries should not

contain arguments, and Mr Guy's question in my view brought that up.

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's question.

Mr Guy interjected.

The PRESIDENT — Order! If Mr Guy wants to dispute or debate my ruling, there is a mechanism for him to do that. Snide remarks from the sideline are not appreciated and are not acceptable. If he wants to continue in that vein, I will remove him from the chamber.

Hon. J. M. MADDEN — I can understand that Mr Guy's priority might be about embarrassment. His priority in this question was not about public policy; it was about embarrassment. I can understand why the opposition is concerned that there might be an incident where there could be some embarrassment, because I know often his colleagues in the Liberal Party embarrass Mr Guy. I make this point, and I make it very clearly as I did in my previous answer — —

Mrs Peulich — On a point of order, President, to be consistent with your previous ruling, could I ask that you call on the minister to cease debating the question and using his answer to attack the opposition?

The PRESIDENT — Order! Mrs Peulich is correct in the fact that neither answers nor questions during question time should not contain arguments or be debated, and they certainly should not overtly criticise the questioner or the opposition. I do not believe we are yet at the stage of overt criticism, but the Minister for Planning and all ministers are aware of the standards that are required in the house. As I say, I do not believe we are at the stage of overt criticism or actually debating, but we are not far away from it.

Hon. J. M. MADDEN — As I was saying, I welcome Mr Guy asking questions about public policy, but on this occasion he is asking about embarrassment. Today I was expecting a question from Mr Guy, and I look forward to questions from Mr Guy, but today it certainly was not about this issue. There are a whole lot of other issues he could have asked about, and I am in some ways disappointed on those public policy grounds that they were not asked.

Can I just say, because I know we need to wind up very quickly, that I would encourage Mr Guy to put forward his views in terms of this discussion paper, as I have encouraged my colleagues to do and as I encourage the public to do. As we progress through the consultation I look forward to more input and more discussion so that we can improve the planning system to make sure that we address those issues which are critical to the public: transparency, fairness, certainty and affordability. If we can improve the system through discussion and consultation, I look forward to that result and to making sure that we improve the certainty and the guarantees that make Victoria an even better place — in fact, the best place — to live, work and raise a family.

Exports: performance

Mr EIDEH (Western Metropolitan) — My question is for the Minister for Industry and Trade. Can the minister inform the house of any recent export figures that highlight the strength of Victorian exports?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I thank the member for his question, as I know he is very interested in jobs in this state. One of the ways we create jobs in this state is through exports. If there is one thing that this government can be proud of, it is its record in creating jobs.

It does not happen by accident. Whether we are talking about jobs in terms of more police, more teachers or more ambulance officers and all the jobs that we have created directly, or whether we are talking about all the jobs created in the private sector, one of the hallmarks of this government is the creation of jobs.

Australian Bureau of Statistics figures released this week show that service exports have again gone up 12 per cent over 2007, and they have reached $11.858 billion.

Mr Thornley — Despite the Aussie dollar!

Hon. T. C. THEOPHANOUS — Despite the Australian dollar and despite a lot of international challenges with globalisation, the downturn in the US economy and so forth, Victoria is showing the rest of the world and the rest of the country how to do it on the back of smart manufacturing and smart exports in the services sector.

Education services in particular have increased by 25 per cent, to $3.9 billion, and they have more than trebled since 2000, which is an indication of how we are moving this state ahead in this important area. Tourism exports rose by 8 per cent, and exports of other services rose by 7 per cent. I am especially pleased that IT exports have grown in the services sector — that is, the software-type services in IT — from a meagre $143 million in 2000 to $487 million in 2007. This is another example of where this government is delivering jobs in what is an extremely tough environment

internationally. The dollar is now at US 94 cents and there is a weakening global demand for goods and services, yet here is this little Victorian economy that is doing it better than most places around the world and is creating jobs for our future.

Planning: Bendigo development

Mr BARBER (Northern Metropolitan) — I have a question for the Minister for Planning arising out of an answer he gave to Mr Drum on a previous occasion in relation to the City of Greater Bendigo's proposed planning scheme amendment for Jackass Flat. The minister said — and I will quote him — that Bendigo council's proposal:

> … would also raise issues about public safety, particularly when I understand in these instances with native vegetation you need to have regular burn-offs.

Was that view informed by the minister having examined the *Jackass Flat Fire Integration Plan* document, which was put together by the council — the city in the forest, as it calls itself — the Country Fire Authority and other relevant bodies? And if so, what about this plan did the minister find inadequate?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Barber's question. I think Mr Barber missed the point of the process that is taking place at the moment in Bendigo. This is an issue that currently reflects on the proposition of a subdivision and the issues about native vegetation surrounding that. Whilst I will not go into the absolute technical detail here, the issues are about what is a fair and reasonable proposition for a suburban development, what is the intention of that and how it should best operate. I know that Mr Barber will always have as a priority native vegetation, and I recognise that that is of critical significance. But there are differing degrees of quality when it comes to native vegetation. My understanding is that much of this discussion is about what is important vegetation and what is not, whether the housing is suitable and whether the offsets are appropriate or not.

You also have to bear in mind — and I would ask Mr Barber to consider this in any follow-up question or any other work that he does on this matter — that there are subdivisions and subdivisions. Some subdivisions might appear particularly attractive because they are nestled in nice locations — we would all like to live in locations like that, no doubt — but there are also issues about the trunk infrastructure and the provision of that trunk infrastructure and how far that should extend and how that should relate within the subdivision. I would ask Mr Barber to bear that in mind in relation to any of these issues that he might highlight and in relation to any discussions that are occurring and continue to occur between the Department of Planning and Community Development, the Department of Sustainability and Environment and the City of Greater Bendigo.

Supplementary question

Mr BARBER (Northern Metropolitan) — If that is the minister's view, and since he is the gatekeeper for allowing planning scheme amendments to be put on exhibition, does that mean that the panel is now precluded from going back and supporting some of the elements of the council's original scheme? In other words, is that panel truly independent?

Hon. J. M. MADDEN (Minister for Planning) — All the panels that report to me are independent, and I receive their advice as they see fit. They provide that advice to me. It runs through the department, that advice is then provided to me and then I make an appropriate decision. I may not necessarily agree with those recommendations and I may not necessarily support them, but on most occasions I expect that I do take up, if not the most significant recommendations, the vast majority of them. What I would say is that in any panel process that takes place in regard to this or other matters, those panels are independent, and I would expect their advice to be frank and fearless and that that should come to the department, and the department would provide me with appropriate advice in relation to these matters as well.

Parks and reserves: access

Mr LEANE (Eastern Metropolitan) — I also take this opportunity to congratulate the Treasurer on the budget. I would also like to ask the Minister for Environment and Climate Change to inform the house on how the Brumby Labor government is investing in better and safer access for our parks and reserves.

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Mr Leane for his question, even though he could not find grounds to congratulate me. I am glad he congratulated the Treasurer and I look forward to the opportunity of convincing him that I am worthy of his congratulations too.

Part of my responsibility, which was announced in the budget, is to provide for the renewal of bridge and stream crossings within public land. They are a very important part of the Victorian landscape and the rich assets we have as a community in terms of our native environments, as represented through national parks and state forests, and they are very popular with tourists

and local communities and play an important role in supporting our firefighting effort. Part of the budget announced this week is a $60 million program to restore 300 bridges and stream crossings across the park estate in the next four years. It is our intention to replace 60 of those bridge crossings this year and in each of the subsequent remaining years of the estimates period to improve 80 bridges and stream crossings. That will make sure that people are able to traverse our natural environment in a safe and secure fashion and hundreds of thousands of Victorians and other people who come to Victoria will be able to appreciate travelling in safety along those roadways and across those bridges.

The firefighting effort that that will support is very significant. Members of this chamber heard me talk about our firefighting effort on a number of occasions in the lead-up to the last fire season. I am pleased to keep reminding the house of our significant effort in firefighting. Last year before the firefighting season started I talked about the $23 million of additional resources that have been provided to support our firefighting effort. I can report to the house that during this firefighting season, whilst there was a significant number of fires — 679 fires started over summer in Victoria — there was an extraordinary record in the repelling capacity of that firefighting effort. Only 32 317 hectares of Victoria was burnt in fires over this summer, which is well below the 30-year average, which is 170 000 hectares. It is a significant demonstration of the repelling capacity of our firefighters. I thank them on behalf of the Parliament and on behalf of the government for their outstanding contribution. Both the professional firefighting effort and the voluntary effort that is undertaken are quite extraordinary.

In terms of our fire mitigation program, again in many instances I have indicated to the chamber the significance of prescribed burning to reduce the fuel load across Victoria. Since last July — members of the backbench on the other side of the chamber will be interested because they ask me these sorts of questions — over 151 000 — —

An honourable member — Riveted!

Mr JENNINGS — No, in fact there are one or two of them who are interested. Over 151 000 hectares has been burnt since last July.

Hon. J. M. Madden — Name them.

Mr JENNINGS — Name the hectares — each and every one of those 151 000 hectares? Beyond that interest I was asked a question on the adjournment at the beginning of April about our firefighting effort and whether with the change of weather there would be a reduction of that effort. By the end of April — thanks to a response to that question and that alert — Department of Sustainability and Environment and my officers were able to guarantee that the 351 project firefighters were retained up until the end of April to support the firefighting effort and to enable that prescribed burn to be supported. We made sure that nine aircraft were maintained until the end of April to support that work.

We recognise our obligation to provide fire mitigation in a safe, timely and professional fashion, and we are determined to do that. In part the $60 million program, in terms of restoring bridges and stream crossings across the park estate, will assist in that firefighting effort in the years to come.

The PRESIDENT — Order! The time for questions has concluded. The time has arrived for this house to meet with the Assembly in the Assembly chamber to choose a person to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Robert Francis Ray.

Sitting suspended 12.43 p.m. until 2.02 p.m.

JOINT SITTING OF PARLIAMENT

Senate vacancy

The ACTING PRESIDENT (Mr Leane) — Order! I have to report to the house that this house met with the Legislative Assembly this day to choose a person to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Robert Francis Ray and that Ms Jacinta Mary Ann Collins was chosen to hold the vacant place in the Senate.

MEMBERS STATEMENTS

Budget: Box Hill Hospital

Mr D. DAVIS (Southern Metropolitan) — What we have seen this week is a Treasurer who has brought down a budget that is not what Victorians expected. This is a Treasurer who flees from the chamber, a Treasurer who has brought down a budget which has pushed up debt at a time of historic growth in revenues that should have been put into services, historic growth in revenues that has not been used to provide the services that Victorians want.

The people in my electorate are disappointed with this budget. They know they are not getting the money they need for hospitals. The Treasurer admitted to the house that he visited Box Hill Hospital just some weeks ago, and he has obviously rejected the bid by the hospital and Eastern Health for greater funding. Box Hill Hospital is a key hospital in eastern Melbourne servicing the areas of Manningham, Whitehorse, Boroondara and parts of Monash. It is a critical hospital, and one that is ageing. The fabric of the hospital needs to be improved. This government has neglected this hospital.

The Kennett government upgraded the maternity section at the hospital, called Birralee, but very little has happened at the hospital since, and I think the community, particularly residents of the city of Whitehorse are very angry indeed with this government. They are disappointed and are going to take this further, I have no doubt.

Bob Stensholt, the head of the hospital's advisory committee — —

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

Emergency services: south-western Victoria helicopter

Mr KAVANAGH (Western Victoria) — I would like to express thanks and congratulations to the government for its decision to fund an emergency helicopter in south-western Victoria. As noted by a lot of observers, it has been a long time coming. But I would also like to express the hope that funding for the helicopter service will not be at the expense of funding for the Warrnambool and District Base Hospital, to which the government has promised $90 million.

In addition to congratulating the government, I would also like to congratulate the community of south-western Victoria on its successful efforts. In particular I thank and congratulate Dominique Fowler and Keith Meerback. They were very effective lobbyists in this good cause. I have been especially moved and inspired by Mr Meerback's loyalty to and affection for his sister-in-law.

In thanking the government I will not emphasise that it took a long time to secure the service, because I, with many other people, asked the government to do something, and I think it would be very unappreciative to then criticise the government for the time taken. I thank the government for this correct decision.

Tracey Greenbury

Mr VINEY (Eastern Victoria) — It is with a great deal of sadness that I rise to express my condolences to Max and Pam Greenbury over the tragic shooting death of their daughter Tracey on 28 April.

Max and Pam have been stalwarts of the Frankston community, and particularly in Karingal. I know that Max is a life member of the Karingal Football Club and is very well regarded in the community of Karingal and more broadly in Frankston. Max and Pam are also longstanding members of the Australian Labor Party. I have known Max for over 10 years. He and Pam have been great citizens, and I certainly appreciate the enormous support they have given me and other Labor members over the years.

I wish also to express my deep condolences to Tracey's children, Harley, who is only 13 years old, and Jamie-Lee, who is 9 years old. I express my condolences and those of my wife, Madeleine, who also knows Max and Pam, for their loss.

Make Moe Glow

Mr HALL (Eastern Victoria) — Around three years ago two of my constituents, Marilyn May and her husband Simon, came to see me about a need to lift the image of the township of Moe, starting with what they believed was the need for a general tidy-up around the town. As a result of that visit I contacted organisations like VicRoads, the City of Latrobe and later the Department of Transport and sought their assistance in improving certain amenities around Moe. I also suggested that Marilyn and Simon make contact with the Keep Australia Beautiful Council and seek advice on how towns like Moe could go about improving their physical appearance.

As a result of that in 2005 a community-based organisation called Make Moe Glow was formed, and the efforts of those people over a short period has been quite remarkable. In 2007 Make Moe Glow won for Moe a Tidy Towns award from the Keep Australia Beautiful Council, and following that award in 2007 Moe was overall 2007 city winner for the south-eastern region. It has also won a sustainable communities tidy town state award and this year qualified as a national finalist, Indeed at the national finals in Hobart recently Moe won the national community action award.

This is a great example of local people, businesses, community groups and government all working together for success. It shows wonderful spirit and community pride, and I congratulate all associated with

Make Moe Glow on their efforts and what they have achieved in the last few years.

Discrimination: same-sex couples

Ms PENNICUIK (Southern Metropolitan) — I wish to congratulate the federal government on its plan to remove discriminatory provisions from commonwealth laws in areas like superannuation, tax, health, aged care and other entitlements. These measures are long overdue and will have a positive benefit on the lives of thousands of Australians. Children of same-sex couples will be regarded in the same way as any other children in terms of a range of entitlements.

Unfortunately the anti-discriminatory provisions do not extend to equal access to marriage, adoption or IVF (in-vitro fertilisation) for same-sex couples. The government says that marriage is defined as being between a man and a woman, so it will not amend the Marriage Act. The fact is that marriage is what we say it is. If we want marriage to be a non-discriminatory, inclusive institution, then we can make it so. If we do not do that and do not remove barriers to same-sex adoption and IVF, then we are not fair dinkum about equality.

Defenders of the current definition of marriage say that marriage must be exclusive to a man and a woman and is necessary for the raising of children. This is not a reflection of reality. Many people marry with no intention of having children. Many children grow up in stable and loving families with same-sex or opposite-sex partners who are not married, and sadly there are many children who are neglected and abused in families where their parents are married.

It is beyond the time that all remnants of discrimination in our laws and practices were removed once and for all. I look forward to seeing the outcomes of the review of the Equal Opportunity Act in Victoria.

Bendigo hospital: staff

Ms LOVELL (Northern Victoria) — I wish to speak today about a former constituent of mine, Zona Joyce Dawson, who was 79 years old and who lived at Pyramid Hill. Mrs Dawson was the mother of eight, and she passed away on the morning of 2 April this year. I have been approached by Mrs Dawson's family in order to convey a thankyou from them for the treatment Mrs Dawson received at the Bendigo hospital in her final days. The family particularly want to pass on their appreciation to the nursing and medical staff on surgical ward 2 at Bendigo hospital for their care and compassion towards Mrs Dawson and her family, which was nothing short of marvellous.

They also wish to thank the staff for the dignity the family was shown after their mother had passed away and for ensuring that Mrs Dawson was treated with respect in her final days. Mrs Dawson knew she was dying, and the nursing and medical staff at the Bendigo hospital ensured she was comfortable in the short time she stayed with them, which was only two days.

The medical and nursing staff at the Bendigo hospital do a wonderful job. They do it in difficult circumstances with ageing infrastructure. We look forward to the day when they have a new hospital that will match the level of service provided by the doctors, the nursing staff and the administration in Bendigo.

Rail: Mildura line

Ms BROAD (Northern Victoria) — Today I welcome the announcement by the Minister for Public Transport in another place, Lynne Kosky, that the first stage of the upgrade of the Mildura rail line between Gheringhap, near Geelong, and Ballarat has been completed, including the replacement of 50 000 sleepers. The second stage of this $73 million project, between Ballarat and Maryborough, is now under way, and the project is on target for completion in 2009. The upgrade of the Mildura rail line by the Brumby Labor government is not only delivering reduced freight train travel times between Mildura and Melbourne and increased competitiveness for rail freight but is also providing for the future standardisation of the line to further increase competitiveness.

These actions by the Brumby Labor government demonstrate our commitment to developing a sustainable freight network for Victoria. This is in stark contrast to the failed privatisation and neglect of the network by the former Liberal-National party coalition government, along with its rail line closures.

Finally, I welcome the $240 million investment by Labor in the 2008–09 budget to further improve Victoria's freight network. This investment will help to deliver jobs and economic development in regional Victoria.

Honourable members interjecting.

Ms BROAD — A lot more than you ever did!

Rail: Noble Park station

Mr SOMYUREK (South Eastern Metropolitan) — I welcome the $2.8 million allocated in the 2008–09 budget for the Noble Park station premium upgrade. The upgrade of the station to premium status will greatly improve customer service and safety for local train passengers. Passengers will benefit from Noble Park becoming a premium station with staffing seven days a week from first to last train. That has been in place as an interim measure and local residents have been concerned that it was going to be lifted. I am pleased to say that the budget has provided for seven-day-a-week staffing. There will be more seating, real-time travel information and a new, fully enclosed waiting room.

The upgrade will benefit passengers from Noble Park and surrounding suburbs. This is good news for the 3200 people who pass through the station's gates each week. Having staff on hand at the station from first to last train is not just important for ticket sales and information, it will also greatly improve passenger safety. Commuters will be able to wait for their services in comfort with new seating and a waiting area that is protected from the elements.

The funding boost is particularly welcome considering the investments recently made at the station. This upgrade comes on the heels of improvements to lighting, the installation of closed-circuit television and changes to improve accessibility for mobility-impaired passengers.

Mornington Peninsula National Park: walking tracks

Mr P. DAVIS (Eastern Victoria) — Recently I visited the Mornington Peninsula National Park. Access was from the Cape Schanck lighthouse car park. I inspected a number of walking tracks, including the Cape boardwalk, the Fingal Beach track, the Main Creek track and the Bushrangers Bay track. I wish to make a few specific comments on the last of these.

I was disappointed to observe the lack of maintenance of the Bushrangers Bay track. Five hundred metres from the start of the track a truckload of tanbark had been abandoned and dumped. Seven hundred metres into the walk the first of several fallen trees was obstructing the track. At the footbridge crossing of Burrabong Creek two trees had fallen across the bridge and access was considerably restricted by the trees and the prolific overgrowth, which has been there for a long time — I suggest more than a year. At the junction of the Main Creek track and the Bushrangers Bay access track the sign was missing. The beach access steps and ramp to the Bushrangers Bay beach were in disrepair.

Clearly Parks Victoria staff are not attending to their core function of maintaining our important national parks and ensuring that Victorians have reasonable access to them. Indeed it has been my experience in visiting parks from Mallacoota to the Mitchell River and the Mornington Peninsula that all the parks I visit are in a similar state of disrepair. The Minister for Environment and Climate Change needs to take Parks Victoria by the scruff of the neck, give it a good shake and make sure it gets on with doing its job.

Racing: Warrnambool carnival

Ms PULFORD (Western Victoria) — On Thursday, 1 May, I was pleased to join Mr Pakula, Mr Koch, Mr Vogels and Mr Drum, as well as a number of my parliamentary colleagues from the other place, including the Minister for Racing and the Minister for Tourism and Major Events, at the 2008 Warrnambool Cup. This year marks the 150th anniversary of the Warrnambool Cup. It is a testament to the vibrancy of rural and regional Victoria, to the community of Warrnambool and to Country Racing Victoria. The May racing carnival attracts around 32 000 people and generates $12 million for the local economy. I would like to congratulate the chairman, Margaret Lucas, and all at the Warrnambool Racing Club on hosting a very successful event.

The May racing carnival again proved to be a winner for Warrnambool, supported by a $160 000 Brumby Labor government funding boost. The Brumby Labor government is supporting the Warrnambool Racing Club with funding for facility upgrades. The float car park at Warrnambool racecourse, which includes fencing and auto gates, has just been completed. Work is expected to begin on a track lighting project mid-year, and Warrnambool is one of five country racecourses to benefit from funding allocated to replace practice starting stalls. These projects are part of $20.6 million committed by the state government in 2006–07 and 2007–08 to support improvements at Victorian racing and training venues through the Racing Industry Development Program.

Alas, all too often the Warrnambool Cup and the state budget occur in the same week, so it may be a few years before we can return. However, in saying that, I am confident that country racing and the Warrnambool Cup will continue to go from strength to strength.

Rail: Eastern Victoria Region

Mr O'DONOHUE (Eastern Victoria) — When promoting their so-called achievements during their time in office since 1999 government members still have the arrogance to cite the supposed fast train project as one of their successes. Perhaps this is a reflection of how little the government has achieved in its now two and a half terms in office. The reality out in the community for the commuters who use this system is that it has been an unmitigated disaster. Travel times have scarcely changed and service performance has failed to live up to expectations or even achieve an acceptable level.

A constituent much exasperated by the troubles on the Gippsland line has taken to keeping a diary. That diary is a litany of cancelled, late, dirty and overcrowded services. My constituent, who takes the train from Garfield to Melbourne daily, regularly takes in excess of 2 hours to get to work from home or home from work. In a recent email to me my constituent concluded that this was a First World country with a Third World train system. That sums up the sad and farcical situation for commuters on the Gippsland railway line. It is not good enough, and it is an indictment of this government and its inability to manage major projects.

On another matter, the government has announced with little scrutiny that it will not reopen the South Gippsland railway line, despite a commitment since 1999. It is an absolute disgrace that it has lied to the people of South Gippsland. And on yet another matter, the state of the Frankston railway station car park is a disgrace. More car parks are required.

Rotary: Shine On awards

Ms DARVENIZA (Northern Victoria) — I was delighted to represent the Premier in Wangaratta at the Rotary Shine On awards last Sunday. These awards celebrate the abilities and achievements of people with a disability. The awards recognise the recipients for not letting their disabilities get in the way of reaching their goals and of serving others. I congratulate all those nominated for the awards and all those who received the awards.

Wangaratta City Football Club: funding

Ms DARVENIZA — I was also pleased to announce, along with the member for Murray Valley in the other place, Ken Jasper, a $60 000 grant to the Wangaratta City Football Club. The grant is for a change room development at the South Wangaratta Reserve. The club has operated for some 50 years and has around 500 people, including three women's teams, using the current change room for soccer, cricket and speedway events. I congratulate the Wangaratta City Football Club on getting this award and the Wangaratta Rural City Council on its support of the project. It is a great partnership project between the state government, local government and the local community.

Anzac Day: South Eastern Metropolitan Region

Mrs PEULICH (South Eastern Metropolitan) — It is gratifying to see so many young people involved in community affairs not only across the south-east but across Victoria. This was never more evident than on Anzac Day, our nation's most significant day of national commemoration. For an increasing number of people, young and old, it is a special day when we remember all those who served in the Australian defence forces and paid the supreme sacrifice so that we and the people of other nations can live in peace.

I was privileged to be involved and to participate in numerous commemorative Anzac Day services throughout South Eastern Metropolitan Region, including those organised by the men and women of the RSLs of Aspendale-Edithvale, Chelsea, Cranbourne, and Cheltenham and a memorial service organised by Narre Warren's Oatlands Primary School along with many other schools. It was particularly pleasing to see the involvement of our young people and students, including the hundreds of boys and girls who sat patiently in a rather cramped hall at Oatlands Primary School.

I commend the Chelsea, Cheltenham, Aspendale-Edithvale and Cranbourne RSLs and their respective presidents, John Morris, Ray Lowerson, James Rankin and Barry Jones; the students and staff at Oatlands Primary School, including principal Stuart Daly, Fiona Jamieson and school captains Brock and Brooke; and other school leaders involved in Anzac Day services across the region for making our Anzac Day ceremonies such a successful and inspiring commemoration.

Arts: Sidney Nolan exhibition

Mr PAKULA (Western Metropolitan) — Last week I attended two events which demonstrated the breadth of Victoria's cultural attractions. On Tuesday I went to the Sidney Nolan exhibition at the Ian Potter Centre along with my colleagues Ms Pennicuik, Mrs Coote, Ms Mikakos and various members from the other place. As well as demonstrating Nolan's genius, the exhibition opened my eyes to the fact that Nolan's art was

representative of many parts of our state. Whether it was his imagery of Glenrowan, the Wimmera, the Goulburn River or his childhood home of St Kilda, Nolan's art stands as a painted reflection of his state in his time.

Racing: Warrnambool carnival

Mr PAKULA — On Thursday, along with a number of colleagues already mentioned by Ms Pulford, I headed down to Warrnambool for the grand annual carnival. I believe the Warrnambool carnival is the best country racing carnival in the nation — and so it proved again. Despite pouring rain there was a huge crowd, fantastic racing and a brilliant atmosphere. The atmosphere carried over, as it always does, into the town at night. And as it always does during the May races, Warrnambool's population swelled to two or three times its normal size. There was a huge number of people, plenty of refreshments and a complete absence of aggro. In fact the good spirits of the revellers in Warrnambool last week could serve as a timely example to some of those who enjoy the nightlife in Melbourne's inner city.

Police: numbers

Mr ATKINSON (Eastern Metropolitan) — I rise to express some concern about policing numbers across Victoria, particularly in the eastern suburbs. I note that the government has on a number of occasions boasted about its strengthening of police ranks and its investment in the security of the community. But it is interesting that the government has been quite reluctant to do a comprehensive audit of its policing stocks in this state. The Police Association undertook an audit in the absence of government action on this matter, and its audit established that there was what it called a black hole in terms of resourcing and that more than 1000 members were missing from the front line of police resources.

Indeed in my own area of Melbourne's eastern suburbs, the policing strength is down 20 per cent. I guess we can consider ourselves fairly lucky, because the figures established by the Police Association rise to 64 per cent in the case of Craigieburn. Significant gaps also exist in rural and regional Victoria and right throughout the metropolitan area. It is all very well to invest in additional facilities for police, but we need those policemen and women in the community on the front line as the Police Association indicates.

STATEMENTS ON REPORTS AND PAPERS

Auditor-General: *Improving Our Schools — Monitoring and Support*

Mr THORNLEY (Southern Metropolitan) — I rise to speak on *Improving Our Schools — Monitoring and Support*, a report of the Auditor-General. There are few more important tasks than ensuring that every single school in this state is delivering a standard of education to which we would aspire. The Auditor-General's report assesses the government's progress towards that task against a set of rigorous measures. I think it makes encouraging reading, but I will not say that the job is done by any means.

When we entered government, according to the Auditor-General, 128 schools were performing below the expected level. That is a disgraceful statistic, and is dreadfully alarming when you put a human face to that and think of the number of students whose learning and potential future lives were impaired by that situation. The Auditor-General says the 128 has been reduced to 31.

I will not for a moment say that that is where we want it to be. It is never good to have a single school that is not performing at the expected standard, but it certainly is encouraging to see that 128 number decline by 93 over that period. Indeed the Auditor-General's figures are for 2005, and it is certainly my fervent hope that the number of schools that are performing in a disappointing fashion will have been further reduced when the numbers for this year come out in a little while.

The report goes into some depth on both the methodology for measurement and in the details of the blueprint program for change that the government has been undertaking through the government schools sector. It is important to note up-front that the Auditor-General says:

> Compared with other states, Victorian government schools generally perform well in national literacy, writing and numeracy tests, and on school retention rates.

That, again from the objective assessment of the Auditor-General, is a promising observation.

Page 12 of the report has a graphical representation of the improvement in performance over the period 1998–2005, beginning with the primary school learning outcomes. The graph is quite compelling, and on every single metric you can see a quite substantial improvement in performance, both in the average performance across the group as well as the 75th and

25th percentiles, and the 10th and 90th percentiles. Indeed, the spread between the lower percentiles and upper percentiles is also reduced while the entire group has also improved. It is hard to describe it all in words, but the graph on page 12 graphically represents the magnitude of the improvement which has been very encouraging.

The secondary school learning outcomes, similarly on page 13, display a promising trend upwards in every number, though perhaps a little less satisfactorily in that the spread between top and bottom is widening, essentially because the top schools were moving forward even faster than the bottom schools were moving up. Whilst the trend lines are all positive, there is still room for improvement.

In the spirit of an accurate assessment, and I think this topic is too important to simply only talk about good news, we need to talk about all the news. The graph on page 14, which talks about the VCE level outcomes, is a little disappointing, and that reflects a very modest diminishment of the average performance of the government school sector as against those of other sectors. It is discernible, if only barely, that it has declined slightly over that period. I do not think anyone is under any illusions that the job is done, but given the magnitude of the improvement from 128 to 31 schools, it is certainly a very encouraging trend.

I could go on in considerably more depth if I had more time, but I make mention finally of the point that is obvious in any of these discussions:

> Many schools considered that addressing student welfare and engagement was an essential precondition to improve teacher and student learning outcomes.

That is clearly the case in the most disadvantaged schools, as it is with other issues like homelessness; you cannot address one issue without addressing all the corresponding issues that surround it. We will continue with that task.

Public Accounts and Estimates Committee: Strengthening government and parliamentary accountability in Victoria

Mrs PEULICH (South Eastern Metropolitan) — I wish to comment on a very timely document — namely, a Public Accounts and Estimates Committee (PAEC) report of April 2008 entitled *Strengthening Government and Parliamentary Accountability in Victoria*. It is timely because of my experience with the Scrutiny of Acts and Regulations Committee and the frustration that it experienced as a result of poor advice over some time, the manipulation of committee processes, and the stifling and frustration of four non-government members from presenting or tabling a minority report pertaining to SARC's *Alert Digest* No. 5.

I was inspired to make comment because this document makes a number of good and sensible recommendations, some of which are not revolutionary; they are evolutionary because they make common sense and go across a range of parliamentary activities, including parliamentary committees, question time procedures, standards of parliamentary behaviour, reform of the process for dealing with petitions and so forth.

Many of these are sensible, but I find the comments in relation to the role of joint investigative committees in particular, dare I say given our recent experience, are somewhat hollow. In particular the report is hollow because it is actually the second report to this Parliament in recent times that focuses and trumpets the benefits of the committee system following the SARC report dated May 2008, called *Improving Victoria's Parliamentary Committee System*.

In this document that I am speaking on today SARC is singled out, along with PAEC, as two of the most powerful and important committees which have unprecedented power to conduct inquires, to hold public hearings and to report to the chambers. There is a bid to make sure that these committees are funded appropriately so that they can do their jobs.

I invite members to have a look at that report, including the committees' right to gather evidence through the conduct of various public hearing activities. The difficulty is that because of the short time line that SARC has to report to Parliament — that is, following the introduction of legislation into the Legislative Assembly and here — some of the guidelines need to be urgently reviewed to make sure that, for example, the minority views of members are able to be tabled.

The coalition members of SARC completed a minority report. It was produced later after the closure of the meeting at 4 o'clock on Monday, 5 May. It was formulated and Mr Carlo Carli, the member for Brunswick in the other place, was notified of the report at approximately 1.30 p.m. Mr Homer, the executive officer, was notified soon after at approximately 1.45 p.m. This was the earliest possible opportunity we had to put in place a system. We believed we were doing the chamber's service, and we were trying to fill our responsibility to inform Parliament that we believed we had not concluded our considerations of the actions that the committee had unanimously voted on, which

were to hold public hearings in relation to the Police Integrity Bill 2008. We had also photocopied in excess of 90 copies; all of them were handed to the Clerk in the Legislative Assembly. Our committee is overseen by the Assembly. This was consistent with various standing orders. In relation to minority reports, the Legislative Assembly standing order 223 states:

> When requested to do so by one or more members of a select committee, the committee will include a minority report with its report to the house.

I urge this chamber, as well as this Parliament, to look at the minority view of an important parliamentary committee on this particular term of governance, or any other, to make sure that the committee has the right, which every member who serves on an all-party committee has, to submit a minority report within a realistic time frame — clearly the SARC time frames are much narrower than many others — to make sure that the opposition's view is not stifled and frustrated by rules which are intended for committees which are not the SARC. I urge that this be done as a matter of urgency.

I will also like to draw the attention of every single member of Parliament to the procedures manual. I have served in this place for 12 years; this is the first time I have actually seen a procedures manual. It is urgent that members read it; it is urgent that it be updated.

The ACTING PRESIDENT (Mr Somyurek) — Order! The member's time has expired.

North East Water: report 2006–07

Ms BROAD (Northern Victoria) — Today I wish to make a statement on the annual report of North East Water for 2006–07. North East Water provides water and sewerage services to 38 cities, towns and villages in north-east Victoria, and services an estimated population of around 100 000 people in an area of approximately 20 000 square kilometres, which is just a small part of my large electorate. North East Water operates 37 water treatment plants, including 7 fluoride-dosing stations and 18 wastewater treatment facilities throughout the region. It also operates 26 recycled water schemes in the region. Those schemes range from pasture and cropping ventures to community benefit applications such as school grounds and golf courses, which have been a huge benefit during the drought because of the conditions which have been experienced across regional and rural Victoria.

The North East Water report marks the 10th anniversary of North East Water. I wish to take the opportunity to thank the chair, Peter Box, members of the board, the chief executive, Jim Martin, and staff for all of their hard work during 2006–07 year to ensure that communities in north-eastern Victoria were provided with quality drinking water and wastewater services.

The 2006–07 reporting year presented North East Water and the communities across the north-east with huge challenges. These are referred to in the annual report. Amongst them include the ongoing drought, resulting in the lowest inflows to the Murray River system ever recorded. That resulted in blanket water restrictions across the entire region — a first for the north-east. Wangaratta required the installation of two bores at great cost to secure that city to stage 4 restriction levels. On top of all that, at the height of the summer the return of bushfires provided an added challenge. It was a year full of enormous challenges which had to be managed by North East Water.

Notwithstanding these huge challenges of 2006–07, North East Water has been able to report significant actions and achievements in addition to responding to the immediate needs of communities faced with those challenges. Those achievements include the completion of the water supply-demand strategy which is North East Water's plan for securing the region's water needs until 2055. That is a key outcome of the Victorian Labor government's Our Water Our Future action plan. North East Water also completed some very important capital works, including:

> The Yarrawonga–Devenish pipeline, which will see Tungamah, St James and Devenish receive treated water from Yarrawonga. This project will remove the three towns' reliance on the irrigation channel system.

It also delivered:

> A 320-megalitre recycled water storage at Benalla to enable the towns treated waste water to be used for irrigation …
>
> A 6-megalitre treated water storage in West Wodonga to improve the city's supply security and water pressure for a significant number of homes.

Those are very important actions which North East Water managed to deliver, as well as:

> to install fluoride-dosing infrastructure in our major towns of Wodonga and Wangaratta —

to deliver better dental health in the region for the future.

I want to assure communities in north-east Victoria that the Brumby Labor government is also taking action to provide secure water supplies for communities, farmers and rivers across that region. That is the reason for the

$865 million for key water projects in Labor's 2008–09 budget. These are projects that will provide water security for Victoria for the next 50 years.

Box Hill Institute: report 2007

Mrs KRONBERG (Eastern Metropolitan) — In reviewing the contents of the Box Hill Institute's report of 2007 I propose to start with some of the quite pleasing opening statements by the chief executive officer, John Maddock, wherein he describes 2007 as a landmark year for the Box Hill Institute, especially in its journey towards its vision of being Australia's premier global provider of vocational education and training. The key to ongoing success and the actual attainment of its quest to be at the forefront of the export of educational services will be the institute's capacity to deliver high-quality, relevant educational services not only to local consumers but also nationally and of course internationally.

As outlined in the report's business and financial performance statement, I note that the institute's student management system recorded 40 363 enrolments in 2007. This figure was made up of 39 954 vocational education and training (VET) enrolments and the pleasing figure of 409 higher education enrolments, which I must say is up from 227 higher education enrolments for the previous year. I would like to commend the Box Hill Institute on its growth in the area of higher education. There was a slight dip in the total enrolments recorded under state government funding, recurrent and non-recurrent, which constituted 46.5 per cent of total enrolments compared with the 2006 results, which brought in 47 per cent.

As a past member of the staff of the centre for business programs I note that over 90 000 training hours were delivered in the areas of domestic government profile, domestic fee-for-service degrees, international inbound students, schools-based programs and transnational delivery through the centre's international campuses. Profile programs delivered to local and international students included financial services, business, government, retail, and sport and recreation programs.

Turning to situational learning programs, which give students the opportunity to apply their skills and knowledge in relevant workplace settings, I note that those programs grew across a number of sections and sectors, including the not-for-profit sector. This saw the students organise events and even play a supportive role in the centre for business programs' own marketing efforts during its opening day and information night promotional events. The 2007 year marked the second year of delivery of the associate degree in commerce, and the centre now provides business, finance and government training to a number of government departments. Internationally Box Hill Institute's centre for business programs has maintained its alliance with centres of higher learning and training colleges in Fiji, in three cities in China, and also in Vietnam.

The statement by the chief executive officer early on in the report includes a pleasing element headed 'People development'. We are told that staff continue to receive ongoing support for professional development through appropriate programs and the provision of industrial release opportunities. I personally want to underscore the importance of educators, particularly those in the VET sector, having the opportunity for industrial release. This is important to allow practitioners and teaching professionals to keep their skills updated and relevant, and sometimes it may be the only genuine interface teaching professionals have with the industry that they may be seeking to develop skills in. Prior to having the opportunity for industrial release, they may have been teaching through the lens of a theoretical base, and it is very good to have a refreshing change running along concurrent with classroom responsibilities.

The Box Hill Institute's strategic plan for 2008 and beyond will see a focus on higher levels of innovation, growth and service to students, industry and the community. Pivotal to the ongoing success of the institute will be the institute's ability to attract and retain professional and other highly skilled staff.

Charter of Human Rights and Responsibilities Act 2006: report 2007

Mr ELASMAR (Northern Metropolitan) — I rise to speak on the 2007 annual report on the operation of the human rights charter. I read this inaugural report with great interest. 'First steps forward' is a very appropriate title for this report. In a civilised and humane society the establishment of a charter that espouses a guarantee of fundamental human rights to all members of society, regardless of their race, religion or gender, is not exceptional; indeed, it is a responsibility of law-makers to enshrine and protect our civil liberties and freedoms in a human rights charter that we, as a civilised nation, should live by. However, what is exceptional is the dedicated men and women of the Victorian Equal Opportunity and Human Rights Commission, who through extensive consultation with police, parliamentarians, public service departments, local councils and many more besides, have come up with a charter that recognises the inherent dignity of humankind and, notwithstanding difficulties associated with instituting changes of attitudes and habits, propose

a way ahead for all the future generations of Victorians to come. There are also many committed people from all walks of life who have an abiding passion for social justice and who have contributed to and nurtured the dialogue of this wonderful charter, because without dialogue there can be no change.

One of the most difficult of changes to make within society is cultural change, because cultural change for the most part is generational. Australia, as we know, is a nation of immigrants. Sometimes prejudices are imported and sometimes they are home grown, but either way intolerance of others' human rights is unacceptable. Education is the key to learning, and it is the best place to start, but until such time as we are all instilled with tolerance of other people's ways, the law should and ought to protect and defend those people among us who do not have the capacity to stand up for their own personal freedoms. The charter seeks to establish a mechanism whereby everyone will be able to understand that we are all equal under the law and that justice is for everyone and not just the wealthy and the highly educated. In all fairness to Australia, we do have an endearing reputation for giving others a fair go, and to a large extent the ethos of 'live and let live' is still very much in existence, but we need to do more to make discrimination extinct in our culture. The legacy of this charter is that it will last well beyond the present population and endure into the future. The entitlement to pursue our ambitions and goals without prejudice will be not a dream but a reality. I commend the report to the house.

Public Accounts and Estimates Committee: budget estimates 2007–08 (part 3)

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am pleased to rise to make a comment on the Public Accounts and Estimates Committee report on the 2007–08 budget estimates part 3. When the Public Accounts and Estimates Committee undertook to report on the budget estimates last May it produced for the first time a report in three volumes. The first volume of the report was a direct follow-up from matters that were raised during the course of the estimates hearings conducted in May, and the purpose of that was to get into the Parliament as quickly as possible a summary of matters that were discussed in the course of the estimates hearing.

The purpose of the estimates hearings in theory is to inform members of Parliament on the matters covered in the budget bills and in the budget, prior to the consideration in the houses of the budget and the passage of its bills. It has always been a shortcoming of the Public Accounts and Estimates Committee that the estimates report was often released months after the budget bills were actually passed by the Parliament, and therefore had less relevance.

As a consequence of getting those early transcripts and early volumes into Parliament, it was necessary to do a lot of the analysis in subsequent volumes of the estimates report, including the third volume that I am commenting on this afternoon. In the third volume the committee followed up a number of the matters that were raised on notice with the government following the estimates hearings and reports back on the government's responses to a range of issues that were raised through the course of the hearings. It is broken down into responses on key budgetary issues that were picked up and then devolves into areas and broader themes in relation to accountability.

The first one is the national reform agenda and its impact on the budget. There are separate sections on departmental asset investment programs and the accountability of such programs, with a further one on advertising and promotional expenditure, which is an issue that has been of considerable concern to the Victorian community.

The area I would like to touch on is detailed in chapter 4, which covers the issue of productivity in government. This matter should be of concern to all members of the Victorian Parliament and all members of the Victorian community, because it is only through productivity that we are able to prosper. It has been a theme of the Public Accounts and Estimates Committee of the current Parliament to pursue the issue of productivity in government, and I must say that one of the concerns of the committee has been a lack of, if not an understanding, the measurement of productivity in the public sector.

It is interesting when departments are surveyed as to how they measure productivity within their departments and within broader agencies. There is often no consistent measure of productivity across the public sector and indeed there has been a lack of understanding of the need to measure productivity across the public sector.

In the budget this year the Treasurer has indicated that he expects the growth of the Victorian economy to be 3 per cent in the new financial year and in the following financial years. He has also noted that the growth in wages in this state will exceed 3 per cent for each of the years in the forward estimates period. That is a clear sign of lowering productivity.

The growth in the cost of outputs is going to exceed the value of production in this state, and that should be a matter of concern to the government and to the wider community. The area where the government needs to address this in the first instance is the Victorian public sector. What the committee is seeking most in chapter 4 of this report is for the government to give greater consideration as to how it measures and how it reports productivity in the public sector.

The report being released late last year was a heads-up for government on the issue of reporting productivity in the public sector. It is something the committee looks forward to seeing addressed in the course of the budget estimates hearings commencing next week, which it will report on in a couple of weeks time.

Auditor-General: *Improving Our Schools — Monitoring and Support*

Mr SOMYUREK (South Eastern Metropolitan) — This afternoon I rise to speak on the Victorian Auditor-General's report, dated October 2007 and titled *Improving our Schools — Monitoring and Support*. The Auditor-General, Mr Pearson, comments in the foreword that:

> Victoria's young people are unlikely to achieve their potential without a quality school education.

I think it is fair to say that his report is pretty much authored from this perspective. He continues:

> Since 2003, the Victorian government has provided targeted support to schools performing below expected levels in the form of diagnostic reviews, funding for improvement initiatives, and direct assistance by regional office staff.
>
> This audit examined how effectively the central and regional offices of the Department of Education and Early Childhood Development were identifying and supporting schools performing below expected levels.
>
> The audit found that there were significant issues with unmet demand for targeted support, and that the department's efforts could be better directed to help the schools most in need.

However, the report also found that:

> … there are early signs that targeted support is actually making a positive difference. The department has established a useful evidence base to inform future targeted support. But there are still important data gaps, and some modes of support, such as student support officers need to be refocussed urgently.

The report also notes that:

> Addressing school performance is difficult, and the schools that were the subject of the audit face a plethora of challenges.

I mentioned the 2003 report without going into detail; now I will go into a little bit more of the specifics of the 2003 audit.

According to the executive summary of the report:

> The *Blueprint for Government Schools* reform agenda, launched by the then Minister for Education and Training in 2003, was designed to address the significant variations in student performance in the Victorian government school system. As well as making available new school improvement opportunities to all schools, specific support initiatives were targeted at schools with student outcomes below expected levels.
>
> The blueprint also reformed the responsibilities and the work of regional offices of the Department for Education and Early Childhood Development … The blueprint placed regions at the front line of the effort to improve government schools and reduce the disparity in student outcomes across the system, including the high concentration of students below expected levels in some schools and some regions.

The report is comprised of six parts, with the executive summary being the first part, the background being the second, schools with student outcomes below expected levels being the third, and it continues on to parts 4, 5 and 6. With that, I conclude my statement.

Human Services: report 2006–07

Mrs COOTE (Southern Metropolitan) — I have pleasure in speaking today on the Department of Human Services annual report for 2006–07. This week we have had the release of the budget. The Treasurer has said that it is a budget for baby boomers. But it would be mindful for us to understand and be cognisant of the fact that a huge number of original baby boomers are ageing and that we have to put in place the infrastructure to make certain that we can cater for an ageing population and that we have first-class aged care into the future. I personally do not believe the budget goes anywhere near addressing any of these issues, but that is not a debate for now and I will certainly be bringing it up in my budget reply speech.

What I want to speak about in relation to this annual report is the concept of an aged-care land bank. We have seen the pressures of the Melbourne 2030 planning program that has been instigated by this government, particularly on inner suburban areas within our city. Many of those areas are within my electorate. Finding a greenfield site for an aged-care facility is an extremely difficult thing to do. In parts of Docklands high-rise buildings are being looked at and several floors have to be put aside to make certain that the increasing aged-care community will be looked after into the future. So the concept of an aged-care land

bank, which is flagged in this report, is of benefit. The report speaks about a pilot and says:

> The purpose of the land bank is to help build more places in Melbourne's inner and middle suburbs, where land is scarce.

I fully and utterly concur with this, because most people when they get aged — and as I look around this chamber it is clear that many of us will be involved — do not want to be sent to the outer regions of the suburbs. We want to be able to age in a place in a community with which we are familiar and where our family and our infrastructure is. It is important to know that those facilities are there. The land bank has a lot of benefits long term, but we have to start that planning here and now.

In a supportive document it put together for this budget the Aged and Community Care Victoria lobby group says that it needs at least $10 million in this budget for expanding the aged-care land bank program. It says:

> $10 million would assist the creation of partnerships between government and community to ensure that frail older Victorians in inner urban areas will not need to leave their communities to receive residential aged care.

It also acknowledges that in 2006 there was some support for this initiative. The shadow minister for ageing in the other place, Mary Wooldridge, is very cognisant of this issue and is proactive in looking into aged-care land bank situations and making certain that the Liberal Party puts them at the forefront of planning into the future.

It is imperative that funding be put into the establishment and creation of the land bank, but in the budget released this week we have not seen any funding put aside for this very important issue. The Treasurer has come out and talked about options for working families — whatever these working families are. This morning one of the Labor Party backbenchers said to me, 'Working families are the people who voted for the Labor Party'. I would like a better definition, because not everyone voted for the Labor Party. I would like a better definition of what 'working families' actually means. How broad are working families? Are they the mum and dad and the three children and the picket fence? Are they extended families? Who are these people?

I am pleased to see that the Treasurer has come back into the chamber. The interesting thing is that we have a budget that is apparently for the baby boomers and young working families. But what about old working families? I would have to put most of us in this chamber at the moment into that category. I think we are all older working families. I would like to know whether money has been put aside in this budget for the land bank for all of us into the future. We are all going to get old — that is one thing that is for sure.

Public Accounts and Estimates Committee: Strengthening government and parliamentary accountability in Victoria

Ms MIKAKOS (Northern Metropolitan) — I am pleased to make a statement on the Public Accounts and Estimates Committee report on strengthening government and parliamentary accountability in Victoria, presented to the house in April 2008. I want to congratulate the Public Accounts and Estimates Committee on its report. I note that the report has 28 recommendations dealing with a range of matters relating to strengthening our parliamentary institutions and making them more accountable and modernising the Parliament as an institution.

In the time available to me I obviously cannot canvas all 28 recommendations. I particularly want to focus on one recommendation — recommendation 21 — because it relates to an issue that is very dear to my heart. Recommendation 21 relates to the oath of office for members of Parliament. I note that when new members of Parliament come to this place in order to take office they are required under schedule 2 of the Constitution Act 1978 to take an oath or make an affirmation. The oath is:

> I swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty and Her Majesty's heirs and successors according to law.

And the affirmation is in similar terms. Coming to this place as a new member of Parliament I have found it incongruous to be taking an oath of office that makes no reference whatsoever to Victorians. I think when all of us decided to stand as candidates for election to this place we were motivated to do so by a desire to serve the Victorian community. I would like to think that the needs and interests of the Victorian community are always at the forefront of our minds in our casting of votes and making decisions and policy. I find it inconsistent with that desire that, as members of Parliament, we come here with a desire to serve the Victorian community, but our oath of office makes no reference whatsoever to the Victorian public. In recommendation 21 the Public Accounts and Estimates Committee notes that it has received submissions suggesting that the oath currently undertaken by members in order to enter Parliament should be amended. On pages 59 and 60 of its report the committee particularly notes that in New South Wales, Western Australia and the Australian Capital Territory

members of Parliament taking office take an oath that does not refer to Her Majesty and her heirs and successors but refers to Australia or the people of the relevant state or territory.

The Public Accounts and Estimates Committee has therefore made a recommendation that members of Parliament should be able to make a choice about whether they wish to take an oath of allegiance to Her Majesty and her heirs and successors or to take an oath in the following terms:

> I swear by Almighty God that I will be faithful and bear true allegiance to Australia and the people of Victoria according to the law.

I want to put on record my very strong support for this recommendation. I think it is time for members of the Victorian Parliament to be able to take an oath or make an affirmation that indicates that our priority will be the interests of the Victorian public. I want to be candid and make full disclosure. I am an avid republican; I am a member of the Australian Republican Movement. I want to see Australia become a republic, and I think it is inevitable that we will do so. Quite aside from the issue of the republic, I think it is time that parliamentarians in this place have an option of making an oath to the people of Victoria.

I hope the government will take this recommendation on board and seek to amend the Constitution Act to enable this choice to be made. I commend this particular recommendation to members of the house.

Australian Crime Commission: report 2006–07

Mr DALLA-RIVA (Eastern Metropolitan) — I rise to speak on a federal publication. It is one of those rare occasions when we are allowed to speak on a document tabled in this chamber from the Commonwealth of Australia.

Mr Lenders interjected.

Mr DALLA-RIVA — Indeed we do, Treasurer. We have had the Senate vacancy joint sitting today, so there is a federal theme running in both chambers that is good to see.

As I said, I wish to speak on the 2006–07 annual report of the Australian Crime Commission. It is interesting to note the we can talk on this federal publication in state Parliament primarily because the Australian Crime Commission crosses all borders. The federal government has taken the lead in terms of developing this particular commission and I might just talk about some of the background. The ACC came about as a result of a review of the National Crime Authority. Members of the chamber with a federal background may have a better knowledge of the review than me and may pick me up on any errors I make. The federal National Crime Authority Act was implemented in 1984 and I guess we have to acknowledge that it has been more than 20 years since we have had a federal body which has cross-state and territory authority. This is important as, back in the early days when states and territories had responsibility for intelligence gathering and the like, often it was found that there was no centralisation of, for example, investigations into motorcycle gangs, drugs and organised crime. From that circumstance the National Crime Authority was established.

I have a personal interest in this. As I have put on the record before, I was seconded to the National Crime Authority when I was a detective in the Victoria Police and undertook complex fraud investigations of matters which have since been dealt with in the courts in Victoria and overseas. It is pleasing to see the ACC is continuing this work from its commencement on 1 January 2003, and I am pleased today to speak on its annual report as presented to the Parliament.

Twenty years is a long time, and at the time the National Crime Authority was established it had groundbreaking investigative powers. It had power to compel people to provide evidence, and if they did not, they were charged with certain offences. I know that civil libertarians have always expressed concerns about this. However, the bottom line is in output 2 on page 38 of the report, where the data can be compared with data from recent investigations under similar powers enacted in Victoria. There have been a range of private hearings and examinations held — 183 examinations according to page 39. You would not have known about them had it not been mentioned in the report. There were no public examinations using extensive powers under the media spotlight such as those we saw last year in Victoria and no personal assassinations of individuals in various organisations who were not really provided with the opportunity of defending themselves. The Australian Crime Commission and the National Crime Authority have always held those powers very responsibly. They have not used them for political purposes. I am very pleased that the ACC continues to use its authority and its powers in an appropriate and measured way, unlike what I have seen in recent times in this state.

Royal Melbourne Institute of Technology: report 2007

Mr EIDEH (Western Metropolitan) — I rise to speak on the annual report of the RMIT University, one

of the most respected and highly regarded educational bodies in Australia. Last year it celebrated 120 years since it first began as the Working Men's College, a very proud achievement for the university and for our state. Moreover RMIT has worked hard under its vice chancellor, Professor Margaret Gardner, to improve its financial and administrative performance.

Today RMIT is known throughout Australia and Asia for its leading-edge education and training, and it is working hard to improve and grow even further. When I read the report I was stunned to learn that it has some 52 000 enrolled students within its Victorian campuses and almost 23 000 students in international and other offshore programs. We have a level of education that leaves even many of the world's better known universities far behind. We have a skills crisis in the country, as the Prime Minister, Kevin Rudd, has stated. We have a skills crisis in Victoria which the minister in the other house, Jacinta Allan, the Minister for Skills and Workforce Participation, is working hard to overcome. But with RMIT we have a winner that is stemming the tide of the shortfall in training, an institution that is critical to the future growth and development of our state.

RMIT is setting high standards for other universities and offers well over 900 educational programs from apprenticeships to doctorates. That is absolutely amazing. The Auditor-General appears to be very satisfied with the current financial position of RMIT University as noted in this report on pages 72 to 78. But I am also pleased to read in the report of its commitment to sustainability and environmental issues, including the better usage of water. I am further pleased to read of the university's strong adherence to the Whistleblowers Act 2001, of its cooperation with the Ombudsman and so much more that in this house we regard as important to the state of Victoria. This is why RMIT has such a positive working relationship with the vast industry sector, not just here in our home state or with industry across Australia but also internationally. Its research institutes are world class, due in great part to the absolute commitment of the academic staff and of the university council that governs RMIT University. These are people regarded around the world in their various areas of expertise, and they bring credit to us by achieving all that they have. They also make it much easier for RMIT graduates to be employed anywhere in the world, as the university is recognised as one of absolute quality and substance.

I can only guess at how the pioneering men who founded the Working Men's College 120 years ago would be in total awe of what their modern-day successors have achieved. We are blessed in this state to have many outstanding educational institutions. I will not name them here, as the focus of this report is the RMIT University, but the people of Victoria should feel very satisfied that facilities such as RMIT are leaders in quality education and training and that they are working so hard to address the skills shortage that threatens our state.

University of Ballarat: report 2006

Ms TIERNEY (Western Victoria) — I rise to make a statement on the University of Ballarat annual report 2006. Although the institution's heritage dates back to 1870, it was in 2006 that it completed its 13th year of operating as a university. During 2006 it achieved many goals and set many more goals for the future. To begin with, I would like to acknowledge and congratulate Professor David Battersby, who was then the new vice-chancellor of the University of Ballarat.

The university takes great pride in being a modern institution and is thus focused on organisational sustainability and environmental management. This is seen through the university's National Centre for Sustainability. It continued its partnership with Sustainability Victoria to maintain sustainability information outlets and hold workshops for western Victorian communities. This included community workshops in Ararat, Ballarat, Bacchus Marsh, the secondary school principals' workshop, and a presence at Springfest Ballarat and the Alternative Expo at Halls Gap.

It also undertook practical exercises such as the Hopetoun Community Sustainable Energy Initiative. It received $100 000 from the state government to study the Hopetoun power demand and to investigate renewable alternative energies in the area, which is another community in Western Victoria Region. The study also researched waste management and the needs and practices necessary to investigate potential sustainable industries for Hopetoun.

In the educational area, the university and the community also had the pleasure of having the esteemed Dr David Suzuki, hosted by the university, give a public lecture in September of 2006 as part of his international and national book tour. It was open to the wider community and of course the university staff and students; it attracted an audience of 750.

During the reporting period a behavioural change program was also undertaken. It was titled 'Switch Off' and it was launched to develop a culture of energy efficiency within the staff working at the university's campuses. The program involved short training

sessions for 35 staff volunteers on influencing behavioural change, and this was accompanied by posters and stickers distributed across the university campuses.

As well as the focus on education and energy resource management, the university implemented substantial energy reduction measures including the installation of more efficient gas boilers, higher efficiency lighting and lighting movement sensors. The year 2006 was a great year of achievement for the students of the University of Ballarat and reflects the quality of staff and education at the university.

Graduate Thomas Blake completed certificate III in agriculture at the Primary Industries Training Centre and received the QBE FarmGate–Victorian Farmers Federation Apprentice of the Year award. This is the second year in a row that a University of Ballarat graduate has been recognised for this award. Grant Luscombe, a graduate from the bachelor of education, physical education, degree at the university was named the *Herald Sun* Secondary Graduate Teacher of the Year and was nominated by the principal of the Casterton Secondary School, the school where Grant teaches. That is another great school in the electorate of Western Victoria.

In the School of Business Services a student from each program received a recognition for excellence award. These included medals in the World Skills Competition, Apprentice of the Year, the university's Vice-Chancellor Award and other local awards. In the schools of science and engineering, graduates continued to secure nearly 100 per cent employment, with salaries substantially above the national average.

In conclusion, I wish all the best for the future to the University of Ballarat. Under the leadership of vice-chancellor Professor Battersby it is clear that the university is making great inroads, not just in terms of high-quality higher education performance but also because its linkages in the community of Ballarat and beyond are exceptional in all fields and make it a true community leader at the campus and beyond. I commend this report to the house.

CONSTITUTION AMENDMENT (JUDICIAL PENSIONS) BILL

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Lenders 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 Constitution Amendment (Judicial Pensions) Bill 2007.

In my opinion, the Constitution Amendment (Judicial Pensions) Bill 2007, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill contains amendments to the Constitution Act 1975, the Supreme Court Act 1986, the Attorney-General and Solicitor-General Act 1972, the County Court Act 1958, the Public Prosecutions Act 1994 and the Magistrates' Court Act 1989.

The bill will amend provisions in these acts, which govern the pension entitlements of Victoria's judicial and other constitutionally protected officers, to facilitate the adoption of the separate interest method for dividing the pension entitlements of judicial and other constitutionally protected officers under the commonwealth family law in divorce property proceedings.

The bill will also amend these acts to preserve and extend entitlement to a reversionary pension to de facto and same-sex partners of the judiciary and other constitutionally protected officers.

The bill enhances the right to equality before the law by ensuring that partners of Victorian constitutionally protected officers are provided equal entitlement to a reversionary pension, irrespective of their martial status, gender or sexual orientation.

This statement of compatibility addresses a number of human rights issues raised by the Scrutiny of Acts and Regulations Committee's *Alert Digest* No. 1 of 2008.

Human rights issues

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

Section 8: recognition and equality before the law

Section 8(2) of the charter provides that every person has the right to enjoy his or her rights without discrimination. Section 8(3) of the charter provides that every person is equal before the law and is entitled to equal protection of the law without discrimination. Discrimination, in relation to a person, means discrimination within the meaning of the Equal Opportunity Act 1995 on the basis of an attribute set out in section 6 of that act.

Clauses 3 and 9: Definition of 'partner'

Clauses 3 and 9 of the bill insert definitions into the Constitution Act 1975 and the County Court Act 1958, respectively, necessary to give effect to the purpose of the bill.

The definition of 'partner' raises the right to equal treatment before the law. The definition of 'partner' includes a married

spouse and opposite-sex domestic partner of an officer who has retired prior to the commencement of the act, if passed, and a married spouse, opposite-sex domestic partner and same-sex domestic partner in every other case.

The terms 'spouse', 'domestic partner' and 'partner' have been defined for the first time, preserving, clarifying and extending existing pension entitlements for partners of constitutionally protected officers to remove discrimination on the basis of their gender, sexual orientation or marital status.

The split definition of 'partner' has been used to be consistent with the approach taken in other defined benefit superannuation schemes in the State Superannuation Act 1988 and the Parliamentary Salaries and Superannuation Act 1968. These acts were amended as part of the significant reform package commenced by the Statute Law Amendment (Relationships) Act 2001 which amended a large number of acts to recognise the rights and obligations of partners in domestic relationships.

Whilst the term 'spouse' has traditionally been considered to only include a husband and wife, the current interpretation of the term 'spouse' as it applies to a reversionary pension within the constitutionally protected pensions scheme, could also give rise to entitlement for an opposite-sex domestic partner.

The split definition therefore preserves and extends the current eligibility of married partners and opposite-sex domestic partners of constitutionally protected officers and also effects reform to the scheme to ensure that from commencement of the act same-sex partners of constitutionally protected officers and their families are not discriminated against on the basis of their marital status or sexual orientation. The definition of partner is therefore consistent with the right to equal protection of the law without discrimination in section 8(3)of the charter and ensures that same-sex partners will enjoy the same benefits as opposite-sex partners following commencement of the act.

Clauses which replace 'spouse' with 'partner'

A number of amendments which replace the terms 'spouse' and 'widow' with 'partner' to include opposite-sex and same-sex couples, positively engage sections 8(2) and (3) of the charter (see clauses 4, 6, 7, 10, 11, 13, 14, 16, 17 and 19–21).

The pension schemes of Victorian constitutionally protected officers provide that upon the death of the officer entitled to, or receiving a pension, his or her spouse shall receive a part pension (a reversionary pension) and where there is no spouse, his or her child or children shall receive a part pension. Replacement of 'spouse' with the term 'partner' in these provisions therefore promotes the right to equal protection of the law irrespective of a person's marital status, gender or sexual orientation.

Clauses 4(l)(b), 6(2)(b) and 10(2)(b):reversionary pension

Clauses 4(l)(b), 6(2)(b) and 10(2)(b) amend provisions which provide that the reversionary pension will cease upon a partner's death or remarriage, or upon becoming the domestic partner of another person. This limits the right to equality on the basis of marital status because a single person will be treated differently to those who re-partner. However, given the original purpose of the reversionary scheme, the distinct nature of the constitutionally protected pension scheme and the purpose of the bill, the discrimination is a reasonable limitation on the right.

a) the nature of the right being limited

People have the right to equality before the law irrespective of their marital status. Not all treatment that differs on the basis of marital status is discriminatory however. Under section 7 of the charter a human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom taking into account all relevant factors.

b) the importance of the purpose of the limitation

Unlike other superannuation funds, the constitutionally protected pension scheme is non-contributory and unfunded — sourced directly from Consolidated Fund. It is not provided as part of a total remuneration package, but rather is created by statute and paid to those who qualify under the statutory criteria. Together with security of tenure, payment of adequate and protected remuneration, the pension promotes judicial independence. The entitlement to a reversionary pension is based on the policy that entitlement is referable to the surviving partner's relationship with the deceased constitutionally protected officer, and therefore when the surviving partner remarries the entitlement ceases. The purpose of the limitation is to maintain the policy basis and ensure that the policy which applies to surviving partners who remarry applies equally to those who choose to enter a domestic relationship. Failure to amend these particular provisions would give rise to differential treatment between partners of constitutionally protected officers who choose to enter a domestic relationship (who would then not be disentitled by virtue of the new relationship) and those who choose to marry (who would be disentitled by the remarriage).

c) the nature and extent of the limitation

The right not to be discriminated against on the basis of marital status will be limited to the extent that a partner of a constitutionally protected officer will not be eligible or will be disentitled to receive a pension under the scheme, if they choose to marry or become the domestic partner of another person.

d) the relationship between the limitation and its purpose

The limitation achieves its purpose of maintaining the policy basis of the reversionary pension scheme (that entitlement is referable to the surviving partner's relationship with the deceased constitutionally protected officer, and ceases upon re-marriage) and ensuring that the policy will apply equally to those who choose to enter a domestic relationship.

e) any less restrictive means reasonably available to achieve its purpose

There is no less restrictive means to achieve the purpose of the limitation, having regard to the historical origins and policy basis of the reversionary pension and the distinct nature of the constitutionally protected pensions scheme.

f) any other relevant factors

g) conclusion

Accordingly, provisions as amended by clauses 4(l)(b), 6(2)(b) and 10(2)(b) of the bill are reasonable and demonstrably justifiable limitations under section 7 of the charter.

Section 13: privacy and reputation

A number of clauses engage the right to privacy under section 13 of the charter, in that they relate to collection of personal information.

Clauses inserting family law provisions

Clauses 5, 8, 12, 15, 18 insert new subsections in the acts governing the constitutionally protected pensions scheme, to enable benefit or pension entitlements of constitutionally protected officers to be divided in accordance with the separate interest method under the Commonwealth Family Law Act 1975 and the Family Law (Superannuation) Regulations 2001 in divorce property proceedings.

The provisions may engage the right to privacy as they require collection and disclosure of personal information by the minister for the purpose of administering the scheme in accordance with his or her obligations and duties under the family law scheme (see subsection 17 being inserted by clause 8). The circumstances in which the bill will authorise the minister to collect and disclose information are circumscribed. Information may be collected and disclosed in accordance with the provisions in order to ensure that superannuation entitlements are valued and understood accurately for the purpose of dividing pension entitlements in divorce proceedings pursuant to a superannuation agreement, flag lifting agreement or a splitting order.

The exercise of these powers are therefore not an unlawful or arbitrary interference with a person's privacy.

Clauses 3 and 9: definition of 'domestic partner'

The definition of 'domestic partner' being inserted by clauses 3 and 9 of the bill engages the right to privacy as it requires the minister to consider all circumstances of the relationship in order to form the opinion as to whether a person is a domestic partner for the purpose of the scheme.

The circumstances in which the bill allows the minister to determine whether a person is in a domestic relationship are circumscribed. The minister is required to take all the circumstances of the relationship into account, including any one or more of the matters referred to in section 275(2) of the Property Law Act 1958 as may be relevant in a particular case.

The purpose of taking into account all circumstances of the relationship is to ensure that domestic partners are eligible to receive a reversionary pension upon the death or disability of their partner, irrespective of their gender. The exercise of the discretion is therefore not an unlawful or arbitrary interference with a person's privacy.

Section 24: fair hearing

The minister's role in determining whether a person is in a domestic relationship for the purpose of administering the constitutionally protected pension scheme may engage a person's right to be heard by a court or tribunal that is competent, independent and impartial under section 24 of the charter.

The minister is responsible for administering part III of the Constitution Act 1975 and other legislation which constitute the constitutionally protected pensions scheme. The minister is already responsible for making a range of executive decisions in relation to the administration of the judicial pension scheme and is ultimately responsible to Parliament for the expenditure of public funds out of the consolidated fund.

The decision is administrative in nature, applying statutory criteria. It involves an objective and disinterested assessment of the facts and circumstances of the relationship. Definitions of this nature have also been used in legislative schemes governing judicial pensions in other states, such as New South Wales and Western Australia. It is also the same test which applies in other superannuation, financial, compensation and property legislation, such as the Parliamentary Salaries and Superannuation Act 1968 and the Superannuation Act 1968.

The exercise of this discretion is therefore neither an unlawful nor arbitrary interference with the independence of the judiciary.

Conclusion

I consider that the bill is compatible with the charter because to the extent that some provisions may limit human rights those limitations are reasonable and justified in the circumstances.

JUSTIN MADDEN, MP
Minister for Planning

Second reading

Mr LENDERS (Treasurer) — I move:

That the second-reading speech be incorporated into *Hansard*.

In so doing I note that this bill was amended in the Assembly. The second-reading speech has been amended for the Council to reflect the passage of the Relationships Act 2008 and to make it clear that for the first time, as explicitly provided for in law, de facto and same-sex partners of judicial and other constitutionally protected officers will be entitled to a reversionary pension.

The statement of compatibility has been amended since the Assembly to address a number of issues raised by the Scrutiny of Acts and Regulations Committee in *Alert Digest* No. 1 of 2008. Discussion has been inserted to make it clear that:

the definition of 'partner' is compatible with the charter;

that whilst losing a right to a reversionary pension upon re-partnering may be a limit on the right to equal treatment it is nevertheless reasonable given the policy basis of the judicial reversionary pension;

the bill engages the right to privacy in that it relates to the collection of personal information;

the bill engages a person's right to be heard by an independent court or tribunal in that the minister has the power to decide whether a person is a domestic partner of an officer for the purpose of receiving a reversionary pension, and that it is not an unlawful or arbitrary interference with the independence of the judiciary.

Motion agreed to.

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill contains amendments that will modernise the pension schemes of Victorian constitutionally protected officers, by ensuring that they operate effectively in accordance with the commonwealth family law and comply with Victorian equal opportunity legislation.

Commonwealth family law legislation

Since the introduction of the Family Law Legislation Amendment (Superannuation) Act 2001 (Cth), superannuation entitlements have been divisible in divorce property proceedings by agreement or court order.

In 2003, Parliament passed the Superannuation Acts (Family Law) Act 2003 to ensure that the commonwealth's family law legislation applied to the Victorian public sector defined benefit superannuation schemes. The 'separate interest' method for splitting superannuation entitlements was adopted by that act.

Consistent with the government's approach to other defined benefit superannuation schemes, this bill adopts the 'separate interest' method of splitting superannuation entitlements in divorce property proceedings for Victorian constitutionally protected officers. Adoption of the 'separate interest' method has also been recommended by an independent actuary as being the most equitable method for dividing pension entitlements of constitutionally protected officers. The separate interest method provides greater certainty for divorcing spouses in that it places an actual value on the superannuation interest to be divided in divorce property proceedings and promotes a 'clean break' by providing for payment of a lump sum to the non-member spouse at the time of the divorce.

This will modernise the pension schemes of judicial and other constitutionally protected officers and ensure that they operate more equitably in accordance with the commonwealth family law.

Equal opportunity legislation

The Brumby government is committed to promoting equal opportunity and protecting the rights of all Victorians.

Drafted in the middle of the 19th century, pension schemes of judicial and other constitutionally protected officers made reversionary pensions available only to the married spouses of judicial and other constitutionally protected officers.

This bill replaces the terms 'spouse' and 'widow' with the term 'partner' throughout the governing acts. 'Partner' will be defined to include married, de facto and same-sex partners, in the same way as it has been defined in the State Superannuation Act 1988 and the Parliamentary Salaries and Superannuation Act 1968. It will also include partners in 'registered relationships' as defined in the Relationships Act 2008, upon its commencement on 1 December 2008 or on a day or days to be proclaimed. In doing so de facto and same-sex partners of judicial and other constitutionally protected officers will be entitled to a reversionary pension under the schemes explicitly in law for the first time.

These amendments will make the Victorian schemes consistent with those in other states and bring these acts into compliance with the Equal Opportunity Act 1995, ensuring that partners of judicial and other constitutionally protected officers are afforded equal enjoyment of work-related entitlements irrespective of their marital status or gender.

This bill also honours a promise, found in the Charter of Human Rights and Responsibilities, to promote the values of equality, respect and dignity inherent in human rights.

I commend the bill to the house.

Debate adjourned on motion of Mr RICH-PHILLIPS (South Eastern Metropolitan).

Debate adjourned until Thursday, 15 May.

JUSTICE LEGISLATION AMENDMENT BILL

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Lenders tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006, I make this statement of compatibility with respect to the Justice Legislation Amendment Bill 2008.

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

Overview of bill

The bill makes amendments to the Corrections Act 1986 with respect to the functions of the secretary and the commissioner and it abolishes the Prison Industry Advisory Committee. The bill amends the Firearms Act 1996 to allow the chief commissioner to declare certain firearms to be of a particular category and with respect to the licensing of tranquilliser guns. The bill also contains statute law revisions and other technical amendments to justice legislation.

The bill amends the Serious Sex Offenders Monitoring Act 2005 to allow for the additional assessment of offenders; to extend the offences in relation to which an extended supervision order may be made to include offences against adults; to provide for the making of interim extended supervision orders; and to clarify the powers of the Court of Appeal. It is government's intention to introduce legislation during 2008 for a post-sentence supervision and detention scheme that will draw upon the recommendations of the Sentencing Advisory Council in its final report, *High-Risk Offenders — Post-Sentence Supervision and Detention*, May 2007. The scheme is to come into operation after mid-2009 (annual statement of government intentions, February 2008).

Human rights issues

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

Right to equality (s8), right to life (s9), privacy (s13), liberty and security (s21) — enhanced

Expansion of relevant offences

Clause 24 amends the schedule to the Serious Sex Offenders Monitoring Act 2005 ('the SSOMA') to include serious sex offences against adults or offences which render a person a sexual risk to adult victims. In conjunction with s4 of the SSOMA (Who is an eligible offender?) and s3 (Definitions), this amendment has the effect of expanding the scope of 'relevant offences' that give rise to eligibility for an application for an extended supervision order ('ESO') by the secretary, under s5 of the SSOMA.

The expansion of 'relevant offences' is based on the Sentencing Advisory Council's (SAC) recommendation that post-sentence detention and supervision should extend to adult victim sex offenders as well as child victim sex offenders (see recommendation 7, Sentencing Advisory Council, final report, *High-Risk Offenders — Post-Sentence Supervision and Detention*, May 2007). The expansion acknowledges that some 45 per cent of sex offender discharges from prison constitute sex offenders against adults, while studies have suggested that rapists of adults have a similar overall recidivism rate to that of child victim sex offenders. As such, the amendment introduces some parity in terms of community protection against different types of sexual offending; and acknowledges the need to also protect potential adult victims.

By protecting adult victims as well as children from sexual offences and the serious consequences of such offences, the amendments under clause 24 promote and protect a number of rights, including the right to equality (s8), the right to life (s9), the right to privacy (s13), and the right to liberty and security (s21).

Right in respect of compulsory medical treatment (s10(c)) — limited

Instructions and directions to attend treatment programs

New section 25H relevantly provides that s16 of the SSOMA applies with respect to an interim ESO as if a reference in that section to an ESO were a reference to an interim ESO.

Section 16(3)(d) provides that the Adult Parole Board ('APB') may give instructions or directions as to treatment or rehabilitation programs or activities in which the offender must attend and participate.

The ordinary meaning of the word 'treatment' (as found in Webster's dictionary) is 'a substance or technique used in treating'; while the verb 'to treat' is defined as 'to care for or deal with medically or surgically'.

As 'treatment' is not defined in the SSOMA, it is possible that 'treatment' under s16(3)(d) could include medical treatment, such as prescribed anti-androgen medication (also known as 'chemical castration'), as distinct from psychological and counselling programs, which are implicit in the reference to 'rehabilitation programs' in s16(3)(d).

This possible scenario suggests that the right to not be subjected to medical treatment without full, free and informed consent is potentially limited by new section 25H insofar as it means that s16(3)(d) will apply to interim ESOs.

Freedom of movement (s12) — limited

Imposition of interim orders and conditions, instructions and directions applicable

New section 25H relevantly provides that sections 15 and 16 of the SSOMA apply with respect to an interim ESO as if a reference in those sections to an ESO were a reference to an interim ESO.

This may therefore include a requirement that the offender comply with the positive and negative obligations in ss15(3)(b), (e) and (f) (Conditions of extended supervision order), which relate to where an offender must go and where they must not go.

Additionally, a condition under s15 is that the offender obeys all lawful instructions of the secretary and the APB under s16(1) and s16(2). Section 16(3) states some of the instructions and directions the APB may make under s16(2). Each of these listed in paragraphs (a) to (i) represents some limitation on offenders' freedom of movement.

Directions to reside in premises that are situated on land that is within the perimeter of a prison

New section 25H relevantly provides that s16 of the SSOMA applies with respect to an interim ESO as if a reference in that section to an ESO were a reference to an interim ESO.

Subsection (3A) of s16 states that an instruction or direction given by the APB under s16(2)(a) may require the offender to reside at premises that are situated on land that is within the perimeter of a prison (whether within or outside any walls erected on prison land) but does not form part of the prison.

Subsection (3B) of s16 states that an offender subject to an ESO who is given an instruction or direction under

subsection (2) of a kind referred to in subsection (3A) must be taken for the purposes of [the SSOMA] to have been released in the community and to be residing in the community.

To the extent that new section 25H provides that the above sections apply to interim ESOs, it creates a limitation on offenders' freedom of movement, as offenders subject to such a direction by the APB would not be free to reside at another location of their choice.

Freedom of association (s16) — limited

Conditions imposed on offenders under ss15 and 16 of the act

New section 25H relevantly provides that ss15 and 16 of the SSOMA apply with respect to an interim ESO as if a reference in those sections to an ESO were a reference to an interim ESO.

This means that conditions and directions may be imposed that limit the extent to which the offender may associate with other persons or engage in community activities (see ss16(3)(f) and (g)). This could extend to a range of persons, particularly children or other sex offenders. This has the potential to limit the offender's right to freedom of association under s16 of the charter. It could also impact upon a range of other rights, including the right to privacy in s13, freedom of thought, conscience, religion and belief in s14, freedom of expression in s15, the right to protection of families and children in s17, the right to take part in public life in s18 and cultural rights in s19. Whilst these rights may be limited in individual cases, it is necessary to have a broad power to impose such restrictions, tailored to the individual circumstances, in order to protect the community.

The extent of this limitation would need to be assessed on a case-by-case basis, having regard to the specific instructions and directions given by the APB in relation to the personal circumstances of the offender. However, it is fair to presume that the limitation that may occur in respect of this right would be reasonable, vis-à-vis s7 of the charter, given that in order to be lawful the limitation would need to be for an important and legitimate purpose (i.e. those set out in s15(2) of the SSOMA) and any derogation from these purposes would render the decision ultra vires. It is also worthwhile noting that the breadth of the discretionary powers in ss16(3)(f) and (g) is necessary in order to tailor instructions to particular offenders; and the individual risks they represent. Bearing in mind that these are discretionary powers, it is important to recognise that the limitation of the right will be curtailed by principles of administrative law. That is, any decision that was in fact disproportionate to an offender's individual risks could be challenged on the grounds that it was either incompatible with human rights (see s32 of the charter); or unreasonable (broad ultra vires) or an abuse of discretionary power.

Privacy and reputation (s13) — not limited

Additional assessments of sex offenders

Clause 15 inserts a new s7B into the SSOMA which provides that a medical expert who is preparing an assessment report has the discretion to seek an assessment of an eligible offender from an additional medical expert or experts for the purpose of informing that assessment report; and that the additional medical expert should assess the offender following a personal examination of the offender, but should still be able to make an assessment if the offender does not fully cooperate in the examination.

Clause 15 also provides an amendment to the SSOMA which empowers the secretary to direct an offender to attend at a specified additional medical expert(s) for a personal examination for the purpose of preparing an assessment, similar to s7A of the SSOMA.

Clause 16 provides an amendment to the SSOMA which will require an assessment report to address the results of an additional assessment under the new s7B.

While these clauses represent an interference with offenders' privacy, the right to privacy in s13 of the charter is not limited, as the interferences are neither unlawful nor arbitrary as:

> the new section 7B is precise and circumscribed as to the extent of the interference with offenders' privacy. In particular, although a person may be required to undergo an assessment, new section 7B(6) makes clear that the power does not extend to requiring an offender to submit to a physical examination or in any way actively to cooperate in the carrying out of a personal examination;
>
> section 21(3) of the SSOMA allows an offender (with the leave of the court) to apply for a review of the ESO at any time;
>
> offenders have the opportunity to file their own assessment report under s10;
>
> given the complexity of offending behaviour envisaged by the amendments made by clause 24 (extension of relevant offences), it is appropriate that there be a power to request additional assessments (e.g. an assessment which utilises violence offending frameworks) that can be tailored to accurately reflect this complexity;
>
> the scheme as a whole is reasonable, as it fulfils a legislative goal of fundamental importance (community protection from known serious sexual offenders); and
>
> personal examinations are necessary to properly achieve that goal (i.e. the court cannot make a fair determination under ss11, 23 and 28 without the information in the assessment report).

Conditions of interim orders

New section 25H relevantly provides that ss15 and 16 of the SSOMA apply with respect to an interim extended supervision order.

This will therefore include a condition that the offender must report to and receive visits from the secretary or any person nominated by the secretary (s15(3)(c)); and notify the secretary of any change of name or employment (s15(3)(d)); and that the offender obeys all lawful instructions of the secretary and the APB under s16(1) and s16(2).

Section 16(3) states some of the instructions and directions the APB may make under s16(2). These include:

> (h) forms of monitoring (including electronic) of compliance with the [interim] ESO; and

(i) personal examinations by a medical expert for which the offender must attend for the purpose of the board being given a report by the expert to assist it in determining the need for instructions and directions.

While these provisions represent an interference with offenders' privacy, the right to privacy in s13 of the charter is not limited, as the interferences are neither unlawful nor arbitrary. They cannot be considered 'unlawful' as the SSOMA is broadly compatible with the aims and objectives of the charter, insofar as its main purpose is to protect the community and the human rights of potential victims in the community. These provisions are also precise and circumscribed as to the extent of interference with offenders' privacy. The provisions also cannot be characterised as 'arbitrary' because:

they are justifiable and proportionate, having regard to the need to monitor the offender's compliance with the order to ensure that it is effective;

conditions of orders under the SSOMA are reviewable under traditional grounds of judicial review;

the provisions are reasonable as they fulfil a 'legislative goal of fundamental importance' and are essential to ensure protection of the community through effective monitoring of the offender; and

the personal examinations are necessary to properly achieve that goal (i.e. the APB cannot make proportionate and tailored directions and instructions without the information in the report, which is most likely to be most accurate if it is pursuant to an examination of the offender).

Application of victims register provisions in s30A of Corrections Act 1986 to interim ESOs

Clause 6 amends the definition of 'extended supervision order' in s30A(1) of the Corrections Act 1986, so that persons on the victims register may be given information about the application for and details of an interim ESO, including the relevant instructions and directions and whether it is being suspended or revoked. In other words, s30A will apply to interim ESOs and applications for interim ESOs in the same way it applies to final ESOs and applications for final ESOs (and note that clause 25 amends the Victims Charter Act 2006 to also include interim ESOs). Additionally, it is the effect of clause 24 that s30A of the Corrections Act 1986 will apply to adult-victim sex offenders subject to ESOs.

The information provided to victims under s30A of the Corrections Act 1986 about offenders subject to interim ESOs (for adult or child-related offences) might be regarded as interfering with offenders' privacy. However, this is not an unlawful or arbitrary interference with offenders' privacy, such that the right in s13 of the charter is limited.

The interference with privacy is neither 'unlawful' nor arbitrary as:

Section 30A is precise and circumscribed as to the kinds of information that may be released to a victim, who a 'victim' or 'family member' is, the kinds of offenders in respect of whom information about them can be released, and how that information is dealt with by those who receive it.

Section 30A(3) also suggests that the release of the information happens on a 'case-by-case basis' in accordance with the circumstances of each case, insofar as it limits the circumstances in which the information can be disclosed to a victim. The secretary is subject to a duty not to disclose information if the information in question might endanger the security of any prison or the safe custody and welfare of the prisoner or any other prisoner; or the safety or welfare of any other person.

Section 30H provides that victims must treat information provided to them under s30A as confidential, while s30G provides that it is an offence to publish information disclosed under s30A in electronic or print media. The section therefore offers appropriate safeguards against unlawful uses of that information.

The proposal enhances the security of victims and provides comfort to them in respect of any concerns they may have about offenders who have committed a relevant offence and who might, in the interim period, pose a risk to their safety and security and their human rights.

It is reasonable that victims should be provided the kinds of information that may be released to them under s30A about an offender who might otherwise pose a threat to their sense of wellbeing and their safety.

The appropriateness of being subject to these provisions will be reviewed when the application for a final ESO is determined. This ensures that the interference with privacy is justifiable.

Photographing of sex offenders in community corrections centres

Clause 6 includes consequential amendments to the Corrections Act 1986, including an amendment to s104E which provides that the definition of 'monitored person' in part 9B includes a person who is subject to an interim ESO.

Section 104K(1) of the Corrections Act 1986 provides that while a monitored person is at a community corrections centre, an officer may at any time take photographs of the person for the purposes of identifying the person, or of completing records concerning the person. Section 104K(2) provides that an officer may give to the person all necessary directions to ensure the taking of accurate photographs.

The taking of photographs of people subject to interim ESOs represents an interference with their privacy by community corrections officers.

However, the power is neither 'unlawful' nor arbitrary. While involving a relatively minimal interference in the person's privacy, the power to photograph offenders serves the purpose of ensuring that persons subject to an ESO can be readily identified by community corrections staff so that they can be effectively monitored and supervised.

Right to liberty and security of person (s21(3)) — not limited

Imposition of interim orders and conditions, instructions and directions applicable

New section 25H relevantly provides that ss15 and 16 of the SSOMA apply with respect to an interim ESO as if a

reference in those sections to an ESO were a reference to an interim ESO.

This will therefore include a requirement that the offender must comply with the positive and negative obligations in ss15(3) (b), (e) & (f) (Conditions of extended supervision order), which impact on offenders' liberty.

Additionally, a condition under s15 is that the offender obeys all lawful instructions of the secretary and the APB under s16(1) and s16(2). Section 16(3) states some of the instructions and directions the APB may make under s16(2). Each of these listed in subsubsections (a) to (i) create some restriction on offenders' liberty.

Section 21(3) of the charter provides that 'A person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law'.

Whilst the provisions in part 2 of the SSOMA which establish a scheme for deprivation of offenders' liberty would, in part, demonstrate that the deprivation of liberty is 'in accordance with law', it remains that the deprivation must not be 'arbitrary' in order to characterise it as 'lawful'.

The relevant provisions should not be considered 'arbitrary' as:

> they are proportionately tailored toward effective interim monitoring of an offender's movement and how the offender is occupying himself;
>
> this is an objective that is essential to achieving the broader objective of the scheme, that is, community protection and the protection of the human rights of potential victims in the community — an objective which is compatible with the aims and objectives of the charter;
>
> each of the conditions, the instructions and directions are 'reasonable' as they fulfil a 'legislative goal of fundamental importance'; and they also manage what would otherwise be a short-term 'gap' in community protection; and
>
> the proposed interim ESOs are not ongoing orders, while a final order is only made if the legal test in s11 of the SSOMA is met.

As such, the application of these provisions in the SSOMA to interim ESOs should be considered as deprivations of liberty that are on grounds, and in accordance with procedures, established by law. The right to liberty of offenders is therefore not limited.

Directions to reside in premises that are situated on land that is within the perimeter of a prison

New section 25H relevantly provides that s16 of the SSOMA applies with respect to an interim ESO as if a reference in s16 to an ESO were a reference to an interim ESO.

Section 16(3)(a) states that instructions or directions given by the APB may include instructions or directions as to where the offender may reside.

Subsection (3A) states that an instruction or direction given by the APB under subsection (2)(a) may require the offender to reside at premises that are situated on land that is within the perimeter of a prison (whether within or outside any walls erected on prison land) but does not form part of the prison.

Subsection (3B) states that an offender subject to an ESO who is given an instruction or direction under subsection (2) of a kind referred to in subsection (3A) must be taken for the purposes of [the SSOMA] to have been released in the community and to be residing in the community.

Arguably, by providing that an offender may be required to reside within the perimeters of a prison, these sections create a limitation on offenders' liberty, which engages the right in s21(3) of the charter.

As noted, s21(3) provides that 'A person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law'. Thus the key issue is whether the deprivation of liberty is arbitrary (within the meaning of subsection 21(2) of the charter); and whether it is in accordance with procedures, established by law.

This particular instruction would prima facie satisfy the requirement that the deprivation of liberty may only occur in accordance with law, given that the act is broadly speaking compatible with the aims and objectives of the charter. It is also very clearly establishes the 'lawfulness' of such an instruction by the APB, such that such an instruction could not be impugned on traditional grounds of judicial review such as excess of jurisdiction.

In considering whether it is 'arbitrary' the United Nations Human Rights Committee has provided the following guidance (see *D & E v. Australia*, Human Rights Committee, Communication No. 1050/2002, UN Doc CCPR/C/14/D/27/1977 (9 August 2006)):

The detention should not continue beyond the period for which a state party can provide appropriate justification.

New section 25G provides that an interim ESO cannot exceed four months, unless the court making or renewing the order considers there are exceptional circumstances. Interim ESOs imposed by the Court of Appeal under new section 39A inserted by clause 21 of the bill are safeguarded by the new section 39A(3), which provides that an interim ESO ceases once the matter to which it relates has been remitted and determined by the relevant court. It is noted that it would not be appropriate under this provision to impose a time frame similar to that which is in new section 25G, as this would effectively:

> expose the community to risk if the interim ESO were to expire before the final application is determined by the court to which the application is remitted; or
>
> force an interference with the administration of courts, as to when matters should be brought.

While these provisions ensure that the operation of an interim ESO will not continue for any period beyond which there is appropriate justification, in respect of directions under s16(3A), it might be argued that offenders' detention in prison is continued beyond the period for which there is appropriate justification. That is, notwithstanding s16(3B) (which states that such offenders should be taken to be in 'the community'), effectively offenders required to reside on premises in accordance with s16(3A) are still on prison grounds, and might therefore consider themselves to be 'still in prison'.

However, even if it is considered to be continuing offenders' detention in prison beyond the expiry of a custodial sentence, appropriate justification can be provided, as follows.

The purpose of ss16(3A) and 16(3B) is to ensure safe, temporary accommodation for offenders subject to an ESO or an interim ESO, where it has not been possible to find other suitable accommodation. It recognises not only the need to be able to adequately control high-risk offenders; but also to ensure offenders' safety. Under principles of international human rights law, these purposes of public order, health, safety and morality; are recognised as legitimate purposes for limitations on rights (see United Nations, Economic and Social Council, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, U.N. Doc. E/CN.4/1985/4, Annex (1985)).

Where there are less intrusive measures that can achieve the same end they should be used.

'Less intrusive measures' in this instance would be to place offenders somewhere that is not on prison land. However, having regard to the above, the same 'end' (of community protection and the offenders' safety) could not be achieved by this measure.

In view of these factors any detention pursuant to ss16(3A) and (3B) is not arbitrary. As such, the right to liberty and security of person in s21 of the charter is not limited.

Fair hearing (s24) — not limited

Attendance of offender at hearings

Clause 17 inserts a new division 4A into part 2 of the SSOMA — 'Interim extended supervision orders'. This means that division 5 of the SSOMA will apply to applications for interim ESOs under the new division 4A.

Section 29 in division 5 duplicates s18P(4) of the Sentencing Act 1991 (Vic) and provides that if the offender acts in a way that makes [any hearing under part 2] 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 s24 of the charter requires a party to be given a reasonable opportunity to be heard. Assuming s24 of the charter applies, it might be said that the right is potentially limited by the exclusion of the offender from the hearing under s29(2). 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 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. Further, s29(3) establishes safeguards on proceedings where the offender is absent because of illness or any other reason, 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, s29 of the SSOMA does not limit the right to a fair hearing in s24(1) of the charter.

Reverse onus provisions and the right to be presumed innocent (s25(1)) — not limited

Clause 14 substitutes the existing s7A(3) of the SSOMA by providing a new s7A(3), stating that:

> An offender must not fail, without reasonable excuse, to comply with —
>
> (a) a direction given to the offender under subsection (1); or
>
> (b) that direction as varied under subsection (2).

The penalty in respect of the above is level 7 imprisonment (two years maximum).

Similarly, clause 15 inserts a new section 7B, which provides that (amongst other things), an offender must not fail, without reasonable excuse, to comply with —

> (a) a direction given to the offender under subsection (2); or
>
> (b) that direction as varied under subsection (3).

The penalty in respect of the above is level 7 imprisonment (two years maximum).

By reason of s130 of the Magistrates' Court Act 1989, the burden would be on the accused to point to or present sufficient evidence to raise the reasonable possibility of the existence of a reasonable excuse. It would then fall to the prosecution to rebut the existence of that excuse beyond reasonable doubt.

Courts in other jurisdictions have generally taken the approach that an evidential onus on an accused to raise a defence does not limit the presumption of innocence. However, even if it did, the limitation would be reasonable and justifiable under s7(2) of the charter as the defence is solely within the knowledge of the accused.

Retrospective criminal laws (s27(2)) — not limited

Expansion of 'relevant offences' (increasing pool of eligible offenders)

Clause 24 amends the schedule to the SSOMA so that 'relevant offences' for the purposes of s3(1) of the SSOMA include various sex offences against adult victims. This means that persons who have committed this new class of offence before clause 24 commences (the day after royal assent) will now be eligible under the SSOMA for an application for an ESO and interim ESO.

The application of clause 24 therefore has a 'retrospective' impact to the extent that at the time the relevant offence was committed, the offender would not have been eligible for the scheme.

The first, threshold question to consider when assessing whether there has been a limitation on the right in s27(2) of the charter, is whether the imposition of eligibility for an application for an ESO can be fairly characterised as the imposition of a penalty for a criminal offence. This must be answered in the negative because:

The primary purpose of the SSOMA is the protection of the community. As stated in s1:

> The main purpose of [the SSOMA] is to enhance the protection of the community by requiring offenders who have served custodial sentences for certain sexual offences and who are a serious danger to the community to be subject to ongoing supervision while in the community.

Other objectives apparent from the scheme of the act include the rehabilitation of the offender. However, they do not include punishment.

In considering the impacts of s4 (which states who is an eligible offender), and of the scheme generally, a parallel may be drawn with detention that is considered 'administrative' and not 'punitive' under the Migration Act 1958 (cth) ('the MA'). In *Chu Kheng Lim v. Minister for Immigration* (1992) 176 CLR 1 ('Lim's case') the High Court considered the constitutional validity of various immigration detention provisions in the MA, and noted that prima facie 'the involuntary detention of a citizen in custody by the state is penal or punitive in character and … exists only as an incident of the exclusive judicial function of adjudging and punishing criminal guilt'. However, the majority agreed that there are established and legitimate exceptions to this general rule (which do not necessarily involve an exercise of judicial power in contravention of chapter III of the constitution). The common thread running through these exceptions is that they have a primary purpose that is non-punitive in nature.

Further, High Court authority suggests that the imposition of an ESO (interim or final) could not be considered as punishment 'for' a criminal offence. In *Fardon v. Attorney-General for the State of Queensland* [2004] HCA 46 ('Fardon') it was noted in the majority judgement that conviction for a 'relevant offence' is an appropriate factum for, or antecedent to, eligibility under the separate, normative structure [of post-sentence schemes]; but the making of an order does not 'increase' the original punishment. By way of analogy with Fardon, part 2 of the SSOMA establishes its own, separate 'normative structure' for determining whether an ESO should be imposed, and therefore the imposition of an ESO should not be characterised as being 'for' the relevant offence, or even an addendum to that offence. In other words, the authority to impose an ESO is not drawn from what was done in the sentencing of the offender; rather the act simply takes as the factum for the application for an ESO the status of the offender as a person who is serving a custodial sentence (see s4(1)(b)). As Gummow J noted in Fardon, while there remains a connection between the operation of the act and the anterior conviction for a child sex offence, 'a legislative choice of a factum of some other character may well have imperilled the validity of [the scheme]'.

Although Fardon was decided in the absence of a human rights instrument such as the charter, the approach of the court is consistent with the approach of courts in a number of other jurisdictions under human rights legislation where protective measures are imposed upon persons who have been convicted of certain offences, including sex offenders.

Thus the imposition of an ESO under s11 or new section 25D or clause 24 should not be characterised as being a penalty for a criminal offence.

Imposition of interim ESO

Clause 17 inserts a new section 25D into the SSOMA which provides for when a court may make an interim ESO. It provides that a court may only make an interim ESO in respect of an offender if it is satisfied that (inter alia) (d) the making of an interim extended supervision order is justified having regard to any matter that the court considers appropriate; and (e) it is in the public interest to make an interim extended supervision order, having regard to the purpose of the SSOMA and the reasons why the application for a final ESO will not be determined before the expiry of the offender's sentence.

Given that eligibility for an application under s11 is linked to the offender's previous conviction, arguably the imposition of an interim ESO creates a greater penalty for that offence to that which applied at the time it was committed, and thereby limits s27(2) of the charter.

As above, whether or not the right in s27(2) is limited depends on firstly whether it is so linked to the commission of the offence such that it could be characterised as a penalty for that offence; and secondly whether the imposition of an ESO can be fairly characterised as a 'penalty'.

For the reasons set out above, both of these limbs must be answered in the negative. In summary, the imposition of an interim ESO is for a legitimate, non-punitive purpose, so it is not a penalty; nor could it be characterised as being 'for' the criminal offence, even if it were considered punitive, as it draws its authority from the separate normative structure set out in part 2 of the SSOMA, and not from the elements of the original offence.

Right not to be punished more than once (s26) — not limited

Expansion of 'relevant offences' (increasing pool of eligible offenders)

See discussion above. Clause 24 impacts on this right insofar as arguably, eligibility under the SSOMA is 'double punishment', i.e. these offenders have already 'done their time'.

However, for the reasons set out above and those referred to by Gummow J at paragraph 74 in Fardon, this right is not limited, as offenders are not being 'punished' for an offence for which they have already been finally convicted.

Imposition of interim ESO

As noted, clause 17 inserts a new section 25D into the SSOMA which provides when a court may make an interim ESO if it is satisfied of various factors set out in subsection (1)(a)–(e).

Clause 21 also inserts a new section 39A into the SSOMA which provides that the Court of Appeal may make an interim ESO if it is satisfied that the making of the order is justified and that it is in the public interest to make the order.

Given that eligibility for an application under s11 is linked to the offender's relevant offence, arguably the imposition of an

interim ESO under the above proposed new sections creates a form of double punishment for the relevant offence.

However, for the reasons set out above, and those referred to by Gummow J at paragraph 74 in Fardon, this right is not limited, as in becoming subject to an interim ESO offenders are not being 'punished' for an offence for which they have already been finally convicted.

By way of analogy with Fardon, the SSOMA takes as its factum for an application for an ESO an offender's status as an 'eligible offender'; but the actual imposition of an interim ESO under these sections does not 'draw its authority' from the prosecution's case at the offender's trial (i.e. proof of the elements of the offence). Instead, the court draws its authority from the fact that the secretary has applied for a final ESO for the offender and —

> the matters set out in paragraphs (a) to (e) of new section 25D(1); or
>
> the Court of Appeal is satisfied that the making of the order is justified and that it is in the public interest to make the order.

2. Consideration of reasonable limitations — section 7(2)

Right in respect of compulsory medical treatment (s10(c))

Instructions and directions to attend treatment programs and activities

As noted, the right to not be subjected to medical treatment without full, free and informed consent is potentially limited by new section 25H, insofar as it means that s16(3)(d) will apply to interim ESOs (treatment … programs that the offender must participate in).

(a) The nature of the right being limited

The prohibition on medical treatment without consent is not an absolute right under international law. Indeed, it is not even an internationally recognised right. In *Deacon v. Attorney-General of Canada* [2006] FCA 265 the Canadian Federal Court of Appeal found that a limitation on the common-law right to refuse medical treatment did not infringe s7 of the Canadian Charter of Rights and Freedoms (s7 being the equivalent of s10 of the charter), as it was in accordance with 'the principles of fundamental justice'. Linden J.A. stated that:

> There exists no significant social consensus in favour of an absolute rule concerning the right to refuse medical treatment in every situation, and such a principle is not considered 'vital or fundamental to our societal notion of justice' (*Rodriguez v. British Columbia (Attorney-General)*, [1993] 3 SCR 519);
>
> The right of a competent adult to refuse unwanted medical treatment is clearly 'fundamental to a person's dignity and autonomy' (*Starson v. Swayze* [2003] 1 SCR 722). However, respect for human dignity and autonomy is not itself a principle of fundamental justice (Rodriguez, supra at 592).

(b) The importance of the purpose of the limitation

In requiring offenders subject to interim ESOs to comply with treatment orders under s16(3)(d), new section 25H serves the important purpose of furthering offenders' rehabilitation. In this regard it provides an obvious valuable benefit to the community — and enhances the following rights of potential victims:

> right to life — s9;
>
> protection from torture and cruel, inhuman or degrading treatment — s10;
>
> freedom of movement — s12;
>
> privacy and reputation — s13;
>
> protection of families and of children — s17; and
>
> right to liberty and security of person — s21.

Offenders also benefit from being required to submit to treatment programs inasmuch as they are generally thought to reduce offending behaviour. The benefit of this outcome for offenders is that they will not suffer all the consequences of a further conviction for a relevant offence. In some cases offenders may not consent to treatment as they may not see themselves as having a problem requiring treatment. However, arguably it is important that these offenders, in particular, be compelled to attend treatment programs as arguably such denial in and of itself indicates a danger of recidivism.

In *Normandin v. Canada* [2006] 2 FCR 112 the Canadian Federal Court of Appeal noted the benefit of the Canadian long-term supervision provisions for offenders, as follows:

> Before this scheme [for long-term offenders] was established, a sexual offender could be sentenced as a dangerous offender for an indefinite period or a longer prison sentence. The scheme established by Parliament for long-term offenders within the community is a more flexible scheme that is more beneficial for them. Its purpose is to enhance the offender's social integration but without compromising the protection of society and the victims.

The primary purpose of the SSOMA is the protection of the community by way of supervising and rehabilitating the offender. In this regard post-sentence supervision schemes are distinguishable from sentencing regimes, insofar as the protection of the public is the paramount consideration under such schemes; and not punishment. In this regard an order to undergo treatment as part of a sentence may be found to be unlawful in contrast to a treatment order pursuant to a post-sentence scheme (see *Deacon v. Attorney-General of Canada* [2006] FCA 265, distinguished from *R. v. Kieling* (1991) 64 CCC (3D) 124).

(c) The nature and extent of the limitation

As noted, in practice, an order pursuant to s16(3)(d) compels offenders to attend treatment and rehabilitation programs which may involve both medical treatment and psychological counselling. Insofar as an offender may not 'freely' consent to a medical treatment order (for fear of being in breach of his ESO), it directly limits the right in s10(c) to a great extent.

In *Deacon v. Attorney-General of Canada* [2006] FCA 265, the court stated that a long-term offender or serious sex offender within the meaning of the Canadian Corrections and Conditional Release Act, may retain the rights and privileges

of all members of society, except those rights and privileges that are necessarily removed or restricted as consequence of [the relevant court order]. Linden J.A. stated that the appellant's complaint in respect of a medical treatment condition imposed by the relevant board related to a restriction '*necessarily consequent* upon his sentence as a long-term offender. As a long-term offender, the appellant has been found to pose a substantial risk of reoffending, but one that has been judged reasonably capable of eventual control in the community' [emphasis added]. Thus compulsory medical treatment may be a significant limitation on the right in s10(c), but its nature is such that it may only create a 'limitation' to the extent necessary to achieve the relevant purposes of rehabilitation of the offender and community protection.

It is also relevant when considering the extent of this limitation that, when considering directions for medical treatment pursuant to an ESO, as a public authority the Director of the Victorian Institute of Forensic Mental Health would (in accordance with s38 of the charter) need to consider the human rights of the offender and weigh up whether in each case the offender should be ordered to undergo medical treatment without his or her consent. Thus in each case the director would determine the extent of the limitation and would be required to assess whether it is proportionate and necessary, and therefore a reasonable limitation.

(d) The relationship between the limitation and its purpose

There is a rational connection between requiring serious sex offenders subject to interim ESOs to submit to treatment programs and the purpose of protecting the community and rehabilitating offenders. That is, many offenders will reoffend if they are not 'treated' or refuse treatment. As stated by Jill J. in *R. v. Payne* [2001] OTC 15 (Ont. Su.Ct) at para 138:

> In my view, an offender on conditional release by way of a long-term supervision order may be compelled by a term of the order to undertake treatment and related pharmaceutical intervention where essential to management of the accused's risk of reoffending. In other words, the offender's consent to such a condition is not required. Should the offender breach terms of the order respecting treatment or medication, he or she is subject to apprehension with suspension of the order pursuant to [the act] or to arrest and prosecution pursuant to [the code]. The entire object of the long-term offender regime would be undermined by providing the offender the ability to defeat risk management. Accordingly, mandatory treatment and medication conditions in an order are a proportionate response to protecting the public from a person who, by definition, is a substantial risk to reoffend.

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

It is likely that some offenders' behaviour is exacerbated by physiological factors which cannot be controlled other than by means of administering medication. For instance, where psychological counselling fails to repress 'deviant arousals' or urges towards violence, anti-androgen medication provides an additional safeguard. There is no 'less restrictive means' of providing this safeguard; rather the only other alternative to this safeguard would be continued detention, which is likely to be considered a 'more restrictive', 'blunt instrument' which may not be justifiable in circumstances where an extended supervision order with appropriate treatment is reasonably available (see *R. v. Johnson* [2003] 2 SCR 357).

Cases where non-consensual medical treatment has been considered have also adverted to the notion that medical treatment and supervision orders are the least intrusive way of achieving the purpose of protecting the community. For instance, in Deacon (supra), the court noted that the relevant board had concluded that 'medication is necessary to control the risk [the offender] poses. If [the offender] does not want to take this medication, he may choose to refuse, but he thereby chooses also to face the consequences flowing from that decision …' (Deacon, supra, paragraph 41). The court went on to refer to this 'choice' as that which exists between the right to liberty (as incarceration may result upon refusal of the treatment) and the right to security of the person (which is limited by taking medication against one's free will) (Deacon, supra, at paragraph 68).

Similarly, offenders subject to interim ESOs who find themselves required under s16(3)(b) to submit to treatment programs are faced with a similar choice. The directions and conditions imposed under ss15 and 16 may be seen as a 'package' of measures designed to achieve the protection of the community and rehabilitation of the offender. An offender who refuses to take the medication prescribed does so facing the likelihood that if his or her risk is unable to be managed through this condition, then other conditions with more restrictions upon his or her liberty, freedom of movement, or other rights may well be necessary to protect the community.

Conclusion

In the light of all of the above s7 factors, new section 25H is a reasonable limitation on the right in s10(c) of the charter and is therefore compatible.

Freedom of movement (s12)

Imposition of interim orders and conditions, instructions and directions applicable

As noted, the right to freedom of movement is potentially limited by new section 25H, insofar as it means that the positive and negative obligations in s15(3) (b), (e) and (f) and s16(3) will apply to offenders subject to interim ESOs.

a) The nature of the right

Section 12 of the charter is not an absolute right; rather, it is well established under international law that the right to freedom of movement may be restricted where such restrictions are provided for by law, and are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights (see article 12(3) of International Covenant on Civil and Political Rights).

b) The importance of the purpose of the limitation

Applying ss15 and 16 of the SSOMA to interim extended supervision orders will ensure that offenders who are subject to these interim orders are subject to the same supervision powers as offenders subject to final extended supervision orders. This will strengthen the ability to supervise offenders, in appropriate cases, pending the final determination of an ESO application. In turn, this will minimise the risks of reoffending by these offenders to enhance community

protection. Exposing the community to an identifiable risk of criminal behaviour is inconsistent with the government's obligations under s38 of the charter to act compatibly with human rights. In this regard it is recognised that in a 'free and democratic society' the human rights of community members need to be protected; e.g. the right to liberty and security of person and the right to life.

The protection of the community against criminal conduct which involves sexual assault and other kinds of violence is also recognised as a legitimate purpose for limitation clauses, insofar as they constitute risks to public health and safety (see United Nations, Economic and Social Council, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, UN Doc. E/CN.4/1985/4, Annex (1985)).

In seeking to enhance community protection new section 25H therefore fulfils 'a legislative goal of fundamental importance' (*R. v. Oakes* [1986] SCR 103, 136) and one which is democratically recognised in both the Crimes Act 1958 (Vic.) and the charter.

It is also important that the range of conditions, instructions and directions apply to interim orders, so that community protection can be tailored and proportionate in the same way as it is tailored under a final ESO; i.e. the specific risk an offender represents can be appropriately minimised.

c) The nature and extent of the limitation

Sections 15 and 16 of the SSOMA necessarily confer a very broad discretion to limit offenders' rights to freedom of movement to the extent that is necessary, so that the instructions or directions can be tailored to specific offenders. The flexible nature of these powers also operates in the offenders' favour. Whilst frequent reporting and support may be appropriate when an offender is first released into the community, the frequency of that reporting may reduce as the offender demonstrates he or she is managing their risk. Conversely, it may be appropriate to increase reporting and direct attendance at a rehabilitation program where the offender's behaviour within the community demonstrates an increase in risk.

The conditions and directions imposed or authorised by these provisions are directed to achieving the purpose of the scheme, namely to enhance community protection and promote the rehabilitation and care of the offender. If an instruction or direction under these powers in respect of an interim ESO was in fact excessive or disproportionate to these ends, it could be challenged by way of traditional grounds of judicial review.

d) The relationship between the limitation and the purpose

In the light of what we now know about violent and sexual offenders it is appropriate and necessary to provide for restriction of their movement on an interim basis until a final ESO is made; therefore there is a rational connection between the limitation and the purpose sought to be achieved (community protection).

The restriction on offenders' movement under ss15 and 16 also rationally serves the purpose of assisting in their rehabilitation, whilst allowing for sufficient flexibility in the setting of instructions and directions by the APB, so as to ensure that any restriction on offenders' movement is proportionate.

e) Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

There is no less restrictive means by which serious sex offenders who continue to present a high risk of recidivism could be prevented from reoffending after completing their custodial sentence and joining the general community — other than to provide for their supervision, monitoring and rehabilitation through interim or final orders.

Conclusion

In the light of all of the above s7 factors, the limitation on the right to freedom of movement is reasonable and therefore new section 25H is compatible with the charter.

Directions to reside in premises that are situated on land that is within the perimeter of a prison

As noted, the right to freedom of movement is potentially limited by new section 25H, insofar as it means that s16(3A) and (3B) will apply to offenders subject to interim ESOs.

a) The nature of the right

See above.

b) The importance of the purpose of the limitation

The purpose of ss16(3A) and 16(3B) is to ensure safe, temporary accommodation for offenders subject to an ESO or an interim ESO, where it has not been possible to find other suitable accommodation. It recognises not only the need to be able to adequately control high-risk offenders but also to ensure offenders' safety. Under principles of international human rights law, these purposes of public order, health, safety and morality are recognised as legitimate purposes for limitations on rights.

c) The nature and extent of the limitation

Arguably, the limitation on this right could be characterised as significant, given that offenders subject to directions under these provisions are required to live within the perimeter of a prison, which is likely to have a significant impact on their freedom of movement. However, these provisions are not disproportionate when considered in the light of the purpose of the scheme and the need to find safe and appropriate housing for offenders and the challenges associated with that need.

d) The relationship between the limitation and its purpose

There is a rational connection between the purpose outlined above and these provisions allowing for placement in a safe environment that is monitored by Corrections Victoria.

e) Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

A 'less restrictive means' of safely accommodating offenders, whilst fulfilling the purposes of the scheme, is not currently available.

Conclusion

In weighing up these s7 factors, two are of such significance that they outweigh the fact that ss16(3A) and (3B) do represent a significant interference with this right. Those are the purpose of the limitation and its importance (s7(2)(b)) and the fact that there is currently no less restrictive means of achieving the purpose (s7(2)(e)). In the light of these factors new section 25H is a reasonable limitation on the right in s10(c) of the charter and is therefore compatible.

Conclusion

I consider that the bill is compatible with the charter.

Justin Mark Madden, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated on motion of Mr LENDERS (Treasurer).

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The bill amends the Corrections Act 1986, the Firearms Act 1996 and the Serious Sex Offenders Monitoring Act 2005, as well as making statute law revisions and minor amendments to three other pieces of justice legislation. I will address each of the more substantive amendments in turn.

Corrections Act 1986 amendments

The bill implements the government's commitment to ensure proper management of prisons and the secure and humane containment of prisoners, by amending the Corrections Act 1986 to clarify that the Secretary of the Department of Justice has responsibility for monitoring performance in the provision of all correctional services to achieve the safe custody and welfare of prisoners and offenders.

Clause 4 of the bill also clarifies that, additionally, the commissioner for corrections has oversight responsibilities for assessing performance in the provision of all correctional services to achieve the safe custody and welfare of prisoners and offenders.

The bill also repeals redundant provisions in the Corrections Act 1986 relating to the former Prison Industry Advisory Committee. This amendment makes way for the new and improved corrections education and employment ministerial advisory committee, currently being established administratively to provide advice on education, training and work programs in prisons.

A key focus of the new committee's deliberations will be the integration of education, training and prison industry programs with transition support services in order to maximise prisoners' ability to secure continuing employment post release. This proposal therefore furthers the government's commitment to provide offenders with opportunities and incentives to address offending behaviour while also providing drug treatment, life skills education and employment-focused programs in prison.

Serious Sex Offenders Monitoring Act 2005 amendments

The government is committed to protecting the community from further offending by convicted serious sex offenders. Its 'Community safety' 2006 election policy committed it to work with the Sentencing Advisory Council with a view to introducing a continued detention scheme for those serious sex offenders that pose a high ongoing risk to the community. The government recently confirmed it will implement this commitment and operationalise a new scheme for post-sentence supervision and detention of serious sex offenders so as to strengthen protection of the community.

The amendments to the Serious Sex Offender Monitoring Act 2005 in this bill strengthen the operation of the current scheme for extended supervision of serious sex offenders by widening eligibility. The bill expands the range of offences for which a court can impose an extended supervision order to include sex offences against adult victims and empowers the court to make interim extended supervision orders.

The extension of the existing scheme for extended supervision of serious sex offenders will ensure that all serious sex offenders — those who offend against adults as well as those who offend against children — are eligible to be made subject to extended supervision orders at the expiry of their sentence.

Clause 17 of the bill provides for new powers for the court to impose interim extended supervision orders pending the final determination of an ESO application or on an appeal against an extended supervision order. These powers for interim orders will bring the procedures for imposing interim supervision in line with the powers to make final extended supervision orders.

They will also address a limitation in the legislation identified by the Supreme Court of Appeal in the case of *TSL v. Secretary to the Department of Justice & Anor [2006] VSCA 199*. The court noted the absence of a power for it to make an interim extended supervision order and remit a matter back to the court of first instance as a limitation in the act's operation. The proposed amendments will address this limitation and will ensure that where an extended supervision order is found on appeal to be flawed, the Court of Appeal can remit the matter back to the original court to reconsider rather than simply revoking the extended supervision order.

In July 2007 the Sentencing Advisory Council released its final report *High-Risk Offenders — Post-Sentence Supervision and Detention*. In the 2008 annual statement of government intentions, the Premier has outlined the government's commitment to working with the Sentencing Advisory Council to implement a continued detention and supervision scheme for serious sex offenders who pose a high ongoing risk to the community. A further bill containing a new legislative scheme for the post-sentence supervision and detention of serious sex offenders will be introduced into the Parliament in 2008 and will become operational after mid-2009.

Firearms Act 1996 amendments

The bill amends the Firearms Act 1996 to address two separate issues. The first is the issue of firearms that, while being of a relatively low firepower, nonetheless have the

appearance of a military firearm. The vast majority of other states and territories in Australia already have legislation in place to limit the availability of such firearms. It is appropriate that Victoria also takes steps to deal with this issue. It is a genuine concern of the community to ensure that the presence of military-styled weapons is strictly controlled and that they are made available only for appropriate and limited professional, official, commercial or prescribed purposes.

The bill enables the Chief Commissioner of Police to permanently declare a firearm or type of firearm that would otherwise be a category A, B or C longarm to be a category D or E longarm if the chief commissioner is satisfied that the firearm or type of firearm is designed or adapted for military purposes or substantially duplicates such a firearm.

The chief commissioner will be required to publish any declaration made in the *Government Gazette* and will also be required to give notice of the making of the declaration to each person that the chief commissioner is aware is in possession of a firearm that has been made the subject of the declaration.

The second issue that the Firearms Act 1996 amendments address is the availability of tranquilliser guns to vets and other animal care professionals. The bill clarifies that these individuals may obtain more than one tranquilliser gun where they can demonstrate a genuine reason. This amendment is necessary to ensure that vets have backup guns in the event of their primary gun breaking down or requiring servicing. It will also allow vets to have tranquilliser guns of different types, styles and purposes so that they have the necessary tools to effectively carry out their duties.

Statute law revision and other amendments

Finally, the bill makes statute law revisions and other amendments to justice legislation, being the Administration and Probate Act 1958, the Liquor Control Reform Act 1998 and the Summary Offences Act 1966. These amendments rectify errors that have occurred in these acts due to drafting, clerical or other mistakes.

I commend the bill to the house.

Debate adjourned on motion of Mr DALLA-RIVA (Eastern Metropolitan).

Debate adjourned until Thursday, 15 May.

THE UNITING CHURCH IN AUSTRALIA AMENDMENT BILL

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Lenders 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 Uniting Church in Australia Amendment Bill 2008.

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

Overview of bill

The bill seeks to assist the Uniting Church in Australia, Synod of Victoria and Tasmania, conduct its property trust transactions in a more efficient and less administratively burdensome manner. It does so by: broadening the current definition of 'synod' in section 5 of The Uniting Church in Australia Act 1977 (the act); amending section 12 of the act to effectively increase the limit on the maximum number of trustees constituting the trust from 8 members to 10 members; amending section 17 to allow an instrument to which the common seal of the trust is affixed to be signed by either not less than two members of the trust or by one member of the trust and a person who is a designated officer appointed by the synod; and amending section 26 to allow for the receipt of moneys payable to the trust to be in writing by either two members of the trust or by one member of the trust and a person who is a designated officer appointed by the synod.

Human rights issues

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

The provisions in this bill do not raise any human rights issues.

2. Consideration of reasonable limitations — section 7(2)

As the bill does not raise any human rights issues, it does not limit any human right and therefore it is not necessary to consider section 7(2) of the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it does not raise human rights issues.

JUSTIN MADDEN, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated on motion of Mr LENDERS (Treasurer).

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Uniting Church in Australia is a Christian religious organisation with a national congregation of around 300 000 members and is an active member of the National Council of Churches in Australia and the World Council of Churches. The Uniting Church in Australia was formed in 1977 as the union of the Congregational Union of Australia, the Methodist Church of Australasia and the Presbyterian Church of Australia.

The Uniting Church in Australia is formally supported by legislation enacted in each state and territory. Each act made provision for a statutory corporate body (a property trust) in the state or territory to hold property in trust for the church.

The acts also authorised the assembly of the Uniting Church, the national council of the Uniting Church, to adopt a constitution for the church consistent with the basis of union under which the church was formed. The constitution of the church was adopted by the inaugural assembly on 22 June 1977. It makes provision for the formation of synods by the assembly and the assembly initially formed seven synods, one for each state and one for the Northern Territory. In 2002, for practical reasons, the assembly merged the synods of Victoria and Tasmania to form one synod, the synod of Victoria and Tasmania.

This bill is being introduced at the request of the synod of Victoria and Tasmania to facilitate the more efficient operation of the Victorian property trust following the merger of the two synods. The bill does so by increasing the maximum number of the members of the property trust from 8 to 10, widening the provisions for the execution of instruments and the receipt of moneys to allow such matters to be properly done with the signature of one member of the trust and a 'designated officer' appointed by the synod, and to update the definition of 'synod' to not only allow for the merger of the Victorian and Tasmanian synods but to allow for any future merging or de-merging of synods without the need for further amendments to that definition in the act.

It is understood that the Uniting Church is not seeking any amendment of the Tasmanian Uniting Church in Australia Act 1977 at this time as its operations in Tasmania do not currently require any immediate legislative change. Most of the synod of Victoria and Tasmania's operations are conducted in Victoria.

The Victorian Government is pleased to introduce this amending legislation on behalf of the Uniting Church in Australia to reflect the current structure of the property trust of the church and to enable the church to conduct its property trust transactions in a more efficient and less administratively burdensome manner for the benefit of the members of the church.

I commend the bill to the house.

Debate adjourned on motion of Mr RICH-PHILLIPS (South Eastern Metropolitan).

Debate adjourned until Thursday, 15 May.

ENERGY AND RESOURCES LEGISLATION AMENDMENT BILL

Statement of compatibility

For Hon. T. C. THEOPHANOUS (Minister for Industry and Trade), Mr Lenders 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 Energy and Resources Legislation Amendment Bill 2008.

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

Overview of bill

The bill will support the government's commitment to ensuring an efficient and secure energy system, reliable and safe delivery of energy services, access to energy at affordable prices and environmental sustainability. In particular, the bill will improve the energy and earth resources legislative framework by ensuring that the owner of a cathodic protection system is responsible for any breaches committed by third parties engaged to operate the owner's cathodic protection system. In addition, the bill will update registration processes for electrical contractors to ensure that there is consistency with existing licence renewal arrangements for electrical workers.

The bill will deliver greater certainty and administrative efficiencies in earth resources regulation for the benefit of government, industry and community stakeholders alike.

Human rights issues

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

Presumption of innocence

New section 93A (in clause 6 of the bill) provides for the operation of cathodic protection systems and applies to persons (who are not owners) who have been given the responsibility of operating a cathodic protection system (subject to consent of the owner of that system). New section 93(2) (in clause 6 of the bill) states that the owner of a cathodic protection system must ensure that it is operated in accordance with the Electricity Safety Act 1998 and the regulations and with any conditions to which registration is subject. An offence is created where the owner does not comply with this provision. An express defence is prescribed in new section 93A(2). This provision enables a defendant to escape liability if the defendant reasonably believed that the system was operated in accordance with the act and the regulations and with any conditions to which registration is subject.

Clause 93A(2) raises the right to be presumed innocent until proven guilty under section 25(1) of the charter. The right is raised because the clause operates to enable an accused (i.e. it need not be proven) person to raise a defence of reasonable excuse. However, the defence need only be raised by the accused and upon being raised the burden of proof would revert back to the prosecution to disprove. Any burden on the accused is merely evidential, therefore the right to be presumed innocent under section 25(1) of the charter is not limited by section 93A(2).

Clause 6 of the bill is therefore compatible with the charter.

Property right

The proposed amendment in clause 18 of the bill relates to a process under the Pipelines Act 2005 that allows compulsory acquisition of land under the Land Acquisition and Compensation Act 1996 (LACA) in certain circumstances. The LACA provides a process for appropriate compensation to be awarded to affected land-holders. In deciding whether to allow land to be compulsorily acquired under the LACA for the purposes of the pipeline, section 95 of the Pipelines Act 2005 requires the minister be satisfied that the pipeline proponent or licensee has taken 'all reasonable steps' to try and first reach agreement with the owners of the land. Clause 18 of the bill proposes to amend section 95 to simply clarify that the minister may consider whether the pipeline proponent or licensee has complied with the approved consultation plan required under section 16 of the act when deciding whether to allow any compulsory acquisition of land. The right not to be deprived of property other than in accordance with the law is provided for in section 20 of the charter and is not affected by the proposed amendment. Proposed clause 18 of the bill is therefore compatible with the charter.

Conclusion

For the reasons outlined above, I consider that the bill is compatible with the Charter of Human Rights and Responsibilities.

The Hon. T. C. Theophanous, MLC
Minister for Industry and Trade

Second reading

Ordered that second-reading speech be incorporated on motion of Mr LENDERS (Treasurer).

Mr LENDERS (Treasurer) — I note that there was a minor technical amendment to this bill in the Legislative Assembly. I move:

That the second-reading speech be incorporated into *Hansard*.

Motion agreed to.

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The bill will support the government's commitment to ensuring an efficient and secure energy system, reliable and safe delivery of energy services, access to energy at affordable prices and environmental sustainability.

The bill will also deliver greater certainty and administrative efficiencies in earth resources regulation for the benefit of government, industry and community stakeholders alike.

In particular, the bill amends the Electricity Safety Act 1998 (ES act) to provide that the owner of a cathodic protection system must not operate such a system unless it is registered by Energy Safe Victoria (ESV) and must operate such a system in accordance with the ES act, regulations and conditions of registration.

Currently electrical contractors are required to renew their registration annually. The bill will amend the ES Act to provide for registration periods for electrical contractors of up to five years. This will ensure consistency with existing licence renewal arrangements for electrical workers.

The bill makes amendments to the Electricity Safety Amendment Act 2007 to increase the penalty for failure to obtain independent safety compliance audits for operators required to operate under an approved electricity safety management scheme.

The bill makes technical amendments to the Geothermal Energy Resources Act 2005 (GER act) to increase the government's flexibility to determine the best way to optimise the efficient and timely allocation of geothermal energy resources. This includes introducing a requirement that applications for retention leases are provided at least 90 days before the exploration permit expires, failing that, applications will be subject to a payment of a 'late fee'.

The bill will also make amendments to the GER act to clarify that where a tender process has not resulted in exploration permits being issued, another tender can be run for the land that was the subject of the original tender at any time. Currently, where a tender process for the grant of exploration permits under the GER act fails to result in the exploration permits being issued, another tender process may not be commenced in the short term.

The bill will amend the Mineral Resources (Sustainable Development) Act 1990 in order to clarify that a tourist fossicking authority may be granted to both an individual and a company. The authority allows a holder and any person accompanied by the holder to search for minerals using non-mechanical tools. The bill will ensure that the penalty for damage to land caused by a person acting under a tourist fossicking authority is consistent with the penalty for the same offence committed under a miner's right.

The bill will amend the Extractive Industries Development Act 1995 to clarify that the department head has a period of one month to make a decision on whether or not to approve work plans or rehabilitation plans that have been revised at the request of the department head.

Finally, the bill will repeal redundant provisions and make other minor and statute law revisions of an administrative and machinery nature. This includes amendments to the Pipelines Act 2005 to increase penalties for constructing or operating a pipeline without a licence and amendments to the Electricity Safety Amendment Act 2007 to exempt any person that has an approved electricity safety management scheme.

I commend the bill to the house.

Debate adjourned for Mr HALL (Eastern Victoria) on motion of Mr Koch.

Debate adjourned until Thursday, 15 May.

PUBLIC SECTOR EMPLOYMENT (AWARD ENTITLEMENTS) AMENDMENT BILL

Statement of compatibility

For Hon. T. C. THEOPHANOUS (Minister for Industry and Trade), Mr Lenders 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 Public Sector Employment (Award Entitlements) Amendment Bill 2008.

In my opinion, the Public Sector Employment (Award Entitlements) Amendment Bill 2008, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill amends the Public Sector Employment (Award Entitlements) Act 2006 by repealing part 3. This will result in public sector employers no longer being required to submit their federal workplace agreements to the Victorian workplace rights advocate for the fairness test. The workplace rights advocate will no longer be required to undertake the test or make a determination whether an agreement passes the test.

The federal Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008 has introduced a new no-disadvantage test that will replace the state fairness test and effectively render it redundant. The federal test will ensure that an agreement does not result, on balance, in a reduction in the overall terms and conditions of employment of the employees under a relevant federal award (or designated federal award) and a law of a state or territory that relates to long service leave. An agreement cannot operate unless it passes the federal test.

The bill does not affect the existing award safety net protection that the state act provides to public sector employees.

Human rights issues

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

The bill has no human rights impacts.

2. Consideration of reasonable limitations — section 7(2)

As the bill has no impact on human rights it is not necessary to consider section 7(2) of the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it does not raise a human rights issue.

HON. THEO THEOPHANOUS, MLC
Minister for Industry and Trade

Second reading

Ordered that second-reading speech be incorporated on motion of Mr LENDERS (Treasurer).

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The bill contains an amendment to the Public Sector Employment (Award Entitlements) Act 2006, specifically to repeal the fairness test for federal workplace agreements administered by the Victorian workplace rights advocate.

This act commenced operation in July 2006 and was a response to the former Howard government's 2005 amendments to the federal Workplace Relations Act 1996, more familiarly known as the WorkChoices amendments. Those amendments removed the longstanding no-disadvantage test for federal agreements, and also made further reductions to the federal award safety net.

The Victorian government was concerned about the further weakening of the federal award safety net, and accordingly sought to immediately rectify the situation by enacting the legislation that is the subject of this amending bill. The act essentially did two things. Firstly, it preserved the federal award safety net as it existed prior to WorkChoices for those Victorian public sector employees who rely on award conditions. Secondly, it established a new fairness test for federal workplace agreements covering the Victorian public sector. The test is administered by the workplace rights advocate and is similar in compass to the no-disadvantage test that existed prior to WorkChoices.

The circumstances that led to the development of the Victorian act have significantly altered with the commencement of the Rudd government's Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008 on 28 March 2008. This act has introduced a new no-disadvantage test for workplace agreements carried out by the workplace authority. In addition, the act allows parties to pre-WorkChoices agreements to extend and vary those agreements, in which case they are required to submit the variations for a no-disadvantage test by the Australian Industrial Relations Commission measured against transitional federal awards. The tests are consistent with the Victorian government's workplace rights standard which advocates the establishment and maintenance of a comprehensive, fair and relevant safety net of minimum wages and conditions to form the basis of a no-disadvantage test for all new agreements.

This bill therefore seeks to repeal part 3 of the Public Sector Employment (Award Entitlements) Act 2006. The proposed amendment removes the requirement for Victorian public sector employers to submit proposed workplace agreements to the workplace rights advocate for assessment. It would clearly be unnecessary and inconvenient for the employers, unions and employees to undergo two separate tests of a similar nature.

The workplace rights advocate will not be required to assess proposed agreements that have been submitted to him but not yet finalised at the time of commencement. Those proposed agreements will be required to undergo the no-disadvantage tests under the federal legislation.

The amendment is to be effective from the date of royal assent.

I commend the bill to the house.

Debate adjourned on motion of Mr RICH-PHILLIPS (South Eastern Metropolitan).

Debate adjourned until Thursday, 15 May.

POLICE INTEGRITY BILL

Second reading

Debate resumed from 17 April; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Ms PENNICUIK (Southern Metropolitan) — This bill is important for Victorians. It is important to, if I can use this phrase, get the balance right or to get the structures and processes right regarding scrutiny of police, natural justice and fairness, protection of witnesses and protection of the public.

The bill essentially establishes a stand-alone act for the Office of Police Integrity (OPI), rather than the functions of the office being embedded in the Police Regulation Act. It finalises the separation of the Ombudsman and the director, police integrity, and further extends the functions of the OPI to include education about police corruption. It implements 19 of the recommendations made by the special investigations monitor (SIM). In fact, in terms of the special investigations monitor the bill implements 18 of those recommendations in full. Two of the 23 recommendations did not require legislation. They went to the amount of detail in the annual reports of the OPI, and giving non-police power to bring people into custody, as there is already a mechanism for this.

Two recommendations have not been implemented. Recommendation 23 concerned the expansion of the role of the special investigations monitor to include abuse of power, impropriety or other forms of misconduct on the part of the OPI's staff and director. We asked the departmental officers questions about this at the briefings, because similar roles are performed by oversight bodies in other states, such as the Police Integrity Commissioner in New South Wales and the Parliamentary Inspector of the Corruption and Crime Commission in Western Australia.

The point was made that specific complaint provisions relating to the SIM are narrower than those applicable to comparable oversight bodies. We were told the government took the view that the Ombudsman already has oversight capacities in this area, so it would be a duplication of the function, and the SIM looks at coercive powers and the Ombudsman looks at lower levels of coercive behaviour. However, we made the point, and I am not sure this point has been answered to our satisfaction, that the Ombudsman has a certain role and brief under the Ombudsman Act and that that was confused when the Ombudsman and the director, police integrity were the same person. Now that they are not the same person we feel that the special investigations monitor should be doing all the oversight, including oversight of what is referred to as low-level coercive behaviour or other types of administrative behaviour in the OPI, which could turn into more significant or more worrying types of behaviour. We do not feel that splitting those functions between the Ombudsman and the special investigations monitor is a good thing.

The government was of the view that recommendation 17, which relates to extending judicial review, was not necessary, as it would open the way to vexatious litigants and impede the OPI from carrying out its functions. We made the point in our briefings that in other jurisdictions similar provisions are that the special investigations monitor, or a person holding a similar office, would screen applicants to make sure there were no vexatious litigants, meaning the court would not have to be involved in that process. The operations of the OPI would therefore not be held up by such a provision.

One of the recommendations of the special investigations monitor was not implemented — that is, that an assistant director be appointed. Advice from the department was that that role is to be replaced by a senior relevant person; anybody really who fits the criteria for eligibility for being a director could in fact fulfil that role. We did not really have an issue with that recommendation not being implemented.

The bill also clarifies some existing provisions in relation to limits of judicial review of acts of bad faith and makes the state liable for damage caused by acts carried out in good faith. We are not quite sure whether the balances are right there, and we have been talking and consulting about that for quite some time. I think that is an issue in the bill that is not quite resolved.

The bill also clarifies provisions relating to the production of documents in civil and criminal proceedings. The director, police integrity, can refuse to produce documents for civil proceedings, and in criminal proceedings some mechanisms are to be put in place allowing the court to decide whether or not documents are protected. Those have been outlined by other speakers in the debate; it suffices for me to say that that also is an area of some contention amongst commentators and observers of the bill.

Division 9 of part 4 contains clause 102, a provision enabling OPI operatives to carry defensive equipment — that is, handcuffs, batons, capsicum spray and so on. Clause 103 goes to the ability of OPI operatives to be issued with firearms in certain circumstances. The Greens still have concerns about this division of the bill. When we received our briefing we asked the department about the use of defensive equipment, including firearms, and we said it was a concern. It was explained to us that the use of defensive weapons was for when OPI operatives had to enter dangerous buildings and deal with members of organised crime. We were told that equivalent organisations in other states have these powers. The director must give authorisation for the use of defensive weapons. We asked whether there was a penalty for unauthorised use, and we were told that as with other offences officers would face disciplinary procedures. Of course there would be judicial oversight in terms of critical incidents, because damages arising from critical incidents can be claimed in the courts.

We were told there would be less than 20 operatives who would be trained to Australian Federal Police standards in Western Australia and that there would be recruitment of former members from other states. If that is correct — that members will be recruited from other states — that is a good thing. However, the Greens still remain concerned about those provisions in the bill. Usually what happens with OPI operatives is that, if they need to execute a warrant issued by a magistrate or to arrest someone, they would take police with them to assist them. The bill is silent on whether that practice will continue. We are told the practice will continue and that it will be unusual for the director, police integrity, to authorise the issue of firearms to OPI officers. However, I am concerned that because the bill is silent on that, and because the director can issue firearms and defensive equipment, over time that will become the norm and the use of police to assist the OPI will occur less. You would then have a culture in the OPI of the use of firearms and defensive equipment, which would not be a good thing.

This bill was deferred on my motion during the last sitting week, because the Greens had these ongoing issues with it. We did not feel there had been enough time to go into the detail of the bill and its ramifications in terms of the issues I talked about before: the scrutiny of police, the protection of natural justice and fairness, the protection of witnesses and the protection of the public. It was not clear to us then that the bill was fulfilling all those requirements to the fullest degree.

The Greens are not opposed to the Office of Police Integrity per se or to an office of police integrity per se. New South Wales has its Police Integrity Commission, but it also has the Independent Commission Against Corruption, the most broad-ranging independent commission in the country. It also has an Auditor-General similar to our Auditor-General and an Ombudsman who carries out functions similar to our Ombudsman's functions. The Greens would say this is a fair model. It is certainly not the model that is being followed in Victoria.

I have mentioned in the house before in similar debates that Western Australia also has the Corruption and Crime Commission and an Ombudsman, and that Queensland has the Crime and Misconduct Commission, an Auditor-General and an Ombudsman. As the Greens have said many times, Victoria needs to establish a broad-ranging anticorruption commission as well as an Office of Police Integrity, an Ombudsman and an Attorney-General. That is the model that is being followed by the other major states. Victoria is the only major jurisdiction that does not have a standing anti-crime commission.

On 22 August 2007 in our very first motion in this Parliament Mr Barber moved on behalf of the Greens that this house call the Attorney-General to send a reference to the Victorian Law Reform Commission to examine the most appropriate legal model for an anticorruption commission for Victoria. That was eight months ago. So for eight months that motion, supported by a majority of this house, has lain in limbo. The Attorney-General still has not referred that motion to the law reform commission, and it is regrettable that that has not happened.

The government has argued that the model that is in place in Victoria of an Auditor-General who looks after, reviews and audits the public accounts, an Ombudsman who looks at the public administration and an Office of Police Integrity is enough. But it is not enough because the Office of Police Integrity does not have the same powers that a standing anticorruption commission would have. The Office of Police Integrity cannot investigate other citizens besides sworn and

unsworn police officers. For example, it cannot look into the actions of members of Parliament, members elected to local government or ordinary civilians. This is a huge gap in Victoria's system of public accountability for its public officials and people elected to public office. We cannot get away from that fact. So we have had the argument a couple of times in the house with the government defending the system that is in place. The Greens would say elements of the system in place are good, but it is not enough. We need the standing commission.

There are issues in New South Wales relating to elected councillors with links to members of Parliament and allegations of untoward things happening. I am not making a statement that anything is happening here, but we should not assume that those sorts of things only happen in Western Australia, New South Wales and Queensland and not in Victoria.

I have made the point before that I think it is better for the government to be proactive about this, to get the ball rolling to send the reference to the Victorian Law Reform Commission and for it to settle the arguments once and for all as to what is the best model for Victoria. The law reform commission has a great reputation in comprehensively investigating things that are put to it and bringing forward options. I am sure the law reform commission would look in a proactive way at the models in other states and indeed in similar jurisdictions for what is the best model.

We know that the setting up of the Corruption and Crime Commission in Western Australia, the Crime and Misconduct Commission in Queensland and the Independent Commission Against Corruption in New South Wales were all the result of governments being forced to set them up because of certain events. That is not a scenario I would like to see happening in Victoria. I would like to see the Victorian government be proactive on this issue, for the reference that has been languishing for eight months on the Attorney-General's desk to be sent off to the Victorian Law Reform Commission and to get the ball rolling on the establishment of an independent crime commission in Victoria. That is what we need to be doing.

In the absence of that, and while we have an Office of Police Integrity in operation, then we need to ensure it is the best model. In my inaugural speech I mentioned the phrase 'structure is destiny'. By that I mean that if the structure of an organisation is not correct then problems will arise. With the structures that this Parliament sets up for important issues such as the scrutiny of police, it is important to get those right or problems will arise.

The director, police integrity, in his report to the Parliament late last year made the comment that there was police corruption and that there is police corruption in the Victoria Police. That statement was made by the then director who was also the Ombudsman. I believe, as do other members in this chamber, that the police do a difficult job and the very vast majority of them are hardworking and honest, but there is police corruption. The director, police integrity, made the point that there were cliques and also former police who were instrumental or involved in corruption with existing police officers. This is a concern.

During the last sitting week I moved a motion to adjourn debate on this bill until this week because we had questions about the bill to which we had not received answers from the department. We have since received a very good briefing from departmental officers, for which I thank them. The briefing was very comprehensive and they were helpful in trying to answer our questions. For me to say that I have not had my concerns addressed or my questions answered is not a reflection on the staff who provided the briefing, but there are remaining concerns we have about some aspects of the bill. I thank all parties in the house for giving us the opportunity to adjourn the debate so that we had time to think, consider, discuss and consult about this very important bill.

Concerns about this bill were first raised publicly in articles and an editorial in the *Age* of 28 February which referred to provisions that I have outlined and makes particular reference to the provisions in the bill to allow Office of Police Integrity officers to be armed with firearms, batons, capsicum spray and handcuffs. The article says that the Department of Justice had in a briefing paper raised alarm at these proposals and warned of the very thing that might flourish in the OPI that the office is supposedly fighting — that is, corruption. The department said that there was a significant risk to potential or improper and corrupt conduct by the OPI without the deterrence or detection that can be provided by adequate oversight.

Adequate oversight is probably the linchpin or the kernel of our concerns about this bill. The justice department, it was said in the briefing note — which I believe has never been made public, it has only been referred to as being seen by the *Age* — also raised concerns about the attempts to remove the special investigations monitor who reports to Parliament and who is part of the important oversight of the OPI. Concerns were already raised back then before the bill was introduced into Parliament in early March.

We also asked — and I will go into more detail in a moment — the officers whether the government had considered the Public Accounts and Estimates Committee (PAEC) recommendations regarding oversight of public officers by parliamentary committees. We were told that the government had considered this but did not feel it was necessary. I will be returning to this issue in a moment, because it is an important issue for the Greens in that it goes to the very oversight that we were talking about.

Concerns that we have — and these are not necessarily about the bill, although they could be addressed in the bill — have also been raised by other people. I think I have said previously that there is a perception that the Office of Police Integrity and police command may not be at arms-length — for example, in the OPI report last year the director, police integrity, referred to close relations between the Chief Commissioner of Police and himself and between the ethical standards department and himself.

Mr Dalla-Riva — On a point of order, President, I draw attention to the fact that there is no minister in the house.

The PRESIDENT — Order! The Treasurer is standing in the doorway. I remind the house that the doorway is in fact part of the chamber, but it is a valid point the member raises. He would have had no idea that the minister was not in the chamber, but the Treasurer had alerted me to the fact that he would be standing in the doorway.

Ms PENNICUIK — In that report the director, police integrity, referred to good relations between himself and police command at meetings. I am not sure whether it is the practice of the director or the police commissioner to keep records of those meetings, but I would have thought that meetings between police command and the director or senior staff should be recorded and should be formal meetings, and the relationship between the two should be professional and at arms-length and not necessarily close.

The Greens believe it is critical that the bill provide the appropriate legislative background and appropriate oversight of the Office of Police Integrity so that we have that office fulfilling its brief to prevent and to investigate alleged police corruption, but to do so in a way in which it is accountable to the people of Victoria and that it upholds the principles of natural justice and fairness.

There are quite a few provisions in the bill that raise concern as to whether this is the case. How do you fix that? I have referred to the fact that we had asked departmental officers whether the government had looked at the recommendations of the inquiry by the PAEC into the legislative framework for independent officers of Parliament, a report which was tabled in this house on 8 February 2006, more than two years ago. The government responded to it in August 2006 — that is, nearly two years ago. As far as I know, nothing has been done to implement the recommendations of that committee report, including those recommendations that the government said it would consider.

I commend this report; I am sure members have read it. I will remind members of some of the report's recommendations which are germane to the Greens proposed amendments to this bill, which recommend the increased oversight of the Office of Police Integrity. Chapter 3 of the report, which is entitled 'Officers of Parliament — developments in other jurisdictions' says that the committee found that:

> While no consistent approach to independent officers of Parliament has been adopted by parliaments either overseas or in Australia, there is a clear trend towards these officers being —

four things, which were —

> established in a generally standard way by an act of Parliament;
>
> appointed and dismissed with parliamentary involvement;
>
> oversighted by a statutory parliamentary committee which is also responsible for budget approval; and
>
> required to report to a specific parliamentary committee.

None of these conditions applies in Victoria at the moment. Chapter 4 of the report states:

> Five structural features that determine the independence and accountability relationships of independent officers of Parliament and their agencies:
>
> > the nature of the mandate of the office/agency, including how it is defined initially and how it is updated periodically;
> >
> > the provisions respecting the appointment, tenure and removal of the leadership of the agency;
> >
> > the processes for deciding budgets and staffing for the agency;
> >
> > whether the agency is free to identify issues for study and whether it can compel the production of information; and
> >
> > the reporting requirements for the agency and whether its performance is monitored.

In terms of the structure of this bill, the conformity of the OPI to these five criteria is patchy at best. The committee then says:

> These structural features are very important in determining the nature of the interactions among the three key institutions — the political and administrative executive, Parliament, and officers of Parliament.

The committee recommends that:

> The legislation relating to each officer of Parliament be amended to provide that the appropriate parliamentary committee be responsible for reviewing and recommending the remuneration and allowances of independent officers of Parliament. The process should be transparent, with the relevant committee reporting to Parliament on the outcomes of its deliberations.

That is because at the moment independent officers of the Parliament are appointed and their remuneration is decided by the executive arm of government. In this report it is stated — and even the layperson would think this — that that is not desirable. The appointment, the tenure and remuneration of independent officers should be overseen by the Parliament through the mechanism of an independent joint parliamentary committee.

Recommendation 5 is interesting. It says:

> No officers of Parliament should be eligible to take up a position within the Victorian public sector until after a period of at least two years from the completion of their appointment as an officer of Parliament.

That is the Greens policy regarding the employment of ministers and parliamentary officers after they leave Parliament.

Recommendation 7 is about the independence and oversight of parliamentary officers by a parliamentary committee. It says:

> The legislation relating to each officer of Parliament be amended to provide that —

and members should remember that this report was written in 2006 —

> (a) the Public Accounts and Estimates Committee, as the delegate of the Parliament, has the principal responsibility for ensuring the independence and accountability of the Auditor-General and his/her office —

and the Ombudsman and his/her office; and —

> (c) the Electoral Matters Committee, as the delegate of the Parliament, has the principal responsibility for ensuring the independence and accountability of the Electoral Commissioner and his/her office.

The first part of that recommendation is in place: the PAEC has the responsibility for ensuring the independence and accountability of the Auditor-General and his/her office. That is not in place for the Ombudsman and the electoral commissioner. Now that we have separated the director of police integrity from the Ombudsman, that part of the recommendation is not in place for the director, police integrity, either. That is why the Greens have proposed amendments which I am happy to circulate.

Greens amendments circulated by Ms PENNICUIK (Southern Metropolitan) pursuant to standing orders.

Ms PENNICUIK — The report also says:

> The committee is of the view that the Ombudsman and the electoral commissioner —

and members should remember that the Ombudsman was also the director, police integrity, in 2006 —

> should be directly accountable to Parliament for the proper and efficient management of staff and the significant financial resources allocated to their offices, rather than have any line of accountability directly to the Premier (in the case of the Ombudsman) or the Attorney-General (in the case of the electoral commissioner) or to any agency of the government …

That is why our proposed amendments are in accordance with the PAEC report, which we think contains good recommendations and would increase the oversight of the director, police integrity. Our amendments would also ensure that the relevant parliamentary committee, the Drugs and Crime Prevention Committee, on behalf of the Parliament would have the principal responsibility of ensuring the independence and accountability of the director of the Office of Police Integrity.

Those words are the very same words that were recommended in the PAEC report to apply to all officers of Parliament — that is, the Ombudsman, the electoral commissioner and the Auditor-General. Now we have a new officer of Parliament whose position is created by this bill. Clause 9 makes the director, police integrity, an officer of the Parliament. The report recommends that officers of the Parliament be coupled with a committee and that the appropriate committee in this case be the Drugs and Crime Prevention Committee.

There are many good recommendations in this report, and I commend it to members of the Council. Many of the recommendations have not been implemented. In making these comments I am referring to a note I wrote to myself a couple of weeks ago. Given this report and

the recommendations in the report, and the fact that the bill did not go to those recommendations, the bill should probably have been subject to a public inquiry. We are setting up the position of an officer of Parliament, and PAEC had recommended that when this was done in future that officer should be coupled with a committee, so we believe our proposed amendments to this bill are achievable. They relate to a key PAEC recommendation, and they will improve oversight and confidence in the Office of Police Integrity.

I would like to turn now to the Scrutiny of Acts and Regulations Committee report on the bill. I read the first SARC report on it, and in the preliminary notes I prepared for debate in the last sitting week I made the observation that the SARC report had made a number of comments in 16½ pages — it was a long report, and so it should have been because it is an important bill — and that SARC had written to the minister on 8 April with six questions. The bill had already gone through the Assembly at that stage and had come here to the Council.

Nine days later, on 17 April, it was being debated, and at that stage none of those questions had been answered. I was concerned about those questions, and that was one of the reasons I requested that debate on the bill be adjourned for two weeks, hoping that the questions would be answered in that time. I also noted at the time that this was not really good enough, given that there were such important questions on such a complex bill with the potential to infringe on people's rights and all the other complex ramifications that can come from setting up an office like this, including its general public ramifications.

The questions are important questions, and members can read those for themselves, and they can now also read the answers to those questions that the minister supplied about two days ago. I am not sure that those answers necessarily address all the concerns raised by the Scrutiny of Acts and Regulations Committee in its questions.

I go back to the point — and I think the house needs to take note of this point — that the Scrutiny of Acts and Regulations Committee is performing an important role in overseeing a bill like this which infringes on people's rights. It infringes on the right to not self-incriminate, it infringes on the right to have access to documents in a proceeding, and it infringes on the right to be able to cross-examine evidence that may be presented about you in a proceeding.

The bill also makes it mandatory for people to answer questions, it allows for searches and arrests, and it allows for the use of firearms and defensive equipment. There are a lot of provisions in this bill that could potentially infringe on people's rights, health and safety, and so it is that SARC should have oversight of this bill, take it seriously, produce a long report and ask questions of the relevant ministers. But then we had the situation where the answers were not provided by the minister, yet the bill was produced in the Council and we, as members of Parliament who have to rely on the reports of SARC and on the answers to questions asked of ministers, did not have those things in front of us.

We did not have the full information. Six questions raised by the Scrutiny of Acts and Regulations Committee about infringements of the human rights charter in the bill and submitted to the minister were not answered by the minister, yet we were expected to deal with the bill.

This has happened with many bills, and it has been an issue that has concerned me for a while. Now I really want to say how much it concerns me that had I not moved to adjourn the debate, we would have been expected to pass the bill without the answers to those questions. I do not think that is good enough, and in fact I think the Council should look at this issue very seriously. We have in place an important committee like the Scrutiny of Acts and Regulations Committee, and if it has given a report on a bill that is not a complete report and if we do not have the answers to questions it has raised, then we should not debate that bill in the Legislative Council until those answers are forthcoming.

There should be some procedure put in place in the Council whereby until there is a complete report on a bill from the Scrutiny of Acts and Regulations Committee and full answers to any questions asked of the relevant ministers, we should not debate that bill, because we would be debating the bill without full information, and I do not think that is the best use of the Parliament. The Parliament should have the full information about a bill before it, and members of Parliament should be able to debate the bill based on the information provided by the Scrutiny of Acts and Regulations Committee and on the answers given by the relevant ministers to questions put to them by SARC as to what they think of the provisions in the bill, but at the moment we cannot always do that.

I think that is an important issue in terms of this bill. If that does not happen, what is the point of having the Scrutiny of Acts and Regulations Committee? I think it has a good role, and we should wait until we get the full

information on bills before we debate them in this chamber.

I would have to say that the revelations and developments in the last 24 or 48 hours regarding the Scrutiny of Acts and Regulations Committee have concerned me a great deal in that we have been told by members of the committee in this chamber that the committee had come to a unanimous decision to hold a public inquiry into this bill. I do not know what went on within the committee, but I would have to infer from the fact that the committee had passed a unanimous motion — all the members of the committee had agreed — that this bill should go to a public inquiry, that the members of the committee had concerns about the bill and that they thought there were enough issues with it to warrant a public inquiry.

We have been told that in fact the agreement of the committee was that the terms of the public inquiry would be advertised in the newspapers and that people would be asked to make submissions about the bill. I have to infer that there was a reason for that, as it is not usual for the committee to hold a public inquiry into a bill. I would say that this is an important bill — I have said that throughout my contribution — and we need to get this bill right. Every time I have looked at it I have found something else in it that I have not been quite sure about. Perhaps that is what the members of the Scrutiny of Acts and Regulations Committee thought when they passed that unanimous motion.

Now we have heard that that motion was not implemented, and that when the committee met again, that motion to hold a public inquiry was rescinded by a majority vote. I have no idea why it was rescinded, but I am concerned that it was, and I think anybody who is watching this from the outside would have to be concerned that it was so rescinded because at first all members of the committee made the decision that this bill warrants a public inquiry, then a majority of members — and you would have to say that the majority of members on that committee constitute government members, because the government has the majority on that committee — have rescinded that motion to not have an inquiry into the bill. Then we had members of the committee coming into the chamber full of concern about what has happened. We have had a member of the lower house, so far as I know, indicating that he wishes to resign from the committee over this. We have an issue that, from the outside looking in, does not look good.

The fact is that I have laboured over this bill for a good four weeks now, trying to work out how to fix what I think are some holes in it and how to come up with an amendment to meet the advice that has come from the Public Accounts and Estimates Committee, which looked comprehensively at how to improve the oversight of public officers. The Greens have come up with an amendment that is in compliance with the recommendation of that committee of this Parliament that said public officers of the Parliament should be overseen by a joint committee. We came up with the amendment that we put before the house today, because that committee could assist in ironing out any problems in terms of the operation of the legislation and bringing that back to the Parliament.

That was where we were until we came into the Parliament yesterday, and then we heard all these other revelations relating to what I have just talked about — what happened in the Scrutiny of Acts and Regulations Committee over the last two weeks. We, I have to say, are very concerned about what has happened there and think the best thing that can happen with this bill is that it actually goes to a public inquiry so that, if there are problems with it, they can be identified and can be fixed so that the whole cloud that now sits over the bill because of the activities of the Scrutiny of Acts and Regulations Committee can be lifted.

The cloud is there; the cloud will not be removed if the bill goes through. The bill needs to be looked at in a public, open and transparent way, and then the Victorian community can be confident that they have in place an Office of Police Integrity and an oversight mechanism that will serve them well.

Mr D. DAVIS (Southern Metropolitan) — I am keen to make a contribution on this bill. It is an important bill that the Liberal Party did not oppose in the lower house; and that, we think, carries some considerable importance. The issue with the Police Integrity Bill 2008 has been canvassed extensively in debate in this chamber earlier in the week, and I note that the bill was held over because a number of members of the chamber had a number of concerns. It is a complex bill. It is a bill that contains a large number of matters that needed to be worked through by members of this chamber from all political parties.

The main provisions of the bill essentially replicate, update and rephrase much of the current Office of Police Integrity and special investigations monitor (SIM) provisions of the Police Regulations Act. There is no change to the jurisdiction of the OPI, except that its functions have been extended to include education about police corruption.

I note that one of the issues that has developed over the last two days in this Parliament is what has occurred in

the Scrutiny of Acts and Regulations Committee. That is a very important committee of this Parliament, and we heard revelations in this chamber yesterday when the latest SARC digest was tabled here. There had been an earlier SARC digest dealing with this bill and drawing attention to a number of infringements of rights and liberties, and it also made a number of comments and recommendations. The most recent SARC digest deals with the ministerial response and makes further comments and points about this bill, but what particularly disturbed a number of people is that it is very clear from what was said in this chamber and in another place that there have been some untoward occurrences in the Scrutiny of Acts and Regulations Committee.

I do not want to canvass those issues other than to say that in broad outline, as I understand it from what has been related in this chamber and in the other chamber — and it appears now to be very much part of the public record — the committee voted unanimously some weeks ago to conduct a public inquiry that had a notification or advertisement phase to it and the opportunity for members of the public to make submissions.

Now that investigation seems to be entirely within the purview of the Scrutiny of Acts and Regulations Committee. My understanding is that the vote on that motion was unanimous. My understanding is also, from the material that has been referred to in this chamber, that at that committee in very recent times there has been a decision to rescind that earlier decision to hold a public open inquiry.

There are several matters here: one relates to the bill itself and concerns that maybe surround it; another relates to the processes at SARC and whether they are satisfactory; and a third relates to the question of whether the bill could be improved and whether it provides for the absolutely best arrangement and model that could be put in place.

The Liberal Party is widely on record stating that we believe the system for the regulation of corruption in this state is insufficient. We believe an independent, broad-based anticorruption commission is required. We believe, despite the best will in the world at the OPI and other agencies involved, the sort of independent, broad-based anticorruption commission that exists in other states is required here.

There are a number of models for that. We are very much alive to the different choices and arrangements that are available. In this chamber in an earlier debate I made available an extensive tabulation of the different modes of anticorruption commissions that are available around the country. From looking at that table it is clear that Victoria is now the odd state out in not having a broad-based anticorruption commission. Whatever you think about that, I believe it is a defensible position that there should be such a broad-based, independent anticorruption commission.

In the lower house the Liberal Party did not oppose this bill, and in this chamber we do not oppose the bill per se. We make the point that we reserve the right in government to step forward with a more comprehensive model to regulate and to prevent corruption in this state. As Ms Pennicuik and others in this chamber have pointed out in earlier contributions, a whole series of corrupt activities has been exposed around the country, made up not of isolated examples but of large-scale and systematic corruption.

The examples of the Wollongong council and so forth and the beach suburbs south of Perth are now well known to this chamber and to the Australian community. I would argue that the links in some cases between corruption of police and corruption of other public officials need to be exposed in a systematic way. The arrangements that we now have in place in Victoria — even if this bill were to be passed today, as no doubt it will be in due course — are insufficient to deal with that systemic issue. That is why we have said we need an independent and broad-based anticorruption commission in Victoria.

I return to the issue I want particularly to put on the record today. The Liberal Party is concerned about what occurred with the Scrutiny of Acts and Regulations Committee and believes that committee had an intention to undertake an open public inquiry involving advertising. We believe pressure has been brought to bear by the executive on that committee. It is worth drawing the chamber's attention specifically to the aspects of the act that lay out that committee's fundamental duties and key roles. The Parliamentary Committees Act 2003 is the act under which the committee is promulgated. It is a Legislative Assembly committee under that arrangement. Section 17 of the Scrutiny of Acts and Regulations Committee legislation sets out its functions as:

> (a) to consider any bill introduced into the Council or the Assembly and to report —

and I take 'report' to be a plural word, a word that does not limit it to a single report.

Mrs Peulich — A verb.

Mr D. DAVIS — In this case there have been several reports already, and in my view the committee should and could have undertaken further reports, if necessary, to provide the chamber or chambers with whatever additional information would assist it or them in reaching a satisfactory conclusion — amendments if necessary, reconsiderations; whatever is required. That is the role of that committee: to act fearlessly and freely to discharge its charter, as it were, under the Parliamentary Committees Act 2003.

Its functions are:

> to report to the Parliament as to whether the Bill directly or indirectly —
>
> (i) trespasses unduly on rights or freedoms;
>
> (ii) makes rights, freedoms or obligations dependent on insufficiently defined administrative powers;
>
> (iii) makes rights, freedoms or obligations dependent on non-reviewable administrative decisions;
>
> (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the Information Privacy Act 2000;
>
> (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the Health Records Act 2001;
>
> (vi) inappropriately delegates legislative power;
>
> (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
>
> …
>
> (b) to consider any bill introduced into the Council or the Assembly and to report —

as Mrs Peulich has pointed out, the verb in this case —

> to the Parliament —
>
> (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the Constitution … or raises an issue as to the jurisdiction of the Supreme Court;
>
> (ii) if a Bill repeals, alters or varies section 85 of the Constitution Act 1975, whether this is in all the circumstances appropriate and desirable —

it is a very broad gamut to cover —

> (iii) if a Bill does not repeal, alter or vary section 85 of the Constitution Act … but an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;

It goes on. It has the ability:

> to consider any Act that was not considered under … (a) or (b) when it was a bill —
>
> (i) within 30 days immediately after the first appointment of members of the Committee after the commencement of each Parliament; or
>
> (ii) within 10 sitting days after the Act receives Royal Assent —

and it goes on. It can look at subordinate legislation and things under the Environment Protection Act and cooperative schemes. The tasks of this committee encompass a very broad gamut, particularly those tasks that relate to the trespass on rights and freedoms and the administrative powers of government that can be enshrined within legislation, administrative powers that can on some occasions unfairly and unreasonably trespass on the rights of individuals.

It is in my view a committee that has been put in place specifically to stand up to the executive, specifically to ensure that those examinations are undertaken and specifically to report to the Parliament in a free and frank way. That is why the opposition regards with such seriousness what occurred with the Scrutiny of Acts and Regulations Committee in recent weeks.

One of the major bulwarks against tyranny, one of the major bulwarks against the imposition of unsatisfactory legislation on the Victorian people, has been attacked unnecessarily and inappropriately. If the executive is allowed to undertake these sorts of impositions on a parliamentary committee of this type, our democracy will be much the poorer, our freedoms will be at risk and our rights will be trespassed on more readily by the executive. I place on record the concerns that the community would feel and that those on this side of the chamber feel about these matters.

Some have put to me that there is an inability to undertake a public hearing. That is clearly not the case with SARC. There have been recent hearings, and I am sure members of SARC would only too readily tell the chamber of those public hearings and inquiries the committee has undertaken.

For the benefit of the chamber and the community, the committee does much of its work in a narrow gamut as bills come to Parliament and move between the chambers. It looks at the individual causes and at the trespass that may occur and reports in a systematic way. Those reports are relied on by many members of this chamber. I read those reports in the case of every bill that comes to this Parliament. Every time I prepare a bill pack to speak in this Parliament, it contains the SARC report, and often I read in pertinent comments from SARC. I know many other members of the chamber are equally as diligent in their attention to the

points made by the Scrutiny of Acts and Regulations Committee.

Some of the points that are made by SARC are arguable. That is the point of the committee's report: a debate occurs in the chamber or chambers regarding particular points made by SARC, which can draw attention to potential trespass on rights and liberties. It is up to the chamber to make judgements as to whether that trespass is real, in the first instance, and secondly, whether it is warranted or justifiable in the broader sense. Of course rights and liberties are trespassed upon by laws and regulations on many occasions. That is legitimate. However, it is only legitimate where those rights or liberties are taken away in a thoughtful way by the Parliament after due consideration of the impact of such clauses in legislation that may reduce rights, liberties and trespass on those important rights.

Some have said that public hearings could not occur. As I have said, that is clearly nonsense. The committee has conducted public hearings with respect to a number of bills in recent times. I am just thinking, Mrs Peulich, of the recent legislation on — —

Mrs Peulich — IVF.

Mr D. DAVIS — The in-vitro fertilisation bill, and classically that is the sort of area where Parliament would look — —

Mrs Peulich — The terrorism legislation.

Mr D. DAVIS — The terrorism legislation is another recent example. There have been many occasions over the years when public hearings have been conducted. I draw the attention of chamber to section 27(1) of the Parliamentary Committees Act, which in a very clear and unequivocal way says:

> A Joint Investigatory Committee may hold a public hearing on any proposal, matter or thing being inquired into or being considered by the Committee.

That is a very clear and open invitation to the committee where it has a matter under consideration to deal with that matter in an open and clear way. It may also refuse to hear evidence if it believes it is irrelevant or unnecessary in some way, but the opportunity is there for a committee to undertake those hearings on a particular matter.

Some might say that the committee has reported to the Parliament twice on this bill and that should be the end of the matter. That to me is a matter for the committee to judge, not for others external to the committee to judge. I, for one, would be very concerned if we were to set some precedent of closing off the option of the Scrutiny of Acts and Regulations Committee reporting more than once or twice to the Parliament about a particular bill.

As I said to somebody earlier this afternoon, imagine if an academic or an observer of some kind or somebody involved with an industry wrote to the Scrutiny of Acts and Regulations Committee while a bill on a matter was still live in the Parliament and pointed out some area of trespass or reduction of rights that the committee had not considered appropriately at that point. The committee would be derelict in its duty if it dismissed that correspondence openly and said, 'We are sorry; we are not going to consider this any further'. That would be a travesty of the committee's charter of responsibilities.

I cannot get into the mind of the committee, of course, because I am not a member of it and I am not fully aware of the material that was presented to the committee, but if a committee becomes aware of issues and matters when the bill is still actively before the Parliament it is in its own hands to respond in the way it sees fit. It might write to the chamber with a quick update; it might table a new *Alert Digest*; it might conduct an inquiry or hearing; it might consult with people; it might seek legal opinions; it might do all manner of different things to satisfy itself as to whether a matter that has been raised with it is within the purview of its charter under the Parliamentary Committees Act.

If it decides that there is such a matter, it should conduct an inquiry. In my view it is entirely open to that committee to report to the Parliament. In fact it would be derelict in its duty if it did not do so. It would be wrong for the committee to summarily dismiss new information that came to it at a time when a bill was still live and between the chambers. In that sense I am very concerned that a decision was clearly made to look at material subjects and then that decision was overturned.

Mr Tee — On a point of order, Deputy President, I am concerned that there has been some speculation as to what may or may not have occurred in the deliberations of the Scrutiny of Acts and Regulations Committee, and I suggest that is not in order.

Mr D. DAVIS — On the point of order, Deputy President, the chamber has heard discussion in open session in the last few days that goes to some of these points directly. It is a matter concerning the Police Integrity Bill 2008 and SARC's report to the Parliament. The Parliament relies on the SARC reports and the veracity of those reports. The quality, security

and completeness of those reports is very much a point of discussion as the bill is being considered by the chamber.

The DEPUTY PRESIDENT — Order! I have some inclination to support at least the principle of the point of order Mr Tee raised. I am actually surprised it has taken so long for such a point of order to be raised, given that Mr Davis is clearly not the first speaker to refer to this subject matter in his speech. Indeed the matters canvassed by Mr Davis have been canvassed in a number of speeches in various proceedings of this house over the last two or three days. In that sense I am a little surprised. Can I say, though, that whilst this house has received two SARC digests that give the conclusions of the committee and provide some advice to the house on the views of the committee, no document has been tabled that gives full details of the deliberations and proceedings of SARC in respect of the matters that have been raised.

I think Mr Tee's point of order is in order to the extent that this house does not have an opportunity to speculate on what may or may not have happened in a committee, particularly in the circumstances where that committee has not tabled any report of its comprehensive deliberations. I think Mr Davis has pretty much exhausted that line of debate anyway, which is another reason why it surprises me that it took so long for the point of order to be raised.

If it were a matter of concern to members of the house, I would simply ask Mr Davis to move to other subject matter and not rely on speculation or commentary about what may have happened in the committee, notwithstanding that quite a bit of the information has been part of proceedings over the last two days.

Mrs Peulich — Further on the point of order, Deputy President, I think the non-government members of SARC have been placed in a serious and difficult position. We prepared a minority report but were not given the opportunity of tabling it because of the narrow reporting time frame, and therefore the unacceptable practices within the committee have subsequently been locked up. It is for those reasons that Mr O'Donohue and I took the opportunities this chamber presented to us to report to the house through other means.

I draw attention to the standing orders relevant to this matter. I note that the numbering is a little fluid because there is cross-referencing between the old standing orders and new ones, but I would like to quote:

> (4) Evidence not taken in public and any documents, papers and submissions received by the committee which have not been authorised for publication will not be disclosed unless they have been reported to the Council.

Arguably, what Mr O'Donohue and I have done is use the means and forms available to us in this chamber to actually report to the Council. I ask that you, Deputy President, take that into consideration in considering the position that members of SARC may be placed in, the frustrations they feel and the hurdles they face in trying to submit a minority report to draw to the attention of this and the other chamber the deficiency in the process of scrutinising the legislation before them.

The DEPUTY PRESIDENT — Order! I am not in a position to rule on the minority report at this time because that is not the matter before the Chair and the context of this debate. That is a matter to be taken up separately. I suggest members of committees have a responsibility to their committees and to the integrity of those committees, and it would be improper for a member to come into this house and report on proceedings of a committee in an informal way without the committee having tabled a report on the same subject matter, because that would lead to a breakdown of the committee system. Indeed it would open up a range of debating issues that are not in the interests of the house.

To the extent that Mrs Peulich and Mr O'Donohue have raised matters in this house in the last two days, those matters have been canvassed in the proceedings of the Parliament. They have been referred to by a number of speakers in the course of this debate, and particularly today Ms Pennicuik and Mr Davis have had the latest opportunity to reflect on the matters that have gone before. Therefore I think that to a point they have been referred to. I do not wish to have those matters canvassed further on this occasion, and I am, in that context, mindful of the point of order that Mr Tee raised, to which I give some credence.

Mrs Peulich has raised an interesting point, but I do not believe it is relevant to my ruling at this stage. That is a matter that we ought to have considered separately perhaps, particularly the aspect of the tabling of minority reports. The fact that the committee reports have substance when they come to Parliament means that individual members of the committee need to be very careful and exercise great responsibility in raising matters about proceedings that have not been formally commented on by the committees themselves.

Mr D. DAVIS — I had, as you intuited, Deputy President, largely finished the points I wanted to make on that. However, I want to bring to the house's attention my reasoned amendment, which I now move:

That all the words after 'That' be omitted with the view of inserting in their place 'this house refuses to read this bill a second time until after the Scrutiny of Acts and Regulations Committee conducts a full public inquiry on this bill'.

The reason I have moved this particular reasoned amendment is that the opportunity should be afforded to the Scrutiny of Acts and Regulations Committee to conduct a full public inquiry on this bill, as it intended.

The opposition did not oppose the bill when it was in the other chamber, but I am of the view that, given its central role in the legislative framework in this Parliament and in ensuring that liberties and rights are not unduly or unreasonably trespassed upon, the Scrutiny of Acts and Regulations Committee should have that opportunity to undertake an inquiry. For that reason it is my view that the bill should not proceed until the Scrutiny of Acts and Regulations Committee has conducted that full public inquiry on this bill.

This reasoned amendment would afford Parliament the opportunity to signal to the Scrutiny of Acts and Regulations Committee that it has an important role and should fulfil it. It would also enable Parliament to be fully informed as we move to the final stages of this bill. Agreeing to this reasoned amendment or having the Scrutiny of Acts and Regulations Committee look at this bill would in no way limit other opportunities for the bill at a point in the future. The committee could conduct a very short, sharp inquiry. Recent committee inquiries have been of the order of two to three weeks, and I would have thought a three to four week framework was plenty for such a committee to undertake its inquiry. It could advertise quickly, receive whatever submissions are necessary, examine those, hear any witnesses and briefly and securely report to Parliament on what is occurring with this bill and any concerns it may have.

The chamber will then be in a position to make a full decision on where this would proceed. If there are matters of which Parliament is not aware at the moment and that the Scrutiny of Acts and Regulations Committee has the opportunity to raise, it will then have the opportunity to report to Parliament in a sufficient and timely manner.

It is my view that this could be done very swiftly and the committee could report in two to three weeks — or certainly within a four-week time frame. By doing that the committee would be doing its duty and undertaking its responsibilities under the Parliamentary Committees Act. I believe the committee is that bulwark against unreasonable trespass on rights and liberties, and that in this instance it should be allowed to do its work.

I step carefully on this, given the Deputy President's early ruling, but I believe two matters need some closer look. One is the specific activities of the Scrutiny of Acts and Regulations Committee over recent weeks that have been referred to in the chamber and the second is its reporting time frames. I am happy to put on the record here one that came to my attention recently when the opposition moved the Port Services Amendment (Public Disclosure) Bill in this chamber. For the first time I moved a private member's bill and I was on the receiving end of SARC's activities, as it were, as it looked at the matters surrounding the bill that we had proposed. On that occasion the bill was passed by the chamber, and members had the benefit of SARC's report, its *Alert Digest*.

It did not have the benefit of my response as the promulgator of the bill because I did not receive the communication from SARC until after the chamber had dealt with the bill. I think it was the Friday morning after the bill had been dealt with that I received a letter from SARC asking me for my response. That is clearly relevant to the lower house before it considers the bill. However, if I had been given that letter from SARC on, say, the Monday afternoon or the Tuesday, I would have endeavoured to respond. I certainly would have been in a position to circulate that response.

I think this point is an important one. There are some issues about the time lines in which SARC has to deal with things and the opportunity for detailed response, in particular by ministers or promulgators of bills. Some ministers are concerned about reporting to SARC, others are not. I am not prejudging or criticising anyone there. I am just saying that those who want to assist SARC in its deliberations should not be defeated by a process that has a time line that does not give them the opportunity to assist SARC and thereby the chamber. I think there are a couple of simple matters that should be looked at.

I make those points by way of broader discussion and perhaps advice to the committee as to how it might helpfully work to the benefit of the Parliament and the community. With those words, I have moved a reasoned amendment. I indicate again that the opposition does not oppose the bill but we think that this process has gone wrong and there should be a proper report in this way by the Scrutiny of Acts and Regulations Committee.

Mr Tee — On a point of order, President, my point of order relates to the reasoned amendment that has been moved. I seek advice and clarification. It seems to me that the powers of SARC (Scrutiny of Acts and Regulations Committee) are such that having

considered a bill it cannot reconsider that bill. That is the statutory provision; I think it is in section 17. This house cannot override that section of the Parliamentary Committees Act to give SARC power that it does not have under the legislation.

Mrs Peulich — On the point of order, President, I believe that if we read section 17 of the Parliamentary Committees Act 2003 it says that SARC has a role according to this section:

> (a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly —

and then it goes on to list all of the areas, rights, freedoms and so forth.

The use of the phrase 'to report' is a verb. It does not necessarily mean to issue a single report, it is not a noun. Therefore, while the legislation is still a bill, under section 17(a) SARC has the opportunity and the right to submit however many reports to the Parliament as it wishes. Where a report is not tabled before the Parliament — say a piece of legislation is rammed through the Parliament — then section 17(c) comes into play. Clearly under section 17(a) of the Parliamentary Committees Act the committee has the right to do this. It is not a single report, it could be a number of reports while the legislation is still a bill.

The PRESIDENT — Order! Mrs Peulich raises a well-considered and thoughtful point of order that creates a problem for me, in that this is a very complex issue — an unusual one. Mr Tee's points are also as valid. I am not particularly confident that I can rule on the matter right now. I will seek further advice to clarify the position.

I am advised that the most prudent course for the house right now might be to consider adjourning the debate on the bill until such time as we are able to define clearly the actual powers or position of the Scrutiny of Acts and Regulations Committee. I am advised that if debate were to continue on this and the motion were to be carried, it would have the effect of killing the bill. I am not sure that is exactly what members want to do. On that basis I advise the house that it ought to consider adjourning debate on this bill until such time as we can clarify the position, but that is a matter for the house.

Debate adjourned on motion of Mr PAKULA (Western Metropolitan).

Debate adjourned until later this day.

JUSTICE LEGISLATION AMENDMENT (SEX OFFENCES PROCEDURE) BILL

Second reading

Debate resumed from 10 April; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am pleased to rise to speak on the Justice Legislation Amendment (Sex Offences Procedure) Bill this afternoon and say the Liberal Party will not be opposing this legislation. The bill seeks to make a number of largely procedural changes relating to the way in which a court handles certain sex offence cases, particularly cases in which the complainant is a child or is a person with impaired cognitive ability.

The reason the court makes a distinction between those classes of people and competent adults is it recognises the extra need those people have to be protected by the court from undue exposure to proceedings in a criminal case. It has been the position of this Parliament that such protection should be afforded in various ways to ensure that the complainants in such cases are afforded appropriate protection. In doing that it is important for the court, and for this Parliament in establishing the legal framework, to ensure that the right of a defendant to a fair trial is also protected. There are competing interests at play when the Parliament creates procedures for criminal cases where different rights or special rights, entitlements and procedures are put in place to protect certain complainants, as is the case with this legislation.

The amendments this bill makes were previously introduced as a result of Sentencing Advisory Council recommendations. The bill corrects and addresses some existing impracticalities within the legislation relating to the way in which cases dealing with children and with parties of reduced cognitive ability are handled.

Under the current legislation when a matter is committed for trial the requirement to hold a special hearing to take evidence from the complainant where the complainant is a child or a person with impaired cognitive ability is that the special hearing be held within 21 days of the matter being committed for trial. The reality is — and, frankly, this is an issue that we see time and again with bills that come before this house to change the processes of our courts — that we now have a situation where there is such a backlog of matters in the criminal courts and in the civil courts that these time lines are simply not practical. It has become the case that allowing only 21 days for a special hearing

to be held from the time that a person is committed to trial has simply been inadequate. This bill will increase that period from 21 days to 3 months. This will provide far more flexibility in the current environment and is a far more realistic time period in which that special hearing can be held. In the absence of this legislative amendment the need to provide dispensation, if you like, from the 21-day requirement was substantial because it simply has not been possible for the courts to undertake the special hearings within the required 21-day time frame.

There is also a requirement that sets a time line for the commencement of proceedings. In relation to this aspect we have a similar set of circumstances at play. The bill will increase the maximum time frame for the trial to commence in circumstances where the complainant is a child or a person of impaired cognitive ability to a period within three months of the committal unless there is a reason in the interests of justice for that period to be different. Again, the exemption being in the interests of justice is a mechanism by which that period can be increased if the court deems it appropriate to do so. What the bill is seeking to do with respect to that provision is to impose a more practical time frame so that special cases can be dealt with more appropriately, having regard to the current lack of resources in the courts for these types of proceedings.

This has become a recurring theme because recently whenever procedural bills have come before this house — and there have been a number in recent months — it appears that often the sole intent of the bill is to provide increased flexibility to the court in recognition of the fact that the courts are currently heavily overloaded. There are other bills coming forward in this house in the next sitting weeks that address that similar issue through changes to the make-up of the judiciary.

One of the other areas that is tacked onto this bill relates to the issue of sexual assault being included as an offence where, if the complainant in such a case is a child or a person of impaired cognitive ability, they also have access to the provisions in this bill in terms of having the capacity to give evidence at a special hearing which does not expose them to the full court environment. It does not expose them to the defendant, and it provides them with an element of protection.

This is a bill that was commented on at length by the Scrutiny of Acts and Regulations Committee. In its consideration of this bill SARC dealt at some length with the issue of the charter of human rights and responsibilities. As the house knows, the charter was not supported by this side of the house. It was the position of the opposition that the charter was unnecessary and that it was contrary to the interests of human rights and responsibilities in this state, and that is the position the opposition still holds. That charter was adopted by this Parliament at the instigation of the Attorney-General, so it is appropriate that the Attorney-General in introducing bills into this place at least abide by his own charter. Yet we see time and again when legislation comes before this place that the charter of human rights is ignored in the preparation of bills. The Justice Legislation Amendment (Sex Offences Procedure) Bill that we are debating today is another example of that. The Scrutiny of Acts and Regulations Committee made a number of adverse findings with respect to this bill as it measures up against the charter of human rights. Again, the response from the Attorney-General has been dismissive and incomplete and has not addressed the concerns raised by SARC. The more often we see this type of response from the Attorney-General, the clearer it becomes that the charter is just a farce.

When the Attorney-General himself, the sponsor of the charter, will not abide by it, as has occurred time and again with legal bills and as has occurred with other legislation we have heard about recently, it makes a mockery of the charter and of the work the Scrutiny of Acts and Regulations Committee has to go through in its consideration of such bills. A further provision in the bill, not related to proceedings in a court but relevant to the issue of the charter and SARC's findings, is the new reporting requirement under the Sex Offenders Registration Act 2004 on people with a single conviction for persistent sexual abuse of a child under the age of 16.

This is a new requirement for an additional class of offender who will be required to engage in a reporting regime with the police over their lifetime. It is a matter that has been raised by SARC as a potential offence against the Charter of Human Rights and Responsibilities on the grounds that it imposes a retrospective penalty. SARC's view is that as this requirement will apply not only to people who are prospectively charged and convicted but also to those who have already been charged and convicted, it constitutes a retrospective penalty and is therefore an offence against the Charter of Human Rights and Responsibilities. However, yet again this is not a matter that has been addressed by the Attorney-General. Yet again we have an example in this bill of the Attorney-General offending against his own Charter of Human Rights and Responsibilities.

The Liberal Party is happy to support any measure that improves the operations of the courts and protects the

interests of vulnerable victims of crime in their proceedings in court, subject to it maintaining the integrity of the justice system with respect to the rights of defendants and victims. It is clear yet again, though, that in bringing this legislation forward the Attorney-General has had little regard to his own charter of human rights in applying the changes to court proceedings and placing that extra class of persons under the lifelong reporting obligations. As such the Liberal Party can only take the position of not opposing this legislation.

Ms PENNICUIK (Southern Metropolitan) — As I understand it this bill implements the remaining recommendations of a 2004 Victorian Law Reform Commission report, most of which were implemented in 2006 and 2007 legislation — the Crimes (Sexual Offences) Act 2006, the Crimes (Sexual Offences) (Further Amendment) Act 2006 and the Crimes Amendment (Rape) Act 2007. Prior to this legislation vulnerable witnesses in sex offence cases had to give evidence twice — in the committal and at the actual trial. The Crimes (Sexual Offences) Act 2006 amended the Magistrates Act so that children and people with a cognitive impairment would not be required to give evidence at a committal.

Further, the Crimes (Sexual Offences) Act amended the Evidence Act to create a right for children and people with a cognitive impairment to give their evidence to the court through alternative arrangements that do not require them to be in the same room as the accused person. I am sure all members can understand that that would be a traumatic and possibly intimidating experience for children and people with a cognitive impairment. Instead that act allows them to be seen and heard via closed circuit television.

These alternative arrangements enable children and people with a cognitive impairment to have their evidence-in-chief prerecorded at a special hearing and played before the court at trial. That ensures children and people with a cognitive impairment give evidence-in-chief and are cross-examined only once, thus protecting them from having to repeatedly give evidence and from unnecessary delays and further trauma in the prosecution of sexual offences against them.

It should be noted that that act allows the victim to apply to go to court. It does not preclude them from doing that; it just protects them if they do not wish to. It also restricts the sort of questioning that children and people with a cognitive impairment can be subjected to.

I turn now to the bill. This legislation extends the time for a special hearing to three months while reducing the period between the special hearing and the trial itself. It extends the limit of the requirement for the holding of a special hearing from 21 days to three months, as it has been found that the 21-day period provides insufficient time to prepare for the special hearing and thus does not really achieve what it is trying to achieve, which is to expedite proceedings. That time has been extended, therefore, not a long way but enough to make sure that the preparations are fully in place before the case proceeds.

At the same time the bill provides that County Court trials for sex offence matters must commence within three months after a Magistrates Court committal unless it is in 'the interests of justice' to extend this time. Currently, the test is 'if it' — 'it' being the court — 'thinks fit', which is a broader test. There will now be less ability for the court to extend the time between the special hearing and the trial. This will be to the benefit of children and people with cognitive impairments.

The bill will bring greater certainty to vulnerable witnesses and will also realise efficiency gains by reducing duplication of court resources, as both the special hearing and the trial will be listed before the same judge. At the same time, the bill preserves the benefits for complainants of only having to give evidence once. Various clauses in the bill ensure that if the child is 17 and turns 18 during the process, the protections intended for children will still apply.

The Sentencing Act recently amended offences incorporated as 'serious sexual offender' offences — that is, persistent sexual abuse against a child under 16 years — and offences under section 47A(1) of the Crimes Act now attract a lifetime reporting obligation under section 34(1) of the Sex Offenders Registration Act 2004. Previously, offenders convicted of this offence only needed to stay on the register for 15 years.

We think the provisions in this bill are good in terms of protecting children and people with cognitive impairment in cases of sexual offences. We will be supporting the bill.

Ms TIERNEY (Western Victoria) — This government has been absolutely committed to sexual assault reform, which is evident by the number of pieces of legislation that have come before this house. Indeed, quite recently in debate on the Crimes Amendment (Rape) Bill 2007 a number of members spoke about the experiences of women who had been raped and the need to create a judicial environment that obviously would not only encourage more women to

report rape but also not add to the actual trauma of the experience that they had already gone through.

Horrific as the experience of rape is, it is absolutely beyond my comprehension that the act of rape can and does occur upon a child, children or persons with a cognitive physical impairment. It is with this absolute lack of acquiescence in the act of rape that we as legislators need to make sure we do everything possible to alleviate the trauma of those witnesses going through the judicial system. We are about trying to improve the experiences of witnesses who have to give evidence in sexual offence matters, and in this case it is in relation to children and people with a cognitive impairment or disability. As I said, it is about making sure that we do not add to the trauma they have already experienced.

The bill before us today is to finetune legislation that was introduced in 2005 and which set up a special system for children and people with cognitive impairment to give evidence at special hearings. We have now seen that procedure operate for some time, and as a result of that experience it is believed improvements can be made by further reducing the trauma experienced by vulnerable witnesses. That leads us to debate the bill before the house this evening.

This bill amends the Evidence Act 1958 and related acts to provide a more effective and efficient timetabling process for the holding of special hearings. The bill is necessary to ensure one primary object of the Victorian Law Reform Commission's recommendation — that is, to improve the system for children and cognitively impaired witnesses — and that this is not undermined.

In summary, the main amendments to the bill are to extend the time requirement for the holding of special hearings from 21 days to three months, and this will address the administrative and timetabling difficulties experienced to date. It will hopefully provide adequate time for parties to prepare for the special hearings. It also provides that the County Court trial for relevant sex offence matters must commence within three months after the Magistrates Court committal, unless it is in the interests of justice to extend this time.

The amendments are designed to enable the special hearings to be held and the trial commenced before the same judge within three months of the accused person being committed for trial. The bill is designed to ensure that vulnerable witnesses still only attend once to give evidence whilst simultaneously expediting the entire trial process, providing certainty for complainants and other witnesses involved in the trial.

It will also realise efficiency gains by reducing duplication of court resources, as both a special hearing and a court trial will be listed before the same judge. It is further designed to ensure that pre-trial matters are resolved prior to the scheduled special hearings, thereby preserving the benefits for complainants of only one attendance to give evidence.

In addition to amendments to the special hearing process, the bill also makes a small number of technical amendments and other changes as a consequence of the experience gained through implementation of the Victorian Law Reform Commission's recommendations. In essence, the additional proposed amendments will achieve consistency in terminology used across the act — for example, the definition of 'child' will be changed in one section from under 17 years to under 18 years. It will remove ambiguity in the operation of some provisions — for example, the use that can be made of certain types of evidence. It will update relevant sentencing schedules — for example, to incorporate recently amended sexual offences as 'serious sexual offender' offences for the purposes of sentencing.

Stakeholders such as the County Court, the Office of Public Prosecutions, Victoria Legal Aid, the Victorian Bar, Victoria Police and the Department of Justice advisory committee charged with improving the criminal justice response to sexual assault have been involved in consultation on the bill as we are debating it tonight. They have all had input and are very supportive of the finetuning.

This Brumby Labor government knows that legislative reform, particularly when it comes to sexual assault, in itself alone will not change the system for victims, which is why it is incredibly important that this government delivers by providing money and resources to underpin the legislative reform inroads we are making. This government has already provided $34 million for initiatives to improve the justice system's response to sexual assault victims, as it was announced in the 2006–07 budget.

I was absolutely delighted that last Tuesday the Treasurer announced that $8 million will be provided for a special sexual assault prosecutions unit in Geelong. That will include prosecutors and also, importantly, solicitors, as well as videoconferencing facilities. That will enable people in rural and regional Victoria specifically to have access to their judicial system so that they will not necessarily have to travel huge distances from outlying areas. This is a fantastic announcement not just for Geelong but for western Victoria.

The key is for all of us in all of our communities to make sure that there is no room for sexual assault in our communities. It is sad that we have to put in a lot of public money to set up sexual prosecution units. The key is to change the mindset and create a cultural change, where we demand that the only forms of relationships that we have are respectful, regardless of the form of those relationships. All our interactions need to be respectful. There is no place for people who exert their power over others by committing sexual crimes in particular, whether they be against women, children or people who have a disability.

As I said before, legislative reform is important. I am happy to be part of a government that understands the importance of reform of sexual assault law. This bill is also about changing the mindset and behaviour of individuals; it is about creating a greater understanding that care and responsibility is owned by individuals and communities. This bill is about making sure that sexual assault is stamped out not just in Geelong and western Victoria but in all of this great state of Victoria. I commend this bill.

Mrs KRONBERG (Eastern Metropolitan) — While I will not be opposing this bill, there are a number of issues that warrant amplification. I will start with the main purposes of the Justice Legislation Amendment (Sex Offences Procedure) Bill which is to extend the time frame for special hearings of evidence in sex offences trials involving child and cognitively impaired complainants. These amendments reflect the unworkability of the original time frames that were introduced by the government in 2006 and the growing waiting lists and backlogs in our courts.

The bill imposes a lifetime reporting obligation on persons convicted of the persistent sexual abuse of children. These amendments are based on recommendations made by the Victorian Law Reform Commission in its final report on this issue in 2004.

The bill further provides that a trial of any sexual offence where the complainant is a cognitively impaired person or a child at the time of the commencement of legal proceedings must commence within three months of the committal hearing unless it is in the interests of justice to extend that time. The bill makes other amendments to change the time when it is to be determined whether a complainant is a child or is cognitively impaired. For the purpose of evidence of prior representations, the bill raises the age of the child from 17 to 18 years and limits the warning about unreliability to be given to the jury as evidence to prove facts rather than support credibility.

At this point it is probably useful to refer to some authoritative statistics which would have motivated the government to respond in the way that it has. I draw upon a resource kit provided by the federal government's Australian Institute of Family Studies, particularly its resource sheet 9 from March 2008 headed 'Child abuse statistics'. Interestingly, it comes from an entity within the institute which is called, unbelievably, the National Child Protection Clearinghouse. When applied to the abuse of children, that is quite an unfortunate name. I understand that it is a formal term, but it is quite unfortunate.

The definition of 'child maltreatment' includes physical abuse, sexual abuse, emotional and psychological abuse and neglect. If we turn to the number of incidents of child abuse made in Australia each year, we are told that during 2006–07 there were 309 517 reports of suspected cases of child abuse and neglect made to state authorities. Unfortunately these figures have increased by over 50 per cent in the last five years. As a waiver, however, we can say that these figures do not necessarily mean that the actual incidence of child abuse and neglect has increased over this time, but they do show that the reporting of cases to child protection services has increased, and that is certainly welcomed. All concerned should be congratulated on those sorts of results for the multifaceted approach that has been taken to achieve such an improvement in reporting.

If we look at the number of substantiations — 'substantiation' meaning that a case of suspected abuse was reported and investigated, and child protection authorities verified on the balance of probabilities that the allegation was true and the child was in fact in need of protection — we see that the level of substantiations in this state in 1999–2000 was 7359. Reporting for 2006–07 shows there has been a diminution of that figure, and it might be appropriate to flag some concern about the reduction in that figure, which now totals 6828.

Footnotes to table 1 of the resource sheet — the table headed 'Number of substantiations, states and territories, 1999–2000 to 2006–07' — refer to the statistics in their settings and in the context of legal frameworks for the different state jurisdictions and those compiling this information. Footnote (f) to table 1 states:

> Due to new service and data reporting arrangements, the Victorian child protection data for 2006–07 may not be fully comparable with previous years' data.

I flag that as an area of concern to me, because this government does have a practice of shifting the goalposts and reassigning values and just the whole

way it tables the information and scrambles it under readjusted headings and so on. I am hoping that nothing is being hidden from public gaze by a confusing array of realignment of the reporting of such data.

For normal, rational people the sexual assault of children or cognitively impaired people is revolting. It is astounding to think that these crimes are perpetrated in civilised society. It is probably useful to say that any degree of depravity seems to be possible these days. Over the last two or three weeks the media has reported an incestuous relationship that has allegedly occurred in a cellar of horrors in an Austrian town. Such a case is evidence that such sustained depravity, through an incestuous relationship and the begetting of seven children and an unrelenting assault on one particular human being in the most dehumanised state over 24 years, is possible.

Unfortunately sexual assault victims seem to prefer to seek out domestic violence centres and health-care organisations rather than presenting themselves to be interrogated by the police. By assuaging their suffering in this way a lot of information would be hidden and therefore of course a lot of matters cannot be substantiated and a lot of matters are not brought before the court. I am sure I am not the first person who has said this, but it needs to be underscored that the government needs to direct more of its budget funding to sexual assault support services and family violence centres for the simple reason that victims need to feel safe and cared for in a time of crisis, and they want an end to the trauma.

I have personally been undertaking a quite extensive investigation with providers of family violence support services, and as the result of that and a conversation I had about six working days ago I can say without equivocation that people providing those services are really pushing themselves to the point of exhaustion and dealing with overwhelming case loads. There are not enough people mobilised to manage those case loads. Their working conditions are becoming cramped and the evidence of gross underfunding is manifest. I ask the government to review all funding regimes for family violence and rape crisis centres as soon as it can, because its bandaid approach and avoidance of addressing these matters cannot be sustained. The injustices out there are too frequent and too hideous to contemplate.

According to the Australian Institute of Health and Welfare all jurisdictions around Australia have come to the conclusion that girls in this country are three times more likely than boys to be the subjects of substantiated sexual abuse cases. The government has neglected the needs of women and children, including their need for care, shelter and assistance after they have become victims of domestic violence and sexual assault. One can only imagine how people with cognitive disabilities and children themselves deal with the shame and aftermath of such abuse.

Also contained in this bill is a provision that the offence of compelling sexual penetration is an offence for which forensic samples can be obtained. Clause 5 of the bill amends references to two other offences in relation to forensic samples. This issue compels me to bring before this house the reality of the provision of forensic services on this day and at this moment — that is, what would be available tonight — for a rape victim in the Eastern Metropolitan Region. This government stands accused of failing to adequately provide for after-hours in situ forensic services in hospital settings such as the Maroondah Hospital. Traumatised sexual assault victims in that region who have made their way to their local hospital now face and will face tonight the extra stress of being transferred in the middle of the night out of the Eastern Health domain to either Southern Health in Frankston or Northern Health in Epping, chasing the services of a forensic specialist.

Just imagine this: you have been sexually assaulted or raped; you are battered, bruised, traumatised, shivering, shuddering, and all the time dying to immerse yourself in cleansing waters, but you have gathered enough courage to seek legal redress and justice for your attacker. It is 3 o'clock in the morning and, after you have stopped sobbing and perhaps hyperventilating, you settle into dialogue with professionals and generally embark on a course towards stabilisation of your condition and a host of reactions that your body is racked with. And then you are told there is no forensic specialist available at Maroondah Hospital tonight, so you have to move to another hospital.

I call upon this government to closely examine the current practices in the provision of forensic services for sexual assault victims across the state and especially in the eastern metropolitan region. I can only underscore those comments by saying that clearly this legislation is overdue. I hope the government does not continue in its tardy approach to the management of, and its response to, such injustices and unnecessary suffering in this state.

Mr HALL (Eastern Victoria) — I want to make a couple of comments on this piece of legislation. First and foremost, I want to say that we in The Nationals strongly support the principles enshrined in this amending legislation. The mechanics of the whole process lead us to a final conclusion that we certainly

will not oppose this legislation going through the chamber tonight. The legislation is designed primarily to assist in a small way those younger people who have been the victims of some sort of sexual assault. To have gone through an experience like that must have been horrific in itself. The ordeal of having to give evidence before a trial is again an awful experience for those people. We strongly support the view that we need to reduce the stress as much as possible on those people required to go through the ordeal of giving evidence at a trial.

So it is that this bill essentially amends the time frames for special hearings of evidence in sex offences trials involving children and cognitively impaired complainants. In particular, as has been explained by other speakers, it extends the time limit from 21 days to 3 months after committal for the holding of a special hearing to take evidence from a child or a cognitively impaired complainant in a sexual offence case. That may seem contradictory to the intents of the bill— that is, to reduce the pressure, the ordeal or the stress on someone having to give evidence. But as others have already said, it is a reflection on the state of our court system in Victoria at the moment. To ensure that the ordeal of having to give evidence is dealt with in the least stressful way, even though it may take some further time to put that evidence together, it needs to be done properly, so we are prepared to accept the extension of that time from 21 days to 3 months for the holding of a special hearing.

I also want to say that the concept of a special hearing is one which we support strongly. Special hearing circumstances are where a person can give evidence by a variety of means and does not necessarily have to stand in a courtroom to give evidence.

This bill also provides that the trial for any sexual offence where the complainant was a child or cognitively impaired at the time of the commencement of legal proceedings must commence within three months of committal unless it is in the interest of justice to extend the time. Again, the expediency with which these matters can be pursued is important for the victims. A requirement that from go to whoa the time period is three months is certainly helpful for those having to give evidence. For the same judge to hear both the committal proceedings and then the case itself is a further advantage.

There are a number of other technical provisions in the bill, as other speakers have pointed out. One provision of particular interest to me is the fact that this bill will impose a lifetime reporting obligation under the Sex Offenders Registration Act on a person with a single conviction for persistent sexual abuse of a child under the age of 16. I do not think we should show mercy on people who have committed offences like that. They should be required to have a prolonged reporting period to ensure that they are not pursuing those practices that they have been engaged with in the past.

The principles within this bill are strongly supported by The Nationals. The mechanisms of the process lead us to the view that we will not oppose the passage of this legislation tonight.

Ms MIKAKOS (Northern Metropolitan) — I am very pleased to be able to rise to speak in support of the Justice Legislation Amendment (Sex Offences Procedure) Bill. The Brumby government, and previously the Bracks government, have made it a hallmark of government since the Labor Party has been in office to amend the law in a number of ways to ensure that victims of sexual offences are not retraumatised through the criminal justice system.

We all know that sexual offences are horrendous crimes, and I think as a community we would agree that sexual offences committed against children are the most horrendous category of these crimes. I note that in her contribution, Mrs Kronberg referred to a recent case that has received a great deal of publicity internationally. That is the horrendous case of a father having allegedly committed incest with his daughter in Austria and having incarcerated her for 24 years, during which time she was successively raped and bore seven children as a result.

The response we have seen from the Austrian people and the international community as a whole, I believe, and the absolute horror that has been the reaction to this particular case is a very clear demonstration of the very strong views the community has about these issues and the total abhorrence with which we regard these types of crimes.

I am very proud to be a member of a government that has sought to make a number of reforms over the years following on from a groundbreaking report by the Victorian Law Reform Commission (VLRC) in 2004 entitled *Sexual Offences — Final Report*. I want to just read one quote from page 82 of that report, which I think succinctly summarises the rationale behind these types of reforms:

> Sexual offences usually involve the exercise of power by one person over another. They are most frequently committed by family members, friends or other people known to the victim. Such breaches of trust make sexual offences particularly traumatic for those who experience them. These factors contribute to the very low reporting rate for such offences, which means that some serious offenders are not prosecuted.

> People who are sexually assaulted by someone they know are less likely to report the offence than those who are assaulted by strangers.

We know, and the VLRC certainly noted this in its report, that the victims of sexual assault can feel retraumatised when they are confronted with the criminal justice system. The traditional adversarial approach of our criminal justice system has, in the past, made victims feel that they rather than the perpetrator of the criminal act are on trial, which is why over the past few years, in response to the VLRC report, we have made a number of reforms that have encouraged victims to come forward and report crimes committed against them.

For example, we have allowed prerecording of evidence to occur before a trial commences, through the use of closed circuit television to enable a victim not to be physically present in the courtroom with the accused during the trial, and we have put in other supports, particularly for child victims or victims who have some cognitive impairment.

I am also proud of the fact that we have put in place a regime seeking to protect children through the monitoring of convicted sex offenders by means of a sex offenders register, and we also have put in place restrictions on the eligibility for employment in particular professions that involve close contact with children. That is because we as a government have taken these issues very seriously, and we have sought to respond to community concern about the issue of child sex offences.

The bill seeks to build upon those previous reforms that I mentioned by seeking to expedite hearings involving child sex offences. I do not want to go into the bill in any great detail because Ms Tierney has already done that in a succinct way. The reforms in the bill seek to expedite hearings to ensure that victims do not have to wait a long time for a matter to be heard, and they seek to provide a new process to relieve trauma for vulnerable victims of sex offences by reducing such things as adjournments of special hearings and, as I said, by expediting trials.

The bill should not be viewed in isolation from the significant resources that the government has put in place as part of the 2006–07 sexual assault budget package. As part of our response to assisting the victims of sexual assault the government put in place a four-year package, which is obviously still in place now. It included $6 million to fund multidisciplinary sexual assault centres in Mildura and Frankston, bringing together sexual assault police investigation units, forensic services and victim support services; $2.7 million to fund the Office of Public Prosecutions' specialist sex offences unit comprising a senior Crown prosecutor and an extra four solicitors specialising in sexual offences to lead and manage sex offence cases; $4.6 million to fund specialist sexual assault lists in the Magistrates and County courts, including a new County Court judge and a new magistrate; $1.5 million to appoint new forensic nurses and a nurse coordinator as well as provide special training for further forensic nurses who will be based around Victoria, which means that more victims, particularly those in regional Victoria, can receive a forensic examination within 24 hours of reporting a sexual assault; and $3.2 million to fund Victoria's first child witness service to give specialist support to children, including child victims of sexual assault who give evidence in court cases.

It is important that the bill is not viewed in isolation. It builds upon the significant package that was included in the 2006–07 budget to provide a range of supports for victims of sexual offences, in particular child victims of sexual offences. As I said, it builds upon a range of previous reforms that this government has already put in place to support the victims of sexual offences in addition to the reinstatement of compensation for pain and suffering for victims of crime, which is something that members are well aware was abolished by the Kennett government in 2001.

We have also increased pain and suffering payments by 30 per cent. We have established a victims register to enable victims of violent crime to receive information about the release of an offender and allow their views to be considered by the parole board. We have established the Sentencing Advisory Council to ensure that the community, including victims, has a say in sentencing reforms. We have seen a number of reforms flow from a number of reports handed down by the Sentencing Advisory Council. I conclude my remarks and indicate my strong support for the bill, which seeks to support child sexual assault victims. I commend the bill to the house.

Mr EIDEH (Western Metropolitan) — The bill is part of a series of legislative reforms in the area of sex offence crimes. The bill implements further reforms by the Labor government following on from the 2004 document of the Victorian Law Reform Commission entitled *Sexual Offences — Final Report*. However, while the government has worked very hard to ensure that victims and witnesses are protected and supported as far as possible and that administration of justice is affirmed, there are still some issues that require the attention of the Parliament.

This bill seeks to improve the special hearing processes. It will reduce unnecessary duplication in various areas, particularly by having one judge rather than two for the special hearing and the trial, as outlined in the minister's incorporated second-reading speech.

It also makes other improvements to ensure that appropriate time is made available for witnesses who feel vulnerable and threatened to better prepare. It will also improve other administrative functions of several related acts with regard to the conduct of trials for sexual offences, and it recognises and reflects amendments made to those related acts in recent times.

The Brumby Labor government wishes to ensure that children and a specified category of witnesses are supported as much as possible to ensure that justice can be done and be seen to be done. The bill is consistent with that aim, as reflected in the government's Access to Justice policy. Therefore I commend the bill to the house.

Motion agreed to.

Read second time.

Third reading

Hon. J. M. MADDEN (Minister for Planning) — By leave, I move:

That the bill be now read a third time.

In doing so I wish to thank the respective members of the chamber for their contributions.

Motion agreed to.

Read third time.

CHILDREN'S LEGISLATION AMENDMENT BILL

Introduction and first reading

Received from Assembly.

Read first time for Mr JENNINGS (Minister for Environment and Climate Change) on motion of Hon. J. M. Madden.

DRUGS, POISONS AND CONTROLLED SUBSTANCES AMENDMENT BILL

Second reading

Debate resumed from 15 April; motion of Hon. J. M. MADDEN (Minister for Planning).

Mrs PETROVICH (Northern Victoria) — I rise today to speak on the Drugs, Poisons and Controlled Substances Amendment Bill. The purpose of the bill is to make two unrelated amendments to the Drugs, Poisons and Controlled Substances Act 1981. This piece of legislation, although small, is important in that it addresses two very different amendments to the act. I would like to say from the outset that the coalition supports the bill.

The first amendment relates to the supply of drugs during a public health emergency. The second relates to the notification system used by medical practitioners particularly in relation to patients who are using what are regarded as drugs of dependence. The coalition has consulted widely with a number of major stakeholders and associations, which they have offered their support for this bill.

Part 3 of this legislation amends the scheme found in sections 33 to 35 of the act. That scheme deals with the supply by medical practitioners of schedules 8 and 9 poisons and schedule 4 poisons, which are also drugs of dependence. It is particularly beneficial in removing red tape from the administering of the current scheme and its simplification by rationalising the permit and notification requirements. With a more streamlined approach to the treatment of patients, these changes will assist medical practitioners, providing a continuity of care which is very important by way of efficiency, but the changes should also improve patient care, which I believe is of even more significance.

New section 33(2) in clause 7 makes it an offence for practitioners to fail to give notification of a drug-dependent person seeking treatment with section 9 poisons. This section alleviates the need for practitioners to create permits for patients being treated at aged-care facilities and nursing homes, as it is much less likely that these people will be in the business of doctor shopping, which is one of the reasons this provision has been introduced. It also relates to people who are incarcerated, as prison inmates find it difficult to doctor shop.

In the broader community some of the indications of doctor shopping are when a dependent person visits a variety of doctors to get a number of prescriptions,

particularly on the same day. For family members one of the indicators of this is the amount of time it takes. It is a significant problem both for medical practitioners and the community at large.

Health Insurance Commission data indicates that 58 per cent of doctor shoppers are female and aged between 15 and 29. Of the pharmaceutical benefits scheme medicines obtained by doctor shoppers, 35.5 per cent are benzodiazepines, which is a pretty significant number. New section 33(4) makes it an offence for a practitioner to fail to give notification of a drug-dependent person seeking treatment with a section 9 poison. Failure to notify the secretary carries a penalty of 100 penalty units. New section 33 requires a practitioner to notify the Secretary of the Department of Human Services as soon as practicable if a patient who the practitioner believes is drug dependent seeks a prescription for a schedule 9 or schedule 8 poison or a schedule 4 poison which is also a drug of dependence.

As an explanation of what these drugs are, schedule 8 poisons are drugs of dependence commonly used to treat medical conditions such as severe pain and attention deficit disorder. They include dextroamphetamine and morphine-based drugs. Schedule 9 poisons include heroin, LSD and cannabis. The bill also requires the practitioner to report to the secretary if the practitioner intends to treat the patient with such a poison.

The bill also deals with treatments during a public health emergency or pandemic, particularly the supply of antivirals and neuraminidase inhibitors which can reduce the duration of symptoms, especially when used within 48 hours of the onset of the virus. The sort of circumstances where this would be required might be pandemics such as severe acute respiratory syndrome (SARS) or avian influenza. The bill broadens the scope of administration of these drugs from the current circumstances where only medical practitioners and nurse practitioners are able to administer these antivirals and extends that administration to nurses, council employees and pharmacists, who would all be provided with the training to administer drugs during a public health crisis.

The authority to do this would be provided by the secretary of the department in the case of a pandemic. This would be by way of an order in writing to authorise a wider range of suitably qualified people to fulfil this role. That needs to be done in a timely manner. I think this will be a short time after the bill is passed. It is important that gets under way as soon as possible. The order would specify the type of emergency, which location is affected and who is authorised to possess, use and supply the appropriate medication.

The coalition is pleased to support this provision, as there is no point in having adequate supplies of antiviral medicines — which I know the previous federal government ensured were available for use in Australia and Victoria — and not being able to administer them for lack of suitably qualified people, particularly in times of need, such as a pandemic. The figures that I was provided with are that the stockpile includes 3.8 million courses of oseltamivir, 50 000 courses of oseltamivir suspension for children and 275 000 courses of zanamivir, all available for use within 24 hours of the onset of such a pandemic. This stockpile is one of the highest per capita supplies of neuraminidase inhibitors held worldwide, and has increased to 8.75 million applications since the incidence of SARS and would be able to be applied expediently if the need arose. I would like to acknowledge the importance of preparation for these sorts of pandemics, particularly in country areas where animal virus and transmission of disease are always front of mind for those who participate in animal husbandry on a daily basis.

Equine influenza is an issue that I have spoken about in this place on many occasions. The process that surrounded the handling and quarantine cross border was slow and disorganised, to say the least, in the recent outbreak. It was very unfortunate that information that should have been passed on in a much more expedient manner was delayed. This particularly related to those involved in recreational horse activities and who probably did not have those formal organisations to get the message out to them. I think the information program was implemented just before Christmas last year, and at that stage the recreational horse industry had been in lockdown since August. This was not timely information, and I think it was truly a case of shutting the gate after the horse had bolted.

There are many lessons that can be learnt from the sloppy handling of this outbreak of equine influenza. It was more by good luck than good management that Victoria did not have a case of equine influenza. Obviously this disease does not relate to human beings — it is not transferable — but I would hate to be standing in this house in the future and relating a similar sad state of affairs about a human pandemic.

Luck may well not be on our side in the future, and the virus may not be just specific to our equine friends. If this were the situation perhaps with something like avian flu, I would hope our checks and measures and containment and security would be in place well in

advance. I will conclude on that note. The coalition is happy to support this bill and any other that improves medical treatment for Victorians, particularly in the case of a medical emergency.

Ms HARTLAND (Western Metropolitan) — The Greens believe this bill is a positive step in the right direction, taking a preventive approach as opposed to a reactive one, which is unfortunately often the way emergencies are dealt with in this state.

There are two main issues addressed in this bill. One is the distribution of medications in the event of a public health emergency, which would assist Victoria in preparing for something we hope does not occur — a worse-case scenario. In doing research for this bill I have looked at the Australian Medical Association websites. The association has noted that it supports this bill, but in its budget submissions it has raised a number of issues about capacity in public hospitals in terms of population.

Victoria is experiencing a population boom. According to Australian Bureau of Statistics figures, Victoria's population has increased by 323 584 people from June 2001 to June 2006. This is around 7 per cent over the last six years. During the same period the number of public hospital beds in Victoria has increased from 12 162 to 12 223. This is an addition of only 61 beds or an increase of around 0.5 per cent. I think we can quite clearly see that as a consequence of bed shortages we will be having higher occupancy levels and signs of productivity growth slowing across a range of hospital performance indicators.

The question is: how is the government going to cope in a major pandemic when we are talking about numbers such as 30 per cent of Victorians being affected if there were a flu pandemic, 25 000 people needing hospitalisation and the possibility of 10 000 deaths?

How would the ambulance service cope? According to the Australian Medical Association, ambulance bypass rates across Victoria increased from 1.3 per cent to 1.7 per cent from 2005–06 to 2007. In fact more Victorians were being stuck with long waits in emergency departments, and 78 000 Victorians who attended emergency departments and needed a hospital bed failed to be transferred within 8 hours, which is the clinical benchmark. This is a failure rate of 29 per cent. The government's projections for 2007–08 released in the budget forecast in fact put this failure rate at 34 per cent.

How would the ambulance service deal with it? I have spoken to the ambulance union in the last few weeks. It told me it has a number of concerns. They include asking how many Victorian health professionals have been sufficiently trained and equipped to deal with a pandemic or with a chemical or biological hazard. Is the minister able to provide details of how many health professionals have been appropriately trained, and what sort of equipment will they have access to during such events? Hopefully we will later get some answers from the minister to these questions.

The second part of the bill relates to permit requirements for drugs of dependence. This provision is a really good move and alleviates the administrative burden that, in my mind, is currently both unreasonable and excessive. In the last few weeks I have had an opportunity to speak to a number of health centres that deal almost exclusively with long-term drug addicts. From what I am told, legislative provision will be a really good move. They say the current legislation is clumsy, and every time someone who is a drug addict comes to them for benzodiazepines or any other of the scheduled drugs, they have to notify the department.

This will eliminate a huge amount of paperwork. In fact, a person at one of the centres said that it is unreasonable and overly bureaucratic to expect medical practitioners to notify the Department of Human Services of every benzodiazepine or Panadeine Forte prescription written for a person who is drug dependent. That is an example from a person who deals with this on the ground, and they have given this bill a great deal of support.

While the Greens support this bill, I think it raises a number of questions about whether the state's hospital system would be able to cope, and I hope later in the committee stage we will have an opportunity to ask questions about the current government mechanisms to make the emergency hospital services work, let alone in the situation of a pandemic.

Mr SCHEFFER (Eastern Victoria) — I rise to speak in support of the Drugs, Poisons and Controlled Substances Amendment Bill 2008. The bill has two purposes. One is to provide for the supply of drugs such as antivirals and vaccines during a public health emergency, and the other is to amend the act to simplify the processes to be followed by doctors and nurse practitioners when they supply drugs of dependence to patients, including those who suffer from a dependency on drugs of this type. As members will know, these drugs are referred to as schedule 8 poisons, schedule 9 poisons and schedule 4 poisons.

Part 2 of the bill, which I will focus on first, considers public health emergencies. The provisions in this part of the bill need to be understood against the background of the work that the government and the Department of Human Services have been doing to ensure that Victorians are protected against pandemics.

The background to the bill is amplified on the Victorian Government Health Information website. The information on that website sets the scene for the kind of contingencies that need to be accommodated in dealing with a pandemic. The Department of Human Services says that the most difficult thing to deal with in planning for a pandemic is assessing when it will happen. It is impossible to predict and impossible to assess how virulent it will be, and this is why multilevel preparation is critical.

The government released the current Victorian health management plan for pandemic influenza in July 2007. The plan provides a response framework aiming to minimise the impact of disease and death on individuals and the community. The Victorian plan links into other plans developed at the commonwealth level and also links into other relevant portfolio areas such as industry, tourism and resources.

The components of the plan include the characteristics of a surveillance system that can detect emerging danger, and the strategies for implementing actions to take place during each phase of a pandemic, as well as ways in which new emerging virus types will be detected and responded to.

The document describes the ways in which the diseases will be contained to limit harm to individuals and to the functioning of the community, including the critical protection of emergency services personnel. The plan also describes the way information will be disseminated in the event of a pandemic.

Australia, along with other parts of the world, experienced severe influenza pandemics a number of times last century. The Spanish flu in 1918–19 caused massive loss of life in this country — globally between 20 million and 40 million people died, and mostly it hit younger people. The Asian flu hit in the 1950s and the Hong Kong flu followed in the 1960s.

The lessons from these pandemics are that responses need to be flexible. The plan says that generally a pandemic affects about 25 per cent or 30 per cent of the community, but it has reached 70 per cent in some cases.

In Victoria this would be horrific. It would mean — and Ms Hartland referred to this in her contribution — between 2265 and 10 145 deaths. It could mean between 6236 and 24 000 hospitalisations, and between 600 000 and 700 000 outpatient visits — in other words, it would have an extremely serious impact.

Responding to such an event takes place at the national and global levels. There have been successive national frameworks upon which the Victorian health management plan for pandemic influenza has been built.

The national plan targets health planners, public health and clinical care providers, state and territory health departments, essential service providers, people working in the media, and the communications industry. The action plan is designed to be widely accessible so that as many people as possible understand what government and the various agencies will do in the event of an influenza pandemic in this state.

The roles and responsibilities of the World Health Organisation, national health authorities and pandemic planning committees are set out in the World Health Organisation's *Influenza Pandemic Plan — the Role of the WHO and Guidelines for National and Regional Planning*.

In Victoria the plan indicates that if the state fell victim to an influenza pandemic almost certainly an emergency would be declared and the various agencies that are currently involved in the prevention, mitigation, risk reduction, response and recovery phases of the management of a state of emergency would come into operation as provided for under the Emergency Management Act.

The amendments contained in this bill give the Secretary of the Department of Human Services the power to make a public health order where he or she believes that there is a risk to public health or a public health emergency, and the bill specifically states that the kinds of events envisaged are an influenza pandemic or a bioterrorism incident.

The public health order must specify the detail of the emergency or risk, the location that is affected, the people who will be permitted to use the drugs specified in the order, the substances themselves and the relevant period of time that the order refers to. The bill states that the objective of the amendments is to enable health professionals who would not normally be able to administer the kinds of drugs specified in the bill to do so because of the nature of the emergency.

The second set of amendments are set out in part 3 of the bill. They relate to the circumstances in which a

practitioner can administer, supply or prescribe a schedule 8 poison to a patient for a continuous period. Under these provisions it is an offence for a practitioner to prescribe schedule 8 poisons for a period greater than eight weeks because it is considered that that is the point at which the patient is likely to become dependent on the substance.

Under the provisions of the bill a practitioner is required to inform the secretary of the department whenever he or she believes that a drug-dependent patient is trying to get hold of a drug of dependence — that is, a schedule 8, schedule 9 or schedule 4 poison — and where the practitioner intends to treat that patient with a similar poison. Failure to comply with this requirement is an offence.

The bill also separates control of schedule 9 poisons from control of schedule 8 poisons. Schedule 9 drugs include heroin, LSD and cannabis. These drugs have limited therapeutic applications and are highly addictive and trafficable, and therefore they should be very carefully dealt with. That is why a practitioner is now required to apply to the secretary for a permit if they intend to administer, supply or prescribe any of these drugs.

In summary, the bill will enable a broader range of health professionals to distribute vaccines and medicines in an emergency and will streamline the processes that guide medical and nurse practitioners in administering a range of scheduled poisons. This is clear, sensible legislation supported by everyone, and I commend it to the house.

Mr DALLA-RIVA (Eastern Metropolitan) — I also rise to make a brief contribution to the debate on the Drugs, Poisons and Controlled Substances Amendment Bill and to indicate my support for it. It is clear that it has become necessary for the government to introduce this legislation. As the previous speaker indicated, it is important that we create legislation that provides protection for the community in a preventive rather than reactive way, which is how this government always seems to deal with things. It always seems to be guided by whatever appears on the front page of the daily newspapers, which it then follows up with legislation. We see this time and time again, so it is good that it has been proactive in allocating money to get things done.

The Australian Medical Association (AMA) published an issues paper on this bill in which it talks about the two main issues: the permit requirements for drugs of dependence, and the distribution of medications in the event of a public health emergency. I want to talk about the second issue first.

We have heard evidence from people about the influenza pandemics that are a constant threat. There is also the threat of avian influenza, which we know as bird flu. This is a constant threat from our northern cousins, as we often hear. That is of real concern to the Victorian community, and we should have in place a public health emergency program such as this bill allows.

The AMA references the influenza epidemic in 1918. For those members who have a memory for inaugural speeches, when I made my first speech in this Parliament I mentioned one of my distant relatives who succumbed to that epidemic. From memory it was one of my great-great-grandmothers, so I am aware that the epidemic had an impact on the community. Although it may have been close to 100 years ago, Victoria was directly impacted by it and it is still something that people remember, so much so that the AMA put it in its issues paper on the bill.

This bill is supported by all and sundry in the chamber. I want to put on record that it is important that we have a management system for the drugs that are listed, in particular those under schedule 9. As members know, that schedule covers the more serious drugs such as heroin, LSD and cannabis. There needs to be some methodology for their prescription and use and obviously some penalty that can be applied when those drugs or medications are misused or inappropriately provided to certain persons during periods when there is a threat.

Other than those remarks I want to say that we support this bill and look forward to its speedy passage.

Sitting suspended 6.25 p.m until 8.02 p.m.

Ms PULFORD (Western Victoria) — It gives me pleasure to rise and make a short contribution to debate on the Drugs, Poisons and Controlled Substances Amendment Bill 2008. This bill proposes to make two key changes to the Drugs, Poisons and Controlled Substances Act. The first of these will see Victoria leading the nation in being the first jurisdiction in the country to create an effective method of distribution of vaccines should the need arise.

The bill recognises that in the event of a major public health emergency the critical factor in how we deal with such an emergency is having an appropriate workforce that is ready and able to respond very quickly. That additional workforce may in times of major medical emergency need to be able to distribute

vaccines and antiviral medications, and of course an emergency by its nature would in all likelihood require a response at very short notice.

This bill proposes to amend the act so that in the event that Victoria is faced with a major medical emergency, the secretary of the department would have the capacity to issue a written order to give an appropriately trained workforce the power to distribute vaccines and antiviral medicines. Such an order would give personnel, like registered nurses and pharmacists — that is, appropriately skilled personnel — the power to issue such vaccines and antiviral medications that under normal circumstances they would not be issuing. The changes that are proposed in the bill would assist to maintain the safety of Victorians in the event of a major medical emergency.

The second area that this bill seeks to address is a series of unnecessary administrative burdens that are currently placed on the medical workforce, in particular those dealing with schedule 8 and 9 poisons. These administrative burdens are currently having a negative impact on the quality of care our health system can provide to patients. The current act imposes notification and permit requirements on all medical practitioners with regard to the use of schedule 8 and 9 poisons. As members may be aware, drugs classified in this way are drugs of dependence. Schedule 8 poisons are drugs like morphine that are commonly used to treat medical conditions such as severe pain and post-operative pain. Schedule 8 poisons are also used for the treatment of hyperactivity and attention deficit disorder. Schedule 9 poisons are illicit drugs of abuse. These drugs are prohibited except in medical research. Schedule 9 poisons include heroin, LSD and cannabis. The regulation and restriction of the use of such poisons is very important in maintaining public safety.

I am pleased to note that opposition members are supporting these measures. The changes the Brumby Labor government plans to introduce have been welcomed by the peak industry bodies which have been consulted along the way, including the Victorian branch of the Australian Medical Association.

The act is currently structured in a way so as to minimise issues associated with the use and abuse of schedule 8 and 9 poisons. Importantly the act is designed to limit doctor shopping. We are all aware of instances of doctor shopping and circumstances where people with addictions to drugs of dependence forum shop for their supply. The proposals in this bill are in no way designed to undermine these important principles These changes will not make drugs categorised under schedules 8 and 9 any more accessible to misuse. These changes are simply designed to assist medical practitioners in the treatment of patients. Under the current act situations can arise where compliance is onerous and does not contribute to the best possible care the state can provide to patients. This bill proposes to simplify the current permit system for schedule 8 and 9 poisons. In particular areas where health care is carried out, such as in hospitals, prisons and aged-care facilities, doctor shopping cannot occur. This bill proposes that a permit should not be required when medical practitioners are treating patients in these types of environments.

We have many large multipractitioner clinics throughout Victoria where each practitioner has access to all patient records. It is proposed that the requirements be changed to allow for one permit per patient rather than one permit per practitioner. In such clinics doctors have the ability to coordinate a patient's treatment between them. The day-to-day reality of many people's accessing of medical services is that they attend large clinics — often these are the only places people can access bulk-billing services. Part of their regular experience in these medical clinics is they see a variety of medical professionals, all of whom have access to their treatment history.

Practitioners will only have to provide notification of drug dependence in high-risk circumstances, such as when a practitioner intends to treat a patient with their drug of dependence. Currently a practitioner can treat a patient with a schedule 8 poison for up to eight weeks without having to obtain a permit, regardless of whether the patient in question was previously being treated by another practitioner, unless that practitioner suspects a drug addiction. The government is proposing amendments to ensure that practitioners who consider it necessary to prescribe a schedule 8 poison in a circumstance when a patient has been in long-term treatment by another practitioner with a schedule 8 poison for a time frame that exceeds eight weeks will be required to obtain a permit from the secretary.

This will ensure that patients with dependence issues relating to these very strong poisons are not able to seek treatment from one practitioner for eight weeks, then go to the next place for eight weeks and then the next one. It will certainly safeguard against that practice.

The second or subsequent practitioner is, however, able to continue treatment up until the issue of the permit. Whilst that safeguard is in place, it is also a practical measure that will not interrupt patient care. It will enable continuity of treatment for the patient while still encouraging a coordinated response from the various practitioners assisting the patient with their illness or

ailment. With those words, it gives me pleasure to encourage the house to pass this bill.

Mr DRUM (Northern Victoria) — The Drugs, Poisons and Controlled Substances Amendment Bill 2008 will effectively make two specific changes to the current drugs and poisons management process. The first is in relation to the supply of drugs and medicines to the public during a health emergency, and there are some examples of that which have been referred to during debate on the bill. The second will alter the permit notification system regarding drugs of dependence, and how they are administered and used.

There are important elements within this bill which hopefully will never be used; we hopefully will never have to put into action some of the aspects of this bill. To the government's credit, it seems to have heeded the warnings of the health sector in Victoria which said that currently it would be unable to deal with a serious pandemic of the proportions of Asia's bird flu, severe acute respiratory syndrome or what we recently witnessed in relation to the horse population with horse flu or equine influenza.

That certainly ground the horseracing industry and the general horse population to a halt. If that epidemic had an enlightening effect and made those in government realise how difficult it would be to acquire the mass quantities of antiviral drugs that would be needed, then that is a positive thing. It is quite reasonable to go through some of those aspects of the horse flu outbreak.

Firstly, people were not sure that administering vaccine was the right thing to do, because the strain of flu involved was not exactly the same as the strains covered in the antiviral vaccines they held for treatment. There was concern that not only would giving the horse population a certain type of vaccine not have stopped the spread of the disease, it would also have masked some of the early signs. That was one concern.

Another concern was that people simply did not have anywhere near enough vaccine. There was going to be a significant delay, if they decided to go down the track of vaccines, in acquiring those types of drugs to fight the epidemic. Then it simply came down to the sheer cost of the whole program that would have had to have been put in place.

It is interesting that what we are talking about here has similar connotations. What happened in Asia was quite scary. If we are in a situation where we can be proactive against some of these potential disasters and emergencies, then that can only be a good thing. That is why we are delighted we can support this type of legislation which hopefully will put our state in a better situation. It will give people an opportunity to fight these diseases in a more proactive manner.

We also learnt from the recent outbreak of horse flu that it was able to be stopped at the border between New South Wales and Victoria. When we are talking about a virus or some sort of pandemic that is being carried by the human population, we will not be in the position where we can stop it at a border.

It is also going to be necessary that our neighbouring states be just as ready as we are. I hope some of the government members comment on this. It would be ludicrous to suggest that Victoria ready itself to deal with potential catastrophes, only to discover suddenly that New South Wales has not done so. You might have 70 000 people sitting on the edge of the Murray River in Albury, unable to gain some of the medical advantages we may have readied ourselves for in Wodonga. If neighbouring states do not make sure that they are in sync with this type of legislation, the purpose of the legislation would be defeated, which could potentially lead to situations where people would be going across borders, if they could, to receive medical treatment. I would like to think that someone from the government benches would be able to affirm that New South Wales, and South Australia to a lesser extent, have passed or at least considered legislation similar to this.

The second aspect of the bill being discussed tonight is the range of poisons and drugs which are also drugs of dependence and how they are going to be administered to people who need treatment with them in the future. The bill deals with schedule 8 and schedule 9 poisons, simplifying the current scheme by rationalising the permit notification requirements. We have had five or six different examples, and I will not go through them again. There is hope that this new system of managing these drugs of dependence will lead to people who need this sort of support being at lesser risk of becoming more dependent on these drugs in the future.

Subdivision 2 of this bill concerns the need of medical practitioners to notify the Secretary of the Department of Human Services, as outlined in proposed section 33, when a person believed to be dependent on these drugs seeks a schedule 9 poison or a schedule 8 or 4 poison which is also a drug of dependence. That is also intended to occur when a medical practitioner intends to treat a person with these poisons or drugs which are known to be also drugs of dependence.

It has already been spoken about, but it is worth noting that the current system is in place to hopefully stop people from doctor shopping — that is, going from one doctor to the other to build up a war chest of drugs which are legal but are still drugs of dependence. If such people are going to arm themselves with five or six different prescriptions, that is going to create harm as opposed to fixing what the prescriptions were intended to fix. This area of legislative inflexibility has raised the concern of the Australian Medical Association, which has been keen to support this legislation and ways of making it more flexible in allowing medical practitioners to administer these very serious drugs of dependence.

I return to the first section of the bill, which deals with antibiotics and vaccines. The bill will make the import and administration of emergency drugs easier so that we can address a potential emergency earlier. The Department of Human Services will play a large role, qualifying those who may be able to administer these drugs. We would imagine that health care nurses, pharmacists and medical nurses would be used to administer these drugs in a timely and efficient fashion.

We are supportive of this legislation. It is a good opportunity for us, in a state like Victoria and a country like Australia, since we can put in place proactive legislation that hopefully will safeguard the state from some of the diseases that wipe out certain communities in some of the less fortunate countries around the world. It gives us pause to ponder: here we are — a state of effectively perfect health, putting in place protections against some of the potential problems that may beset this community. It makes us realise how lucky we are to live in a country like Australia.

Mr ELASMAR (Northern Metropolitan) — Like my colleagues, I support this bill, which seeks to amend the Drugs, Poisons and Controlled Substances Act 1981. One of the principal reasons for these amendments is to provide the legislative framework for our public health professionals in the event of an outbreak of a virulent influenza epidemic in Victoria. Several years ago medical scientists from the World Health Organisation warned the international community and Australia that a flu pandemic of epic proportions is on its way and that it will cause severe discomfort and most certainly death in the very young, the frail and the elderly within our population.

In response to this call for international action by the World Health Organisation, Victoria along with the other states began to formulate action plans to deal with such an emergency. State governments across Australia acquired antiviral medicines in an effort to protect their citizens from this public health emergency. In consultation with the State Emergency Service, VicRelief and local government councils, public buildings have been earmarked as temporary hospitals, and vaccines ordered and stockpiled to cope with the pandemic. However, it is not enough to prepare action plans or stockpile medicines. Victoria will need to authorise a much larger group of qualified health professionals than it currently has. We are all aware of the current doctor shortage in Australia and what that will mean for the operation and efficiency of these comprehensive action plans. The legislation as it stands today does not and cannot provide for any category of health professionals other than registered doctors to administer these medicines.

A training program will need to be put into place to allow nurses and pharmacists to be adequately educated in the administration and distribution of these medicines if we are to have any hope at all of being able to respond efficiently and effectively to such a drastic scenario. Without a suitable medically trained workforce all the vaccines and antiviral medicines in the world will not help save our most defenceless and vulnerable Victorians. The $4.5 million that has already been allocated will count for nothing if we cannot mobilise trained health professionals quickly. This amendment seeks to put in place a strategy that will enable flexibility but at the same time ensure that the highest medical standards are maintained at all times.

I do not want to repeat what my colleagues have said about schedule 8 and 9 poisons, but currently all medical practitioners must acquire a permit prior to treating patients with schedule 8 or 9 poisons. In the case of a patient who is attending a clinic for treatment, no other doctor in that clinic may treat the patient without a permit. The object of these amendments is to streamline the system in the interests of the patient, to allow for patient care to take precedence over the present regulation and to allow another doctor at that clinic to treat the patient, always provided the treatment is consistent with the permit already issued.

Red tape is not there to put this category of patients at risk. Rather it attempts to minimise the occurrences of doctor shopping, a well-known practice of some drug addicts. However, there are circumstances that will impede the progress of patients, and the Brumby government is committed to ensuring that Victorians have the best possible chance and treatment that is timely and effective while at the same time maintaining safeguards for both the patients and the medical professionals concerned.

In conclusion, in supporting this legislation I also want to pay tribute to the outstanding efforts and commitment of those marvellous men and women who have researched the pandemic prognosis and come up with a strategy that, if implemented properly, will most certainly save Victorian lives. We in Parliament now need to do our part and give them the tools to carry out their strategic action plans by voting in favour of these amendments to the principal act. I commend the bill to the house.

Mr SOMYUREK (South Eastern Metropolitan) — I rise to make a brief contribution in support of the Drugs, Poisons and Controlled Substances Amendment Bill 2008. The purpose of this bill is to introduce provisions to facilitate a response to a public health emergency and to streamline the administrative burden placed on the medical workforce whilst maintaining the protection of the current permit system.

The bill introduces a provision to provide a mechanism for the effective and efficient supply of drugs, including vaccines, during a health emergency such as an influenza epidemic. The statistics I have in front of me predict that if a pandemic affected 30 per cent of the Victorian population it could lead to almost 25 000 hospitalisations and more than 10 000 deaths. We hope the amendments in this legislation will never need to be activated, and we also hope and believe the precautions being taken as a result of these amendments will contain some of the fallout from a potential public health emergency, be it through an influenza epidemic or some other epidemic spread in some other way. We are living in an unstable world, and there are all types of nasty scenarios whereby our country and our states may be the victims of biological attack.

The government has already invested in public health emergency response, having provided $700 000 for new emergency response vehicles, $5 million to expand negative-pressure rooms in major hospitals and $1.8 million to Victoria's two leading public health laboratories. Under normal circumstances the provisions of the current act allow only for practitioners to distribute vaccines.

In the event of a public health emergency such as an influenza pandemic, the ability to quickly mobilise an appropriate workforce would be a key factor. The bill provides that in the event that the community is faced with a public health emergency the Secretary of the Department of Human Services will be able to authorise a wider range of suitably qualified persons, such as registered nurses and pharmacists, to distribute vaccines and antiviral medicines.

Victoria will be the first jurisdiction to enact the provision that allows for the effective distribution of vaccines should the need ever arise. On that point Mr Drum sought clarification on what will happen in the case of Victoria enacting these amendments but not other states. I sought clarification and can report to the house that other jurisdictions, such as Tasmania, the Northern Territory and the Australian Capital Territory are in the process of working through similar provisions.

Tasmania is in the process of amending its Poisons Act 1971 to address scheduling issues. The Australian Capital Territory and the Northern Territory are also considering options in terms of being able to issue a standing order to allow the chief health officer to delegate all classes of persons to be able to administer and supply schedule 4 poisons drugs. The remaining states are considering their options; however, no position has been stated to date. I hope that they will also come to the same conclusion that Victoria has, that these amendments need to be enacted for the sake of the population.

The second collection of amendments seeks to address some unnecessary administrative burdens placed on the medical workforce when treating patients. They have been welcomed by peak bodies including the Australian Medical Association Victoria. The current act places notification and permit requirements on practitioners with a view to minimising problems associated with the use and abuse of schedule 8 and 9 poisons which are drugs of dependence.

The existing provisions were enacted to minimise doctor shopping and enable the coordination of treatment within the community. That is not to say that doctor shopping is not a problem now; it continues to be problem. But we may have a bigger problem, and that is why these amendments have been introduced; they are to contain problems like influenza. However, there are situations where compliance is onerous and does not contribute to patient care. The bill proposes that the current permit system for schedule 8 and 9 poisons be simplified in certain restricted settings. I commend the bill to the house.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Ms HARTLAND (Western Metropolitan) — I have two questions for the minister. The Australian Medical Association's budget submission deals with the fact that hospitals are now at capacity. The second-reading speech for this bill says that if there were an influenza pandemic there would be up to 25 000 hospital admissions. If hospitals are not coping now, how would they cope with a pandemic?

Mrs Peulich — You have got to find the answer.

Mr JENNINGS (Minister for Environment and Climate Change) — Ms Hartland foreshadowed that she was asking two questions. She has been generous enough to only ask them one at a time.

Mrs Peulich — That is because she is waiting for you to answer the other one.

Mr JENNINGS — I do not think that is literally true.

The DEPUTY PRESIDENT — Order! The minister should respond to Ms Hartland and not Mrs Peulich.

Mr JENNINGS — Thank you, Deputy President, for your wisdom and direction. The government actually recognises that circumstances where a third of Victorian citizens may be subjected to a pandemic is an order of magnitude which is way out of kilter with the normal health demands and expectations that are put on our system. That order of magnitude is way out of kilter with what would be the reasonable operating resource allocation and availability of services in any jurisdiction around the world. In terms of a pandemic occurring in any jurisdiction, that order of magnitude would create significant pressures on whatever health-care system is available in whatever community.

In light of that, and as Ms Hartland has quite correctly identified, there have been significant stresses on all hospital systems throughout the nation, including our own. Our government has tried to respond significantly over its life in office of dedicating significant resource allocation, including significant financial support to the hospital sector in this budget — indeed $1.8 billion worth of additional investment was made earlier in the week through announcements in the budget. We recognise that we have to increase the capacity of our hospital system. My colleague the Minister for Health in the other place often reminds me that our system now has the ability to provide 500 000 additional patient treatments each and every year. That has been increased to the capacity of the system during our tenure in government.

Specifically in relation to providing for support for the potential for a pandemic beyond the scope of the provisions of this bill, which allow for certain authorities to be made at the direction of the Secretary of the Department of Human Services and the chief health officer to try to provide that we have a workforce that is authorised on a mass scale to dispense medicines to people who have contracted the pandemic illness, we have made a number of specific investments in the hospital system, including a significant stockpile of medical supplies to be brought into effect should a pandemic occur. That includes a $4.5 million stockpile of flu vaccines, which we would estimate would be in accordance with the demand we would anticipate at that point in time.

We have invested in the creation of negative-pressure rooms within hospital settings, so $5 million has been allocated to try to provide for those rooms. We have allocated additional capacity in the ambulance system, through an allocation of $700 000 for three emergency response vehicles, to enable them to be fitted out with appropriate atmospheric controls. Significant resources have been allocated to the laboratories that would be undertaking the examination of specimens and providing diagnostic support to our efforts to treat the pandemic.

We have tried to make sure that within the hospital system generally we have added to the wherewithal and the capacity to isolate the air flow through air conditioning and other forms of ventilation support within hospitals so that cross-contamination does not occur within the populations that will be coming into the hospital.

Within this we are trying to make sure there is an effective communication strategy which would be introduced under the auspices of the chief health officer and which would make sure that the community is well armed in terms of getting access to primary health care by broadening the base of the effort of engagement to try to make sure that the medical system beyond hospitals is brought to bear at such time and that information kits are made available not only to medical practitioners and community health centres but more broadly through pharmacies and other agencies that would be able to dispense that information. We would make sure that general practitioners are well armed with and well versed in those protocols and procedures. In fact the staff of those practices may have the capacity

to be authorised to undertake the activities that would be required to dispense the medications.

There are specific investments in the hospital sector; there are arrangements in place to try to make sure that we increase our laboratory capacity, particularly the airflow and ventilation systems that try to mitigate the cross-contamination of airborne particles; and there is an extensive communication plan and strategy in place to try to broaden the application of the workforce and the locations at which members of the community could be supported. The reason why I baulked before I answered the question was that I anticipated that the member was going to ask me some questions about the workforce in particular, so I will sit down and perhaps wait for the second question.

Ms HARTLAND (Western Metropolitan) — My second question is in relation to ambulance officers. How many ambulance officers have actually been trained to deal with biohazards and what equipment is supplied for ambulance officers to deal with biohazards? I raise this because in the Tottenham fire incident that occurred before Christmas ambulances were not able to go into the area because the ambulance officers did not have protective suits. Has that condition been changed, or is it the intention to change it?

Mr JENNINGS (Minister for Environment and Climate Change) — One of the reasons for my seeking some advice was that Ms Hartland has actually gone into an area beyond the scope of the bill and perhaps beyond the limits of what might have been expected to have been my brief in relation to this matter. This is a matter that falls into a related area, and in fact my first substantive answer related in part to the substance of her question.

The ambulance capacity I referred to in my first answer can be deployed in circumstances such as the one Ms Hartland is now drawing attention to. She has drawn attention previously to certain biohazard circumstances that have arisen in the community, and she has certainly previously made representations in the Parliament on behalf of her community about incidents such as the one that occurred in Tottenham recently.

In light of the review of the practices that were undertaken there, I am advised that there will be a careful examination of the appropriate call-out regime, the appropriate application of the equipment that I have referred to already, and what should be the engagement and support provided to ambulance officers and the appropriate call on equipment that could be applied in circumstances where there are biohazards in the future. That is a contemporary issue and contemporary consideration is being given specifically to dealing with biohazards, but it will be consistent with our approach and our capacity to build on our ability to deal with pandemics into the future.

Ms HARTLAND (Western Metropolitan) — I want to thank the minister but also say that the bill does talk about biohazards, so my question was not as far off the scope of the bill as may have been thought.

Mrs PETROVICH (Northern Victoria) — I would just like to check what provisions have been made available to quarantine patients in the case of a pandemic.

Mr JENNINGS (Minister for Environment and Climate Change) — In my first answer I noted that the important elements of a quarantine first of all relate to a secure location that people may find themselves in and, most importantly, the isolation of the air-conditioning and ventilation system to which they would subjected, to limit the potential for additional airborne contamination. Significant investment has been made in a variety of settings within the hospital system to add to our capacity to have negative-pressure rooms installed; $5 million has been specifically dedicated to that capacity.

More generally through the hospital system, there has been a review of the availability of portable ventilators. There would be the ability to isolate air-conditioning systems within those hospitals. That will be the effective mechanism by which quarantining would occur.

Mrs PETROVICH (Northern Victoria) — In the case of a pandemic, how will those public health messages be transmitted or forwarded to the broader community?

Mr JENNINGS (Minister for Environment and Climate Change) — An extensive communication strategy that has already has been prepared would be undertaken. It would be implemented by a coordinating committee, of which the chief health officer would be an integral part, to determine the way in which that communication strategy would be dispensed. Beyond our hospitals, it would be through a variety of settings which would include community health services, general practice, pharmacies and other appropriate community settings to ensure that our citizens were informed about the way in which they can take remedy and action, and what advice should be given to them.

I have not been advised of the media elements of the communication strategy, but I am fairly confident that in the circumstances such as we are talking about, either

through paid media or free media there would be an extensive communication strategy that would try to ensure that our citizenry were well informed and well armed to take as much as possible preventive action or seek assistance. Certainly the important nature of those information kits I referred to earlier will be to make sure that those who are called upon to provide support, either through general practice or through those people who may be delegated responsibility and authorised to take action, would be well armed with information and training to enable them to undertake this work.

Mrs PETROVICH (Northern Victoria) — As a point of clarification: it sounds like a very comprehensive program in alerting people, but I would like to clarify the time frame from the announcement of an outbreak of a pandemic as to when that program would be implemented?

Mr JENNINGS (Minister for Environment and Climate Change) — Obviously the simple answer would be that implementation would be imminent, but I think there is a very good chance that by the time it was actually formally designated that a pandemic was evident, the communication strategy would have already been in place because the circumstances would warrant early action. In terms of the proliferation of the illness pattern throughout Victoria, you would probably want to make sure that you ramp up communication prior to a formal designation of a pandemic circumstance.

Clause agreed to; clauses 2 to 14 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a third time.

In so doing, I thank members for their contributions to the debate and thank them for the very appropriate and well-considered committee section of the debate on the bill.

Motion agreed to.

Read third time.

ENVIRONMENT PROTECTION AMENDMENT (LANDFILL LEVIES) BILL

Second reading

Debate resumed from 17 April; motion of Mr LENDERS (Treasurer).

Mr D. DAVIS (Southern Metropolitan) — I am pleased to make a contribution to debate on the Environment Protection Amendment (Landfill Levies) Bill 2008. In doing so I indicate that the opposition does not oppose this bill, but I propose to place on record certain concerns and to seek certain commitments from the minister. It is my understanding that the bill is likely to go into committee at some stage, and I put the minister on notice that there will be a number of points that I will seek significant clarification on from him. It is an important bill, and the task of dealing with industrial waste, and in particular prescribed industrial waste, is an important task for our society, which relies on many industrial processes. I make the point that years ago you could go down along the Maribyrnong River or other rivers and see massive levels of pollution from industrial outfits of all types.

I understand that all of us in this chamber and the community more broadly now believe that such practices of dumping industrial waste, either in rivers or in landfills of various types, unrestricted, unconstrained and untreated is simply unacceptable. To that extent, as things have progressed, the community has put in place mechanisms to manage such waste and increasingly we are beginning to see that as a community we have a broader responsibility to demand that our industrial waste is dealt with appropriately and that there is no pollution that is going to cause harm to the community, our population or the environment more generally. The Liberal Party is very committed to a policy whereby waste is minimised, recycled or reused, waste streams are treated in a constructive and productive way, and opportunities are maximised to ensure that waste is not released into the community in a dangerous or potentially toxic form.

In 2006 a bill came to this Parliament which introduced a series of administrative steps and significantly increased the levy on certain types of prescribed waste. At the time the Liberal Party did not oppose that bill, and members understood the need for that. The levy on category B waste went up to $130 per tonne. For the benefit of the chamber, category B waste is defined as waste that requires a high level of control and ongoing management to protect human health and the environment. Disposal requirements state that that waste must either be sent to landfill licensed to accept

category B waste or be treated or immobilised to meet category C criteria. This bill, in effect, proposes to bump up the levy to $250 per tonne.

As I said, the opposition will not oppose that, but we seek some guarantees from the government. In particular the Australian Industry Group and a number of individual manufacturers who have spoken to me are concerned that industrial waste charges of this type are hypothecated to the task of recycling and reuse. We want to ensure that the significant revenue stream that will be generated from this waste stream as charges for these particular levies and fees will not be held unnecessarily inside the Environment Protection Authority or be used as a replacement for government contributions to the EPA.

I understand the EPA has a number of trusts. I need to ask the minister some questions about some of those when we come to the committee stage. I put him on notice that I will be seeking assurances and clarification on a number of points to ensure that the money raised by these levies is hypothecated to those tasks of waste use. At an early point tonight I will be seeking from him some indication as to where the government proposes to spend the enormous amount of money that will flow from this — it will be many tens of millions of dollars. I understand the proposals are only being developed at this stage, but I would have thought that, as the government imposes this levy on businesses, it would have a very good idea as to the types of waste streams that are involved.

Perhaps I will make some broader comments first. At the last election the Liberal Party was aware of the need to work with industry to deal with certain issues of waste. One of the key policies that we supported was to enact container deposit legislation. The chamber will be aware that since 1975 the South Australian government has had in place a container deposit legislation system. The Western Australian government is looking closely at the system. The minister will remember that quite recently in this chamber I asked him a question about container deposit legislation.

Mr Jennings interjected.

Mr D. DAVIS — Yes, he gave me an answer as well. I was happy that he responded fulsomely to me in the answer, but I was less than happy with the content of his response in the sense that I think he is perhaps a little slow off the mark to see the benefits of container deposit approaches.

Mr Jennings interjected.

Mr D. DAVIS — He says that he is not a 70s sort of guy — although we occasionally wonder, given the suits he wears. But that is too easy, isn't it? I should not indulge in such jocularity with a serious bill like this.

I thank the minister for his answer on that day. It is clear the opposition believes — and I know Ms Hartland has this view too — that container deposit legislation has a significant place at a national level. It requires a national scheme to deal with one aspect of the waste stream. To some extent a container deposit system is an archetype of a scheme that looks at an enhanced producer responsibility system.

One of the points that we made at the last election was that we would be prepared as a Liberal government to look at the options for enhanced producer responsibility. We committed to a green paper to look at enhanced producer responsibility. These are complex issues. A green paper followed by a white paper process is one very good way of handling these sorts of complex issues where there are different waste streams and different challenges in a variety of industries. We were prepared to indicate that enhanced producer responsibility is a concept that will find greater acceptance as time progresses. We need to be at the vanguard of the process to ensure that in the end with all our industrial processes, and working with industries over time, a concept of enhanced producer responsibility finds a significant place, with the assistance of government, to incorporate the principle that these activities would be achieved at the lowest cost and the lowest impact to industry. We were very sincere in our commitment to achieving those outcomes.

I want to say something about the history of waste and toxic waste policy in this state. The current government did not cover itself in glory in the period of the last Parliament. Its relentless pursuit of a toxic waste containment facility at Hattah-Nowingi was in my view a serious mistake. It meant that enormous amounts of money were devoted to a process that, frankly, caused enormous damage and exhausted the community in the Mildura and Sunraysia region of Victoria. It was always a daft idea in my view to have a toxic waste dump nestled in between two national parks — the Hattah-Kulkyne National Park and the Murray-Sunset National Park — where there is a small wedge of land. The community, certainly in Sunraysia, will be familiar with the history of that land. The Kirner government in its review initially proposed to incorporate that chunk of land into the Hattah-Kulkyne National Park, but for whatever reason it did not promulgate that decision, despite the quality of the land. On any objective analysis it was land of the highest quality, and in terms

of Mallee scrub and a high presence of the endangered Mallee emu-wren it was an area that deserved to be protected and arguably incorporated into a protective management framework.

The minister has led off with a process of biodiversity protection that he is running through a green paper process. As I have said to him a number of times, both privately and publicly, I welcome that process and the opposition supports the process of an examination of how we can manage biodiversity, given that Victoria is the most degraded of all the states in terms of the amount of land area that has been cleared and the loss of vegetation, the loss of habitat and the loss of fauna. We face real challenges in Victoria.

We also face challenges with the changes in the climate that we are observing. It is interesting to see the CSIRO projections, the Bureau of Meteorology discussions and more recently the Garnaut review on examinations of the impact of climate change on Victoria in particular. We will see a drying of the climate, a reduction in rainfall and a real challenge for the protection of biodiversity in particular. Obviously there will also be huge challenges for our agricultural industries.

In that context, on the issue of the terrain around Hattah-Nowingi the government made some foolish decisions to pursue the idea of transporting industrial waste, with significant risk and danger, hundreds of kilometres, either by rail over clapped-out old railway lines with hundreds of level crossings, or alternatively by moving it up the major highways through townships and past hospitals, schools and kindergartens. It was a bizarre and costly plan. The fight to prevent the government putting industrial waste in such an obscure and dangerous location exhausted the northern communities of the state.

I put on record my sense of relief when the government finally relinquished or revoked its plan after the election. I also want to put on record my thanks — I have not done this formally, and I am very pleased to do it today — to the panel members, who were prepared to sit through many hours of testimony. It was a challenging task to listen to and absorb the huge amount of material that was placed before them — not only the environment effects statement material but also the material from individual communities, the social impact assessments and the assessments of the impact on agricultural industries. One of the silliest aspects of the proposal was the idea of nestling a toxic waste dump in amongst many of the state's major exporting agricultural industries, causing them serious concern over the maintenance of their clean and green status.

I should also say the bill proposes to increase the category C waste levy from $50 per tonne to $70 per tonne. At the last election the Liberal Party had a proposal of outright opposition to that toxic waste dump, as I said. We believed it was sensible to commit to a focus on reusing and recycling and to a policy of government support for those activities leading to the production of much less waste.

At the time we had opposition from the government. It attacked us bitterly for our focus on a low-waste policy — a focus on recycling and reuse. I personally wore some of the attack by the government. I remember the day the government announced its backdown and its commitment to a zero-waste policy. I was in Queensland at the time, and a series of people rang, one after the other, to say, 'You were right. The Liberal Party was right; the government was wrong. The government played politics and sought to attack your position shamelessly, yet it has now adopted your position — the outright opposition to the Hattah-Nowingi toxic dump and the commitment to recycling and reuse — in total'. It is one of more than 40 opposition policies that the Bracks and Brumby governments have adopted since their election, showing that we clearly led the way in a lot of this policy formation process — and we are proud to have done so.

The recycling industry recognises the importance of the bill. I have of course consulted with a number of recycling industry groups, including Advanced Recycling Australasia and the recycling association, and a number of other groups. It is very clear that there are huge opportunities for us to build an industry focused on recycling, not only using the waste we have in Victoria but also using the techniques and technologies that we develop here to build an industry elsewhere — in South-East Asia in particular.

As we move from an old-fashioned industrial economy where waste materials are thrown away and not treated properly, there are opportunities to build these new industries that will position Victoria very well. I believe Victoria needs to be at the forefront of those industries.

As I have said in discussion already, I am looking forward to the committee stage on this bill because I want to make sure that these commitments are achieved by the chamber tonight in terms of the hypothecation of the significant revenue flows. I look forward to the minister perhaps expounding to the committee on how that enormous revenue flow will be used and how it will be devoted to the productive and important task of recycling and reuse and to building those management approaches to significant waste streams.

Ms HARTLAND (Western Metropolitan) — The Greens support this bill because we think it is appropriate for industry that has created the waste to pay higher fees for it. Increasing the fees on the dumping of toxic waste makes alternatives to dumping much more competitive. Industry needs to be encouraged to avoid creating waste in the first place, and the best way to do that is to make it cheaper for industry to avoid creating waste than dumping it. The levies will also make, I would hope, alternative technologies more competitive.

While we believe the levies are very good, they will not help with a number of issues related to toxic waste. One of those is the Tullamarine toxic waste site. At a briefing by staff from the minister's office we were told that the levies will raise roughly $30 million over the next four years. We ask that that money be reinvested in the Hazardous Waste Fund (HazWaste fund) so that we know that what funds are raised will be used to try to deal with these problems.

I want to acknowledge that the minister seems to have taken a very different attitude towards Tullamarine than the previous minister and has been prepared to actually speak with the local community. But we also need to look at the fact that for over 30 years there has been inadequate legislation, regulation and monitoring by government and industry, which is the reason the Tullamarine tip and the residents who live close to it have had such terrible problems.

I also will be wanting to ask questions during the committee stage. One will be, 'Will part of the hazardous waste fund be spent on monitoring the residents who live near Tullamarine and also the residents who live near the Lyndhurst tip', which will continue to receive waste?

There is the problem that if the government increases levies on the disposal of toxic waste, some cowboy companies will also then try to dump illegally. When I raised this at the departmental briefing on the bill I was told that the Environment Protection Authority (EPA) has ways of tracking exactly where and how much toxic waste has been disposed of, where it had originated from and where it is disposed to. Unfortunately that is not my belief. I would like to give an example of this statement being completely and utterly wrong in relation to asbestos.

On 6 December 2007 I raised community concerns about dust from the Reid Street tip near Cairnlea being distributed and drifting over residential areas. The community had very real concerns that the dust might contain asbestos. The issue I raised on the adjournment was whether class 3 materials containing asbestos from the Cairnlea site were placed on the Reid Street landfill in 2001.

We know that the Reid Street landfill was capped in 2000. An audit report from Cairnlea says materials were placed on the site in 2001. The EPA has made statements that asbestos material placed on the Reid Street landfill was underneath a protective capping. The obvious question that I ask the minister to answer is, 'How do you place a cap on top of a site in 2000 and then add asbestos materials in 2001 and say that they are actually under the capping?'. This is the kind of tracking the EPA claims it has available.

I then requested that the minister report back to the community on what was in the dirt on the top of the Reid Street landfill, and whether it actually contained asbestos. I finally received a response on 8 April, a week after the briefing at which I raised the issue. The response was a short letter which did not contain any mention of asbestos. It was almost as if not mentioning the word 'asbestos' meant it did not really exist. The letter said that the minister had asked the Environment Protection Authority to undertake an investigation, and the authority reported back that the materials used to cap the site were suitable for the end use. But it did not say whether they were the class 3 materials contained in asbestos, which concerns us as to whether the tracking the EPA claims it has for these matters is really up to scratch.

The other major question is obviously going to be: where will the money raised from the levies go? I hope it is not going to go into general revenue. The levy should go directly into programs that encourage waste reduction. That way there will be no delays, and it will be much more accountable and transparent to the community. Many alternative technologies are available for dealing with such waste, and the levies should be directed towards them. In fact when I discussed these matters with groups such as the Western Region Environment Centre, I was advised that they view particular technologies as a priority for the use of those funds, including diverting considerably more from landfill through regulatory means — for example, fluorescent tubes which are highly polluting and for which there are excellent recycling facilities in Melbourne; and pyrolysis and other technologies for dealing with organic wastes. Obviously greater teeth should be given to the cleaner production program. At this stage it is voluntary and financially driven.

Levy moneys should be used to establish preconditions for making cleaner production and world best environmental practice a mandatory part of doing

business in Victoria, not just something that might be nice if you can manage it. This should include making the waste hierarchy a compulsory reference point for industrial licences and trade waste agreements. I think governments should start looking at whether they should impose similar levies on the trade waste that goes down our sewers and pollutes the waters that we want to recycle. Such a move might enable Melbourne Water to meet its 20 per cent wastewater recycling target by 2010, as is current government policy which is continually highlighted in Melbourne 2030 and in the white paper on water.

Just to end, and I suppose in some ways people could say a little cheekily — but that is not unusual for me — I started by talking about how we put a price on waste and how it should not end up in landfill. One of the ways we could avoid waste going to landfill is if we had container deposit legislation, and we have referred to it today so people see that waste has a value and can be used. Cans and bottles are currently ending up in landfill because the recycling price is too low. Such legislation would encourage companies to start seeing a true value for them. If the government follows its own logic in terms of landfill levies, then it should have the courage and the foresight to support a drink container deposit scheme.

Ms MIKAKOS (Northern Metropolitan) — I am very pleased to rise to speak in support of the Environment Protection Amendment (Landfill Levies) Bill and to indicate that through the bill the government is seeking to implement its election commitment set out in *The Sustainable State — Labor's Plan for a Greener Victoria,* in which the government indicated its commitment to a prescribed industrial waste reduction strategy which aims to remove hazardous waste from landfill by 2020.

As members are aware, in January 2007, following the report of an independent panel, the government announced that it would not be proceeding with the long-term containment facility at Nowingi and that there would not be another siting process for a long-term containment facility in Victoria. We do have a finite amount of space available at the two existing landfills at Lyndhurst and Tullamarine that are licensed to accept category B prescribed industrial waste, so there is a very strong need to drive reduction in such waste generation and disposal. To meet its commitments the government has taken action to accelerate the reduction of prescribed industrial waste, and it has been doing so through a number of methods. One of those is through the increase of landfill levies that this bill seeks to implement, as well as the reinvestment of the levy revenues that will drive the reductions in prescribed industrial waste that Victoria needs. The proposed levy increases will reduce category B manufacturing waste by at least 30 per cent, from about 60 000 tonnes per annum in the 2007–08 financial year to about 40 000 tonnes per annum in 2008–09, with further reductions ongoing in the future.

Members would be aware that the government introduced, from 1 July 2007, a new hazard classification system, which sought to classify prescribed industrial waste into three categories, A, B or C, depending on the level of hazard or the potential to impact on amenity, on issues such as odour. Category A is the highest hazard waste that requires a very high level of control. It includes waste with high levels of contaminants as well as flammable, toxic, corrosive, explosive and infectious characteristics. Category B wastes are higher hazard wastes that require a high-level of control before they can be safely disposed of in landfill. They are not flammable, corrosive, infectious, radioactive nor emit any toxic gases or liquids, and this material can only be disposed of at the Tullamarine or Lyndhurst prescribed industrial waste landfills. Category C wastes are low-level hazardous wastes which can only be disposed of at licensed, best practice municipal landfill.

What the bill is seeking to do is to make changes to the levies that apply in relation to categories B and C, in particular, from 1 July 2008. Category B waste will increase from $130 to $250 per tonne; and the category C waste will increase from $50 to $70 per tonne. The bill is predicated on the basis that industry and all of us, as a society, have a responsibility to reduce the amount of waste we produce in a consumer society, and the government is seeking to assist industry to reduce the amount of waste it generates. The bill is based on a reinvestment strategy that will be coordinated by the Environment Protection Authority (EPA), and the funds that will be raised through the HazWaste fund will be invested in three key areas — namely, research and development, capital implementation, and capacity building within industry.

As is noted in the second-reading speech, the Environment Protection Authority has already committed funds to a number of key projects, including the Veolia sustainability covenant and the waste treaters project with the Australian Sustainable Industry Research Centre (ASIRC). A number of additional projects are currently being funded. They include research and development projects to identify prescribed industrial waste reduction opportunities. These projects have the potential to reduce prescribed industrial waste to landfill by more than 7000 tonnes

per annum from a range of manufacturing and metals processing firms as well as waste treatment firms.

Examples of specific industry research, development and technology projects that could potentially be funded include things such as removing sulphur from waste material, squeeze press and baghouse infrastructure to enhance waste material capture for reuse and alternatives for waste materials to be used as fuels or as material substitutes in other operations. I note that a HazWaste fund advisory panel will be established to inform the EPA in decision making, and this will enable industry, government and commercial expertise to be utilised in determining what the priorities should be.

There was some reference made to the issue of asbestos, and I want to touch on that very briefly. The EPA sets standards for the disposal of waste asbestos, whether from a workplace or from a household, and for the transportation of waste asbestos when undertaken by a commercial contractor. The volume of asbestos waste has reduced from 79 000 tonnes in 2000 to 39 000 tonnes in 2006, although the figures fluctuate depending on construction in any given year.

As members would be well aware, asbestos waste was used in construction and manufacturing products as a fire retardant only up until 1980, and as such the waste stream is now only generated through building demolition or renovations. Quantities are expected to trend down over the long term as asbestos is replaced with other materials. Without the need to drive reductions in asbestos manufacturing, there is no need to raise the levy, and in fact a higher levy may promote unsafe disposal. Asbestos remains, however, an important community issue, and I understand the EPA has recently announced $1 million in funding over the next two to three years to promote better management of asbestos and safe handling facilities. Having had discussions with organisations like the Asbestos Diseases Society, I understand and appreciate the significant concerns it has about the removal of asbestos and the care that members of the community need to take in removing asbestos when conducting home renovations.

This is a significant piece of legislation that has come before the house. It seeks to reduce the amount of prescribed industrial waste currently going to landfill, and it is part of the government's commitment to working with industry to encourage sustainable practices. I commend the bill to the house.

Mr VOGELS (Western Victoria) — I rise to speak on the Environment Protection Amendment (Landfill Levies) Bill and to say that the opposition does not oppose this legislation. As I read it, the government's stated intent underpinning this bill is to essentially adopt the policy that the Liberal Party took to the 2006 election not to establish a new toxic waste dump in country Victoria and to work with industry to reduce the level of toxic waste consigned to landfill. Labor, on the other hand, was proposing to treat rural Victoria as Melbourne's toxic dumping ground and subject country Victorians to the emotional stress of having a waste dump imposed on them and to have hazardous waste being carried along country roads and highways. By implication, Labor's policy was an admission that under its plan more waste would be generated.

The Liberal policy was socially responsible and recognised the severe emotional trauma Labor's approach to siting waste dumps in country areas had caused. The Liberal Party policy was also environmentally responsible because it aspired to a low-waste future. On the other hand the Labor Party ridiculed the Liberal position before the election, but it was forced by weight of popular opinion to back down and change direction after the election.

I want to recount some of the history that has led to this bill being introduced, but first I believe it is important that we understand what this bill is and what it is not. At its heart this bill is about increasing taxes. The bill's primary purpose is to increase taxes on industry and local government, which manages municipal waste collection, but it is masquerading as a measure to protect the environment. Having read the bill closely I can see nothing in it which initiates new activities to protect the environment — no new activities to encourage industry to reduce waste generated and ultimately sent to landfill, or for industry to adopt measures to reclaim and reuse waste.

With the state government milking the community for higher taxes, it is not surprising to see that a main purpose of this bill is also to raise taxes on business. This bill will increase the landfill levy tax by 92 per cent for category B waste, from $130 to $250 per tonne, and by 40 per cent for category C waste, from $50 to $70 per tonne. These are very high increases in the rate of tax, especially for category B waste products.

Landfill levies are not an insignificant tax on Victorian business. The budget papers show an estimated $45.3 million will be collected from councils and businesses next year, 2008–09. When the former Deputy Premier, John Thwaites, first announced the landfill levy would increase, back in 2007, he claimed the levy would raise about $30 million over the next four years. We now know the government increased the

landfill levy from $26 per tonne to $130 per tonne on 1 July last year. The government estimates it will collect $45.6 million this current financial year, and it is now increasing the levies again.

It is possible under Labor — some might say highly likely — that Victorian industries will not see the benefits of higher landfill levies being returned to the community by way of meaningful government strategies to actively help business reduce waste sent to landfill. Like the coalition, business representatives support the goal of reducing industrial waste but they want to make sure these higher landfill taxes charged by the government are reinvested in full, with all of the tax raised used in strategies to support recycling of industrial waste and other related measures designed to cut the amount of material consigned to landfill.

It would be a betrayal of the community and of industry if the government imposed these higher taxes and levies, but then, instead of investing those funds on waste minimisation, recycling and reuse initiatives, pocketed some of the money to fund general government or Environment Protection Authority administration activities that should be funded from consolidated revenue.

As this bill is being debated during budget week and is bringing about an increase in taxes that will apply from 1 July 2008, the new budget year, I thought I would look at the budget papers to find an indication of how Labor wanted to spend these higher landfill levies. While I cannot claim to have read every single page of the budget papers, I did have a good look but could find no new measures to encourage recycling of industrial waste in the budget. There seem to be no new measures budgeted for to work with industry to minimise the generation of industrial waste. Those businesses that have invested in the recycling industry should be concerned because it means government is not doing its bit to reinvest landfill levies on encouraging waste material reclamation.

More than $45 million is budgeted to be collected next year in landfill levies. We are debating a bill here to increase, from 1 July, landfill levies by 92 per cent and 40 per cent respectively for categories B and C waste and, as I said, I cannot find anything in the budget to indicate where that money will be actually spent. It is important that the taxes raised from these higher landfill levies are reinvested into measures to assist industry to reduce hazardous waste inputs which ultimately contribute to waste, and to encourage recycling and reuse of waste products to reduce, and where possible eliminate, the ultimate impact on the environment of material that has no end-of-life use other than to be disposed of at landfill.

As a representative of Western Victoria Region I have taken quite an interest in the government's handling of hazardous waste materials. The western Victorian community was one of those targeted by this Labor government as a site to house a new toxic waste dump, which was proposed to be at Pittong. Members might remember that in 2003 Pittong was one of three locations, along with Baddaginnie and Tiega, selected as possible dump sites. It was only through strong, consistent and coordinated community campaigning opposing the proposal that the communities of Pittong and nearby Linton, as well as those in Baddaginnie and Tiega, were able to convince the government to back down and not impose a waste dump on places in the heart of one of the state's prime agricultural districts. A former Labor member for Ballarat Province in this house, Dianne Hadden, lost the support of her party over this issue.

However, having been beaten at Pittong and the two other proposed sites, the government decided it would establish its toxic waste dump at Nowingi in the Mallee. Once again, thanks to the efforts of local communities, this proposal was abandoned after the election.

As I indicated at the start, the opposition does not oppose this bill. It has come about as a result of Labor taking a long and circuitous route from a position of proposing new toxic waste dumps be established in rural Victoria to taking a view that industry should be encouraged to reduce the amount of waste sent to landfill and that more should be done to recycle and reclaim valuable resources from industrial waste. This is a bill that imposes higher taxes on Victorian businesses but it does not improve the transparency of how the taxes raised will be spent in achieving the desired outcome of reducing waste.

Mrs KRONBERG (Eastern Metropolitan) — In rising to speak to the Environment Protection Amendment (Landfill Levies) Bill 2008, I advise that I will not be opposing the bill. This bill will usher in an increase in certain prescribed industrial waste levies. It also makes some minor amendments to improve the operation of the Environment Protection Act 1970. The main provisions include administrative amendments to correct errors in the drafting of the 2006 bill.

The bill increases from $130 to $250 the amount payable as a prescribed industrial waste landfill levy for each tonne of category B waste deposited to land, and for category C waste that levy increases from $50 to

$70 per tonne. Unfortunately it is easy to see that this bill is yet another mechanism to raise taxes on businesses. We all need to be assured that the income from the increase in these landfill levies will be directed in a meaningful way. I am very interested to know just what the government's position is on investment in cleaner production strategies, which were very topical things through the early 1990s. That very important worldwide initiative was ushered in by a United Nations environment program whereby organisations engineered their production processes around the reduction of waste. It seems to me that there has been a diminution of effort in concentrating energies and focus on cleaner production techniques. I put a question to the government: what is its position on fostering cleaner production techniques which would start to shrink the amount of waste consigned to toxic waste streams?

We also need to recognise that anything consigned to landfill has the potential to create a very dangerous toxic soup that will leach into aquifers, soils and surface water. It will seep through crevices in rocks. I want to remind the government that it should be vigilant in its adherence to the principles of ensuring that any landfills that come on stream in the future benefit from the most advanced application of the highest quality geomembranes. We need to actually avoid the slackness of the management of landfills in the past, when people were happy with a couple of metres of clay as the mechanism of filtering toxic leachate out of aquifers and soils. There was no commitment to a regime of effective geomembranes. Why? Because geomembranes are expensive, but they are also effective, and they should be to the minimum standard.

The government needs to direct its energies to rigorous adherence to standards to protect communities that might abut very primitive composting waste facilities such as the one that is allowed to prevail in Coldstream. Somehow or other people have been fooled and waylaid; they lack vigilance. They have been conned into the phenomenon of tolerating composting waste facilities that are undertaken through anaerobic digestion of organic waste streams. In the 21st century, I have to ask where is this government on this. It should know that aerobic digestion of organic matter in waste streams exists. Why is it not insisting that all composting facilities for the diversion of the organic waste streams use aerobic digestion? Why are they not now online all over this country?

There is a great amount of slackness and I think nudge-nudge, wink-wink stuff when it comes to the buffers in terms of the spread of dust and odour. The Coldstream facility is a strident example of that. It is worth underscoring the fact that the government has been negligent in not ensuring that putrescible waste streams are consigned to technology centres that are capable of producing aerobic digestion of organic elements. Surprise, surprise! You actually start to make a contribution towards avoidance of the emission of climate-change gases.

For every molecule of methane that you prevent being emitted from a landfill, you are 23 times better off than you are when you try to reduce carbon dioxide emissions. If this government is serious about a reduction in greenhouse gases, that should be the no. 1 game; it should make sure that no methane is permitted to escape from landfills.

There has been the uneconomic and totally unviable mechanism of capping landfills in the past in the desperate and vain hope that you can actually pipe methane out of landfills. We all know, after many years of doing that, that it is not economically viable because methane appears in little spots throughout a landfill. No-one can predict where it is next going to be bubbling up to the surface. There has to be a commitment to aerobic digestion of organic waste streams. Then you will start to reduce what has been consigned to landfill in a very dramatic way. This is not rocket science and frankly, I have to accuse the government of being asleep on its watch and obviously being fooled by vested interests.

I draw the house's attention to an article headed 'Trash test dummies' in the *Bulletin* of 18 September 2007. On page 35 of that publication an authority, Jon Ward, the general manager of business, information and technology at Sustainability Victoria, says:

> The composition of a nation's waste stream is almost a fingerprint … We (Australia) have a high ecological footprint and a high level of waste generation per capita. According to an ABS 2007 report, each year the average Australian generates 1639 kilos of waste, second only to the United States.

To me the imperative of avoiding municipal solid waste from landfills seems to be something that is pretty basic — it is a no-brainer.

Of the 32 million tonnes of garbage Australia generates each year, 46 per cent is recycled — thank goodness! — but unfortunately the remainder, 54 per cent, is going to landfill. In its 2006 report on waste the Productivity Commission estimated that the recycling rate in Australia had jumped substantially — by 825 per cent — since 1996, but there remains an urgent need for improvement.

The waste industry estimates that about 70 per cent of household waste now going into landfill, such as

packaging and organic material, could be diverted and recycled. That makes me think of the packaging used by our friends promoting the Beijing Olympic Games — everyone received a lapel badge last night, and I thought their packaging was complete overkill, with its layers of wrapping. Products emanating from China might be a good place to start, since we are flooded with China's products. We all know that landfill is bad for the environment and that 40 per cent of dumped household waste is biomass. This needs to be consigned to aerobic digestion facilities.

It is also important to talk about where landfills and waste managers have gone wrong around the world; we do not want to repeat those mistakes. The city of New York produces 25 million tonnes of garbage per year, and all of that is consigned to barges that float on the sea. Those responsible for the management of waste in New York are desperate for a means of treating it. There is also the Spanish example of the landfill that was precipitously close to a cliff face which collapsed, disgorging all of the contents of the landfill into the Mediterranean.

I hope this government uses the lessons of history, adopts best practice and sharpens up its resolve to not be persuaded to continually use landfills. I am very concerned that there are a lot of holes in areas where we quarried for bluestone, which means a lot of landfills could still come on stream. We should be doing our very best to make sure we reduce the amount of material being consigned to landfill in the near future.

The upside of this legislation is that even though this taxation regime is a bitter impost on the production processes of business, hopefully — if it is directed and monitored — at least it will provide a means for ensuring that landfills are receiving only material that cannot be managed in any other way.

Mrs PEULICH (South Eastern Metropolitan) — I first of all commend Mrs Kronberg on a very enlightened and comprehensive contribution to the chamber in relation to waste and our society's tendency to generate more of it, not think much about what to do with it, and bury it very close to people's backyards.

Unfortunately there is a lot of waste in my electorate, the South Eastern Metropolitan Region. It is home to vast amounts of manufacturing and industry and too many tips — tips for putrescible waste; hard rubbish tips; the Lyndhurst toxic or 'hazardous' tip, as it has been notoriously called for some time; and a number of municipal tips, which will be the repositories of increasingly large amounts of waste with a high degree of hazard.

I would also like to commend David Davis on the policy that he, on behalf of the Liberal Party, took to the 2006 election — the low waste policy focusing on recycling and reuse — —

Hon. T. C. Theophanous — Which really helped in the election.

Mrs PEULICH — It certainly forced this government to try and outbid us by taking a zero waste approach, which is a farce, because clearly it has failed in many respects in terms of management of waste. First of all, the government was committed to finding a long-term containment facility — at Nowingi. That did not happen and now it has had to look at alternative ways of resolving the matter, to cover up that very significant and controversial failure. The coalition will not be opposing the increases in the levies, but business does have concerns. Industry needs to be encouraged, as Ms Hartland said, to create less waste and to reduce waste, and costs are often used as a stick in order to force it to do that.

Ms Mikakos spoke about the new classification of waste. From my reading, given the level of interest in waste across my region, I know that class A waste cannot be deposited into landfill and is contained on site, whereas class B can be disposed of in hazardous waste facilities such as Lyndhurst, and class C in a greater number of municipal tips throughout the state. With the increased levy on category B prescribed industrial waste from $130 to $250 per tonne and on category C prescribed industrial waste from $50 to $70 per tonne, there is an incentive not only to reduce the amount of waste but also for industry to treat class B waste and produce more class C waste, which could then be more economically disposed of in a greater number of facilities. Clearly that is going to mean more cost to business, and we have a growing population and need a business and economic base to sustain it. They are competing interests in many ways but complementary in many other ways, so there needs to be a workable regime to address these issues on behalf of the state as well as our community.

I imagine the government hopes that more and more of the hazardous waste is treated before it ends up in places such as Lyndhurst, and therefore Lyndhurst will continue to exist for a much longer period of time, which is clearly the concern for the community that I represent. The local member, the Minister for Finance, WorkCover and the Transport Accident Commission in the other place, Mr Holding, had promised — —

Hon. T. C. Theophanous — A good man.

Mrs PEULICH — Let me say he would probably be thought of as a more worthy representative of the electorate if he actually lived within it, cared about it and took up some of the issues that are close to the heart of the electorate. It was very disappointing to see Lyndhurst identified as one of the top 10 least livable areas in Australia. The reason is the problems around safety with the Lyndhurst tip, because VicUrban continues to release land and estates continue to be built around the perimeter of Lyndhurst. In particular there has not been an established buffer between residences and the facility, although I understand that SITA has been purchasing properties as a way of creating a buffer. It is interesting to note that in the Nowingi study there was concern about a 9-kilometre buffer between residences and the facility, but at Lyndhurst there is one residence within 50 metres, and within a 9-kilometre radius there are 200 000 residents as well.

These people naturally are concerned about their health and wellbeing. They want assurances that the odours and their concerns about their health and safety and the interest of their families will be responded to. This government has done nothing for nine years. I echo the view of the Leader of the Opposition, David Davis, in saying that I hope some of the proceeds of that $30 million waste levy will be hypothecated and will be used not only to invest in the newer technologies for waste reduction but also to undertake some of those health studies, if only to reassure the community that what the government has been doing in continuing to generate residential estates has not been at their expense. That is something the government needs to give serious and urgent consideration to. It needs to set aside some of the moneys to address the long-term concerns about some of these facilities. There are concerns about the possibility of an increase in illegal dumping as a result of an increase in cost. I hope Ms Hartland is wrong about the Environment Protection Authority's inability to track waste, but I have certainly seen evidence of waste being disposed of in waterways. I have seen the Dandenong Creek turn red.

Ms Hartland — I would like to be proved wrong.

Mrs PEULICH — And I would like to be proved wrong too. I know that a lot of people in the community think that while the Environment Protection Authority may have noble intentions it is very much a toothless tiger. I hope all of us are proved wrong, because if we are not then the consequences for the community would be much too serious.

The failure to secure alternative sites has meant that Lyndhurst has been left to pick up Victoria's toxic waste bill, and unfortunately this means that it will continue to feature in the top 10 of the suburbs or areas that have been identified as the least livable. The other reason is that the local member, the Minister for Finance, WorkCover and the Transport Accident Commission in the other place, Tim Holding, has failed to pound on the doors of his ministerial colleagues and secure other benefits for the community, such as the local railway station, the required infrastructure and so forth. Unfortunately that community is suffering and is generally associated with a toxic tip rather than with its many redeeming features. They are good, hardworking people who bought homes and are proud homeowners and proud members of the community actively involved in many activities and community affairs.

I refer the house to the ABC *Stateline* program of Friday, 6 May 2005, when the then Minister for Major Projects, John Lenders, was asked about trucks overturning while carrying toxic waste material to a toxic waste facility. He said, 'If one of these trucks overturns you simply scoop it' — meaning the toxic waste — 'back onto the truck. You don't have to be worried about it running into your water system'.

I can tell the minister and government members that the community is very much worried about the impact of this toxic material. With more of it coming into their neighbourhood, more of it being dumped into their toxic tip and affecting their quality of life, they have increasing concerns about the safety of their families. The residents of Lynbrook, Lyndhurst, Hampton Park and Narre Warren South are concerned about toxic materials in their backyards and the failure of the former Bracks government and now the Brumby government to do anything about it, especially, as I mentioned before, in terms of defining and securing a buffer and undertaking a study into the negative health effects of the facility on the local community.

Business interrupted pursuant to standing orders.

ADJOURNMENT

The PRESIDENT — The question is:

That the house do now adjourn.

Drought: government assistance

Ms LOVELL (Northern Victoria) — Tonight my adjournment matter is for the attention of the Minister for Agriculture in the other place. It relates to the scheduled review on 30 September of exceptional circumstances (EC) assistance. I request that the Minister for Agriculture ensure that state government

departments, including the Department of Primary Industries, cooperate fully with the National Rural Advisory Council and make available any data which is needed to support the case for continued EC funding for Victoria's drought-affected farmers.

Exceptional circumstances assistance, which is drought assistance provided by the federal government, has been a lifeline for farming families across northern Victoria where the drought has not broken. In the past month, Shepparton recorded just 9.2 millimetres of rainfall, which is far less than the 32.8 millimetres of rain that fell in the district in April 2007. Bendigo recorded even less rain last month: 8.8 millimetres, compared with 45.8 millimetres in April 2007; and Mildura had just 5 millimetres, compared with 35.4 millimetres last year. It must be made clear to the National Rural Advisory Council during the review process that the drought is not over and that communities reliant on EC have concerns.

Recently I was contacted by the Moira Shire Council's drought recovery committee which is concerned about what it describes as a pending loss of EC status. The committee believes any decision to remove the region's EC status at the end of September would be inappropriate and untimely because, as a result of poor prices and yields and increased costs, many farmers are now in a worse position than they were in at this time last year. A major concern is the impact that the removal of EC assistance would have on producers of seasonal crops, including cropping farmers and orchardists, who have no significant income until the summer months.

The Department of Primary Industries, whose staff provide extension assistance to farmers in addition to other services, know full well that the drought is not over and the critical importance of EC assistance to rural and regional communities. That department plays a critical role in preparing the data for the original application for a declaration of EC assistance. I hope it will also supply this type of data to support the extension of an EC declaration.

I request that the Minister for Agriculture ensure state government departments, including the Department of Primary Industries, cooperate fully with the National Rural Advisory Council and make available any data to support the case for continued EC funding for Victoria's drought-affected farmers.

Mount Hotham: airline services

Mr HALL (Eastern Victoria) — Tonight I seek the assistance of the Minister for Tourism and Major Events in the other place in regard to airline services to Mount Hotham.

Victoria's snowfields are a great generator of tourism activity, particularly in our winter months. Access to the snowfields has been enhanced in recent times with regular Qantas commercial flights to Mount Hotham. Just recently it was brought to my attention that Qantas was proposing to withdraw the commercial service that it currently operates. I understand that some locals have approached other airline companies to discover whether they may be interested in taking over that service, but apparently at this stage none of those companies has indicated a willingness to do so.

Given the importance of tourism to Victoria, particularly winter tourism in our snowfields, I request that the minister meet with airline operators and explore means by which an airline service to Mount Hotham might be reinstated.

Water: community gardens

Ms HARTLAND (Western Metropolitan) — I raise a matter for the attention of the Minister for Water in the other place. The matter concerns current residential water restrictions. I raised this issue in September last year when the possibility of stage 4 water restrictions was on the cards. Under stage 3a restrictions residential gardens can be watered on only between the hours of 6.00 a.m. and 8.00 a.m. on two days a week, and watering is to be done with handheld hoses fitted with trigger nozzles or with buckets or watering-cans. There are concerns that the current water restrictions fail to acknowledge the issues of food security, social equity and community health. I recently met with Friends of the Vegie Patch, a great group of people — horticulturalists and gardeners — who have circulated a petition on this matter. Friends of the Vegie Patch have serious concerns about some of the limitations of stage 3a restrictions and the negative impacts on people's ability to grow their own food at home.

Growing your own food produce contributes to a reduction in pollution and resource waste by eliminating food miles. A quick look at the situation in Queensland shows that Victoria could gain much from adopting some of that state's key strategies — for example, the Target 140 campaign asks residents to consume less than 140 litres of water per day. There are no restrictions in Victoria on consumption inside the home. The Target 140 campaign allows handheld hoses, watering-cans and buckets to be used to water gardens on three days between the hours of 4.00 p.m. and 7.00 p.m. Why can Victorian vegie growers not water in the evening instead of the morning?

Rainwater tank rebates in Queensland are substantially more generous that those here. In fact for a tank of 3000 litres or above it is $1500, but in Victoria the rebate for a tank between 2000 litres and 5000 litres is a mere $500. We need to ensure that people on low incomes are able to access water-saving devices, such as rainwater tanks. Better rebates for people on low incomes should be a priority. In Victoria if you have an exemption you can still fill a swimming pool, but you cannot water your vegetables on an extra day a week.

It is time for the government to seriously implement strategies that take the burden off vegie growers and organisations like Cultivating Community, which helps organise community gardens, especially around high-rise public housing. My request is that the minister meet with the Friends of the Vegie Patch group to discuss their creative and logical solutions to this problem.

Rail: freight rebates

Ms TIERNEY (Western Victoria) — I raise a matter for the attention of the Minister for Public Transport in the other place with respect to rail freight. I ask that the minister promote the benefits of rail freight, and I will go to the specifics a little bit later. We all know that the drought has hit hard in regional Victoria. It has reduced the amount of rail freight and has made it very hard for rail operators; however, it is clearly in the broader community interest that freight is carried by rail rather than road. Communities throughout Victoria want fewer trucks on the roads. There are important environmental benefits in using rail for freight.

I strongly support the recent measures to support rail freight. Also, last year rail freight access charges were reduced for domestic grain movements. Recently this initiative was extended to export grain, and we hope that, with a little bit more rain — indeed a fair bit more rain — we have a good crop to export. In the area of container freight, the government has added incentives to keep containers on trains and off trucks, so the government is doing its bit. We hope these incentives lead to a sustainable future for rail freight.

I call on the minister to outline how the government will promote rail freight as the way of the future and provide me with a breakdown of the recent $20 million funding announcement that will provide a temporary rebate for container freight carried on rail services from Warrnambool, Horsham, Mildura, Shepparton and Tocumwal.

Emergency services: south-western Victoria helicopter

Mr KOCH (Western Victoria) — I raise a matter for the attention of the Premier. It concerns his recent announcement that a new helicopter will be funded in this year's budget to boost Victoria's air ambulance services in western Victoria. At last the Premier has listened to the people of western Victoria and finally committed to providing a long-awaited emergency rescue helicopter for the only part of the state that has not had ready access to such a vital, fast-response air ambulance service. This is yet another policy backflip that is in direct contradiction to the Premier's and Labor's consistent opposition over the last eight years to funding a helicopter for western Victoria. The Premier again stated in February this year that the government had been advised by Air Ambulance Victoria that a helicopter was not warranted at this stage, but the tremendous effort and hard work by so many western Victorians, who have diligently supported the campaign over the years, has finally paid off.

The community is especially grateful to Dominique Fowler of Terang and Keith Meerbach of Portland for raising awareness of this issue and for their fantastic efforts in gaining more than 28 000 signatures for one of the largest ever petitions tabled in this Parliament. Thanks also go to Geoff Downes of Hamilton for eagerly volunteering — —

The PRESIDENT — Order! I advise Mr Koch that the adjournment is not an opportunity to make a statement or debate a particular issue. It is an opportunity to raise a matter that he wants addressed by a particular minister, in this case the Premier. I ask the member to contain himself to directly asking for a response to a particular matter of some urgency or importance and not to debate an issue and go into a significant background on it.

Mr KOCH — I was trying to give the background of the efforts of these people in the community in bringing this matter to the government's attention. I think the example set by western Victorians typifies their passion for what they see as the necessity for this helicopter in Western Victoria Region.

I go on further to say that my request is for the Premier to ensure that emergency helicopter services are in operation as soon as possible so that more lives are not lost due to unnecessary delays in this service being provided.

Maroondah Hospital: mental health facility

Mr LEANE (Eastern Metropolitan) — My matter for the adjournment is for the Minister for Mental Health in the other place. I was fortunate enough to have a walk around and have a good look at the new mental health facility that was recently opened at Maroondah Hospital. I have to say that it is a fantastic state-of-the-art facility which increases the hospital's capacity for mental health beds to 35, and eventually when the second stage is done it will be increased to 50. These are important facilities. The majority of people using these services suffer from psychotic illness such as schizophrenia, mood disorders such as depression and also serious personality disorders. This facility was purpose built as a functional unit with staff input. We are lucky to have it out in the outer east.

I also noticed in the budget that announcements have been made concerning other mental health facilities to be developed, and the action I seek from the minister is that she encourage the people who are going to develop new facilities in this state with money that will come through the budget to go to Maroondah Hospital, inspect what it has got and perhaps use that as a template, because it is such a fantastic facility that is leading the way.

Mallacoota: firewood permits

Mr P. DAVIS (Eastern Victoria) — I raise a matter of urgency for the attention of the Minister for Environment and Climate Change. It concerns domestic firewood permits that are not being made available at Mallacoota. This is a time of year when many people who do not have the good fortune to have access to other forms of fuel for their necessary winter warming need to get in their firewood stocks. However, I am advised that it is now some weeks since firewood permits have been made available in Mallacoota.

My constituent who advised me of this was expecting to get a permit, but in the meantime he went to see his son in Western Australia. When he came back it was still not available, so he contacted me and said, 'What can we do about this?'. As I have reported to the house before, one of the problems at Mallacoota is that although the office that houses Parks Victoria, the Department of Primary Industries and the Department of Sustainability and Environment is supposed to be open from 8.30 a.m. to 5.30 p.m. daily, five days a week, it is mostly unavailable because the doors are closed.

An honourable member interjected.

Mr P. DAVIS — They could well be out chopping wood, indeed. In any event, I have a constituent who is pretty angry about it, and I can understand why; he cannot get access to a permit. The permits are otherwise available through the local supermarket, because that is more convenient than having them available through the office of the joint agencies of the government. I ask that the Minister for Environment and Climate Change make available reasonable access to firewood permits for residents of Mallacoota and district so that they can perhaps have some warmth this winter.

West Preston Cricket Club: funding

Mr ELASMAR (Northern Metropolitan) — I raise a matter for the Minister for Sport, Recreation and Youth Affairs in the other place, James Merlino, in relation to the West Preston Cricket Club, also known as the West Preston Sharks. The club recently launched an under-13s competition and last year bought new sports equipment to meet the needs of younger players. The new initiative was very popular and attracted many new junior members. Unfortunately the new equipment — which included bats, pads, balls, helmets and other essentials — was stolen in early February. The club is not in a financial position to replace these badly needed stolen items, so I am requesting sympathetic consideration by the Department of Planning and Community Development to replace the stolen equipment by allocating an emergency grant of $1500. I fully support this application. I call upon the minister to also get behind the kids in West Preston, as they are understandably devastated by the theft of their new sporting equipment.

Schools: boundary marking

Mrs KRONBERG (Eastern Metropolitan) — My adjournment matter is directed to the Minister for Education in the other place. The state government's Melbourne 2030 policy means a wide variety of suburban sites are being infilled by developments. Such redevelopments or new developments often result from the overruling of local planning laws by the Victorian Civil and Administrative Tribunal and therefore have the tacit approval of the Minister for Planning. An increasing number of dwellings are being built boundary to boundary, and often rising a number of storeys higher than the height that the immediate neighbourhood has been characterised by in the past. They are also now abutting school precincts.

My concern centres on the possibility that deviants and predatory paedophiles may, unbeknown to locals, take up residences which provide a clear view over school boundaries and therefore into classrooms. I have in

mind a particular school that is currently accommodating just such a development on its borders. Each of the school's modern classrooms has individual entrances which allow children, in line with modern teaching practice, to move from inside the classroom, evidence the change of seasons, experience fine weather and have direct access to nearby sports fields. The residential development under construction will have views of these facilities from just a few metres away.

I now ask that, as a result of undertaking an examination of her department's policies and practices which set out to protect schoolchildren from potential intrusions by perverted individuals, an account of new policy initiatives or recommendations be included in the minister's response to my request.

Mental health: early intervention

Ms DARVENIZA (Northern Victoria) — I wish to raise a matter for the attention of Lisa Neville, the Minister for Mental Health in the other place. The minister has just released a consultation paper summary entitled *Because Mental Health Matters — A New Focus for Mental Health in Victoria*. This consultation paper focuses on investing in services for young people in an approach to addressing mental health issues based on prevention and early intervention. I certainly welcome this consultative process, which is going to inform the mental health reform strategy that is going to be released later this year.

We know from research that the emphasis on preventive measures, particularly early in life, brings about much better outcomes in support and treatment — it might be an early episode of mental illness that someone is experiencing. Research also shows that, if developing mental health problems are identified and treated early enough, there is a far greater chance of a lasting recovery. We also know that untreated illness can have a major impact on long-term health, education, job prospects and participation generally in the community.

As a former mental health nurse, I have a particular interest in this area, and I have certainly noted the budget boost to mental health services. We saw a $128 million boost to the sector, and I certainly welcome that.

The specific action that I am looking for is that the minister establish a process of engagement with rural and regional Victoria as part of the consultation around this paper, and that the engagement actually means people are getting out into rural and regional areas and hearing what Victorians in those areas have to say. That forms an important part of the consultative process. We want to ensure, and I certainly want to ensure as a member for Northern Victoria Region — —

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

Buses: Yarra Ranges

Mr O'DONOHUE (Eastern Victoria) — I raise a matter this evening for the Minister for Public Transport in the other place. As the house may be aware, there is a need for additional public transport services in the Upper Yarra region. The shire of Yarra Ranges is a very large area, and educational and social opportunities tend to be located in Lilydale and beyond, further into the metropolitan area. I have been contacted by several different constituents regarding the possibility of increasing bus services from Yarra Junction, Warburton and Powelltown to Lilydale and Bayswater and the employment area and factories.

The government has committed to reviewing the public transport services in different local government areas. My request, given the anecdotal additional demand for separate public transport services to connect the communities of the Upper Yarra to each other, such as Yarra Junction to Healesville or Powelltown to Yarra Junction and further down the line, is that this review be accelerated so that it happens as a priority for the government.

Electricity: co-generation

Mr THORNLEY (Southern Metropolitan) — My adjournment matter is for the Minister for Industry and Trade, and my request is that the minister investigate the opportunities for the development of a distributed co-generation industry in Victoria, with particular reference to the Ford engine plant in Geelong.

The opportunity for gas-fired power is a very substantial one in this time of climate change concerns. Gas-fired power, particularly through co-generation, is far more energy efficient and is likely to deliver a reduction in emissions in the vicinity of 70 per cent versus our existing coal-fired generation. Distributed gas-fired power through distributed co-generation has further benefits because you do not have the transmission losses, and you get to use the waste heat from the electricity generation to fire hot water or steam or other useful products.

The genius of the situation we find ourselves in is an ironic one. We have an engine plant that is coming towards the end of its economic life in creating engines

for motor vehicles, at least in its current form, but it turns out those engines are particularly well qualified — among the best in the world, in fact — for use in co-generation. They have much higher thermal efficiency than almost any other engines and they are well tuned for gas.

I believe there is an opportunity there for an industry to develop around that facility that will not only potentially continue the life of that facility for many years to come but potentially create a hub for a distributed co-generation industry with a range of other adjoining industries that could flow from it.

I am aware that the minister certainly has been alerted to this opportunity, and I ask that he investigate it with his department and consider what means it would be necessary to introduce to see that opportunity come to fruition. There are a whole range of things that spring to mind — the topical issue of feed-in tariffs, for example. This would not need a 60-cent feed-in tariff to make it viable, just the ability to sell into the grid at the same price as you bought it. I ask the minister to investigate that possibility.

Road safety: speed cameras

Mr DALLA-RIVA (Eastern Metropolitan) — I raise a matter for the attention of the Minister for Police and Emergency Services in the other place. The issue relates to the government's policy of using covert speed cameras, and it is in light of the recent announcement about the EastLink tollway.

Speed cameras are, as we know, important in terms of managing our road toll. However, over the last year we have seen a 20 per cent increase in revenue compared with the same time last year, which is extremely disappointing. Although the 39-kilometre EastLink tollway has not opened, we note in the budget that the government estimates revenue from fines will be around $62.2 million, primarily from the EastLink tollway when it opens. That works out roughly at about $1.98 million per week.

Victoria is the only Australian state with a covert speed camera program, and it differs markedly from other states. For instance, in South Australia in the mornings the *Adelaide Advertiser* lists where speed cameras are located for that day; in New South Wales all fixed speed camera sites are accompanied by high-profile advance warning signs, and the policy is that the community is advised of the start of their operation by a media release detailing the camera location, crash history of the site or the reason for the camera's installation and date of commencement. Victoria has the nation's only covert speed camera program. If the objective were road safety, then speed cameras would be used to promote accident hot spots on our roads.

I therefore request that the minister take action to review the effectiveness of the government's policy on covert speed cameras in Victoria in light of the impending opening of the EastLink tollway.

Stonnington and Port Phillip: clearways

Mrs COOTE (Southern Metropolitan) — My adjournment matter tonight is for the Premier and it is in regard to the issue of clearway zones, particularly in the cities of Stonnington and Port Phillip. All the councils, the residents, the communities and the small business owners in the 10-kilometre radius are particularly concerned about the clearway zones that have been suddenly imposed upon them.

I will just remind the house — I am sure members would like to know — about the clearway times. The clearways are now going to operate from 6.30 a.m. until 10.30 a.m. and from 3.00 p.m. until 7.00 p.m. The concern of the small business operators is that these shopping meccas will have only five working hours a day and will be reduced to ghost towns. They are particularly concerned about the fact that there was a lack of consultation and that they did not get a say on the issue at all.

I have been lobbied by a number of councillors and mayors from the councils within the vicinity, and they are concerned that the onus is going to be put back onto them to make parking available. As I am certain that you, President, would understand, it is very hard to get readily available car parking spaces in the inner city. These businesses are going to be immediately affected by these clearway zones, which will put great pressure on their businesses. As I said, they are particularly concerned about the fact that there has been no consultation. They feel that hours and hours of having no customers might mean the end of many businesses. They believe no-park zones mean no-purchase zones.

The action I seek from the Premier is to meet with the City of Stonnington, the City of Port Phillip and other councils that are affected by this decision, as well as the business owners and trader associations, with the purpose of halting this impetuous decision and protecting their businesses.

Moorabbin Wholesale Farmers Fresh Market: future

Mrs PEULICH (South Eastern Metropolitan) — I wish to raise a matter in relation to a very popular business in the Mordialloc electorate in the other house called the Moorabbin Wholesale Farmers Fresh Market, which is located at 168 Chesterville Road, Moorabbin, on the corner of Keys Road. It is a popular outlet for fresh food, fruit and vegetables. It is popular because its produce is fresh, it is cheap and it supports local businesses and suppliers. I understand there are — —

Honourable members interjecting.

Mrs PEULICH — The matter is for the Minister for Planning; I am not sure whether I said it. It is in relation to the likely action by the City of Kingston to take the Moorabbin Wholesale Farmers Fresh Market to the Victorian Civil and Administrative Tribunal, even though I understand it has never been issued with a fine, an enforcement order or any sort of warning. I must confess that I have not been able to take it up with the local ward councillor, Cr Alabaster, who is a very strong supporter of the Labor Party. We will not have as much difficulty when we go to a multi-councillor ward because I will be able to talk to others. From the many approaches of clients and shoppers, I understand Cr Alabaster has not been particularly helpful.

However, I call on the minister to see what he can do to assist the Moorabbin Wholesale Farmers Fresh Market to stay in business so that needy families — people who are finding it tough: single-parent families and self-funded retirees — can continue to buy cheap food.

Mr Leane interjected.

Mrs PEULICH — This is a legitimate issue. There is no reason why — —

The PRESIDENT — Order! There is no debate here. Mr Leane is not helping, and Mrs Peulich's engaging with Mr Leane is not helping either.

Mrs PEULICH — I believe, President, that this issue is very important, and I cannot understand why the interjections are occurring. I know that some councils have concerns about the retailing activities of certain businesses. I understand that the business provides space only to people with an Australian business number and that, as with many others such as Sportsmart and other outlets in industrial and manufacturing areas, a retail outlet.

I would like the Minister for Planning to see what he and his department can do to broker some sort of arrangement so that this business can continue to exist and continue to provide the local community — local families who are doing it hard — with a cheap, affordable fresh food outlet.

Our Kids Childcare and Montessori Preschool: payment

Mr ATKINSON (Eastern Metropolitan) — I wish to address my matter to the Minister for Children and Early Childhood Development, the Honourable Maxine Morand. It is in regard to a concern that has been raised with me by a constituent business, Our Kids Childcare and Montessori Preschool, which is situated on Springvale Road, Nunawading.

Its concern, which I think might also be shared by some other businesses and might well be something the minister needs to look at in policy terms, is that it accepted at its child-care centre a child who was in foster care for a period of two weeks. The attendance at the child-care centre for 10 days was court approved and therefore the responsibility of the Department of Human Services from a payment point of view. However, when the business sent the account to the department's finance office it was told that the Berry Street Watsonia centre was required to make the payments. It approached the Berry Street office and was advised that the invoices had duly been sent back to DHS because it was its responsibility — which of course was the business owner's understanding.

After 12 months of phone calls and faxes the business has still been unable to resolve this matter and to receive payment for the child-care services it provided. This is not the only foster care child for whom it has provided a service, and it is keen to provide quality care for children in need. We would all recognise that where children from a foster care background are placed on short-term placements in a child-care centre like this, it is usually because the children are under some duress and there is a real need to have a satisfactory provider who is extending quality care. Obviously if such businesses cannot get paid for that service or if they are given a bureaucratic run-around they are not given much encouragement to provide the service in the future.

This business has indicated to me — and I am happy to give the minister a copy of the letter — that now its only recourse is to go to debt collectors, and that is unsatisfactory for all concerned. The action I require from the minister is that she investigate this incident, have this matter resolved and perhaps look at whether there are any policy implications in foster care children going to private child-care centres.

Responses

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I intend to refer on to the relevant ministers the issues raised by the following members: Ms Lovell, Mr Hall, Ms Hartland, Ms Tierney, Mr Leane, Mr Philip Davis, Mr Elasmar, Mrs Kronberg, Ms Darveniza, Mr O'Donohue, Mr Dalla-Riva, Mrs Coote and Mr Atkinson.

In relation to the issue raised by Mr Koch: firstly, I reject his criticism of the government; secondly — and I think this discharges this issue — of course the government will ensure the helicopter goes there as soon as possible, which I think answers the question he asked.

In relation to Mrs Peulich's criticism of a Labor councillor, it sounds to me like a local issue. I suggest to Mrs Peulich that she raise the issue with the council.

I intend to also discharge the question asked by Mr Thornley, which was for me. He asked a question about co-generation. Co-generation is something the government promotes in relation to industry generally, because wherever there is excess heat in any industry production process, that excess heat could be used to generate electricity.

One of the government's important programs is to try to identify wherever there is excess heat and ensure that it does not just go into the atmosphere, which is a total waste, but is used to produce other forms of energy. I think the specific issue he referred to is about the fact that there is the capacity to produce straight-6 engines in Geelong. These engines, which have traditionally gone into Ford cars, are suitable for conversion to a stationary product which, using gas and with the attachment of a generator, would be able to generate electricity in particular circumstances.

It would make a very nice product. It would have the advantage of being able to be used in places where it is difficult to get power to, particularly around regional Victoria, or in order to reduce the emissions footprint of particular firms. This would be an interesting product. He is correct. It was raised with me today by the union. I have undertaken to have a good look at it and consider whether this is a way we could use that facility in Geelong going forward. I thank him for raising this matter with me.

I have a number of written responses to the adjournment debate matters raised by: Mr Koch on 7 February; Mr Thornley on 28 February; Mr Pakula on 11 March; Mr Drum on 12 March; Mrs Coote on 13 March; Mr Guy on 13 March; Ms Pennicuik on 13 March; Mr David Davis on 8 April; and Mr O'Donohue on 9 April.

The PRESIDENT — Order! The house now stands adjourned.

House adjourned 10.40 p.m.

Thursday, 8 May 2008

JOINT SITTING OF PARLIAMENT

Senate vacancy

Honourable members of both houses met in Assembly chamber at 12.45 p.m.

The SPEAKER — Order! The joint sitting of the Legislative Council and the Legislative Assembly is being held to choose a person to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Robert Francis Ray. Under joint standing order 19.2 the Chair of the joint sitting alternates between the President and the Speaker. The Chair for this joint sitting will be the Speaker. The general procedure is set out in joint standing orders 22 and 23.

I invite proposals from members for the appointment of a person to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Robert Francis Ray.

Mr BRUMBY (Premier) — I propose:

> That Ms Jacinta Mary Ann Collins hold the place in the Senate rendered vacant by the resignation of Senator Ray.

Ms Collins is willing to hold the vacant place, if chosen. In order to satisfy the joint sitting as to the requirements of section 15 of the commonwealth constitution, I also declare that Ms Collins is the selection of the Australian Labor Party, the party previously represented in the Senate by Senator Ray.

Mr BAILLIEU (Leader of the Opposition) — In the tradition of the house I second the proposal, and I look forward to meeting Ms Collins.

The SPEAKER — Order! Are there any further proposals?

As only one person has been proposed, I therefore declare that Ms Jacinta Mary Ann Collins has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Robert Francis Ray. I will advise the Governor accordingly.

Mr Ingram — On a point of order, Speaker, due to my objection to the process of filling casual vacancies, I would like my dissent recorded.

The SPEAKER — Order! There is no point of order. I now declare the joint sitting closed.

Proceedings terminated 12.50 p.m.