PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 11 March 2010

(Extract from book 3)

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By authority of the Victorian Government Printer

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Professor DAVID de KRETSER, AC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

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Legislative Council committees

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 Train Services — Mr Atkinson, Mr Barber, Mr Drum, Ms Huppert, Mr Leane, Mr O'Donohue and Mr Viney.

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 D. Davis, Mr Hall, Mr Lenders, Ms Pennicuik and Mr Viney.

Joint committees

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

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

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

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

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

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

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

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 and Mr Scheffer. (*Assembly*): Mr Brooks, Mr Clark, Mr Donnellan, Mr Foley and Mrs Victoria.

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

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

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

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

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

Heads of parliamentary departments

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

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

Parliamentary Services — Acting Secretary: Mr H. Barr

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT — FIRST SESSION

President: The Hon. R. F. SMITH

Deputy President: Mr BRUCE ATKINSON

Acting Presidents: Mr Eideh, Mr Elasmar, Mr Finn, Ms Huppert, Mr Leane, Ms Pennicuik, Mrs Peulich, Ms Pulford, Mr Somyurek and Mr Vogels

Leader of the Government:
Mr JOHN LENDERS

Deputy Leader of the Government:
Mr GAVIN JENNINGS

Leader of the Opposition:
Mr DAVID DAVIS

Deputy Leader of the Opposition:
Ms WENDY LOVELL

Leader of The Nationals:
Mr PETER HALL

Deputy Leader of The Nationals:
Mr DAMIAN DRUM

Member	Region	Party	Member	Region	Party
Atkinson, Mr Bruce Norman	Eastern Metropolitan	LP	Lenders, Mr John	Southern Metropolitan	ALP
Barber, Mr Gregory John	Northern Metropolitan	Greens	Lovell, Ms Wendy Ann	Northern Victoria	LP
Broad, Ms Candy Celeste	Northern Victoria	ALP	Madden, Hon. Justin Mark	Western Metropolitan	ALP
Coote, Mrs Andrea	Southern Metropolitan	LP	Mikakos, Ms Jenny	Northern Metropolitan	ALP
Dalla-Riva, Mr Richard Alex Gordon	Eastern Metropolitan	LP	Murphy, Mr Nathan[2]	Northern Metropolitan	ALP
Darveniza, Ms Kaye Mary	Northern Victoria	ALP	O'Donohue, Mr Edward John	Eastern Victoria	LP
Davis, Mr David McLean	Southern Metropolitan	LP	Pakula, Hon. Martin Philip	Western Metropolitan	ALP
Davis, Mr Philip Rivers	Eastern Victoria	LP	Pennicuik, Ms Susan Margaret	Southern Metropolitan	Greens
Drum, Mr Damian Kevin	Northern Victoria	Nats	Petrovich, Mrs Donna-Lee	Northern Victoria	LP
Eideh, Mr Khalil M.	Western Metropolitan	ALP	Peulich, Mrs Inga	South Eastern Metropolitan	LP
Elasmar, Mr Nazih	Northern Metropolitan	ALP	Pulford, Ms Jaala Lee	Western Victoria	ALP
Finn, Mr Bernard Thomas C.	Western Metropolitan	LP	Rich-Phillips, Mr Gordon Kenneth	South Eastern Metropolitan	LP
Guy, Mr Matthew Jason	Northern Metropolitan	LP	Scheffer, Mr Johan Emiel	Eastern Victoria	ALP
Hall, Mr Peter Ronald	Eastern Victoria	Nats	Smith, Hon. Robert Frederick	South Eastern Metropolitan	ALP
Hartland, Ms Colleen Mildred	Western Metropolitan	Greens	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Huppert, Ms Jennifer Sue[1]	Southern Metropolitan	ALP	Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Theophanous, Hon. Theo Charles[3]	Northern Metropolitan	ALP
Kavanagh, Mr Peter Damian	Western Victoria	DLP	Thornley, Mr Evan William[4]	Southern Metropolitan	ALP
Koch, Mr David Frank	Western Victoria	LP	Tierney, Ms Gayle Anne	Western Victoria	ALP
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

[1] Appointed 3 February 2009
[2] Appointed 9 March 2010
[3] Resigned 1 March 2010
[4] Resigned 9 January 2009

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THURSDAY, 11 MARCH 2010

Thursday, 11 March 2010

The PRESIDENT (Hon. R. F. Smith) took the chair at 9.33 a.m. and read the prayer.

PETITION

Following petition presented to house:

Bellarine Peninsula: foreshore committee

To the Legislative Council of Victoria

The petition of the residents of the Bellarine Peninsula and other persons draws to the attention of the Legislative Council our dissatisfaction with the Bellarine Bayside Foreshore Committee of Management and the way the organisation has managed the coast between Point Richards at Portarlington and Edwards Point at St Leonards.

We, the undersigned petitioners, request the Minister for Environment and Climate Change and the Brumby government to replace Bellarine Bayside Foreshore Committee of Management with an organisation that can:

1. better deal with the increasingly complex issues of the north Bellarine coastal landscape;

2. deliver a more satisfactory provision of services for the benefit of all coastal users from Point Richards to Edwards Point;

3. demonstrate a greater willingness to consult with residents and users of the Bellarine Peninsula's foreshore.

By Mr KOCH (Western Victoria) (717 signatures).

Laid on table.

ELECTORAL MATTERS COMMITTEE

Misleading or deceptive political advertising

Mr P. DAVIS (Eastern Victoria) presented report, including appendices and minority report, together with transcripts of evidence.

Laid on table.

Ordered that report be printed.

Mr P. DAVIS (Eastern Victoria) — I move:

That the Council take note of the report.

I wish to make a few brief remarks — indeed, they might be more than a little brief. By way of background on this report I remind members that on 2 June 2008 the then member for Kororoit, André Haermeyer, resigned, and subsequently a by-election for that electorate was held on 28 June 2008. Prior to the by-election a complaint was made to the Victorian Electoral Commission regarding a pamphlet authorised by the then state secretary for the ALP, Stephen Newnham, which said, 'A vote for Les Twentyman is a vote for the Liberals'.

In the VEC report, which was tabled in this place on 3 February 2009 and which reviewed the Kororoit district by-election, the electoral commissioner expressed the opinion that the pamphlet that the complaint was made about contributed to an undesirable trend for candidates to take advantage of or build on community misunderstandings of preferential voting with confusing statements and suggested to the Parliament there should be some consideration in regard to the Electoral Act and how, if at all, it should be amended to improve the operation of the misleading provisions of the act so that abuses such as this one were more likely to be successfully prosecuted.

On 1 April 2009 the Legislative Council referred to the committee an inquiry with terms of reference for the committee to proceed with, and the committee proceeded to call for submissions on 4 July 2009. It held public hearings on 18 August 2009. That is just a brief synopsis of the background to the inquiry.

It is with some pleasure I acknowledge the contributions by those who made submissions and acknowledge those who participation in what I think was generally a constructive discussion in the committee process, bearing in mind that this inquiry by its very nature had the potential to become very political and partisan. I have to compliment all members of the committee, because notwithstanding there were probably some moments in discussion and particularly perhaps outside the discussion where we were not necessarily assuming we would reach agreement, largely agreement was achieved. However, I do reinforce in the formal tabling of the report that there is a minority report attached, which I will come to shortly.

The committee considered the varying evidence in support of and in opposition to amending the Electoral Act 2002 relating to misleading or deceptive political advertising. The committee discussed a range of proposed measures to regulate misleading or deceptive political advertising and enforcement issues including such things as: educating candidates and political parties about ethical standards and legal provisions affecting the nature and content of political advertising; educating electors about voting systems; introducing a voluntary code of conduct for political parties and candidates; mounting a test case, making it an offence

to mislead electors in the formation of their vote; making it an offence to use a candidate's name, photo or likeness without written consent; requiring a statement on the political advertisements relating to preferences; introducing a Trade Practices Act-style provision requiring political parties to register their logos; nominating an agency to monitor, review and investigate compliance with misleading or deceptive political advertising provisions of the Electoral Act; and reviewing the penalties associated with breaches of the Electoral Act.

We looked to a wide field of experience and accepted the received wisdom of various submitters. In an Australian context we noted there have been numerous commonwealth and state parliamentary committee inquiries that have examined the issue of truth in political advertising.

In February 1984 the Hawke government passed legislation following the recommendation of the commonwealth Parliament's then Joint Select Committee on Electoral Reform that:

> A person shall not, during the relevant period in relation to an election under this Act, print, publish, or distribute, or cause, permit or authorise to be printed, published or distributed, any electoral advertisement containing a statement —
>
> (a) that is untrue; and
>
> (b) that is, or is likely to be, misleading or deceptive.

Penalties for a person breaching this section were a fine not exceeding $1000 or imprisonment for not more than six months or both or, for a body corporate, a fine not exceeding $5000. An aggrieved candidate or electoral commission could seek an injunction from the Supreme Court of the relevant state to prevent a breach of the Commonwealth Electoral Act 1918.

However, while the commonwealth Parliament's Joint Select Committee on Electoral Reform's second report, tabled in August 1984, agreed that fair political advertising was a desirable objective, it found that it was not possible to achieve such fairness by legislation for the following reasons:

> Long lead times would create particular difficulties for a party seeking to reply to an advertisement from another party. The attacking advertisement will have the necessary lead time to go through whatever clearance is required, but an immediate reply would not be possible;
>
> The committee was particularly concerned to establish the criteria which would be adopted by a court to determine whether a political advertisement was 'true';
>
> [Complications would arise because a statement has] to be both untrue and misleading or deceptive;
>
> Particular difficulties are likely to arise when the alleged untrue statement is a statement concerning future events, rather than existing facts;
>
> Great difficulty in divorcing statements of fact from statements of opinions … On this view a wide range of electoral advertisements could be capable of being caught;
>
> It is undesirable, both from the point of view of the courts, and the participants of the electoral process, to require the courts to enter the political arena in this way;
>
> Great difficulties would be encountered by a court which seeks to define 'untrue and misleading' statements;
>
> Many legitimate assertions which may be expected in the cut and thrust of an election campaign could become the subject of injunction proceedings;
>
> The possibility of candidates seeking injunctions to prevent publication of advertisements from an opposing political party was of concern; [and]
>
> The injunction remedy could cause grave injustice to political parties or candidates and could disrupt the normal political process, if available at the suit of any candidate.

As a consequence the commonwealth Parliament in October 1984 repealed the legislation relating to truth in political advertising. Since then there have been numerous commonwealth parliamentary inquiries examining this matter, and the commonwealth government has not reinstated truth-in-political-advertising legislation.

Other than South Australia, no other states or territories have enacted truth-in-political-advertising legislation. In a recent report to the South Australian Parliament, the South Australian electoral commissioner has stated her strong opinion that the onerous burden of determining whether electoral material was misleading should be removed from the South Australian legislation. The commission would then be in a better position to monitor the content of electoral material based on accuracy alone while maintaining the integrity of the electoral comments.

In 2007 Michelle Grattan, a leading Australian political journalist, in her delivery of the Kenneth Myer lecture, noted the problems associated with the banning of political advertising:

> Advertising is a form of political expression and stopping it would be simply another curb on freedom of speech. Nor can I see that federal rules for truth in advertising would do much more than lead to endless disputes and a mammoth bureaucracy.

Internationally, the United Kingdom electoral commission in 2004 released a report entitled *Political Advertising*. The report itself noted the debates for and against the regulation of political advertising and stated:

> While some [respondents] argued it would be in the public interest for political advertising to be subject to some form of self-regulation, others stated that a code would constitute an infringement on freedom of political expression and result in the curtailment of genuine political debate.

The report includes the main issues which were considered by the United Kingdom Electoral Commission during its inquiry, and which could be paralleled in Australia; it notes:

> … freedom of expression … provoked by far the most discussion among respondents to our paper. The lack of legislation or self-regulatory control of the content of political advertising in other comparable countries, even though self-regulation of other advertising is common, is a clear reflection of the high importance attached to protecting free speech.
>
> All advertising is subject to some specific statutory controls such as those on libel, incitement and copyright. We [the Electoral Commission] do not consider that any further statutory regulation of the content of political advertising could be justified given the importance of free political expression.
>
> There is a much higher degree of subjectivity involved in political advertising than other advertising, with appeals very often based on opinion, conjecture and values … Clauses such as those relating to truthfulness, honesty, comparisons and denigration are problematic, and the obligation in respect of substantiation of claims has never applied to political advertising.
>
> A system considering complaints is unlikely to deliver sufficiently prompt adjudications to be of any value.
>
> A requirement that advertising copy go through some form of pre-clearance is impractical.
>
> A sufficiently independent adjudicatory body would need to be appointed with significant resources to ensure enforcement of a code.
>
> The intense scrutiny of election campaigns by the media, and especially the opportunity for consumers … to deliver their own verdict on polling day, already provide incentive for political parties and campaign groups to steer clear of advertising that may be perceived by some to mislead or offend. Political advertisers overstepping the mark would run the risk of punishment through media criticism, through rival parties capitalising on any 'mistake' and ultimately rejection at the polls.
>
> The [Electoral] Commission is concerned that a regulatory system for political advertising might be more susceptible to spurious claims and allegations than the system of commercial advertising.

I regret that I felt obliged to read the copious quotations from these reports, but it was necessary to provide the context to ensure that sufficient weight is given to the consideration of the report.

By way of explanation, I further refer to my previous commentary relating to the UK electoral commission.

The report cited views of political parties. The Conservative Party was quoted in the report as follows:

> If electors are unhappy with the tone of political advertising they are well placed to voice that disapproval and withdraw their support for any political party engaging in such behaviour. In this context, self-regulation already exists.
>
> We believe that the likely abuse of the regulation of political advertising would create a constant stream of negative publicity for the whole political process. Such controversy would generate more cynicism among the public than would exist without additional regulation.

The outcome of the report was such that the UK electoral commissioner concluded:

> For a code of practice to succeed, whether statutory or voluntary, it will require the support and cooperation of political advertisers as well as a robust and workable system to operate under. We have found no compelling evidence that these aims are either practical or achievable and so are recommending that no code be introduced at present.

In conclusion, I wish to make further comment on the EMC report itself. After much deliberation the committee determined not to support the majority of the proposals, as I earlier outlined. While the committee acknowledges the limitations of the current provisions of the Electoral Act, the committee is not convinced that many of the proposed measures put to the committee would improve the regulation of misleading or deceptive political advertising. The committee supports the adherence by political parties to norms of ethical conduct, particularly during election campaigns, as a vital part of electoral democracy.

The committee also supports the Victorian Electoral Commission educating electors about the system of preferential voting and that voters have the power to control where his or her preferences are directed. The committee was concerned that expanded measures to regulate misleading or deceptive political advertising would have implementation difficulties and increase the risk of a more litigious approach to elections and election law, with a risk of adopting the US model of courts arbitrating and determining the outcome of election contests, which is now very common practice.

The Electoral Matters Committee noted in its conclusions:

> The committee is reluctant for the Victorian Electoral Commissioner to have an expanded role monitoring, reviewing and investigating breaches of the Electoral Act relating to misleading or deceptive political advertising. In addition, the committee does not support the establishment of a separate agency for compliance purposes. The committee was also concerned that the subjective nature of political discourse would make it difficult for any compliance agency to define and determine what is a fact, opinion or comment.

> These reasons contributed to the committee's concern that amending the provisions of the Electoral Act relating to misleading or deceptive political advertising would be potentially unworkable and could have unintended consequences, including the potential for a chilling effect on robust political discourse.
>
> The committee believes that there are already some measures in place to regulate misleading or deceptive political advertising. Parliamentary inquiries and the media have the ability to scrutinise and bring the policies and conduct of candidates, as well as the political issues at stake, to electors' attention.

Indeed our inquiry is an instrument that demonstrates the truth of this.

> The committee believes that the highest authority to test truth in political advertising is the electors. Electors who are dissatisfied with a government, political party, or a candidate's election campaign or question a government, political party or a candidate's honesty and integrity can 'discipline' the candidate or party at an election by not voting for them.
>
> The committee believes that the voting public ultimately determines the regulation of misleading or deceptive political advertising and is capable of making informed choices about who to vote for. This is also a view shared by the commonwealth government. The committee believes that whilst these measures are not perfect, most of the options put before the committee did not provide a satisfactory alternative.
>
> The committee also considered the issue of accessibility. The committee recommended that the VEC publish on its website registered how-to-vote cards during the election period which would improve access to how-to-vote cards for electors (especially absentee, postal and overseas voters), candidates and political parties.

I make some further points just to reflect on the report as a whole, and then I will make additional comments in respect of the minority report. It is worth emphasising these words from the conclusion of the report:

> The committee believes that the community rightly has an expectation that political parties will conform to community standards which hold truth and honesty in high regard.

It is important for us to understand that the nature of a robust democratic process will be argument about policy and the detail of capacity in public administration, but there is a presumption on the part of electors as a whole that the participants in the democratic process undertake that debate truthfully, honestly and with the best of intent to put their own case and to be judged in the court of popular opinion.

The reason that there is a minority report is that it was inevitably the case because we were dealing with an inquiry which was, in a sense, necessarily partisan. While on the whole many of the issues could be agreed, it was evident that there were some comments which all members of the committee could not agree to adopt, so the members of the opposition who were members of the committee determined that they would add an addendum. I make reference to that.

It is useful to note evidence provided to the committee at the public hearing by Mr Phil Cleary, who said:

> If that is a legitimate political strategy, then nothing matters anymore. There is nothing virtuous about the body politic. It is all about deceit … If Mr Newnham says it is a legitimate practice, I will just repeat: that debases the political process, not on the basis of the cut and thrust of politics, or robust opinions of critiquing someone's ideas or actions, but on the basis of the fact that what was stated in Kororoit was a lie.

A submission by Dennis Galimberti states:

> The conduct of the secretary of the Australian Labor Party (ALP) in authorising and distributing the pamphlet 'A vote for Les Twentyman is a vote for the Liberals' was clearly designed by the ALP to mislead voters so that, when they were forming their judgement as to whom they would vote for, they would be influenced against voting for Twentyman, believing that in effect it would be a vote for the Liberals. This pamphlet was handed to electors by representatives of the ALP outside the polling booths on election day. Electors who clearly demonstrated an intention to vote for Twentyman reformed their judgement when they were handed a pamphlet and told that 'A vote for Twentyman was effectively a vote for the Liberals.'

The Victorian Electoral Commission expressed concern that:

> Such statements, that a vote for one candidate or party is a vote for someone else, are effectively exploiting community misunderstanding of how preferential voting works. Despite the VEC's and AEC's efforts, strong anecdotal evidence suggests that a high proportion of voters are not confident about how the preferences they mark on ballot papers translate into election results. Misunderstandings are likely to be especially prevalent in electorates with concentrations of voters who are not proficient in English. In these circumstances, it is tempting for a party to promote the message that a vote for one party will somehow turn into a vote for another.

It is a matter of serious concern on the part of members who signed the minority report that at the public hearing Stephen Newnham, the then state secretary of the Victorian branch of the ALP, said:

> I would run this strategy again if the by-election was being held tomorrow … I think it is a legitimate political strategy, and I stand by it 110 per cent.

The minority report states:

> We regard the view of Stephen Newnham as being unacceptable. We hold the view that the conduct of individuals and political parties should not compromise the conduct of free and fair elections. The strength of the democratic process is undergirded by honest representations

> in political literature. We hold the view that under our terms of reference the position adopted by the ALP could be categorised as at best tending to confuse and at worst, in the words of a campaign worker for Les Twentyman, 'a debasement of the political process'.

Finally I would like to acknowledge and thank the committee secretariat for its work, including the executive officer, Mark Roberts, and Dr Natalie Wray, the principal researcher. She will be a loss to the committee as she goes off to heed the advice of, I think, Peter Costello. I hope all goes well and perhaps we will see her back in the future. I also thank Kate Woodland and Nathaniel Reader, who also provided support to the committee. I should also like to thank my colleagues on the committee for the professional manner in which the inquiry was undertaken.

Ms BROAD (Northern Victoria) — I also wish to make some brief remarks on the report of the Electoral Matters Committee on its inquiry into the provisions of the Electoral Act 2002 relating to misleading or deceptive political advertising. I take the opportunity to thank and acknowledge the work of the staff, all the witnesses who gave evidence to the committee and other members of the committee from both houses.

I wish to draw attention particularly to the statement by the committee in the report's conclusions that:

> The committee recognises that members of Parliament have a duty and responsibility as elected representatives to uphold the values of honesty and integrity.

The committee goes on to state that it believes:

> … candidates, who aspire to be elected representatives, as well as party officials, who develop and conduct election campaigns, should also uphold these values.

Further the committee states that it believes:

> … the community rightly has an expectation that political parties will conform to community standards which hold truth and honesty in high regard.

All members of the committee very readily endorse that conclusion.

Following lengthy deliberations and after hearing from many witnesses in relation to issues around how best to implement the beliefs and values I have just referred to and how to translate them into statute and regulation, and notwithstanding views around some of the failings of existing statutes and regulations in ensuring that those values and beliefs are put into practice, the committee nonetheless came to the view, whilst acknowledging the limitations of current provisions, including those in the Electoral Act, that it was not convinced that many of the proposed measures put to the committee would improve the regulation of misleading or deceptive political advertising. The committee was concerned that expanded measures to regulate misleading or deceptive political advertising would have implementation difficulties and increase the risk of a more litigious approach to elections and electoral law.

Also the committee was reluctant for the Victorian Electoral Commissioner to have an expanded role of monitoring, review and investigating breaches of the Electoral Act relating to misleading or deceptive political advertising. I might say that the Electoral Commissioner has also expressed some reservations in relation to an expanded role for the Victorian Electoral Commission and concerns around how that might get in the way of its responsibilities in relation to the conduct and administration of elections. That begs the question: does that mean that a new body would need to be established, and how would an increased regulatory role be implemented in statute?

For a whole range of reasons which are detailed in the report the committee came to the view that whilst our existing system may not be perfect, much like our democratic system, there is a very real issue around — notwithstanding those failings — what you would replace it with and how you would ensure that what you had replaced it with would be better than what we currently have to work with. The committee was not convinced that the proposals put before it would in fact be better than what we currently have to work with.

I will conclude by making a very brief reference to the minority report, which consists largely of quoting others who made submissions to the committee, and note that nothing in that minority report takes away from the conclusions and recommendations contained in the report by the whole committee, nor do the members listed in that minority report put forward any proposals as to how to improve our current provisions notwithstanding the acknowledgement by the whole committee of some of the failings of current provisions.

Motion agreed to.

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

Alert Digest No. 3

Mr EIDEH (Western Metropolitan) presented *Alert Digest* No. 3 of 2010, including appendices.

Laid on table.

Ordered to be printed.

PAPERS

Laid on table by Clerk:

Budget Sector — 2009–10 Mid-Year Financial Report, incorporating Quarterly Financial Report No. 2 for the period ended 31 December 2009.

Gambling Regulation Act 2003 — Fixed Term Ban Order of 24 February 2010 under section 2.5.A.9 of the Act.

Ombudsman — Report on Investigation into the disclosure of information by a councillor of the City of Casey, March 2010.

Parliamentary Committees Act 2003 — Government Response to the Scrutiny of Acts and Regulations Committee's Report on Exceptions and Exemptions to the Equal Opportunity Act 1995.

Statutory Rules under the following Acts of Parliament:

Building Act 1993 — No. 15.

Fisheries Act 1995 — No. 13.

Road Safety Act 1986 — No. 16.

Victorian Civil and Administrative Tribunal Act 1998 — No. 14.

Subordinate Legislation Act 1994 — Minister's exemption certificate under section 9(6) in respect of Statutory Rule No. 15.

MEMBERS STATEMENTS

Forest Hill electorate: candidates

Mr DALLA-RIVA (Eastern Metropolitan) — I am very pleased that the member for Forest Hill in the other place continues to put her foot in her mouth, so to speak. An issue was raised by the Liberal candidate for Forest Hill, Mr Neil Angus, so the member for Forest Hill decided that Mr Angus does not live in the electorate and thought she would go back to the journo who wrote the article.

In fact Mr Angus does live in the electorate. The member for Forest Hill has now had to concede and put on the record that she resides in Richmond. She has given an indication that she has no intention of going to live in Forest Hill — after nine years, coming up to 10 years. It amazes me that a member representing a marginal seat has no interest in looking after the interests of the residents out there.

The Liberal Party has a solid and real candidate in Forest Hill. It is amazing that he, who is not even yet elected, has moved into Forest Hill to represent the people of that electorate. He will be a very good candidate, and I am glad that he is there to work in that area. I am very supportive of Mr Angus. He is in stark contrast to the existing member who is absent from and very rarely seen in Forest Hill. It is an indictment of this government and of the members who sit opposite in here and in the other place. They do not really care about representing their electorates. They are always absent without leave and this is just another example of a member — —

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

Victorian Employers Chamber of Commerce and Industry: 2009 Victoria Summit

Mr BARBER (Northern Metropolitan) — Before Christmas the 2009 Victoria Summit was hosted by the Victorian Employers Chamber of Commerce and Industry. The partnership opportunities document can still be seen on the VECCI website, where it is suggested to the chamber's partners that:

> The VECCI Victoria Summit is an industry, community and government partnership that seeks to identify, understand and respond to the key issues that face not only our business community, but the broader Victorian and national communities.

Key sponsors included Deakin University, Victoria University, the port of Melbourne, the *Herald Sun*, the *Age*, the City of Melbourne and, interestingly for the Minister for Environment and Climate Change, three of his agencies: Sustainability Victoria, the Environment Protection Authority and Parks Victoria.

It is interesting that, with such a big ideas summit apparently bringing together the Victorian community, in the introductory speech it was said that those present would be hearing from Victoria's three main political parties — being the Labor and Liberal parties and The Nationals.

It is for VECCI to decide how it wants to comport itself as a lobby group. If it chooses to ignore one of the major political parties in Victoria that quite regularly receives 10 per cent of the vote across the community, that will be its loss. But it is a different matter when public funds are used, particularly when three groups in the portfolio area of the Minister for Environment and Climate Change decide to put money behind an ideas summit that then becomes a showcase for the government of the day and its kissing cousins, the Liberal and National parties.

World Plumbing Day

Mr MURPHY (Northern Metropolitan) — Today is a special day; it is the inaugural World Plumbing Day. It is a day dedicated to recognising the role the plumbing industry plays in relation to health through the provision of safe water and sanitation and the environmental role of the industry through water conservation, energy efficiency and the increasing use of renewable resources. I would like to wish all plumbers a happy World Plumbers Day.

I wish Ken Smith, the member for Bass in the Assembly, whom I ran into outside the chamber, a happy World Plumbers Day. We had a good chat about how today is a day of great celebration. It is worth noting that a 2006 United Nations report says that the water and sanitation crisis claims more lives through disease than any war does through the use of guns.

Parliament House: staff

Mr MURPHY — I also take this opportunity to thank all parliamentary staff who have welcomed me and have made my first week in this place an enjoyable experience. I thank them all — the security staff, the clerks and catering staff — on behalf of myself, my family and my friends, who were made to feel so welcome by everyone on Tuesday night after I was sworn in.

Planning: rural city of Mildura

Mr DRUM (Northern Victoria) — I have some concerns about a response given by a minister to a Dorothy Dixer question asked by Candy Broad in question time. He outlined the steps he has taken regarding the Mildura older irrigation area.

In effect the minister has reversed a current blanket ban on smaller agricultural lots. Previously he made sure that these areas were retained purely for agriculture when many of the blockies wanted to build residential units on them. He has now gone back and reversed that decision regarding the smaller blocks; he has effectively opened a two-year window where properties between 0.3 and 1.2 hectares are now allowed to be built on.

The locals are trying to work out how this is going to affect their region, with about 700 properties affected. It means there is going to be an influx of 700 houses built within two years, because that is the stipulation that has been laid down by the minister. Then there will be nothing. Currently there are no buildings.

For two years there will be a window of opportunity where anyone who wants to build in this vicinity will have to do the subdivision, put the application in and build their house, and then it will stop dead again. This is simply no way to take forward a place like Mildura. It is going to offer no security for future housing for the area. There is going to be this one-off, almighty rush to build houses, but that activity will then stop dead and nothing will happen in the future. It is unbelievable that the minister sees this as being a sustainable way to develop a place like Mildura.

Minister for Planning: performance

Mr FINN (Western Metropolitan) — I am very honoured to be a member of this Parliament. I take very seriously the role the people of Melbourne's west have elected me to play in this house. Sadly, the same cannot be said for the Minister for Planning. Last night his performance in this house was laden with arrogance and contempt, not just for this house but for his constituents as well.

I have a responsibility to serve the best interests of my constituents. As such, today I pledge to this house that I will communicate Justin Madden's attitude towards being a member of Parliament to the people of Essendon well before they vote in November this year. I will inform the people of Essendon of the minister's do not know, do not care attitude and his arrogant contempt for them and their needs.

Justin Madden has come to personify everything that is wrong with the Brumby government. He showed it last year when he was caught out in Brimbank; he showed it again this year in his office with the Hotel Windsor planning scandal; he showed it again for all the world to see last night in this house.

I care about the people of Essendon. I have a duty to tell them exactly what the ALP has dumped on them. Unlike Justin Madden and the Brumby government, I know, I care and I will accept my responsibilities.

Victorian Honour Roll of Women

Ms HUPPERT (Southern Metropolitan) — On Thursday, 4 March, I was privileged to attend the celebration of the 10th anniversary of the Victorian Honour Roll of Women, which saw the induction of 20 new members, each of whom has made a valuable contribution to our community.

I particularly wish to mention Dr Sally Cockburn, better known to many as Dr Feelgood, who was honoured for her contribution in harnessing the media to improve health communications. As well as her role in the

media Dr Cockburn has served on various boards, including those of Family Planning Victoria and VicHealth. As many in this house will know, her recent involvements include seeking legislative change to improve the lives of women and the wider Victorian community through her involvement in abortion law reform.

I would also like to mention another inductee who was also a medical practitioner, who was active at a much earlier time but whose work was also groundbreaking. Dr Fanny Reading, MBE, lived from 1884 to 1974. She was born in Russia, grew up in Ballarat and moved to Melbourne to study, graduating in medicine from the University of Melbourne in 1922.

In 1923 Dr Reading conceived and created the National Council of Jewish Women of Australia. She led the council for over 30 years promoting social justice, welfare and the advancement of women in the Jewish and general communities. In 1925 Dr Reading affiliated the NCJWA with the International Council of Jewish Women, of which she became vice-president in 1949.

Her capacity for work was legendary, balancing her professional work as a medical practitioner and her voluntary work for NCJWA and various medical boards. She also maintained an open house, providing a welcoming place for recent migrants in need of support.

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

Gaming: Lynbrook Hotel

Mrs PEULICH (South Eastern Metropolitan) — The statement I make is in relation to the owner and operator of the Lynbrook Hotel, who on 22 October 2009 wrote a letter to his local member, the Honourable Tim Holding, the Minister for Finance, WorkCover and the Transport Accident Commission, who is the member for Lyndhurst, desperately seeking an appointment with him to discuss how government policy has destroyed the financial viability of his new investment and that of his partner in the recently constructed Lynbrook Hotel at 550 South Gippsland Highway, Lynbrook. It currently employs 90 people and certainly would have employed many more if the policy changes made on the hop had not impacted on the viability of this business.

I will not discuss the details of that matter. However, as a result the hotel owner is facing financial ruin. The venue's feasibility was based on the installation and operation of a particular ratio of electronic gaming machines. That has subsequently changed. If the matter is not rectified the Lynbrook Hotel will no longer be economically viable and he will be looking down the barrel of financial ruin, including the loss of capital he has put in through his own personal assets and home. I ask the minister to read the correspondence, to which a response is long overdue, and meet with the operator to discuss this matter. Minister Holding is the local member. He might not live in the electorate, he might live in East Melbourne, but he still has a responsibility to represent his constituents, and I urge him to do so.

D. S. Aitken Reserve, Craigieburn: funding

Mr EIDEH (Western Metropolitan) — I was very pleased last week to welcome the exciting announcement of a $100 000 funding boost for D. S. Aitken Reserve in Craigieburn by the Minister for Sport, Recreation and Youth Affairs, James Merlino, and the member for Yuroke in the other place, Liz Beattie.

The funding will go towards the construction of a pipeline and automatic irrigation system which will feed water from the adjacent Yarra Valley Water recycled water pipeline. Funding will also go towards water storage tanks, making the reserve a water-efficient facility.

The funding for this project is part of the Victorian government's Drought Relief for Community Sport and Recreation program, and will help drought proof and improve facilities for local clubs, schools and the community to host training, games, local events and competitions. Most importantly, the funding will ensure the future of sport and ensure our communities are healthy, happy and active.

I am also proud to say that a further $36 000 from the Victorian government's Community Facility Funding program has been announced towards the addition of exercise stations in Craigieburn. These new exercise stations will be in the Craigieburn Gardens and will complement the nearby walking and cycling paths, basketball half-court, picnic shelter, play space and leisure centre.

I commend the Brumby Labor government for taking these important measures to help provide a more secure future for the D. S. Aitken Reserve and the thousands of park users each year, and for everyone to get active, healthy and involved in their communities.

Planning: height controls

Mr ATKINSON (Eastern Metropolitan) — I wish to express my concern about the lapse of interim height controls in various parts of Melbourne, which means

that developments that are inappropriate to local communities could be proposed by developers. I have some considerable concern for communities such as Blackburn, Mitcham and Vermont. Interim height controls did apply in some of those areas across the city of Whitehorse but, as I said, they have lapsed.

The Minister for Planning has not made any attempt to create any certainty in planning for these communities by establishing height controls, and of course in Whitehorse we are particularly nervous, with a 38-storey development at Box Hill having been called in by the minister after the Whitehorse City Council rejected the project.

We are also very nervous because previously the government, through the Victorian Civil and Administrative Tribunal and VCAT's interpreting of government policies, approved a 15-storey-plus development at Mitcham, which fortunately lapsed because it was not commercially viable on that occasion and is to be replaced by another project. But there is a great deal of nervousness out in the suburbs about this minister's level of attention to detail in terms of planning controls.

Wodonga: children's centre

Ms BROAD (Northern Victoria) — On Friday, 5 March, I had great pleasure in returning to the Belgrade Avenue children's centre in East Wodonga to officially open the redeveloped $1.6 million children's centre. This redevelopment is terrific for young families in the area and a very important investment in those families. The Brumby Labor government is investing in this because it knows that when children receive high-quality early childhood services it increases their chances of a better transition to school, with improved social and learning outcomes later in life. This redeveloped centre will certainly help parents and staff to ensure that those children receive a better chance in life, which will help them to achieve better social and learning outcomes later in life.

It was a pleasure to return after an earlier visit in 2008 to the Belgrade Avenue children's centre to announce a $1 million early childhood services grant from the Brumby Labor government to the shire of Wodonga for early childhood services in that city — an area which is very important to the Brumby Labor government.

Beaconsfield: sports facility

Mr O'DONOHUE (Eastern Victoria) — As members know, the Beaconsfield area is growing significantly, and one of the key community infrastructure projects for the Beaconsfield community is the development of new sporting facilities at Holm Park Road on a 12-hectare site. This has been a long time in the planning. In fact the football club has been planning for this for over a decade, and it is very much looking forward to the new facilities being available because it has hundreds and hundreds of people playing football, including juniors, seniors and over-35s; the netball club has hundreds of players; and Upper Beaconsfield cricket and football club also has a number of players, who are anticipating the construction of the new ovals, netball courts and other facilities.

Unfortunately, the project has hit a snag, with costs having blown out. The state government has previously committed $500 000 to the project out of an overall construction cost of $6 million. I call on the minister to work with the Shire of Cardinia, which is the proponent and the main source of funds for this project, so that the original master plan can be implemented for the benefit of this growing community. The new facilities are desperately needed. The current facilities are no longer up to standard for the demand that is generated, and I call on the minister to work with the local council and the community to find a resolution.

Hon. T. C. Theophanous

Mr ELASMAR (Northern Metropolitan) — It would be remiss of me to allow too much parliamentary time to elapse before I spoke to this house about the departure of my friend and parliamentary colleague the Honourable Theo Theophanous. I pay tribute to Theo not only because of his long and distinguished political career as a minister in the Kirner Labor government and a minister in the Bracks and Brumby Labor governments but because he was my friend and former employer before I was elected to sit in this house. Theo's achievements for the people of Victoria are manifold. I will miss his political expertise and sunny disposition, and I wish him every success in his new endeavours.

Winter Olympics: Australian athletes

Mr ELASMAR — I wish to place on record my congratulations to all our Australian athletes who competed recently in the 2010 Australian Olympic winter team in Vancouver. The Winter Paralympic Games are now on, and I support the athletes competing in them in their endeavour for gold.

Hospitals: waiting lists

Mr D. DAVIS (Southern Metropolitan) — Today I want to draw attention to issues with the outpatient waiting lists across this state. No-one knows in the state of Victoria how many tens of thousands of Victorians wait in pain and suffering on these outpatient lists. The Brumby government does not declare these lists; some other states do — Queensland does and Western Australia does.

The Auditor-General in Victoria has said there should be publication of the lists or of at least the size of the lists of the numbers of patients who are waiting for an outpatient appointment. This is the waiting list before the waiting list. We know that the official statistics are dodgy from what the Auditor-General has said, we know they are inadequate from the audits that have been done — the limited ones that have been done across this state — and we know the figures are fudged and massaged by this government. But equally we know that the people on the outpatient lists are not even included on the official waiting list statistics, and those tens of thousands of people wait a year, two years in some cases and in some cases longer, to get their very first appointment — the first appointment and the chance to join the official waiting list.

I say, as the Austin Hospital has said, these lists could be made public, and I pay tribute to the Austin Hospital for having the courage to stand up to the government and say these lists could be made public. I call on the minister to make them public.

John Tait

Mr LEANE (Eastern Metropolitan) — I wish to express my condolences to the family and friends of a truly great man, John Tait, who recently passed away. John was a passionate unionist and a staunch member of the Boronia ALP branch. John was also a fantastic teacher. John taught at the Studfield Primary School for many years until that school was unfortunately closed. John was genuinely revered, respected and loved by his students and will be remembered fondly by former students spanning decades.

Following his retirement John also continued to volunteer at schools in his local area. His focuses were music, science and sport. He was known for taking his classes outside for entire days to learn how to garden, and everyone who was taught by John learnt how to do origami.

A previous student wrote to me of his vivid memories of John positioning students on a basketball court holding various sized sports balls representing the solar system and of one particular student being the kid representing Pluto standing on the footpath across the street.

The world needs great teachers and great men, and for that fact alone John Tait will be sorely missed.

STATEMENTS ON REPORTS

Library Board of Victoria: report 2008–09

Mrs COOTE (Southern Metropolitan) — I wish to speak on the Library Board of Victoria's annual report 2008–09. I would like to begin by praising the Library Board and in particular the chairman, John Cain.

I have to say it is pleasing to read many aspects of this report, and as this chamber knows, I am a great advocate of the State Library, as indeed I know many other people in this chamber are. I was therefore extremely pleased to read the chairman's remarks in this report, which I quote:

> The board's last annual report documented the strong appetite for the library's services, with 1 583 883 visits (a 38 per cent increase on the previous year) made to Swanston Street —

which is where the library is located.

> The year just concluded saw sustained demand for, and use of, the library, with 1 528 533 visits. Despite this pressure, the library's annual survey of customer satisfaction tells us that 92 per cent consider the library is either exceeding expectations or doing a very good job.

He goes on to say that due to the prevailing economic climate the use made by the library by the unemployed has doubled to 13 per cent from 7 per cent in the last year. As I have mentioned in this place before, when Redmond Barry established the library in the 1800s he said he wanted it to be a library for all people. That increase is very pleasing; it is pleasing to know that people who are unemployed have an opportunity to go to the library and access information that so many of us take for granted.

I will read more statistics from page 11 of the report, because they are informative, and put into context what I wish to say about this report:

> The library's annual customer survey provides some fascinating insights. In 2008–09 more than 40 per cent of these visitors were under 25 years old, while only 22 per cent were over 45 years. There has also been a significant shift towards younger users in recent years.
>
> … there is no particular bias towards male or female visitors … Fifty-six per cent of them earn less than $25 000 a year and 13 per cent are unemployed —

as I explained. The report continues:

> Thirty-three per cent of our visitors do not speak English at home. Among frequent users of the library, who visit every one to three weeks, 74 per cent are under 25.

There are also the online visiting rights and a range of other new technologies, seminars and school groups et cetera that come through the library. This is very pleasing. The library is a place for everyone, including not just visitors of all types of backgrounds but also visitors who use different types of technology.

It has therefore been very disturbing to read some reports recently in the *Age* of 23 and 25 February by Dr Leslie Cannold. She wrote how disturbing it is that the noise level in the dome reading room is so unacceptable that people are no longer using it.

The library renovation, started under Jeff Kennett, has been sensational, and this government has also put money into the library renovations. It is a first-rate facility. There are plenty of spaces, plenty of room, and there should be places that are designated to be very quiet.

In an interesting article by Ian McShane from Swinburne University on 3 March he said a very interesting thing: he said the idea and the notion of silent reading is in fact a very recent one. The article says:

> As the cultural studies scholar Ian Hunter reminds us, silent reading is a relatively recent development in the history of literacy. Emerging with the rise of Protestantism in Europe, the practice of intense, inward meditation on written texts was both a critique of rote learning and a strategy to promote self-regulation and personal development.

That is very interesting, so Dr Cannold's comments are particularly concerning. I think it is most unfortunate that the library has become so noisy that research scholars believe there is no place there for them.

The minister should have a much closer look at what is actually happening in the library. Certainly we want people to be there and to enjoy the library, but we also must understand that the library needs to be there for the scholars and researchers who in fact have been very good contributors to the culture and history of this state. There needs to be a place in the state library for those people.

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

Transport Accident Commission: report 2009

Ms TIERNEY (Western Victoria) — I rise to give a statement on the 2009 annual report of the Transport Accident Commission. As members in the chamber will be aware, 2009 marked the beginning of a new chapter for the TAC, with its moving to its brand-new Geelong headquarters.

More than a year on from the Premier and TAC minister announcing the official opening of the Geelong TAC building, many employees have settled in Geelong and the surrounding region. At the time of this report more than 193 TAC employees had purchased property in the Barwon region and many more are renting in the area. The TAC's relocation to Geelong is expected to generate approximately $59 million a year in economic benefits to the local community.

Members would be aware that the role of the TAC is to reduce road trauma and its impact on the lives of Victorians who have suffered through traffic accidents. The organisation has a very difficult job, but it does a good job in assisting people who have suffered major injuries as a result of traffic accidents. That time is horrific for those directly involved as well as for their families. It often means significant changes in the way people behave after traffic accidents and the way that they conduct and lead their lives. As I said, that is true for the individuals involved, their families and their friends.

Beyond dealing with the physical trauma and the months of recovery for individuals, it is also involved in recovery from the mental stress on individual traffic accident victims as well. The TAC has teams of people offering support in many different ways to assist people recovering from horrific incidents in their lives.

During the 2009 reporting period it recorded a 7.62 out of 10 client engagement score, which is the highest ever recorded in the TAC's history. Coupled with this, there was a record high 75 per cent of staff morale recorded during the reporting period. That also is an increase which is quite significant given the restructure and the relocation of individuals employed by the TAC in that period.

Also during 2008, Victoria recorded the lowest ever road toll, at 303 people; and it invested $112 million in road safety improvements. The hospitalised claim rate was 7.3 per 10 000 vehicles compared with 7.8 in the previous year, so there was a marked improvement there.

I take this opportunity to encourage members to go to the papers office and pick up a copy of this annual report, because it is important to become acquainted with all the elements of the operations of the TAC. The report also provides information members might find informative and pass on to their constituents, which may in turn assist local communities. An example is information about the TAC road safety grants program, which provides grants of up to $20 000 to community-based projects conducted by not-for-profit groups that can demonstrate a specific local road safety issue and create a project to address it.

Even apart from the fact that Geelong is now the home of the TAC, the TAC has been very welcome to the local community. It is an important stakeholder and a partner in the community of Geelong, and it takes up an important seat at the community leadership table, which plays a critical role in taking our region forward. I commend this report to the house, and I urge those who come to Geelong to visit this very environmentally sensitive and sustainable building.

Tourism Victoria: report 2008–09

Mr P. DAVIS (Eastern Victoria) — I rise to make some comments on the Tourism Victoria annual report 2008–09, particularly in relation to regional marketing. Since the Kennett government initiated the Jigsaw campaign with the slogan 'You'll love every piece of Victoria', effectively promoting all parts of the state as regions, there has been an effective campaign to increase the level of regional marketing for tourism. It has been generally reasonably successful, and tourism growth in the regions is an important aspect of economic activity.

Event-based tourism promotion is critically important as well. This last long weekend, for example, up in the high country of north-east Gippsland and the Omeo-Benambra-Swifts Creek area, there were a number of activities which I want to mention and which attracted a lot of people. For example, on Saturday the Omeo and District Racing Club held its annual race meeting at the Hinnomunjie racecourse, which attracted a large number of people and was very well attended. There was a lot of social activity and the local community had a number of entertainment activities on subsequently over the weekend.

Down at Swifts Creek it was proposed that the Tambo Valley Cup would be run at the Swifts Creek racecourse. Unfortunately wet weather, which was well received by the farming community, caused a wet track, and that meeting had to be cancelled. But people had come to the district in anticipation of that event. At Dinner Plain there was a big weekend, particularly for cycling activities, so many people were saying in the region to be involved in that. At Swifts Creek itself on the Saturday there was a big community festival and wood chopping championship, attracting a lot of visitors.

Importantly, there was an event organised by Bicycle Victoria which I particularly wish to refer to. It was called the 3 Peaks Challenge. It was the first time this event had been run, and it involved a ride starting at Falls Creek going along a 230-kilometre circuit circumnavigating the alpine region, traversing Tawonga Gap and Mount Hotham and back to Halls Creek via Omeo. There were 1250 riders. The organisers were expecting 2000, but the rain affected participation and, as I said, 1250 riders started, with only 718 finishing. The ride took the last rider 15 hours to complete. I have to say I admire the effort on the part of the riders, particularly those who traversed the newly sealed Bogong High Plains Road, which is more than 20 kilometres of what one rider described to me as a 'wall'. It was a pretty fair effort to drive it let alone to ride it!

I want to reflect on the importance of organisations arranging tourism activities having a bit of empathy for the communities on which they impose those large activities. The Blue Duck Inn Hotel at Anglers Rest on the Cobungra River became an important stopping point for the ride, but nobody from Bicycle Victoria had consulted with the proprietors of the hotel. The first they knew about the fact that the hotel was going to be a designated stopping point was when, on the Saturday evening before the ride commenced, a truck turned up with portaloos and dropped them on the front lawn and somebody else came along and started setting up tents on the lawn.

This was unfortunate, but what was worse was that on the day, while the hotel was trying to conduct its ordinary business, Bicycle Victoria organisers were advising people who had come to have lunch at the hotel that there was a bicycle event and they should move on. The result of that was that the hotel was only able to provide meals for a handful of people compared to their usual Sunday trade. There was a significant imposition and economic loss caused by the organisers of Bicycle Victoria not having any understanding of the courtesy that is generally required if such a body presumes to take over somebody's place of business to support an activity. I think it was incredibly arrogant, and I think an apology is owed to the proprietors of the Blue Duck Inn Hotel at Anglers Rest.

Auditor-General: *Tendering and Contracting in Local Government*

Mr ELASMAR (Northern Metropolitan) — I rise to make a statement on the Auditor-General's February 2010 audit summary entitled *Tendering and Contracting in Local Government*. The Brumby Labor government continues to demonstrate its strong commitment to providing a transparent and accountable process for tendering and contracting in local government.

The vast majority of local government revenue — more than $2.7 billion — is spent on the construction of roads, waste management, and plant and equipment. Most local councils have already established appropriate probity standards though it is acknowledged in the report that there is scope for improvement.

The recommendations contained in the report go to the heart of ensuring the best value for money for the rate dollar. Councils should strengthen their accountability methodologies by ensuring that all procurement staff are trained to avoid the pitfalls of conflict of interest; through the establishment of tendering, valuation panels ensure that staff qualify and are able to quantify their decisions by ensuring that any decisions that are made are able to stand up to public scrutiny.

This can only occur if the proper maintenance of all written documents clearly outlines all correct procedures have been followed in the eventual allocation and approval of successful contracts thereby attesting to the absolute adherence to the methods that should meet all transparency obligations.

Local Government Victoria has also introduced initiatives across councils to incorporate improved procurement practices and access to the state government's purchasing register, a body that has already been tested for stringent probity and value-for-money criteria.

In conclusion, I support all of the recommendations contained in the report, together with the establishment of a monitoring and revision system to ensure that improvements to the system are continuous and ongoing across all councils in Victoria, because at the end of the day honesty and integrity are what ratepayers want and deserve.

Auditor-General: *Management of Concessions by the Department of Human Services*

Mrs KRONBERG (Eastern Metropolitan) — I would like to make some comments on the Victorian Auditor-General's report *Management of Concessions by the Department of Human Services*. The particular concessions that the report examines are those that are intended to help low-income individuals and households access and afford essential services, such as water, energy, housing, health and transport. Affordable access to these services is often vital for the wellbeing, health and social inclusion of people who are dependent on such concessions. Typically the concessions are provided through discounts on standard fees and charges for service. Reimbursements, rebates to recipients or free services also fall within the range of such concessions.

The state government provides over $1 billion each year in directly funded concessions and forgone revenue. Some 700 000 Victorian households, comprising over 1.3 million Victorians, benefit from the $1 billion that funds the concessions and the ensuing hardship programs. Because the system of concessions has evolved over a lengthy period of time there are inevitable differences in the way that some of these concessions work, some being capped whilst others are not, and not all concession-holders are eligible for all concessions, which leads to a state of confusion.

The state's concession budget will come under great pressure in coming years, because such expenditure is being driven, as would be expected, by increasing numbers of people being eligible for and seeking access to concessions, and by the rising prices of services themselves that are subject to access through the concessions regime itself.

For example, current concern centres on the predicted rise in both energy and water costs, and we are all cognisant of the pressures such rises will put on every household budget, let alone people in disadvantaged situations. The ongoing sustainability of this concessions program for people who suffer hardship and need to access concessions is under threat, because the forecast rate of increase in spending on concessions exceeds projected growth rates in state revenues.

The Victorian Auditor-General reports that, in spite of the Department of Human Services' planning of forward activities, there still remain challenges with the design and ongoing sustainability of the programs. There is concern that individual concessions have not been assessed against the concessions policy

framework since it was agreed to by government back in September 2007.

As a test of concession effectiveness they should periodically be assessed to test their alignment and to ensure proper priority is given when revision and reallocation of limited resources is called upon. The Victorian Auditor-General stresses the need to reduce the number of ineligible people accessing concessions, because without appropriate rigour in verification controls there remains a risk that not all people accessing concessions are entitled to them.

The Victorian Auditor-General reports that concessions provided by energy retailers, water authorities and local government have not been adequately monitored, and powers to gain assurance that adequate controls are operating over concessions provided by these organisations have not been used.

Recommendations from previous audits have not been adequately addressed either, and many organisations have never been audited. The consequence is that this puts a lot of pressure on the distribution of concessions, just access and entitlement. There is a prevailing climate wherein retailers have not been penalised for non-compliance with agreed performance indicators, thus energy retailers have little incentive to comply with their obligations in terms of funds being provided by the state government.

There are a number of recommendations in the report, and one that I think is important to highlight is that there needs to be an implementation — —

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

Auditor-General: *Irrigation Water Stores — Lake Mokoan and Tarago Reservoir*

Ms BROAD (Northern Victoria) — I rise to make some remarks on the Victorian Auditor-General's report *Irrigation Water Stores — Lake Mokoan and Tarago Reservoir*. In particular I wish to make some remarks about performance in relation to the Lake Mokoan irrigation water stores.

I will refer to the findings and conclusions in the Auditor-General's report — that the Brumby government's decision to decommission Lake Mokoan was based on sound technical advice and comprehensive community consultation. The findings and conclusions go on to state that further analysis of the project benefits by the Auditor-General's study support the conclusion of the technical advice analysed in the report.

Further, the Auditor-General's report found that the governance structures and approaches to decision making and project implementation were appropriate and sound, and that decommissioning Lake Mokoan would not raise the flooding risk for Benalla and its surrounds, because Lake Mokoan had not been used for flood mitigation.

The Auditor-General also acknowledged that the government had exceeded its commitment by delivering 92 per cent reliability for irrigators through the offsets package, which came about after listening closely to irrigators who had previously sourced water from Lake Mokoan. The government worked with the Victorian Farmers Federation to get a good outcome, and farmers are now using a much more efficient irrigation system that means water losses have reduced dramatically, as the minister has stated.

I might rhetorically ask the question, why does all this matter, not only to the farmers directly affected, the surrounding communities, particularly Benalla, but to all Victorians? It matters because Lake Mokoan was Victoria's most inefficient water storage, losing 50 billion litres of water in evaporation annually, and the irrigation system lost 3 litres of water for every litre delivered to the farm gate. That means for every 4 litres of water put into that irrigation system only 1 litre was delivered to irrigators, hence the conclusion that it was Victoria's most inefficient water storage.

Notwithstanding those facts, which have been endorsed by the Auditor-General, it is still the case that The Nationals and the Liberal opposition continue to argue in support of maintenance of this water storage and the losses that it caused to our water supplies in Victoria. In particular the member for Benalla, Dr Sykes, of The Nationals, has continued to argue very recently that the decommissioning of Lake Mokoan should be stopped and that this water storage should continue to operate. That is an astounding position that anyone would conclude was irresponsible on the basis of the evidence which has now been thoroughly investigated by the Auditor-General.

I also note that there will be very significant benefits from the decommissioning to Victoria's drought-stressed rivers. There will be 50 billion litres of water saved from the decommissioning to be provided to river systems including the Murray, Snowy, Goulburn and Broken rivers. The decommissioning project, which is also delivering strong economic benefits to the region as a result of the up to $20 million invested by the government, reached a significant milestone last week when the excavators broke through the dam wall, and it will be completed by the middle of the year.

Department of Planning and Community Development: report 2008–09

Mrs PEULICH (South Eastern Metropolitan) — I make further comments on the Department of Planning and Community Development annual report 2008–09 in regard to one of my very favourite topics, local government, and the mismanagement, lack of direction and vision for this very important multibillion-dollar sector as a result of incompetent leadership at the highest level — that is, by the minister.

There have been modest improvements and attempts to address some of the most controversial issues that have emerged, but little real progress has been made on three key issues, as I see them. In this report we have 1.75 pages devoted to reporting on local government, which I think is appalling considering the significance and value of the sector and the number of people employed in the sector.

There are three significant problems. The first is the overarching problem of governance, which is crucial: it is the issue of the decade, especially after 10 years of manipulation of local government by the Victorian Labor Party; the second is the culture that has emerged as a result of that; and the third is the lack of clarity in relation to how conflict of interest rules apply to councillors on the one hand while a blind eye is turned to the very significant breaches of conflict of interest on the other.

I note today the Ombudsman tabled a report in relation to only one breach involving a member of the Labor Party, a Labor councillor from the City of Casey, Cr Kevin Bradford, who until recently was employed by the Parliamentary Secretary to the Premier, Luke Donnellan. There are those problems I have mentioned of governance, culture and lack of clarity in relation to conflict of interest provisions, and generally there is a culture of bullying and intimidation that has permeated the sector as a result. This has all been not only incompetence on the part of the minister but a deliberate ploy to make local government a servant to the Labor agenda.

In relation to the culture of bullying, and again linking back to the report that has been tabled today involving Cr Bradford, the Ombudsman makes a recommendation that the Minister for Local Government consider the matters dealt with in the report and determine what action should be taken. I have also recommended that the City of Casey preclude councillors from being members of panels during procurement processes and that it clarify the role of organising committees. The council has accepted my recommendations.

I note also a recent Auditor-General's report about failings in the area of administration of tenders and contracts in local government. Clearly these are very important areas that this government has failed to come to grips with. However, as a result of that Cr Bradford has breached these rules and no doubt some action will be taken to address this. It is interesting that previously, also from Mr Donnellan's office, Roland Abraham, a former Casey councillor, was charged and convicted of fraud and attempting to claim some benefit from the council to which he was not entitled, and George Droutsas, a former Whitehorse councillor, was also charged.

It is interesting to read from the Legislative Council *Hansard* report of 31 March 2004 an extract from a speech on a matter raised by Mr Forwood, which states:

> We have a situation where one of the two independent councillors on this council has been taken away by the young bovver boy, the foot soldier, the thug from Mike Danby and Luke Donnellan's office, the numbers boy, the Labor Party hit man, in an attempt to silence an independent councillor. I say to members opposite: if they are behaving like this in councils, where else will it go?

I can tell members where they go; they get elected to Parliament. Yesterday I saw Mr Lenders, Treasurer of this state, as well as the new Minister for Public Transport, Mr Pakula, and Mr Viney attempting to insinuate that a newly elected councillor of the City of Kingston who was attempting to represent his community was somehow compromised and corrupt. It is absolutely disgraceful that they turn a blind eye to the thugs who obviously have clear links to the offices of Labor members of Parliament. They are clearly linked to the Premier's door, and yet they try to silence genuine representation by genuine councillors. These matters need to be addressed as a matter of urgency by this government as well as by the Minister for Local Government.

CREDIT (COMMONWEALTH POWERS) BILL

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Jennings 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 (charter), I make this statement of compatibility with respect to the Credit (Commonwealth Powers) Bill 2010 (adoption bill). In my opinion, the adoption bill, 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 the bill

The purpose of the adoption bill is to adopt certain commonwealth legislation, to refer legislative power to the commonwealth in accordance with section 51(xxxvii) of the Australian Constitution to enable it to make amendments to that legislation, and to make related transitional and consequential provisions. The adoption bill is the result of the National Credit Law Agreement 2009 (the agreement). Part 10 of that agreement provides that the Australian government, in consultation with the states and territories, will review the national credit law scheme no later than 30 June 2012.

The adoption is limited to two commonwealth acts and includes a referred power for the commonwealth to expressly amend those acts. The two commonwealth acts (referred to as the national credit legislation) are:

The National Consumer Credit Protection Act 2009 (cth) (the NCCP act), as amended by the National Consumer Credit Protection Amendment Act 2010 (cth). (The NCCP act also attaches the National Credit Code (the code) as a schedule); and

The National Consumer Credit Protection (Transitional and Consequential Powers) Act 2009 (the transitional act).

This statement assesses the compatibility of the adoption bill (including the national credit legislation) with the charter. The adoption bill, the NCCP act, the code and the transitional act are discussed in turn.

The national credit legislation is not subject to the interpretative obligation under section 32 of the charter because it will operate as commonwealth legislation. The power to make declarations of inconsistent interpretation under section 36(1) of the charter will likewise not be available. Further, the regulator of the national credit legislation, the Australian Securities and Investments Commission (ASIC), is not a public authority for the purposes of the charter.

Credit (Commonwealth Powers) Bill 2010 (the adoption bill)

The charter implications of the national credit legislation, as currently enacted, are considered below.

The adoption bill also refers a power to amend the national credit legislation (clause 6(1)). The amendment reference is limited by subject matter to the kind of credit and consumer leases covered by the code. It is also limited to 'express amendment', meaning 'the direct amendment of the text of the national credit legislation (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another commonwealth act or by an instrument under a commonwealth act, but does not include the enactment by a commonwealth act of a provision that has or will have substantive effect otherwise than as part of the text of the national credit legislation'. Clause 7 of the bill contains some express exclusions from the amendment reference. These relate to: state taxes; the recording of estates or interests in land; provision for the priority of interest in real property; and any law that excludes or limits state law with respect to the creation, holding, transfer, assignment, disposal, or forfeiture of a state statutory right.

It is not possible to assess the charter compatibility of any future amendments that may be made by the commonwealth Parliament in an exercise of the referred power. I note that the adoption bill does not include a requirement for states and territories to consent to any commonwealth amendments to the national credit legislation. However, under clause 5.4 of the agreement, the commonwealth ministerial member of the ministerial council will consult the council about amendments. Where three or more state ministers consider that the amendment is for a purpose beyond the scope of the referral, a meeting of the council must be convened. Under clause 5.4(2), the commonwealth minister will not pursue an amendment voted against by three or more state ministers at that meeting. The adoption bill also empowers the governor to terminate the adoption or the amendment reference (clauses 5 and 8).

Transitional provisions and consequential amendments

The adoption bill also contains transitional provisions and consequential amendments to a number of Victorian statutes which raise issues concerning the rights to property, fair hearing and privacy.

Right to property and fair hearing

Part 3 of the adoption bill is concerned with transitional provisions. Once the national credit legislation becomes operational, the old code will cease, as will the ability to commence proceedings in the Victorian Civil and Administrative Tribunal (VCAT). Existing court and tribunal proceedings will, however, be finally determined and enforced under the current scheme (clauses 14 and 15).

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law. 'property' may include existing causes of action. However, a change in the process and forum in which rights and liabilities will be determined does not of itself amount to a deprivation of property.

Individuals will continue to have protections and obligations and the right to have them fairly determined by a competent, independent and impartial court under the national credit legislation. Accordingly, I consider the adoption bill to be compatible with the right to property in the charter. I have also considered these provisions against the right to a fair trial protected by section 24 of the charter and I am satisfied for the same reasons that they do not limit that right.

The right to privacy

Clause 19 permits the Director of Consumer Affairs under the Fair Trading Act 1999 (Vic) to disclose to ASIC any information that it reasonably requires under the national credit legislation, which he or she has acquired in the course of acting in that role.

Section 13 of the charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

To the limited extent that clause 19 permits disclosure of personal information, it will engage the right to privacy. However, any disclosure of private details by the director will not be unlawful or arbitrary because disclosure will be for specific regulatory purposes in accordance with the privacy principles under the Information Privacy Act 2000. The use of that information by ASIC will similarly be subject to the

commonwealth privacy principles under the Privacy Act 1988 (cth). Accordingly, I consider clause 19 to be compatible with the right to privacy in the charter.

The National Consumer Credit Protection Act 2009 (cth) (the NCCP act)

The NCCP act implements a national licensing regime for credit providers, brokers and intermediaries. It introduces new responsible lending conduct requirements, which will be a key condition of holding a licence. As the sole regulator of the scheme, the Australian Securities and Investments Commission (ASIC) is provided with enforcement powers. The NCCP act also introduces dispute resolution mechanisms, remedies for consumers including compensation, and criminal and civil penalties for licensee misconduct.

The NCCP act has already been amended by the National Consumer Credit Protection Amendment Act 2010 (cth) and I have also considered the effect of that amendment.

Although it is generally incorporated entities that are licensed to engage in credit activities, incorporation is not a requirement and the NCCP act also imposes obligations that apply to individuals. Accordingly, I must consider whether those obligations raise any human rights.

Granting, variation, suspension and cancellation of licences, banning and prohibition orders

Under the NCCP act a person must not engage in credit activities without a licence granted by ASIC. The act grants ASIC a range of powers to grant, vary, suspend, cancel or impose conditions on licences which are set out in chapter 2. ASIC may also ban a person from engaging in credit activities (section 80) (These types of decisions are referred to here as licensing decisions). Special provisions apply to licensing decisions for authorised deposit-taking institutions (ADIs) and Australian Prudential Regulation Authority (APRA) regulated bodies (sections 38, 46, 56).

Where applicants or licensees are individuals, some of these powers raise the right to property under section 20 of the charter, and the right to a fair hearing under section 24 of the charter.

The right to property

Section 20 of the charter has been described above.

Section 45 of the NCCP act allows ASIC to impose, vary or revoke conditions on Australian credit licences at any time. However, ASIC must give the licensee the opportunity to appear at a private hearing before ASIC and to make submissions.

Sections 54 and 55 allow ASIC to suspend or cancel a person's licence with or without a hearing on a range of prescribed grounds. A hearing must be given before a decision to suspend or cancel a licence is made unless:

> the licensee has made an application for suspension or cancellation (section 54(1)(a));
>
> the licensee ceases to engage in credit activities (section 54(1)(b));
>
> the licensee is insolvent, convicted of serious fraud or incapable of managing their affairs by reason of mental impairment (sections 54(1)(c) and 54(2)).

Similarly, under section 80(5), a hearing is not required for banning orders when the decision is based on a suspension or cancellation imposed on one of these grounds.

Although 'property' may include statutory rights such as licences, the cancellation or alteration of a licence will not amount to a deprivation of property where the licence-holder did not have a reasonable expectation of the lasting nature of the licence. While the NCCP act defines property to include a licence at section 20, section 44 expressly states that a licence is granted on the basis that it can be suspended, cancelled and varied and conditions can be imposed, varied or revoked under the act or later legislation.

Even if it is arguable that some of these licensing decisions could amount to a deprivation of an individual's property, in most cases the licensee has an opportunity to contest the decision at a hearing.

In summary, the provisions are in accordance with law so as not to limit property rights in the charter.

The right to a fair trial

Section 24 of the charter provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. In *Kracke v. Mental Health Review Board & Ors (General)* [2009] VCAT 646, Justice Bell interpreted civil proceeding in section 24(1) of the charter as encompassing proceedings which are determinative of private rights and interests in the broad sense, including administration proceedings. The right in section 24(1) may be relevant (although non-applicable) to licensing decisions made by ASIC under the NCCP act. Importantly, his Honour noted that if section 24(1) does apply, the whole decision-making process, including avenues for review and appeal, must be examined.

The NCCP act requires that the hearings conducted by ASIC for the purpose of making these decisions must afford procedural fairness. Applicants and licensees are entitled to be represented and make submissions (sections 41, 45(5), 55(4), 80(4), 83). ASIC must comply with notice requirements and provide written reasons (sections 42, 45(4), 60, 61, 84, 85). However, ASIC is not an independent court or tribunal for the purposes of section 24(1) of the charter. Nor are its hearings held in public. Although ASIC must hold a hearing in relation to the variation of conditions on licences held by ADIs, it is the minister who makes this decision (section 56(2)(c)). Further, as outlined above, hearings are not always required before all licensing decisions are made. Where hearings are not provided, it is evident that the decision to suspend or cancel a licence or make a banning order is a consequence of legal or factual determinations established by other courts, tribunals or bodies, such as a conviction of serious fraud or that the licensee is insolvent.

I am of the opinion that these provisions are compatible with the fair hearing right in the charter because procedural fairness is afforded to a person appearing before ASIC in relation to licensing decisions, and these decisions of ASIC

are subject to review by the Administrative Appeals Tribunal under section 327 of the NCCP act.

Provision and disclosure of information

A number of provisions in chapter 2 of the NCCP act (which is concerned with licensing) require licence applicants and licensed credit providers to disclose information to the regulator, ASIC. This obligation to provide information exists for a range of purposes, such as enhancing consumer protection and responsible lending practices.

For the purpose of regulation, ASIC may require a range of information from licensees, such as financial statements and records, audit reports, compliance certificates, notice of credit representatives and any other assistance in relation to compliance as reasonably requested (sections 49, 50, 51, 53, 71, 88, 98, 102). ASIC may also request information such as audit reports from applicants applying for a licence (section 37(4)). An auditor must disclose attempts by licensees to influence his or her report or findings, contraventions of the NCCP act or matters impacting on the licensee's ability to comply with its obligations (section 104).

To promote responsible lending, the NCCP act also imposes a number of requirements on licensees engaging in credit activities to give information to credit consumers such as credit guides, written quotes and assessments of suitability (sections 113, 114, 116, 117, 120, 126, 127, 132, 136, 137, 143, 149, 150, 155). Credit representatives and debt collectors must provide credit guides and disclose all fees and commissions to consumers (sections 121, 144, 158, 160). There are specific restrictions on suggesting to consumers that they enter into or stay in unsuitable contracts or leases (sections 123, 124, 146, 147) in addition to the prohibition in section 30 on people holding out or advertising that they are licensed to engage in credit activities if that is not the case. Under section 33 it is also a civil and criminal offence for a person engaging in a credit activity to provide information that is false or misleading.

ASIC is empowered to disclose certain information in the performance of its regulatory functions. Section 213 of the NCCP act provides that ASIC must establish and maintain one or more public registers and may prescribe the level of information and details contained in the register about persons that are subject to the act. The registers may contain information about persons engaging in credit activities as well as those subject to banning orders, and ASIC is authorised by section 214(3) to make such information available to the public.

Section 219 allows ASIC to establish and maintain registers of documents lodged with ASIC, as well as to compel a person to provide information to the document register (section 220). However, section 219(4) provides that ASIC is not required to make document registers available to the public.

Section 73 permits ASIC to release information to licensees about credit representatives. The act restricts the uses the licensees can make of that information to making decisions about actions involving and against that representative. A breach of these restrictions is a criminal offence and the lawful use of the information by the licensee is protected from defamation proceedings (see sections 73(7) and 16). The same qualified privilege in proceedings for defamation is also given to auditors for statements made in an audit report (see sections 105 and 16).

These provisions raise the right to freedom of expression under section 15 and the right to privacy and reputation under section 13 in the charter.

Freedom of expression

Section 15 of the charter provides that every person has the right to freedom of expression, which includes the freedom to impart information and ideas of all kinds. The right has also been held to include the right not to impart information.

Section 15 of the charter may be engaged by the sections of the NCCP act outlined above that require the disclosure of information to consumers and to ASIC, which create offences for providing false and misleading information, and which prohibit certain advertising. However, to the extent that the right to freedom of expression is engaged, these sections would fall within the exceptions to the right in section 15(3), as reasonably necessary to respect the rights and reputation of other persons, or for the protection of public order.

These provisions enable appropriate oversight and monitoring of compliance with the NCCP act and are reasonably necessary to ensure that credit providers and others who choose to be involved in the industry are meeting their obligations and responsibilities, which have been designed to protect consumers.

Accordingly I consider these provisions to be compatible with the right to freedom of expression in the charter.

Privacy and reputation

Section 13 of the charter has been described above. A 'lawful' interference with privacy is one that is authorised by a positive law that is adequately accessible and formulated with sufficient precision to enable a person to regulate his or her conduct by it. The prohibition on arbitrary interference requires that lawful interference must also be reasonable and proportionate in all the circumstances.

To the extent that these provisions allow for the collection, storage and release of personal information of individuals (as opposed to bodies corporate), they will engage the right to privacy. Any interference with the right occurring in accordance with the provisions of the NCCP act and regulations will not be unlawful and is subject to the safeguards provided in the Privacy Act 1988 (cth). In relation to reputation, section 16 of the NCCP act limits the protection given to licensees and auditors from defamation proceedings (sections 73(7) and 105) to statements made without malice. 'Malice' is defined in section 16(2) to include ill will to the person concerned and any other improper motive.

In summary, applicants, licensees and credit representatives will voluntarily become subject to these provisions through applying for or obtaining a license and/or participating in a regulated industry. As information is collected and disclosed for the purpose of protecting consumers and ensuring the proper regulation of credit activities, the provisions are reasonable and proportionate and consequently not arbitrary. Accordingly I consider these provisions to be compatible with the right to privacy in the charter.

Investigation and enforcement powers

Chapter 6 of the NCCP act is concerned with compliance and enforcement. It gives ASIC powers to make investigations, conduct examinations, inspect books and gather information, commence criminal and civil proceedings following an investigation, and conduct hearings. Criminal prosecutions and civil proceedings may follow. ASIC is provided with similar enforcement rights, obligations and capacity to administer and discharge its duties under the ASIC Act 2001 (cth) and the Corporations Act 2001 (cth) in order to regulate credit activities and maintain public confidence in the integrity of the credit industry.

Examinations and information-gathering activities

Section 253 provides that ASIC may, by written notice, require a person to give all reasonable assistance in connection with an investigation and to appear before a specified ASIC member or ASIC staff member for examination on oath and to answer questions. ASIC may also issues notices under sections 265, 266, 267 and 268 requiring the production of books.

Section 295 provides that it is not a reasonable excuse for a person to refuse or fail to give information because it might tend to incriminate the person or make the person liable to a penalty. This provision also applies to ASIC's power under section 284 to summons witnesses to give evidence and/or produce documents when conducting a hearing (division 2 of part 6-5). Failure to comply with these coercive powers is an offence under section 290.

Freedom of expression

The compulsion to answer questions and produce documents engages the right to freedom of expression under section 15 of the charter. As discussed above, the right to freedom of expression includes the right not to impart information.

The assistance of those responsible for and familiar with the processes and operations adopted by businesses engaged in credit activities is necessary to conduct investigations into whether or not the regulatory obligations on credit providers are being complied with. This duty to assist is co-extensive with the other obligations undertaken by credit providers by participating in a regulated activity. Further, people with incriminating evidence who may not be implicated in any misconduct, but operate within the relevant credit business, have that knowledge because of their role or position. Unless required to provide that evidence, they may not otherwise be forthcoming with information due to concerns about their future prospects or employment, and concurrent confidentiality and contractual obligations.

These provisions enable appropriate oversight and monitoring of compliance with the NCCP act and are reasonably necessary to ensure that credit providers and others who choose to be involved in the industry are meeting their obligations and responsibilities, which have been designed to protect consumers. Therefore, to the extent that freedom of expression is engaged, these provisions would fall within the exceptions to the right in section 15(3) of the charter, as reasonably necessary to respect the rights and reputation of other persons, or for the protection of public order.

Self-incrimination

Section 25(2)(k) of the charter provides that a person who has been charged with a criminal offence has the right not to be compelled to testify against himself or herself or to confess guilt. This right is also an aspect of the right to a fair trial protected by section 24 of the charter. The decision in *Re Application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381 (Major Crime) holds that this right, as protected by the charter, is at least as broad as the privilege against self-incrimination protected by the common law. It applies to protect a charged person against the admission in subsequent criminal proceedings of incriminatory material obtained under compulsion, regardless of whether the information was obtained prior to or subsequent to the charge being laid.

The NCCP act abrogates the privilege against self-incrimination by compelling testimony but replaces it with an immunity. Under section 295(3), if a person claims before making the compelled statement that the statement might tend to incriminate them, that statement is not admissible as evidence against them in criminal proceedings or civil proceedings for a penalty.

This immunity is limited in two ways. First, it only applies to the direct use of the compelled statement in subsequent proceedings. It does not apply to 'derivative' use. What that means is that if, as a result of the compelled statement, further evidence is uncovered that incriminates the maker of the statement, the use of such further evidence in a criminal prosecution against the person is permitted. Secondly, the immunity applies to compelled testimony but it does not apply to the compelled production of documents. It is necessary to consider in turn whether either of those limits on the scope of the immunity amounts to an unjustifiable limit on the right not to have to incriminate oneself, as protected by the charter.

1. The absence of derivative-use immunity

In the decision in Major Crime, the Supreme Court held that, in the circumstances of that case, both a direct use and a derivative immunity were required to ensure that questioning under section 39 of the Major Crimes (Investigative Powers) Act 2004 (which abrogated the privilege) was compatible with sections 25(2)(k) and 24 of the charter. However, the Chief Justice did not rule out the possibility that a denial of derivative-use immunity might be capable of justification in a different regulatory context.

Having regard to the factors in section 7(2) of the charter, I consider that the absence of a derivative-use immunity for testimonial evidence appropriately balances the right against self-incrimination and the public interest in efficiently and effectively investigating criminal offences under the national credit legislation, for the following reasons.

(a) The nature of the right being limited

This has been outlined above. There are a number of rationales for the right against self-incrimination. These include the fact that the state should not be able to compel individuals to assist it to prove that they have committed an offence, the concern about oppressive state conduct, the related concern about reliability of evidence, and the protection of privacy.

(b) The importance of the purpose of the limitation

The statutory purpose underlying the limits to the right against self-incrimination is to enable the regulator to perform its compliance and enforcement functions having regard to the difficulties faced when investigating offences against the national credit legislation. The maintenance of public confidence in the credit industry requires active oversight of credit providers and protection of consumers. The nature of and interconnected functions served by the credit industry requires that investigations must be conducted, concluded and resolved as promptly as possible.

(c) The nature and extent of the limitation

ASIC can compel evidence only for the specific purpose of monitoring compliance with the national credit legislation. The people who will be subject to those powers have chosen to participate in regulated credit activities in which they have assumed duties and obligations.

Procedural fairness is afforded to examinees and witnesses, and ASIC's use of powers under the act is subject to parliamentary scrutiny by the Parliamentary Joint Committee on Corporations and Financial Services. Decisions concerning the exercise of these powers must comply with the statutory preconditions set out in the Act, must not be oppressive, unreasonable or improper and can be the subject of judicial review.

(d) The relationship between the limitation and its purpose

There is a close relationship between the limit and its purpose. Experience in the related context of enforcing corporations law has shown that granting immunities in a regulated commercial context to the type of individuals most likely to be examined and exposed to criminal and civil penalties (those who are responsible for the proper administration of credit activities) leads to protracted investigations, with the result that those responsible for wrongdoing and misconduct can ultimately escape liability.

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

It is for these reasons that all forms of derivative-use immunity were removed from corporate regulation following extensive inquiries and empirical research into the difficulties of investigating and prosecuting corporate misconduct offences. Having considered the right against self-incrimination in other common law jurisdictions and under human rights instruments, both the 1991 report by the Joint Statutory Committee on Corporations and Securities considering 'Use Immunity Provisions in the Corporations Law and the Australian Securities Commission Law' and the 1997 'Review of the Derivative Use Immunity Reforms' by John Kluver concluded that direct-use immunity for oral testimony was sufficient protection for individuals who have voluntarily taken on positions of responsibility and privilege in a regulated industry.

In my view, the same reasoning applies in this context. Investigations into credit and financial services offences face similar difficulties because the evidence of offences is generally only to be found within the domain of the relevant operator and knowledge of the offences is held by those responsible for compliance and day-to-day operations, and in their books and documents.

The extent of these powers is commensurate with ASIC's pre-existing regulatory powers in similar settings.

(f) Other reasons

I have also taken account of the importance of uniform legislation in this area, which is driven by recognition of the complex role played by the credit industry in the national economy. By the end of the 1980s, a lack of consistency between the various pieces of state and territory legislation was becoming an increasing problem and a number of inquiries have called for uniform regulation. The purpose of the adoption of national credit legislation is to end the inconsistent operation of the current Uniform Consumer Credit Code across the states, reduce duplication and compliance costs for businesses, and complexity for consumers. The result will be greater protection of consumer interests and a well-functioning credit market.

2. No immunity for the production of documents

I consider that the limit placed on the right by the absence of immunity in relation to the production of documents is justified for the following reasons.

(a) The nature of the right being limited

The right in section 25(2)(k) of the charter is a right not to 'testify against oneself', the core idea being that a person should not be conscripted into incriminating themselves. For that reason, a search of and seizure of a person's records is not generally considered to breach the privilege against self-incrimination as the person has not been conscripted into articulating or producing what is expressed in the records. I accept that the right does nevertheless protect against the compelled production of documents as well as to enforced oral testimony. However, in my view, the protection accorded to the compelled production of pre-existing documents is considerably weaker than the protection accorded to oral testimony or to documents that are brought into existence to comply with a request for information. That is consistent with the decision of the High Court of Australia in *Environment Protection Authority v. Caltex Refining Co. Pty Ltd* (1993) 178 CLR 477:

> It is one thing to protect a person from testifying to guilt; it is quite another thing to protect a person from the production of documents already in existence which constitute evidence of guilt, especially documents which are in the nature of real evidence … Plainly enough the case for protecting a person from compulsion to make an admission of guilt is much stronger than the case for protecting a person from compulsion to produce books or documents which are in the nature of real evidence of guilt and are not testimonial in character: per Mason CJ and Toohey J at page 502. See also per Deane, Dawson and Gaudron JJ at page 527 and per McHugh J at page 555.

A number of the purposes that underlie the privilege against self-incrimination are not implicated or are less implicated by the compelled production of documents that already exist or of real evidence, in particular, the concern about oppressive conduct or psychological pressure being brought to bear in the creation of the evidence, and the related concern about the reliability of the evidence.

(b) The importance of the purpose of the limitation

The purpose of restricting the right against self-incrimination has already been described above.

I note that the same 1991 and 1997 reports discussed above that saw the removal of derivative immunities from the Corporations Law also supported the complete removal of any immunity for the production of documents in that context.

(c) The nature and extent of the limitation

ASIC's powers to compel the production of documents can only be used against specific people and types of documents. Only people engaged in credit activities, and their representatives, bankers, lawyers and auditors can be the subject of a requirement under sections 265, 266 and 267 to produce documents. These are persons who have obligations under the national credit legislation and other laws, including statutory responsibilities to create and maintain certain documents (for example, books and documents relating to credit activities, audits, the affairs and financial situation of a licensee, and general compliance with relevant laws).

The same parliamentary safeguards and judicial oversight outlined above apply.

(d) The relationship between the limitation and its purpose

The nature of investigations into credit activities and financial services is frequently complex and involves extensive use of documentary evidence. The ability to bring proceedings would be severely curtailed if the documents of key people relating to credit activities could be withheld, or alternatively if they could not be relied upon.

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

Having regard to the nature of misconduct in the credit and financial services industry, there are no less restrictive means available to ensure that compliance with and breaches of the national credit legislation are properly investigated and responded to.

As noted above, the search of a person's records is not generally considered to breach the privilege against self-incrimination as the person has not been conscripted into producing the records. However, the use of search and seizure powers is generally more intrusive and disruptive to businesses, primarily because it is a less efficient method of obtaining the information.

Accordingly, I consider these provisions to be compatible with the right against self-incrimination in the charter.

The right to privacy

Because ASIC is limited in the types of documents it can compel production of, it is unlikely that the documents will contain personal information. The exception is the ability to require documents relating to the financial information of a person engaged in credit activities. When that person is an individual, the production of that information will engage the right to privacy under section 13 of the charter.

Division 2 of part 6-3 of the NCCP act relates to the inspection of books. To the extent that this division concerns the personal information of individuals, it too potentially engages section 13 of the charter.

However, where personal information contained in books is inspected in accordance with the relevant provisions, or where books are seized in accordance with the relevant provisions, any interference with privacy will not be unlawful. In addition, as the purpose of the inspection and seizure powers is regulatory in nature, and the books will be seized or inspected for the purpose of protecting consumers and ensuring the proper regulation of credit activities, any inspection and/or seizure will be reasonable and proportionate and consequently not arbitrary.

Hearings

Division 2 of part 6-5 of the NCCP act relates to ASIC's powers to hold hearings for the purposes of the performance or exercise of any of its functions under the commonwealth legislation. The fair hearing right in section 24 of the charter is engaged in relation to this division. It provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. As discussed above, for the purposes of section 24, the adequacy of an individual's access to a fair hearing must be regarded in its entirety. While ASIC is not an independent and impartial body, it must conduct the hearing in accordance with natural justice under section 285(2)(c). The decisions ASIC makes as a result of the hearings it conducts can be subject to judicial review. All questions of law arising during a hearing must be referred to a competent court under section 287.

Section 278 provides that ASIC has discretion in relation to whether or not the hearings are to take place in public or in private. The factors which ASIC is to have regard to in exercising its discretion are whether evidence that may be given is confidential or relates to the commission of an offence; any unfair prejudice to a person's reputation that would be likely to be caused if the hearing took place in public; whether it is in the public interest that the hearing take place in public and any other relevant matter. Section 280 provides that if the commonwealth credit legislation requires a hearing to take place in private, the hearing must take place in private.

Under section 24 of the charter, a court or tribunal may exclude members of media organisations or other persons or the general public from all or part of a hearing if permitted to do so by law. It will often be in the interests of individuals involved in these hearings that they be held in private, particularly where subsequent or concurrent criminal proceedings concerning their conduct are likely.

Section 293 provides that a person must not engage in conduct that results in the disruption of a hearing. Section 293 may prevent an individual's right to freedom of expression under section 15 of the charter during a hearing if the individual was doing so in a disruptive manner. However, this restriction is necessary to ensure the proper conduct of hearings. Further, as ASIC must observe the rules of natural justice during hearings, individuals will be afforded the opportunity to appear and make submissions (section 285).

Accordingly, I am of the opinion that these provisions are compatible with the rights to a fair trial and free expression in the charter.

Offence provisions

Legal onuses and the presumption of innocence

It is an offence under section 291 of the NCCP Act for a person to give false or misleading information when complying with an obligation under chapter 6, or in the course of an examination or a hearing. The penalty for committing this offence in the context of compliance or at an examination is 100 penalty units or 2 years imprisonment or both. A lesser penalty applies to the offence when it is committed at a hearing — 10 penalty units or 3 months imprisonment or both. Section 291(3) provides a defence where the defendant believed on reasonable grounds that the information was true and not misleading at the time he or she gave it.

Section 294 of the NCCP act makes it an offence to conceal, destroy, mutate or alter a book relating to a matter under an investigation (or pending investigation) by ASIC. The penalty is 200 penalty units or 5 years imprisonment or both. It is a defence under section 294(2) if the defendant did not intend to defeat the purposes of the NCCP act, delay or obstruct the ASIC investigation or proposed investigation.

The NCCP act imposes a legal burden on a defendant in respect of the defences. By placing a burden of proof on the accused, the defences in these provisions limit the right to be presumed innocent in section 25(1) of the charter, when the accused is an individual. However, I consider that the limits upon the right are reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter having regard to the following factors.

(a) The nature of the right being limited

The right to be presumed innocent is an important right that has long been recognised well before the enactment of the charter. However, the courts have held that it may be subject to limits particularly where, as here, the offence is of a regulatory nature; and a defence is enacted for the benefit of an accused to escape liability where they have taken reasonable steps to ensure compliance, in respect of what could otherwise be an absolute or strict liability offence.

(b) The importance of the purpose of the limitation

The purpose of imposing a legal burden is to ensure the effectiveness of enforcement of and compliance with the NCCP act, through prohibiting the giving of misleading and false information when compelled to provide evidence under the act, and the concealment or destruction of books relevant to an investigation. The purpose of imposing a burden of proof on the accused is to ensure that the offences can be effectively prosecuted and operate as an effective deterrent.

The purpose and effect of the defences is to provide a defendant with an opportunity, in appropriate circumstances, to escape culpability for providing false information or concealing books in breach of obligations under the NCCP act, because the contravention was not deliberate.

(c) The nature and extent of the limitation

The burden of proof is imposed in respect of the defences. The prosecution would have to establish that the defendant gave false or misleading information or engaged in conduct to conceal or destroy books that related to an investigation.

(d) The relationship between the limitation and its purpose

The imposition of a burden of proof on the accused is directly related to its purpose. Unless the defendant can satisfy the court that he or she did not deliberately give false or misleading information or conceal books in order to hinder ASIC's investigation, they will be convicted.

It is appropriate that failure to comply with an obligation under the act to provide information or to properly maintain books required under the regulatory framework is culpable, and that the accused must establish the reason for that failure to discharge his or her responsibilities. The defences relate to matters that are within the knowledge and control of the accused and it would be difficult and onerous for the Crown to investigate and prove them beyond reasonable doubt.

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

Although an evidential onus would be less restrictive upon the right to be presumed innocent, it would not be as effective because it could be too easily discharged by the accused, leaving the prosecution in the difficult position of having to prove what the accused did reasonably know or intend to do. The inclusion of a defence with a burden on the accused to prove the matters on the balance of probabilities achieves an appropriate balance of all interests.

Accordingly, I consider these provisions to be compatible with the right to be presumed innocent in the charter.

Evidential onuses and the presumption of innocence

A number of regulatory offences within the NCCP act impose an evidential onus on a defendant to adduce or point to evidence that goes to an exception, excuse or defence. The criminal offences contained in sections 29, 88, 124, 147, 207, 227, 228, 240, 274, 290, 292 and 293 impose such a burden. In my view, these provisions do not transfer the burden of proof, because once the defendant has adduced or pointed to some evidence, the burden is on the prosecution to prove beyond reasonable doubt the absence of the exception raised. Furthermore, the burdens do not relate to essential elements of the offences and are only imposed on the defendant to raise facts that support the existence of an exception, defence or excuse.

Courts in other jurisdictions have generally taken the approach that an evidential onus on a defendant to raise a defence does not limit the presumption of innocence. However, even if these provisions limit the right to be presumed innocent in section 25(1) of the charter, the limitation would be reasonable and justifiable under section 7(2) of the charter because the defences and excuse provided for relate to matters within the knowledge of the defendant.

Accordingly, I consider these provisions in the act to be compatible with the right to be presumed innocent in the charter.

Schedule 1: the National Credit Code (the code)

The code is similar to the current Uniform Consumer Credit Code and is attached as a schedule to the NCCP act. It provides a consumer protection framework for consumer credit and related transactions.

Obligations and restrictions relating to the provision of information: freedom of expression

The code regulates what information credit providers must give to consumers, and how and when it must be given. It prescribes form and content requirements of credit contracts, related mortgages and guarantees and consumer leases (sections 14, 17, 18, 42, 55, 173, 174). Credit providers must comply with pre-contractual disclosure obligations in sections 16 and 56. They are required to provide statements of account (sections 33, 34, 35), statements of amounts owing (section 36), and statements of payout figures (section 83).

The code also imposes a number of notification responsibilities on credit providers including requirements to give written notice to consumers (which comply with sections 183, 195 and 196) when certain action is undertaken by credit providers. Notice must be given where changes occur in fees, interest rates, contracts, mortgages, guarantees, credit limits, guarantor liabilities and repayments (sections 61, 64, 65(1), 66(1), 67, 68, 69, 71, 72(3), 73) or where action is taken to recover debt (sections 38, 85(3), 85(9), 87(2), 88(3), 89, 90, 93, 102(1), 178). Credit providers must also provide information about a debtor's liabilities and rights (sections 94(2), 95(3), 38, 102(1)). There is also an obligation on credit consumers to provide notice to credit providers when they undertake certain action, such as disputing an account (sections 38(1), 58(1), 85(1), 130(5)), and to give reasons (sections 72(3) and 94(2)).

As described above, freedom of expression includes the right not to impart information and may be engaged where there is a requirement that compels the provision of information. However, to the extent that these provisions engage the right to freedom of expression, they come within the limitation in section 15(3) of the charter as they are reasonably necessary for the protection of public order. It is reasonably necessary for consumer protection that credit providers be required to fully inform consumers on their rights and liabilities, and it is also necessary for both parties to be required to provide notice when any action is taken which may affect the rights and responsibilities of either the consumer or the provider.

Obligations and restrictions relating to advertising

Section 150 places regulations on advertisements that state or imply that credit is available, which require rates, fees and charges to be stated. If an interest rate is advertised, comparison rates must also be stated under sections 157 and 160, in the manner required by sections 161, 162 and 164. Section 163 requires that a comparison rate in a credit advertisement must be accompanied by a warning about its accuracy. The requirements in sections 161 to 164 also apply to documents containing comparison rates.

Similarly, section 153 provides that an interest rate must not be disclosed in an advertisement or to a debtor before entering into a contract, unless it is expressed as a nominal percentage rate per annum or is the comparison rate calculated as prescribed and accompanied by the required warnings.

It is a criminal offence under sections 154, 155 and 156 for a person to make a false or misleading representation about a matter that is material to entry into a credit contract (or a related transaction), or in attempting to induce another person to enter into a credit contract (or related transaction). It is also an offence for a credit provider or supplier to harass a person or to visit a person's home without prior arrangement, when attempting to get that person to apply for credit or to enter into a credit contract or a related transaction, or inducing the resident to apply for or obtain credit.

Freedom of expression

These provisions engage the right to freedom of expression by both restricting and requiring expression. The definition of 'expression' is broad and has been interpreted by other jurisdictions to even include false, misleading and dishonest communications. However, these provisions come within the limitation in section 15(3) of the charter because they are reasonably necessary to respect the rights and reputation of other persons, or for the protection of public order. These sections enable appropriate regulation of credit providers in their dealings with consumers through advertising and are reasonably necessary to ensure both the fair and transparent operation of the industry and to protect consumers from dishonest conduct or harassment. Accordingly, I consider that these provisions are compatible with the freedom of expression right in the charter.

The right to be presumed innocent

Breach of the advertising requirements in the code is a criminal offence with a penalty of 100 penalty units (section 150). Under section 151(1) a person properly identified in an advertisement is liable for an advertisement breaching these requirements, in the absence of proof to the contrary, if they provide credit, own or have an interest in any goods, or supply or have an interest in the supply of any goods or services promoted by the advertisement. Section 152 effectively provides a due diligence defence to an offence under section 150, when the breach was outside the defendant's control.

By placing a burden of proof on the accused, section 151 limits the right to be presumed innocent in section 25(1) of the charter, when the accused is an individual. Section 25(1) of the charter has been described above. I consider that the limits upon the right are reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter having regard to the following factors:

(a) The nature of the right being limited

The right to be presumed innocent is an important right that had been recognised well before the enactment of the charter. However, the courts have held that it may be subject to limits, particularly where the offence is of a regulatory nature.

(b) The importance of the purpose of the limitation

The purpose of imposing a legal burden is to ensure the effectiveness of enforcement of and compliance with the code, through imposing a duty on those responsible for credit advertisements to give consumers appropriate and reliable information.

The purpose and effect of the defence is to provide a defendant with an opportunity to escape culpability for publishing material that does not meet the requirements of the code, because the exercise of reasonable care by the defendant could not have prevented the breach.

(c) The nature and extent of the limitation

The burden of proof is imposed in respect of a defence only, and does not apply to an essential element of the offence.

Before the defence could apply, the prosecution would have to establish that the advertisements did not meet the code's requirements.

(d) The relationship between the limitation and its purpose

The imposition of a burden of proof on the accused is directly related to its purpose, which is to ensure that people responsible for credit advertisements act reasonably and diligently to comply with their obligations under the code.

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

Removing the defence altogether would not infringe the right to be presumed innocent. However, this would not achieve the purpose of enabling the accused to escape liability in appropriate circumstances. Although an evidential onus would be less restrictive upon the right to be presumed innocent, it would not be as effective in achieving the purpose of the provision because the defence relates to matters that are principally within the knowledge and/or control of the defendant.

Accordingly, I consider this provision to be compatible with the right to be presumed innocent in the charter.

Entry to residential property to repossess goods: the right to privacy

Section 99 permits a credit provider to enter a person's home to repossess mortgaged goods in accordance with the mortgage. The power to enter a residential property only arises if the court has authorised the entry or the occupier consents in writing (section 100). Section 101 enables the court to make an order for repossession or delivery of the goods.

As the exercise of this authority permits access to private residences, the right to privacy is engaged. However, these powers arise in controlled and prescribed circumstances as set out in the code for the purpose of enforcing regulated contractual agreements and are lawful. Consequently, I do not consider that these provisions can be described as arbitrary.

Accordingly, this provision is compatible with the right to privacy under section 13 of the charter.

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009 (the transitional act)

The transitional act regulates the registration of persons to engage in credit activities. Registration is a transitional authorisation to engage in credit activities that applies in the period before all persons who engage in credit activities are required to be licensed under the new consumer credit regime. This act deals with how a person becomes registered, the obligations of registered persons, and the suspension and cancellation of registrations.

The transitional act has been assessed against the charter. As most of the provisions contained in the transitional act are also present in the NCCP act, the conclusions below will draw heavily on the reasoning already outlined earlier in this statement.

Offence provisions: the right to be presumed innocent

Sections 4 and 6 of schedule 2 part 2 prohibit a person from engaging in credit activities if not authorised to do so under the transitional arrangements relating to registration and licensing. Subsection (3) of these provisions provides defences for contravening the provision, such as having acted on behalf of an authorised principal. In relation to criminal trials, the defendant bears an evidential burden in raising the defence.

It is questionable if the evidential burden in relation to these offences actually transfers the burden of proof so as to engage the right in section 25(1), because once the defendant has adduced or pointed to some evidence, the burden is on the prosecution to prove beyond reasonable doubt the absence of the exception raised. As indicated earlier, 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. The purpose of the defence is to enable the defendant to escape liability in appropriate circumstances. In my view, this provision is compatible with section 25(1) of the charter.

Prohibition on holding out and advertising: freedom of expression

Section 8 of schedule 2 part 2 applies section 30 of the NCCP act to the transitional act, which prohibits a person from holding out and advertising that the person is authorised to engage in credit activity when that is not the case.

As outlined above, to the extent that this provision may engage the right to free expression, it comes within the limitation in section 15(3) of the charter because it is reasonably necessary for consumer protection.

Obligations of registered persons

Sections 17, 18 and 19 of schedule 2 part 3 require registered persons to provide information to ASIC when issued with a notice. Failure to comply attracts both criminal and civil penalties. The obligation to provide information includes statements and audit reports about credit activities engaged in by registered persons. A registered person is also obligated to provide assistance to ASIC, which includes showing ASIC the person's books or giving other information.

Freedom of expression

While the requirement to provide information is a limitation on the freedom of expression, the requirement is reasonably necessary to ensure compliance with the act, which is necessary for the protection of public order under section 15(3) of the charter.

Right to privacy

To the extent that these provisions result in the disclosure of personal information, the interference with an individual's privacy will be authorised under law and will occur in precise and circumscribed circumstances, which are connected to the regulation of credit activities. Furthermore, as discussed earlier, ASIC is subject to safeguards regarding the disclosure of information collected by it.

Accordingly, I consider that the transitional act is compatible with the right to freedom of expression and the right to privacy.

Registration and licence provisions

The transitional act grants ASIC a range of powers to vary, suspend, cancel or impose conditions on the registrations and licences held by persons engaging in credit activities. In the event that licensees are individuals, the transitional act technically engages the right not to be deprived of property in section 20 of the charter.

Right to property

Section 14 of schedule 2 part 3 allows ASIC to impose, vary or revoke conditions on registrations at any time. However, ASIC must give the registered person written notice of the imposition as well as an opportunity to appear at a private hearing before ASIC and make submissions. To the extent that such decisions may restrict the use of the statutory registration for credit activities, the property right may be engaged. If so, the restriction is in accordance with law and would not be arbitrary, particularly given that a person holding a registration has an opportunity to argue before ASIC as to whether conditions should be imposed, varied or revoked.

Section 21 of schedule 2 part 3 cancels the registration of every person at the end of 30 June 2011. However, every holder of a registration is able to apply for a licence. As this is part of the transitional arrangements in transforming the regulatory regime from utilising registrations to utilising licences, the deprivation of property is in accordance with law and not arbitrary.

Section 23 of schedule 2 part 3 allows ASIC to suspend or cancel a person's registration without hearing for a range of prescribed grounds. However, as outlined in the discussion concerning licensing decisions under the NCCP act, even if a deprivation was found to have occurred, the cancellation and suspension of a licence, or the refusal to renew a licence, will occur in accordance with law.

Right to fair trial

Section 23 of schedule 2 part 3 allows ASIC to suspend or cancel a person's registration without hearing. While such a provision may engage the right to a fair trial, a hearing in this situation is not required as the decision made by ASIC will be based on facts and determinations made by other courts, tribunals or bodies, such as a conviction for serious fraud. As outlined earlier, any decision which is based on disputable grounds such as a suspected contravention of the transitional act cannot be made without offering a hearing, and decisions made by ASIC concerning licensing and registration are subject to review.

Accordingly, the provisions relating to licensing and registration of persons who engage in credit activities are compatible with the charter.

Conclusion

I consider that the adoption bill, NCCP act, the code and the transitional act are compatible with the charter.

Justin Madden, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Introduction

The Credit (Commonwealth Powers) Bill is part of the national business and regulatory reform agenda agreed by the Council of Australian Governments (COAG).

In April 2008 the Productivity Commission released a review of Australia's consumer law framework. It identified deficiencies in the jurisdiction-based regulation of consumer credit. In particular, it noted gaps in coverage, variations in requirements across jurisdictions and the lack of ability for the law to respond quickly to rapidly changing credit markets.

The Productivity Commission recommended the transfer of responsibility for the regulation of credit to the commonwealth government, to be administered by the Australian Securities and Investments Commission (ASIC).

In line with this recommendation, to ensure consistency in regulation across Australia and to address gaps in the current scheme, in 2008 COAG agreed to the transfer of the regulation of consumer credit to the commonwealth.

The transfer of the regulation of consumer credit to the commonwealth represents a key milestone in the COAG national partnership agreement to deliver a seamless national economy. Once the national scheme is fully implemented, those involved in the provision of credit will be subject to a single system of regulation administered by ASIC. Consumers across Australia will have consistent remedies and protections available to them, and will enjoy enhanced protections under the new national credit laws.

The national reforms in the area of credit are the subject of an intergovernmental agreement known as the national credit agreement, signed by the Premier in December 2009. The national credit agreement records the agreement to adopt a single national legislative scheme for the regulation of consumer credit. In particular, the national credit agreement notes the agreement of states to transfer certain legislative powers to the commonwealth Parliament to enable the commonwealth to introduce national legislation for the regulation of credit.

Background to reforms

Presently in Victoria, most consumer credit contracts are regulated by the Uniform Consumer Credit Code (the UCCC). The UCCC was developed in the early 1990s in an endeavour to achieve national uniformity in the regulation of consumer credit. Each state and territory has adopted the UCCC as law in their respective jurisdictions.

The UCCC imposes comprehensive disclosure requirements on credit providers in relation to consumer credit contracts, including consumer leases. It regulates the methods for calculating and advertising interest rates, fees and charges. The UCCC enables courts to vary the terms of a consumer credit contract to relieve hardship for consumers, to reopen unconscionable transactions or to review unconscionable interest rates or charges. The UCCC deals with processes and rights related to the enforcement of credit contracts and securities.

While the UCCC has achieved a degree of uniformity in relation to the regulation of consumer credit, various aspects of the regulation of consumer credit remain inconsistent.

Separately to the UCCC, jurisdictions have legislative schemes for the registration or licensing of credit providers or intermediaries such as finance brokers. Credit providers and intermediaries operating nationally must deal with several different state and territory regulators, and can be subject to up to eight separate regulatory regimes. This increases costs for credit providers and intermediaries operating nationally and makes compliance more difficult. This, in turn, increases the cost of credit for consumers.

Another major concern with the current arrangement is the requirement for consensus among all states and territories for the formulation and passage of amendments to the UCCC, and delays resulting from procedural requirements in each jurisdiction. The use of credit in Australia, the number of credit providers and the variety of credit products available to consumers has increased significantly over the past 20 years. For example, it is far more common than it has been in the past for consumers to access credit through intermediaries rather than directly from a credit provider. An effective regulatory scheme must be able to respond quickly to these types of changes in the marketplace.

A comprehensive review of Victoria's consumer credit laws was conducted in 2006. The government has introduced a number of improvements to Victoria's consumer credit laws since that time, including introducing a mandatory requirement for registered credit providers to be members of an approved external dispute resolution scheme. To improve protection for consumers, credit providers in Victoria are also subject to the unfair contract terms provisions in the Fair Trading Act 1999. Victoria has also been instrumental, through its role in the Ministerial Council on Consumer Affairs, in promoting and developing improvements to the UCCC. This bill represents a further important step for Victorian consumers and businesses in the area of consumer credit.

The national credit laws

I turn now to the pertinent provisions of the national credit laws. The relevant commonwealth acts are the National Consumer Credit Protection Act 2009 and the National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009. I will refer to these two acts as the national credit laws. The national credit laws received the royal assent on 15 December 2009.

The national credit laws have been developed in consultation with state and territory representatives on the dedicated Financial Services and Credit Reform Implementation Task Force. The commonwealth has also undertaken consultation with industry and consumer groups.

The national credit laws introduce a single, uniform licensing scheme for those who engage in credit activities. Credit providers, finance brokers and others who provide credit assistance or act as intermediaries will be required to hold an Australian credit licence from 1 July 2011. The national licensing scheme will be phased in from April 2010, allowing time for industry to prepare. It will replace the existing state and territory schemes. The commonwealth regulations will exempt certain classes of people from the licensing requirements, such as point-of-sale retailers who arrange credit or act as intermediaries through an arrangement with a credit provider.

Licensees will be required to be members of an approved external dispute resolution scheme. Credit providers in Victoria are already subject to this important requirement, which is designed to ensure that consumers have access to low-cost dispute resolution options.

The national credit laws introduce new responsible lending conduct requirements for licensees. The centrepiece of the responsible lending reforms is a provision that will require a licensee to assess the suitability of a credit product for a consumer's stated objectives and financial circumstances. Credit providers and finance brokers will be prohibited from suggesting unsuitable credit products to consumers. They will also be subject to enhanced disclosure requirements to enable consumers to make informed choices about credit products and services. The responsible lending conduct requirements will be fully operational by 1 January 2011, with significant obligations commencing from July 2010.

The national credit laws will introduce a national credit code to replace the existing UCCC. The national credit code will be substantially similar to the existing UCCC, enabling a smooth transition from the state-based scheme to the national scheme for industry and consumers alike. Unlike the UCCC, the national credit code will apply as a commonwealth law and will be administered by ASIC.

The national credit code will include certain enhancements from the provisions in the UCCC. The commonwealth will adopt state and territory proposals under development for the reform of mandatory comparison rates, default notices and other provisions dealing with fringe lending practices. The commonwealth will also extend the application of the national credit code to residential investment properties and make adjustments to the threshold loan amount to which hardship provisions in the national credit code will apply.

The national consumer credit scheme represents a significant milestone in the national reform agenda, and will achieve consistency for businesses and consumers across Australia.

The Victorian bill

I turn now to the key features of the Victorian bill.

The bill grants to the commonwealth Parliament the constitutional powers it requires for the effective enactment and operation of the national credit laws. It includes provisions dealing with the repeal of certain Victorian legislation relating to credit, makes necessary consequential amendments to Victorian laws, and deals with the transition to the new national scheme.

The bill adopts, for the purposes of section 51(xxxvii) of the commonwealth constitution, the text of the National Consumer Credit Protection Act and the National Consumer

Credit Protection (Transitional and Consequential Provisions) Act. The adoption of the national legislation allows these acts, as originally enacted by the commonwealth, to operate as a law of the commonwealth in and for the state of Victoria. The adoption is necessary to ensure that the commonwealth has sufficient constitutional power to enact and administer the national credit laws.

In addition, the bill refers to the commonwealth the power to make amendments to the national credit laws in the future. The amendment power is limited to amendments that relate to the subject matters of 'credit' or 'consumer leases' as those terms are defined in the national credit code.

The amendment power is further limited by provisions which confirm that the commonwealth cannot make amendments to the national credit laws that would interfere with specified areas of state legislative responsibility. The national credit agreement also confirms that the commonwealth will not legislate in these excluded areas of state legislative responsibility. Including these protections in the bill is important to ensure that Victoria's legislative powers in areas that might be related to credit are not inadvertently transferred to the commonwealth. This is consistent with previous referrals of power to the commonwealth. The excluded areas of state responsibility relate to: state taxes; the recording of estates and interests in land; the priority of interests in real property; and state laws relating to state statutory rights (such as water rights). The bill also includes a provision which allows Victoria, by a proclamation of the Governor in Council, to terminate the adoption or the referral of powers to the commonwealth.

On 10 February 2010, the commonwealth introduced into Parliament the National Consumer Credit Protection Amendment Bill 2010. This bill amends the national credit laws to recognise as full participants in the national scheme those states that adopt the national laws and that exclude specified areas of legislative responsibility from the commonwealth's amendment power. Victoria has worked closely with the commonwealth to ensure that these important amendments to the national credit legislation proceed.

The bill repeals most of the provisions in the Consumer Credit (Victoria) Act 1995 to make way for the new national scheme. These repeals will abolish Victoria's registration scheme for credit providers and negative licensing scheme for finance brokers. Pending the outcome of the commonwealth review into interest rate caps, Victoria will retain sections 39 and 40 of the Consumer Credit (Victoria) Act, which cap the rate of interest for unsecured consumer credit contracts at 48 per cent and consumer credit-related mortgages at 30 per cent.

The Credit Act 1984 and the Credit (Administration) Act 1984 will be retained, with appropriate consequential amendments. The retention of these two acts is necessary because they apply to certain contracts entered into prior to November 1996 that are not captured by the new national credit laws.

The bill includes transitional provisions that allow for a smooth transfer of functions from Consumer Affairs Victoria to ASIC. Consumer Affairs Victoria will continue to work with ASIC to ensure a successful transition. The transitional provisions in the bill also deal with the treatment of ongoing court proceedings that were commenced under the UCCC.

The bill also includes provisions that displace the operation of the national credit legislation in limited circumstances. These provisions avoid inconsistencies between Victorian laws and the new national credit laws. For example, specific Victorian laws relating to cooling-off periods for motor car purchases in Victoria will be expressed to exclude the operation of slightly different provisions in the national credit code.

Conclusion

The introduction of a uniform national scheme for the regulation of consumer credit represents a landmark law reform measure in Australia. This bill is an important step towards the commencement of that scheme.

Victoria, together with the other states and territories, will continue to work cooperatively with the commonwealth to bring about these important national reforms. Under the national credit agreement, Victoria, through the Ministerial Council for Corporations, will have an important ongoing role in overseeing the implementation of the scheme, reviewing its operation, and considering any future proposals to amend the national credit laws.

Victoria will also support the implementation of a proposed second phase of reforms by the commonwealth in the area of consumer credit. These reforms will follow the initial national credit laws.

I commend the bill to the house.

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

Debate adjourned until Thursday, 18 March.

CRIMES LEGISLATION AMENDMENT BILL

Second reading

Debate resumed from 25 February; motion of Hon. J. M. MADDEN (Minister for Planning).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am pleased to rise this morning to make some brief remarks on the Crimes Legislation Amendment Bill and note that the coalition parties will be supporting it. To a certain extent this is an omnibus bill. It makes amendments to the Crimes Act 1958, the Crimes (Controlled Operations) Act 2004, the Fisheries Act 1995, the Wildlife Act 1975, the Family Violence Protection Act 2008 and the Evidence (Miscellaneous Provisions) Act 1958 with respect to certain child-sex offences, family violence notices, controlled operations reports and, with respect to the evidence act, the definition of 'document'. I understand the minister will be seeking to move amendments in committee with respect to the provisions of the evidence act.

The bill makes a number of changes to the abovementioned acts, the first of which is to change the penalties that apply to certain sexual offences involving children, notably the offence of sexual penetration of a child under the age of 10 years. Currently that offence carries a maximum sentence of up to 25 years in prison. However, for the next cohort of offences of sexual penetration of a child over 10 years of age the penalty currently drops to 10 years in prison. This bill seeks to change the threshold age at which the different penalties apply from a victim's age of 10 years to a victim's age of 12 years, and I will come back to that matter shortly.

The bill also extends for 12 months to 8 December 2011 the existing sunset date for family violence safety notices, which are currently due to sunset on 8 December. What is notable about this provision — and, as I indicated, the coalition will support it — is that the notion of what the legislation refers to as 'family violence safety notices' was in fact an election policy of the Liberal Party in 2006. We went to that election with a policy proposing interim protection orders which would operate in the same way as what we now know as family violence safety notices operate. As is typical of this government, it rejected that policy at the time of the 2006 election campaign only to adopt the policy under a different name subsequent to that election, the name being the current family violence safety notices.

As with many things the Attorney-General does through the legal system it was introduced for a short-term period and was, as I said, to sunset at the end of this year. That period has proved too short for adequate evaluations, so the Parliament is now being asked to extend the sunset period by 12 months to December next year.

With respect to controlled operations and fisheries and wildlife matters the bill changes the dates by which reports on controlled operations are required to be given to the special investigations monitor. It is a technical change. I understand that at present the reports are required to be provided as soon as possible after 31 March and 30 September respectively for controlled operations by Victoria Police and operations by fisheries and wildlife. The bill will change the dates to 30 June and 31 December respectively and provide that reports be made available within two months of those respective dates.

The bill also seeks to change the definition of 'document' as it exists in the Evidence (Miscellaneous Provisions) Act 1958 to bring it into line with the Evidence Act 2008. The Council will recall this Parliament dealt with that consolidated evidence law in 2008 — although it seems more recent than that. The bill will align the definition of 'document' between those two evidence references. As I indicated earlier, the government has foreshadowed it will introduce a further amendment in respect of the evidence provisions. I understand these are of limited scope. They are to put beyond question of doubt any suppression orders that may have been issued by the bushfire royal commission. The coalition parties have indicated we will support that amendment being included in the bill to address that matter.

As I said at the outset, in one sense the primary purpose of the bill is to change the age threshold at which the higher penalty applies for sexual penetration offences against children. I indicated that the current age threshold for the maximum penalty of 25 years is where a victim is below 10 years of age. Where the victim is above that age the maximum penalty falls to 10 years.

I was interested to note that the age threshold has been changed from 10 years to 12 years; the implementation of the threshold is due to a particular case. The threshold has been determined by the court, but I understand that it may be a matter for appeal, so it is still pending. I do not intend to refer to it at any length.

What applied in that case was that the offence that took place occurred just after the victim had turned 10. As a consequence the maximum penalty that applied was substantially lower than would have applied had the offence occurred a matter of weeks earlier, when the victim was under the age of 10. As a consequence it has now been proposed to lift that threshold of the victim's age to 12.

What is important and what the Victorian community is increasingly concerned about is not the maximum penalties that apply for these offences — and that is what this bill seeks to change today, by shifting that age threshold and thereby increasing to 25 years imprisonment the penalty for offences against children between the ages of 10 and 12 — but the sentences that are being imposed for this type of offence.

Data available through the Sentencing Advisory Council indicates that while currently the maximum penalty is 25 years imprisonment for offences against children under the age of 10, on average the penalty applied for such offences is a custodial sentence of only 3.3 years.

So there is already very limited application of the existing maximum penalty for that younger cohort of victims. Equally on the current legislation, where a lower maximum penalty applies, where the victim is

aged 10 or 11 — that is, up to the new proposed threshold — with a current 10-year maximum, the penalty applied is also in the order of three years. It remains to be seen whether by changing the age threshold and in fact increasing the penalty from 10 years to 25 years for offences against children between the ages of 10 and 12 there will be any practical effect, when under both current maximum sentence regimes the resulting custodial sentences are on average approximately three years, which is well short of the maximum that could be applied in both cases.

This is increasingly a matter of concern to the Victorian community. While it is not in order for members of this chamber to criticise judicial decisions — we respect judicial independence — it is becoming increasingly obvious that custodial sentences that are applied in Victoria are not reflecting community concerns and are not in accordance with community expectations. While we go down this path of increasing maximum sentences it is a meaningless gesture if those increased maximum sentences are not reflected in the sentences that are actually applied by the judiciary.

We in opposition are going to support this proposed amendment to the provision, but it remains to be seen whether the amendment has any practical effect given the existing sentences handed down under the current maximum sentence regimes do not reflect those maximum sentences in any way.

Another criticism the coalition has of this particular bill is the delay in its implementation. The amendment was announced by the Attorney-General last September. It is now effectively six months since that announcement was made for, frankly, what is a very minor change in the current legislative framework. The bill itself is short and what it does is comparatively minor. It beggars belief that an amendment to criminal law that the government considers important has taken so long to be implemented, from the Attorney-General's announcement up until today, when it has come before the house.

Another issue I am concerned about is the bundling of the sunset provision on the family violence safety notices. This should have been foreseen when that trial program was established. Repeatedly members in this chamber have asked the government to amend sunset dates which have not been set appropriately on trial programs in the court system or in the legal system. This is yet another example of that.

Despite these concerns, the coalition parties will support the increase in the maximum penalty that applies for the sexual penetration of a child, particularly between the ages of 10 and 12, which is where the amendment applies. We believe this is a step in the right direction, but to date the community continues to be concerned about the ineffective sentences that are handed down for this type of offence; these sentences simply do not reflect community expectations.

Ms TIERNEY (Western Victoria) — I wish to make a contribution to the debate on the Crimes Legislation Amendment Bill 2009, which I support. The bill contains a number of amendments to legislation governing the criminal justice system.

The bill will act on the recommendations of the Sentencing Advisory Council to restructure the offence of sexual penetration of a child under the age of 16 with respect to the highest penalty available to be applied to such an offence — that is, 25 years in jail; the maximum penalty now may be applied to an offence against a child under 12. This penalty currently only applies to offences against children under the age of 10. Raising the age that defines the most serious form of this offence from 10 years to 12 years recognises the vulnerability of primary school-aged children.

The bill will adjust the sunset provisions of the Family Violence Protection Act 2008 to extend the operation of family violence safety notices for one more year beyond 2010. The bill also corrects an anomaly in the reporting dates under the Crimes (Controlled Operations) Act 2004 and related legislation. This correction will allow the special investigations monitor to report comprehensively on the controlled operations conducted by various agencies.

The bill amends the definition of 'document' in the Evidence Act 1958 so that it effectively aligns with the definition of 'document' in the Evidence Act 2008. A number of points on the government's amendment in respect of evidence will be covered by the next speaker for the government, Mr Tee.

There has been significant consultation with the community on the bill that is before us today. The Sentencing Advisory Council consulted widely in developing the recommendations to alter the age ranges in the offence of sexual penetration of a child under 16. The council released both a consultation paper in March 2009 and a final report in September last year. The changes to the relevant reporting dates under the Crimes (Controlled Operations) Act 2004 are made at the request of the special investigations monitor and they are supported by the Department of Sustainability and Environment, the Department of Primary Industries and, of course, Victoria Police. The proposal to extend

the family violence safety notice sunset provision to allow for a full evaluation of new police powers is supported by the family violence interdepartmental committee, comprised of representatives of Victoria Police and the departments of justice, community development, human services and education.

A communication strategy has been developed to ensure that stakeholders, including peak bodies that deal with family violence, have been involved, as well as family violence response service providers. That is to ensure that all elements of the community and all those involved in those sorts of situations not only have been consulted but will be aware of these matters so that they can implement the changes in their respective organisations and services.

The key change that is made by the bill is in the age range of the offence of sexual penetration of a minor. As I said, the amendment addresses the sexual penetration of a child under 16. The most serious penalty of 25 years jail previously applied only to offences committed against a child under 10. Now it will apply to all offences against a child under 12. The defence provided for by the legislation will not apply in relation to an offence committed against any child under 12.

The catalyst for this change was the case of *R v. Morris*, which came before the County Court two years ago. The situation was that Morris broke into his victim's home and sexually assaulted her while she was sleeping in her bed. The victim had only two weeks previously turned 10 years of age, and because she was over the age of 10 the available maximum penalty for the offence was 10 years imprisonment. If the offence had been committed two weeks earlier, when she was under 10 years of age, the applicable maximum penalty would have been 25 years imprisonment.

In October 2008 the Attorney-General sought the advice of the Sentencing Advisory Council on the adequacy of the current maximum penalties for the offence of sexual penetration of a child under 16. As I mentioned, the council released its report in September last year. The council advised that while the maximum penalties are adequate, the age ranges delineated for the most serious offences should be altered, all offences against children under 12 should attract the maximum penalty of 25 years jail and there should be no defence to an offence against a child under 12.

The government is making the change to the Crimes (Controlled Operations) Act 2004 because the special investigations monitor, or SIM, is required to report to Parliament each financial year on any controlled operations conducted by the agencies that SIM officers monitor. The agencies include the Victoria Police and fisheries and wildlife inspectors. The agencies in turn are required to report each six months to the SIM about their controlled operations. During 2009, the SIM raised an anomaly in the reporting dates required by the legislation. Those agencies such as the Victoria Police that report to him are required to make their reports in March and September. However, the SIM is required to report to Parliament as soon as possible after the end of each financial year. The SIM was therefore potentially left waiting until September each year before he could begin to prepare his annual report. The amendment remedies that situation.

People might ask whether the amendment will reduce a level of accountability. The government's position on this is quite clear: it does not believe that is the case at all and that if anything it will increase accountability by making it easier for the special investigations monitor to report to Parliament on controlled operations that are conducted each year.

The bill also addresses the issue of family violence safety notices. Again, one might ask why the notices regime needs to be extended. I want to quickly make five points on this issue. Firstly, the Family Violence Protection Act 2008 gave police new powers to respond to family violence incidents after hours through the issuing of family violence safety notices. The notices have the same effect as an interim intervention order made by a court, to provide legal protection for victims of family violence. The family violence safety notices system is due to sunset two years after the commencement of the Family Violence Protection Act, and that will fall in December. The government has made a public commitment to independently evaluate the efficacy of the family violence safety notice system to determine whether it is an effective and efficient after-hours response to family violence incidents.

This comprehensive 12-month evaluation is under way. Extensive consultation is being undertaken by Victoria Police, the courts, and family violence response service providers as well as victims and perpetrators of family violence. The evaluation outcomes will inform the government on future decisions on the system and its continuity. To give the government time to consider the evaluation of the family violence safety notice system and to make any changes that are needed to be made before the relevant provision sunsets, the operation of the system will be extended until 2011.

While I am referring to that, there might be a question about how the notice system is working so far. In the first year of its operation, 3118 notices were issued by

Victoria Police. Almost half of them were handed out on weekends and almost 90 per cent of respondents were male.

The fifth area of amendment made by the bill is to the Evidence Act. As I mentioned previously, the next speaker for the government, Mr Tee, will take the house through the government's proposed changes.

Members can see that the bill is omnibus legislation. It goes to the heart of and makes changes to the age ranges in relation to offences of sexual penetration of children under the ages of 10 and 12. The bill makes a myriad of other amendments to streamline and improve efficiency in the areas of family violence and evidence. I commend this bill to the house.

Ms PENNICUIK (Southern Metropolitan) — The Crimes Legislation Amendment Bill is an omnibus bill, as has been mentioned, but fortunately it is not the size of a telephone book like omnibus bills often are.

There are various purposes to this bill, which include to amend the Crimes Act 1958 to restructure the maximum penalties for the offence of the sexual penetration of a child under 16 years of age. Specifically, the maximum penalty of 25 years jail currently applies to the sexual penetration of a child aged up to 10 years; the bill raises the age of the child, where the maximum penalty applies, to under 12 years.

This is a result of a review of the sentencing regime by the Sentencing Advisory Council. It recommended that the maximum age of the child victim be raised from 10 to 12 years of age. The Sentencing Advisory Council made the comment that any delineation in terms of the application of maximum penalties in this regard is somewhat arbitrary, but the council recognised in its report that most children under the age of 12 are primary school children and that most children entering high school at the year 7 level would turn 12 during that year.

In recognition of the particular vulnerability of primary school children, the Sentencing Advisory Council recommended the age of the child victim to which the maximum penalty applies be raised from 10 to 12 years. We support that, and we recognise the particular vulnerability of children of that age.

In addition, crimes of a sexual nature perpetrated against children, particularly young children, are particularly heinous crimes in and of themselves. But circumstances can make them even more heinous such that the maximum penalty should apply.

The bill also amends the Crimes (Controlled Operations) Act to adjust the reporting date requirements for the special investigations monitor (SIM). It seems that the SIM is somewhat dependent on the receipt of reports of controlled operations under the Crimes (Controls Operations) Act, the Fisheries Act and the Wildlife Act. In order for the SIM to comprehensively report to Parliament on controlled operations, the monitor needs to be able to have received the reports from those agencies that conduct controlled operations.

We feel that allowing the SIM to comprehensively report to Parliament is a reasonable amendment to the act. We welcome any provision which improves the oversight of the special investigations monitor and the Parliament of particular types of operations. If the SIM finds it difficult to adhere to current time lines, we would support this minor adjustment to those time lines to make that reporting more comprehensive.

The bill also amends the Evidence (Miscellaneous Provisions) Act in terms of the definition of a document, to make sure that definitions are consistent. I also know the government is introducing a further amendment to that act in regard to the operations of royal commissions in terms of exclusion and suppression orders. I understand Mr Tee will be talking about that in his contribution.

The bill also extends the sunset provision of the Family Violence Protection Act for the operation of family violence safety notice orders which can be issued by the police in a similar way to the issuing of interim protection orders outside ordinary working hours. I noticed Ms Tierney outlined the number of family violence safety notices that have been issued, the percentage of them that were issued on weekends and the percentage of them that were issued against male perpetrators.

I support the extension of a sunset clause, because I believe it is important that evaluations of these programs occur. But I note this is not the first time we have extended a sunset clause provision under a justice bill in anticipation of an evaluation to be conducted by the Department of Justice. I would be pleased to hear from a government member as to when the evaluation of the family violence safety notice regime is expected. Are we are going to see that, for example, this time next year?

What I have raised before in regard to the extension of these sunset provisions is that we do not want them approaching their expiry again only to then find the evaluation is not under way or complete and that they

then have to be extended. I would be pleased to hear when that final evaluation report can be expected and made available to the public.

The bill also amends the Fisheries Act to similarly bring the requirements of the reporting of controlled operations into line with the reporting requirements of the special investigations monitor. The Wildlife Act 1975 is being amended for the same purpose.

Most of the provisions or amendments in this bill are fairly straightforward. Probably the most serious one is the amendment to the Crimes Act to increase the penalties for the sexual penetration of a child; we support that. I look forward to an explanation from the government as to its amendment to the Evidence (Miscellaneous Provisions) Act in terms of the conduct of royal commissions.

Mrs PETROVICH (Northern Victoria) — I rise to speak on the amendments to the Evidence (Miscellaneous Provisions) Act, which will be proposed a little later, and make it clear that the coalition does not oppose these amendments to that act. The rest of the bill has been ably covered by Mr Gordon Rich-Phillips. Therefore I will just highlight, perhaps a little ahead of time, that the amendments that are being put before us are house amendments. They relate to exclusion and publication prohibition orders.

Section 19B(1) of the Evidence (Miscellaneous Provisions) Act states:

> The commissioner presiding at a hearing of a commission may order the exclusion of the public or of persons specified by the commissioner from the hearing or a part of it if the commissioner is satisfied that the exclusion of the public, or those persons, from the hearing or a part of it would facilitate the conduct of the inquiry by the commission or would otherwise be in the public interest.

Subsection (2) states:

> The commissioner presiding at a hearing of a commission may make an order prohibiting the publication of a report of the whole or any part of the proceedings of a hearing or part of a hearing … or of any information derived from the hearing or part of it except by, or with the leave of, the commission.

The proposed amendment to section 19B(2) of the act states:

> The commissioner must not make an order under subsection (2) unless the commissioner is satisfied that the making of the order would facilitate the conduct of the inquiry by the commission or would otherwise be in the public interest.

Section 19B(3) states:

> If an order is made under subsection (2), the commissioner presiding at the hearing must cause a copy of the order to be posted on a door or any other conspicuous place where the hearing is held.

Subsection (4) states:

> A person must not contravene an order made and posted under subsections (2) and (3).

The penalty is 30 penalty units or imprisonment for three months. All these provisions come under section 19B.

Proposed new section 164, 'Validation of certain orders', states:

> An order of a commissioner presiding at a hearing of a commission purported to be made under section 19B(2) and purported to be in force immediately before the commencement of this section is, on and from that commencement, taken to have the same force and effect as it would have had if it had been validly made under section 19B(2).

This amendment has arisen out of a letter which was forwarded to the government and highlighted to the opposition on Thursday of last week by the chairman of the Victorian Bushfires Royal Commission, Bernard Teague. It relates to the exclusion clause in the Evidence (Miscellaneous Provisions) Act. Highlighted in his letter is that the reasons for this amendment are:

> There are a number of circumstances where the making of a non-publication order (without an exclusion order) is desirable on public interest grounds or to facilitate the conduct of the commission's work.

The letter goes on to say:

> … it is for these reasons that I have made the current orders —

and there is some urgency about these matters being expedited as part of this bill today.

As I said earlier, the coalition does not oppose the bill but does have some notes of caution, which I hope to explore with the minister a little later during the committee stage, because of the extremely short notice and time frame given by the government to examine these and other issues which I will go on with later. The notification of this amendment was made last Thursday; we were given a briefing on Tuesday morning. There are some areas that will need to be explored, but through my role as opposition spokesperson on bushfire recovery and having an insight into and an understanding of some of the nature of the submissions being made at the royal commission,

I have an appreciation of the reasons for this amendment.

In short, the revision of the Evidence (Miscellaneous Provisions) Act relates to suppression orders and particularly relates to the Victorian bushfires royal commission. Because many of the issues before the commission are of a sensitive nature, it is sometimes necessary — as I said, I understand that — to suppress an identity for the benefit of family members and other members in the community. This amendment seeks to remove from the Evidence (Miscellaneous Provisions) Act the exclusion order which is currently in place and a prerequisite for the granting of a suppression order.

There are some 15 orders currently. This amendment will provide for retrospective protection of those orders. It affords protection for issues around disclosure of names, addresses, telephone numbers and residential addresses of bushfire victims and those issues relating to confidential contractual arrangements.

The types of suppression that would need to be included are intended for the protection of those victims against undue media attention which may cause pain and suffering to families or community members. That relates to the identity of victims and those people who have given evidence of a commercial-in-confidence nature which may relate to companies or organisations or in some cases prejudice some police investigations which are still under way.

If passed today this amendment will be retrospective. It has arisen out of a flaw in the process. I hope it will assist with the protection of those participants in the bushfires royal commission, because they are volunteers. They have not been subpoenaed; they are attending the inquiry of their own volition. I would be very concerned if any of their rights were impinged upon. On that basis I would support the bulk of the bill and also not oppose the amendments which will be forthcoming.

Mr TEE (Eastern Metropolitan) — I rise to speak on this bill. I want to confine my remarks to the amendments. Mr Madden will formally move the amendments in the committee stage, but I ask as a courtesy of the house that the amendments be circulated.

Government amendments circulated by Mr TEE (Eastern Metropolitan) pursuant to standing orders.

Mr TEE — The amendments came about because by letter last week the chair of the royal commission alerted the government to a concern about the way the commission has been making non-publication orders. We have just heard from Mrs Petrovich about her concern about the haste — the speed — with which the government has acted. Let me tell the house that the government makes no apology for moving very quickly, as it has, to protect the personal information of victims of fires where those families have requested that the information be kept confidential. We make no apology for moving quickly to protect that information.

We make no apology for protecting the names of witnesses where there are privacy concerns, nor for moving very quickly to protect material that may interfere with police or coronial investigations. I ask members opposite to be mindful of the victims, of their families and of their rights before they go about criticising the government for moving quickly, as it has, to protect the confidentiality of information.

In my view the government has moved quickly, and it ought to have moved quickly; I cannot understand why there should be any concern about that. I do not understand the basis on which Mrs Petrovich expresses her concern about the speed with which government has acted to protect the rights of the friends and the families of those affected by the fires.

The royal commission has made a number of non-publication orders, which prohibit the publication of evidence or parts of evidence. Those orders have been made under the Evidence (Miscellaneous Provisions) Act 1958, under which at present it is possible to make a non-publication order only if an exclusion order has been made. Under the Evidence Act at present a non-publication order can only be made when the public has been excluded from a hearing.

But the practice of the royal commission on 15 occasions has been to make non-publication orders where the public has not been excluded from the hearings. There is a concern about a risk that, without these amendments and without the government having moved quickly, this sensitive material could now be published and be publicly available, so for that very important reason the government has moved very quickly to make these amendments. I commend the government for that action.

The amendments validate existing non-publication orders made under the act. They will also ensure that in future royal commissions can make non-publication orders without making exclusion orders. In future non-publication orders can be made without first excluding the public from the hearings.

The amendments are very much consistent with a request from the chair of the royal commission, and the

amendments will be retrospective. They will ensure that to the extent that non-publication orders have been made elsewhere — for example, during the Longford royal commission — those orders are validated and indeed protected; moving forward, that will ensure any subsequent orders of the royal commission are covered by these amendments.

That means the royal commission can make non-publication orders during the course of a hearing as soon as the royal commission becomes aware that there is evidence or that there is material or that there is information of a sensitive nature that is able to be heard.

These amendments mean that evidence can be taken and information can be gathered without necessarily excluding the public, and therefore the process of the royal commission can be tailored to meet the particular circumstances. On occasions, as we know, it is appropriate to exclude the public, but these amendments will give the commission power to issue non-publication orders in relation to information without necessarily excluding the public.

The amendments are consistent with the powers exercised by royal commissions in other states and the commonwealth, so it is consistent with other jurisdictions, but it is also, I think, clear to note that royal commissions will not have an unfettered power to make these orders — that the orders can only be made where it is necessary to facilitate the conduct of an inquiry — so there need to be grounds consistent with the outcome that is being sought; and there need to be grounds consistent with the objectives of the royal commission.

This is an important amendment, and I again caution members opposite to be careful when they suggest that the government should have exposed this information — that the government should have delayed and therefore made what is very confidential and very sensitive information available to the public. I would caution them against advocating that position.

Motion agreed to.

Read second time.

Committed.

Committee

The DEPUTY PRESIDENT — Order! The committee has been asked to consider the Crimes Legislation Amendment Bill 2009.

Mr D. Davis — On a point of order, Deputy President, am I correct in presuming that the minister responsible for this bill is Mr Madden?

The DEPUTY PRESIDENT — Order! That is correct. Mr Madden is indisposed at this moment. He will join us forthwith.

As has been indicated in the course of the debate, the government has some proposed amendments that it plans to introduce in the committee stage. The first of those amendments relates to clause 1. I call on the minister to move his amendment 1, and I indicate to the committee that I consider it to be a test all of the remaining proposed amendments, which all relate to the insertion of two new classes.

Clause 1

Hon. J. M. MADDEN (Minister for Planning) — I move:

1. Clause 1, page 2, line 7, after "document" insert "and other matters".

Basically these are just minor technical issues in relation to this bill. I am happy to answer any questions from the opposition.

The DEPUTY PRESIDENT — Order! In respect of the amendment, we are dealing with clause 1, the purposes clause of the legislation. I am therefore prepared to accept both any debate on the amendment and any questions or comments in regard to the purposes clause.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I note that the amendments from the minister provide for somewhat of a different subject from the principal purposes of the bill. I am wondering if the minister can provide the committee with an explanation of his proposed amendments.

Hon. J. M. MADDEN (Minister for Planning) — I have been informed that these amendments relate to a number of issues. By letter last week the chair of the royal commission referred the Leader of the Government to a concern in the way the commission had been making non-publication orders. Non-publication orders prohibit the publication of evidence or parts of evidence heard or received in hearings. These orders are made under section 19B(2) of the Evidence (Miscellaneous Provisions) Act 1958. Currently it is possible to make a non-publication order only if an exclusion order has already been made, and this is an order excluding public from the hearing.

This is a concern, as I understand it, about 15 non-publication orders that have been made to protect a range of sensitive information, such as personal information about victims of fires, some of which families of victims have requested be kept confidential; such as the names of witnesses and others in relation to whom privacy concerns arise; such as commercially sensitive information; and such as material that has the potential to interfere with police or coronial investigations. The risk is that without the proposed amendments this sensitive material could be published and made publicly available. The government is acting to rectify this issue by introducing amendments which will validate existing non-publication orders made under section 19B(2) and enable the royal commission in the future to make non-publication orders without first making exclusion orders. I understand these amendments are consistent with the request of the chair of the royal commission.

Business interrupted pursuant to sessional orders.

Mrs Peulich — On a point of order, President, I was reading the debate last night. I will be very careful not to quote directly from *Hansard*, but in reading the contributions of Mr Madden in his response to the debate yesterday I was concerned that on a couple of occasions he reflected upon this chamber. Although perhaps the words themselves may not have been offensive specifically under standing order 12.16, the sentiment is certainly offensive, because it implies a lack of respect for this chamber — and as he is the Minister for the Respect Agenda I find that very odd — which is a reflection of the democratic voting rights of Victorians. I ask that you consider this matter and come back with a ruling at an appropriate time.

The PRESIDENT — Order! I make two points. First, under standing order 12.19:

> No member will use offensive words against either house of Parliament, any other member of either house, the sovereign, the Governor or the judiciary.

The question I have to contemplate is: who decides? Obviously Mrs Peulich has taken offence — at what I am not quite sure. She seems to be suggesting that I should read *Hansard* and it will become self-evident. Perhaps she should elucidate and explain what she is offended by, and I can make a decision.

Mrs Peulich — President, I was mindful not to quote directly. In the second last paragraph of the second column on page 84 of *Daily Hansard* the minister is reported as having said:

> I do not expect much from this chamber.

He continued:

> … I think very little of this chamber …

Whilst there are no offensive words, the sentiment from the Minister for the Respect Agenda is offensive, and I ask that he apologise to this chamber.

The PRESIDENT — Order! I understand Mrs Peulich's point and that she is offended by those remarks. I will come back to them, but I think there is some merit in what she is suggesting — that it is offensive to the house. I also refer to standing order 12.21:

> Objection to words
>
> If a member objects to words used in debate pursuant to standing orders 12.19 and 12.20 —
>
> (1) The objection must be taken immediately.

Some could suggest that Mrs Peulich has not actually done that. I am assuming that she wanted to check *Hansard*; therefore I will allow the point of order to be made. The question then is: has the minister actually offended this house with the comments Mrs Peulich has now read into *Hansard*? I think on balance he has. I would ask the minister to withdraw.

Hon. J. M. Madden — I withdraw.

QUESTIONS WITHOUT NOTICE

Planning: Hotel Windsor redevelopment

Mr GUY (Northern Metropolitan) — My question is to the Minister for Planning. With the minister announcing a probity auditor to oversee the now corrupted planning process application for the Windsor Hotel redevelopment, I ask: who is the auditor the minister has appointed and what are his or her terms of reference?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's interest in this matter, and I welcome the fact that he now has such confidence in me that he is happy to ask me the first question in the chamber this afternoon!

I make this point: I requested the head of the department, the Secretary of the Department of Planning and Community Development, to appoint a probity officer or auditor to oversee the process in order to give everybody involved in that process absolute confidence that there was nothing that could or should undermine that process.

I have not prescribed terms of reference. I do not know the name of that individual, because it is the duty of the secretary of the department to make that appointment of that company or that individual.

Mr Guy — Have you asked?

Hon. J. M. MADDEN — I make this point to Mr Guy: should I prescribe a name, should I prescribe the terms of reference, then that in its own right would undermine the process, so the appointment must be done through the department, through the process that the department uses normally to appoint people. Should I be involved directly in the appointment of that probity officer, then that in itself would undermine that process.

I know that this is one of these questions where Mr Guy can do a press release later on and say, 'The minister does not know the name of the probity officer'; he has probably already written that out, I suspect.

Mr Guy interjected.

Hon. J. M. MADDEN — You know it is a two-way question. You ask; I say, 'I know'; you say, 'That's a problem'. I say, 'I don't know'; that is a problem as well. If you have not done the press release, you may want to race off and do it, because I suspect you have probably already written a draft of it.

I say again that this is the duty of the secretary of the department to undertake, and I look forward to him providing the advice and the outcomes of the probity officer's report as part of the information I consider as I make my decisions.

Supplementary question

Mr GUY (Northern Metropolitan) — I thank the minister for his answer and wonder if he could advise the house whether he has been advised if the unnamed probity auditor will have full access to all staff who were sent the material pertaining to this corrupted process — including to the office of the Premier, where Ms Duke was formerly employed and where the media plan was originally drafted and where it was sent to?

Hon. J. M. MADDEN (Minister for Planning) — Again I have not defined any terms of reference for this particular order. Again that is the duty of the secretary of the department, and I would think it would be completely inappropriate for me to want to prescribe those definitions for any probity officer. I would expect that the probity officer themself would know what their duty is. It is not a job I should be telling them how to do. That probity officer should be the one who knows what it is they need to look at, what it is they need to do and what it is they need to report on. I look forward to that report and other information coming to me before I make any decisions.

Planning: Port Fairy development

Ms TIERNEY (Western Victoria) — My question is to the Minister for Planning. Can the minister advise the house on how the Brumby Labor government is at the forefront of managing coastal climate change, especially in light of his recent decision to protect the coast at Port Fairy from inappropriate development?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Ms Tierney's interest in these matters, and I thank her for the execution of the question too, given that she had to race here within a very critical time frame.

I have announced publicly a number of issues in relation to low-lying coastal areas, especially managing coastal and climate change interactions and the effects they have more broadly on these communities. With my colleague Gavin Jennings, I announced recently the refusal of a permit for East Beach at Port Fairy, but along with that I announced a $1 million fund to help Victorian coastal communities better prepare for the risk of rising sea levels.

What is worth considering here is that it is not just the issue about potential rising sea levels which needs to be considered.

Honourable members interjecting.

Hon. J. M. MADDEN — I am providing this information to address some of the ignorance that is being displayed in this chamber as we speak. What is important is that it is not just the rising sea level that might be a major consideration, it is also the interaction of rising sea levels and other issues such as inundation with tides, tidal changes and the make-up of the land in some of these locations.

In this instance in Port Fairy a permit had been sought for a coastal subdivision in a low-lying coastal area. What is important is not just the fact that it is low lying, but the fact that it is located in and around sand dunes. If that erosion should take place as well as the sea level rising, combined with the effects of the Moyne River, we could see some very significant inundation. It is not just one issue or the other, it is the combination of them.

As part of that we have contributed $1 million for local assessments to enable local communities and local councils to study the way winds and waves will move

sand and vegetation along our beaches. It is the combination of those factors.

I have inspected a number of sites along the coast which fall into these categories. You might have some low-lying land that you would not normally appreciate was low lying, but once you get up into the dunes, which might be the point in the land that divides it from the beachfront — particularly down in some of those Gippsland areas — you appreciate that if some of those dunes were to wash away in a very significant storm, and given a bit of a sea level rise and a bit of inundation, you would end up with the ocean almost moving into that land not just hundreds of metres but potentially a kilometre or two.

The enormous inundation that would occur would have a very significant effect not only on local biodiversity and on the landform but on a whole lot of other very significant issues going forward that would complicate matters for urban settlement in some of these areas. It is important therefore that we take a very proactive approach. It is not just one singular issue of sea level rise; it is the combination of those factors. The money we have provided to these local communities to investigate the significance of those local conditions in relation to the expected sea level rises will certainly assist them to work through those issues.

The permit sought in relation to Port Fairy was for a 22-lot residential subdivision on the sand dunes at East Beach. The decisions is in line with the independent expert advice from a joint planning panel and advisory committee after an investigation and consideration of the coastal planning processes. I am pleased that this matter has been resolved, but of course we have to work out the rezoning that will occur on that land. We will work with the Moyne Shire Council to plan for the future and address the long-term impacts of climate change on this part of the land in Port Fairy.

The knowledge, the tools and the new layers of data that will come from this funding and the research can give coastal communities, local government and decision-makers and relevant coastal managers and authorities the confidence to work together to plan for our future and the impacts of future sea level rises. This is another example of how we — the Brumby Labor government — are working and acting on climate change. We are not sceptical about it, but active and proactive about it, and we are continuing to make Victoria the best place to live, work and raise a family.

Public transport: myki ticketing system

Mr HALL (Eastern Victoria) — My question without notice is directed to the Minister for Public Transport. I refer the minister to my question without notice on 2 February and his subsequent written response dated 23 February, which says in part:

> When myki is fully operational the free Sunday travel entitlement will provide all seniors myki cardholders with free travel in two consecutive zones across all parts of Victoria on a Sunday.
>
> Latrobe Valley seniors have not been excluded from the free Sunday travel entitlement and will enjoy free travel across two consecutive zones on Sundays.

I ask the minister: will he confirm that this means seniors myki cardholders — and carers and disability support pensioners — will be able to travel free of charge between Traralgon and Morwell, between Moe and Morwell and on similar trips within the Latrobe city on Sundays?

Hon. M. P. PAKULA (Minister for Public Transport) — I thank Mr Hall for his question. Following the question I took on notice a number of weeks ago I gave this matter some fairly close attention, which led to the correspondence I entered into with Mr Hall. The Latrobe Valley, as Mr Hall correctly points out, was one of the regional areas which started using myki on buses, following Geelong, the Bellarine Peninsula, Seymour, Ballarat and Bendigo. More than 6000 seniors myki cards have been issued in regional Victoria. There is a reasonable cost saving for those patrons who use myki on regional buses. Customers who previously used two short-term tickets to travel to and from their destination would have paid $4, but a person using myki money on the same trip would now pay $3.20, so that is a saving of 80 cents a day.

As Mr Hall indicates, myki seniors cards are preloaded with a Sunday pass. That entitles the cardholder to free travel within and across two consecutive zones across all parts of Victoria on a Sunday. I can confirm to him that what that means in the Latrobe Valley is that a passenger using that pass can travel from Moe to Morwell on a Sunday for free. It means they can travel from Traralgon to Morwell on Sunday for free. They are both two-zone trips. It also means that seniors who live in Moe, Morwell, Churchill, Traralgon and other locations in the Latrobe Valley will be able to travel to Latrobe hospital, as an example, for free on a Sunday as that is within one of the interchange areas.

Supplementary question

Mr HALL (Eastern Victoria) — I thank the minister for his consideration, response and clarification of that; I appreciate that. As a condition stated in the minister's letter he said this free Sunday travel was available 'when myki is fully operational'. I am tempted to ask when that will be per se, but as a supplementary question needs to relate to my original question I ask: given that myki has been fully operational on Latrobe Valley bus lines for some time now, will the free Sunday travel be available immediately for seniors who hold myki cards?

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that the simple answer to Mr Hall's question is yes.

Economy: performance

Ms PULFORD (Western Victoria) — My question is to the Treasurer. Can the Treasurer advise the house how the Brumby Labor government's budget strategy is creating and securing jobs to ensure that the Victorian economy remains strong through the global financial crisis?

Mr LENDERS (Treasurer) — I thank Ms Pulford for her question and her eternal interest in jobs. It is heartening to see some members of this Parliament forever focused on growing jobs for their electorates and for the whole of Victoria, because that is the absolute essence of what good government is about in Victoria.

What I can say to Ms Pulford is I released today the midyear financial report on the state of Victoria, which really is the report on the budget of May last year. I cannot help but listen to the Ebenezer-type voices from those opposite, who leap with glee on a single monthly ABS (Australian Bureau of Statistics) figure as if it is the most exciting thing that has happened in their entire day — which is so un-Victorian that Bill Forwood and Jeff Kennett would blush and disown them.

Since this government brought down its budget in May last year we have seen Victoria generate more than two-thirds of the jobs in Australia in 2009. I look to the aptly named individual on that particular issue. I would have thought that two-thirds of the jobs in Victoria would have brought at least a vague glimmer of joy from the Leader of the Opposition in this house that 97 100 Victorians have jobs who did not have them at the time of the budget last year.

Honourable members interjecting.

Mr LENDERS — If Mr Finn thinks I have been on the red cordial for being an enthusiastic advocate for jobs in Victoria, he is right. There is nothing that makes me more excited in this house than jobs for Victorians, because jobs for Victorians mean opportunities for Victorians who otherwise would not get them. They mean a strength in the economy that becomes self-fulfilling as more jobs are generated and they mean opportunities that are not there in so many other parts of the country and the world today.

Also in our midyear financial report, our budget remains with a modest surplus going forward. This feeds onto the economic statistics we already have, which I have reported to this house — on construction activity being up, private capital investment being up and two-thirds of the new jobs in Australia being created in this state, Mr David Davis. I would challenge the Leader of the Opposition to talk that one down, unless he is getting advice from Kim Wells again. There has been a 110 per cent increase in the value of building approvals going up.

I will quote a commentator at the time of the budget last year. Given that this is a report card on the budget, a commentator said:

> To make matters worse we find in the budget papers that the Premier and Treasurer remain silent on the r-word. Everyone else is in recession, but apparently not Victoria. The economic indicators contained in the budget are optimistic in the extreme and are predicated on Victoria not entering recession and benefiting from a fast recovery.

Of course the commentator I refer to is that great economic oracle and guru, Kim Wells, MP — Mr Rich-Phillips's tutor in economics.

What I say to the house here is: we have a midyear budget update, a report on the finances of the state of Victoria which shows that this state is in a stronger position than any other state in Australia. Monthly unemployment figures bounce around — they go up and down — but what we have seen, and I have said this every single month as figures come through, is that two-thirds of the new jobs in Australia are in Victoria. Our stimulus package has delivered the 35 000 jobs we said it would secure.

We are seeing schools built in every community. We are seeing roads built. We are seeing record maintenance and support of our public transport system. We are seeing hospitals built, and we are seeing a grid of secure water supplies across the state of Victoria. We have invested for the future, and we have delivered jobs for today. These things are parts of the story of making Victoria an even better place to live, to work and to raise a family.

Housing: affordability

Ms LOVELL (Northern Victoria) — My question is to the Minister for Planning. Noting that the leaked media strategy from the minister's office announced the government's intention to provide developers with incentives to build affordable housing — a position he has, according to his media plan, flagged with the *Age* — I ask: what incentives is the government considering for developers to build affordable housing and do these incentives include the removal of third-party appeal rights or the usurping of planning approval from councils in any way for developers to comply?

Hon. J. M. MADDEN (Minister for Planning) — I thank Ms Lovell for her question, but I also thank her because no doubt she is the opposition spokesperson for housing, and I suspect for public housing, social housing and affordable housing. I think she is the opposition spokesperson for that, although I thought she was just opposed to it. I am not sure from the way some of these questions are being phrased.

Ms Lovell — On a point of order, President, I asked the minister for an answer to a question; I did not ask for an opinion on my position on housing. The minister knows I am supportive of housing.

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

Hon. J. M. MADDEN — What we are seeing from the federal government is an enormous amount of investment in public housing, and that is a great thing. What we are seeing in the community is a sensitivity to the extent of some of the delivery of that public housing, and we recognise that. We also recognise that we have got to consult, but sometimes people misinterpret what consultation means. Some people believe consultation means agreeing absolutely, but consultation is trying to form a means by which one can make a decision. Consultation is not necessarily about giving people exactly what they want, not because people do not want to give them exactly what they want but because sometimes the planning system just does not allow for it. At the end of the day some people will be happy, some people will not.

What is very important about the delivery of public housing in this state, and affordable housing and social housing, is what we are seeing occurring — and I am sure the opposition would be the first to highlight this if there was a significant housing shortage in this state. The Treasurer has just referred to the job figures. Let me remind members that the vast majority of those jobs are probably in the building sector, and not only in the building sector but in the domestic building sector. What we are seeing in this state is a state of opportunity that provides for jobs and provides for housing.

There is a great demand for housing, and when there is competition for housing and that great demand, sometimes the most vulnerable may miss out.

Mrs Peulich — For 10 years you did nothing.

Hon. J. M. MADDEN — Again we hear the noises from the opposition, the crocodile tears about the vulnerable, but when it comes to providing housing for the vulnerable — —

Mr Finn interjected.

Hon. J. M. MADDEN — Yes; social revisionists, I think. What we do not hear from the opposition is a solution to these housing issues. We have solutions. We are keen to get the private sector enthused about providing more affordable housing options.

I have been approached and no doubt will continue to be approached by people from the building, construction and development communities who are enthusiastic about social housing and the way in which that is combined with other housing. And as I have mentioned in this place on a number of occasions previously, affordable housing is not just about somebody who might be vulnerable; affordable housing is about our aged parents and about our young children who will eventually want their own homes. That affordable housing is for the older members of our community who want to downsize and live in the community they grew up in and for the younger members of the community who want to live in the community they grew up in and want to buy something they can afford.

We had comments from the opposition last night about Sunbury and the size of the dwellings in Sunbury. Again I reinforce the fact that one size does not fit all and that the one-size assumption about housing does not fit all. We need to provide a range of affordable housing options — whether it be public, private or privately subsidised housing options, affordable rental or subsidised affordable rental, or housing of different sizes and shapes in different locations — to provide the choice, diversity and range that the community not only demands but wants and deserves.

We do not apologise one iota for the delivery of social and public housing, but sometimes I think the opposition should apologise for the way in which it portrays it.

Supplementary question

Ms LOVELL (Northern Victoria) — I ask the minister: can he advise the house if the government is planning to set minimum levels of affordable housing within developments for any incentives to apply, or could a developer simply build five affordable housing units in a 200-unit development and entitle themself to planning shortcuts?

Hon. J. M. MADDEN (Minister for Planning) — I know Ms Lovell presents the view that we should all fear public housing and we should all fear social housing, and that would no doubt suit the political view of the opposition and also probably the sensitivities of some of the members of the opposition as well.

I have an article in front of me from the *Maroondah Leader*, and I do not think Ms Lovell has read this article, because if she had she might be a bit hesitant about asking the questions she has asked today. This article from the *Maroondah Leader* features a photo of her great leader, Ted Baillieu, who was at a business breakfast in the Ringwood area. The article states — —

Mr D. Davis — On a point of order, President, in the first part of the minister's answer he spent more than 4 minutes attacking the opposition; now in answer to the supplementary question the minister is again heading off into this territory of attacking the opposition. It was a very simple question, and he should answer the question.

The PRESIDENT — Order! I remind the house that this is question time, when debate tends to be more robust than during other parliamentary proceedings, and I have always expressed the view that I will be more tolerant at question time. The reality is that overtly criticising the opposition or a member is unacceptable, but to suggest there should be no criticism of the opposition or the government during question time is a bit rich. I will judge whether or not the minister is overtly attacking the opposition. I do not think being flogged with a wet lettuce leaf, as the opposition is being at the moment, is being overtly criticised. I remind the minister that no debate should be entered into when answering questions and that answers should be relevant to the questions asked. At the moment the minister is still there; I simply remind him of that requirement.

Hon. J. M. MADDEN — President, I thank you for your complimentary remarks that I am still all here!

The article quotes the Leader of the Opposition in the other place, Mr Baillieu, in relation to what has no doubt been a sensitive development in the Ringwood area around social housing. The article states:

> He backed — —

Mr D. Davis — On a point of order, President, your rulings have been very clear. The purpose of question time is to answer questions and not to attack the opposition or even to discuss the opposition as such. The task is to actually answer questions.

The PRESIDENT — Order! I remind the house that it is fair that reference to or criticism of alternative policy or the opposition's position on certain matters is relevant. If it were not, then question time would be quiet and less interesting.

Hon. J. M. MADDEN — Mr Baillieu:

> … backed the increased powers given to the planning minister that led to last year's controversial approval of an eight-storey social housing development in Ringwood.

Rail: government initiatives

Ms BROAD (Northern Victoria) — My question is to the Minister for Public Transport. Will the minister advise the house of the progress of rail upgrade projects in central and north-western Victoria?

Hon. M. P. PAKULA (Minister for Public Transport) — I thank Ms Broad for her question and for the keen interest she takes in this matter. Last week I had the privilege of taking one of the new V/Locity V/Line trains to Beaufort. I was in Beaufort to do two things. The first was to announce that the Brumby government has completed a $100 million works package to upgrade a number of regional rail freight lines. Those upgrades were undertaken — —

Ms Pulford — Why was that necessary?

Hon. M. P. PAKULA — Well may Ms Pulford ask why it was necessary. They were undertaken to deliver more efficient freight links, to improve the prosperity and viability of a number of small regional centres and to undo the damage from the rail lines that were shut down, sold off or left to rot by the previous government.

We have upgraded all the gold and silver freight lines that were recommended in the rail freight network review which was led by the Honourable Tim Fischer. These included upgrades to silver freight lines from Ouyen to Murrayville, from Quambatook to Manangatang, from Charlton to Sea Lake and from Warracknabeal to Hopetoun. As a result of the

$107.4 million investment rail operators can now provide more efficient rail freight services.

Mr Drum interjected.

Hon. M. P. PAKULA — To deal with Mr Drum's interjection, what it means for regional Victorians is that more than 70 per cent of this year's thankfully larger Victorian export grain harvest will be carried on rail. It means that about 60 per cent of the containers between Mildura and the port of Melbourne will be carried on rail.

The other reason I was in Beaufort was to chair a meeting of the Goldfields-Wimmera-Mallee-Sunraysia Rail Projects Consultative Forum. I met with local government leaders from across western and north-western Victoria to update them on the progress of regional rail projects. I took the opportunity to brief all the mayors, councillors and CEOs who were present on recent improvements to freight and passenger rail services in the region. I was able to provide them with an update on local region freight network upgrades, the government's level crossing program and of course the imminent return of passenger rail services to Maryborough.

A lot of work is being undertaken in north-western Victoria, and meetings like the rail projects consultative forum play a critical role in keeping communities throughout the region informed about those projects. The dialogue with local councils will continue throughout the planning and delivery of freight and passenger rail projects. It is very important consultation. The rail forum meets approximately every four months, and provides an opportunity for high-level engagement with local government on the development and rollout of rail projects in the region. I direct the attention of the chamber to the composition of the forum, which includes mayors and CEOs from the cities of Ararat, Ballarat, Horsham, Mildura and Swan Hill, as well as from the shires of Buloke, Central Goldfields, Gannawarra, Hepburn, Hindmarsh, Loddon, Northern Grampians, Pyrenees, West Wimmera and Yarriambiack.

It was a fantastic trip to Beaufort taken on one of our great new V/Locity trains. I had a chance to speak with a wide range of people, including those from the councils and passengers on the train, about their views on passenger rail and freight infrastructure. I was very pleased to have the opportunity to provide all of them with an update on our investment in the regional rail network and to get their input into it.

Planning: car parking

Mrs COOTE (Southern Metropolitan) — My question is for the Minister for Planning. Noting that the leaked media strategy from the planning minister's office mooted the government's intention to stop the necessity for inner city apartments to contain car parks and to instead have them replaced by pushbikes, I ask: can the minister inform the house what research his department has conducted on the likely impact of local streets being clogged with cars from apartment blocks built with no car parks when added to the government's clearways policy and what impact this will have on the amenity of Melbourne's inner suburbs?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mrs Coote's question on this matter. I am not sure that her description is entirely correct in relation to what is currently taking place in government. Currently a car parking review is being undertaken, and I look forward to the responses from the department on that review. It has been a broad and long process involving extensive consultation as to what people's concerns are about car parking, whether that be in relation to domestic dwellings, commercial dwellings, on-street or off-street parking or the way in which it interacts with the planning system.

So far as I am aware, at this time there have been no hard and fast announcements in this area. I am interested in the fact that Mrs Coote seems to think there are. No doubt there will be some announcements, but I am waiting for the response from the department on the car parking review so I can make appropriate decisions and appropriate announcements across a range of areas in relation to car parking.

Supplementary question

Mrs COOTE (Southern Metropolitan) — I am very concerned about clearways, and I thank the minister for his answer. Can the minister further inform the house if he intends to have a public consultation period for local councils and inner city residents on this idea, and if so, when it will begin?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mrs Coote's interest in this area, particularly around car parking in the inner city. I know it is a matter of interest for her, for retailers and for anybody who tries to travel by car or vehicle in and around the greater metropolitan area.

The car park review that has been undertaken by the department has been a wide, extensive, long-ranging review. There has been an opportunity for submissions

to be made in relation to the review from industry representatives, from local councils and from individuals if they felt strongly about particular matters. I welcome any of those submissions as part of that process.

I suspect, though, that while we hear a lot of noise from the opposition around car parking, there was not — I cannot guarantee it — a submission from the opposition to that review. That would not surprise me, because often when we have reviews, whether it be the retail review, the car parking review, the residential zones review or any review — —

Honourable members interjecting.

Hon. J. M. MADDEN — Nowingi — even Nowingi! I go back to Nowingi; even with those areas that we hear many questions about and we hear many strong views about from the other side of the chamber, at the end of the day when you have got to put your money where your mouth is and make a submission to the review and put some rigour and some hard work into it, I do not see a lot of paperwork coming from members of the opposition on what they believe should happen in this space. I look forward to any submissions that come from opposition members on any planning matters at all when they eventually put pen to paper.

Environment: Gippsland

Mr VINEY (Eastern Victoria) — My question is for the Minister for Environment and Climate Change. Can the minister update the house on how the Brumby Labor government is taking action to help property owners in Gippsland earn extra money to improve the environmental value of their property?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Mr Viney for his question, and I do note that it is about Gippsland. I will be happy to talk about Gippsland at some length.

First of all I would like to say that I was very happy to hear my colleague Mr Pakula step up a few minutes ago and talk about taking a train ride to Beaufort, given that in the days when I lived in Trawalla and went to Beaufort High School we felt a little bit isolated there. To know that I am part of a government that is committed to restoring services and increasing access for people who live in areas such as Beaufort and Trawalla, where I lived, is a great thing. It is a great thing to be part of a government that is committed to engaging with the regional landscape and regional communities.

The government understands the importance of actually making sure that it provides the appropriate support to rural communities, and that is the nature of the program I am talking about, the program which Mr Viney has invited me to talk about, which is in fact preserving, protecting and enhancing environmental values on private land-holdings across the Victorian landscape.

When we think about environmental pressures and opportunities in terms of rehabilitating land values we have to understand that 65 per cent of land across Victoria is in private hands — private land-holders, farmers and people in the agricultural community. Land-holders are the great custodians of environmental legacies, with both the downsides and the potential upsides of those environmental values.

The government understands the importance of that. The ecoMarkets program is one approach the government has adopted to try to find financial incentives for land-holders to encourage them to undertake works that rehabilitate and revive land values on their properties and to do it in an appropriate way that supports the living income of land-holders across the Victorian landscape.

Most recently, in the last couple of weeks we announced the application of $2 million worth of ecoMarkets operating in the West Gippsland catchment management area. This is a very important part of the Victorian landscape — it spans, roughly, from Warragul to Sale and from the Great Dividing Range south as far as Wilsons Promontory. The private land-holdings comprise somewhere in the order of 17 700 square kilometres of Victoria. Obviously there are very important environmental values on those private land-holdings.

What the ecoMarkets program will do is provide opportunities for land-holders to competitively bid for restoration works on their property — whether they be to increase fencing and remove grazing from stream sides, replant vegetation or enhance wetlands, there will be a competitive environment where land-holders can put in bids about the way in which they would undertake those works. The government will assess those bids on the basis of good value for money and the appropriate restoration of environmental values.

This is a novel approach. It is trying to incentivise our farming and rural communities to actually find ways in which they can restore those values and earn a quid at the same time. That is perhaps an old-fashioned idea, but it is a very new application of the idea. It is something the government is very keen to be associated with by providing that support for rural communities. It

has allocated $14 million to this program across Victoria.

The $2 million allocation in West Gippsland will be extremely popular with land-holders, and we will see great environmental outcomes which will provide some support for the ongoing income security of people in our rural communities across Victoria.

Environment: government programs

Mr BARBER (Northern Metropolitan) — My question is for the Minister for Environment and Climate Change. It relates to a number of programs that the minister's various departments would be pushing for, including rebates around water tanks, solar hot water, solar PV (photovoltaic cells), even insulation, and in this case window shadings. Is the minister aware of any difficulties with implementing these programs where the person seeking the assistance is part of what is generally known as a body corporate — that is, they are living in an apartment that is part of a body corporate? The situation is that under section 52 of the Owners Corporations Act a special resolution vote of 75 per cent of the lot owners is required to make significant alterations to common property. That includes the roof, the roof space, outer windows and so forth. Is the minister aware that there have been difficulties with getting his programs implemented where the dwelling is part of a body corporate arrangement?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Mr Barber for his question; he raised quite an interesting issue. It is of concern to the agencies that work with me, including in particular Sustainability Victoria, which provides a number of rebates to support the installation of water efficiency and energy efficiency applications across Victorian households. They have been confronted with determining the best way to make sure that those programs are implemented equitably and reasonably across the broadest range of household structures in Victoria.

Certainly I know that an issue that is not the same but runs in parallel with the issue raised in Mr Barber's question. It is our concern about the split incentives that currently exist between tenants and landlords. Whereas in fact many tenants would be interested in applying for support through the programs Mr Barber referred to in his question, the benefit ultimately, in terms of the investment profile, would accrue to the landlord, who may not necessarily immediately see the value of the reduction in water or energy consumption.

We have exercised our minds greatly in trying to find ways in which we could overcome that, because the general rule is that the more households across Victoria apply water and energy efficiencies, the better those households will be in terms of not only getting better environmental outcomes but also keeping their cost structures down, and ultimately adding to the value of a dwelling. We have certainly spent quite some time exercising our minds about this basket of issues.

At one level I am pleased to say that there is not a proliferation of evidence of concern coming from the sector Mr Barber referred to. The owners corporations — colloquially known as bodies corporate but called owners corporations in the act he has referred to — obviously comprise a large and perhaps growing section of the household market structure across Victoria and may feature more prominently in terms of having some barriers or impediments to those programs working. As Mr Barber has quite correctly indicated, the structure means that 75 per cent of householders in a building would have to sign off on whether they install these efficiencies or put a new antenna on the roof. Sometimes there are structurally some impediments to decision making.

Whilst this has not been a feature of great alarm and reporting through the programs that we have, we will now take it on notice that we need to be alive to the potential for this and to work with our colleagues in consumer affairs, who are the custodians of this piece of legislation, to make sure that if there are any barriers to efficient access to our programs, they are removed. I am very happy for us to take note of Mr Barber's concern as a conceptual issue that we have to be alive to rather than reporting back to him that we have a lot of evidence that this is currently a problem, although obviously conceptually it can be a problem.

Supplementary question

Mr BARBER (Northern Metropolitan) — Minister, according to the *Northern Weekly* of 12 January, the Moreland Energy Foundation has provided a report to the state government, and I presume that may be Sustainability Victoria. In this article the CEO of the foundation is quoted as stating:

> We had residents in flats and apartment having to turn down the offer of a free solar hot water system because getting approval through owners corporations … was too difficult or time consuming.

I am aware that that act is not in the minister's portfolio but in that of the Minister for Consumer Affairs, Tony Robinson, but on my information it covers as many as half a million lots and as many as a million persons

living under these arrangements, all of whom could have such difficulties obtaining access to the various programs the minister is running. In Queensland the government has amended the Body Corporate and Community Management Act so that a rule of a body corporate cannot prevent the installation of photovoltaic cells merely for the purposes of preserving the external appearance of a building. My supplementary question is: will the minister make representations to the other members of his government to have the act in Victoria amended as the Queensland act was?

Mr Viney — On a point of order, President, I am not sure how under the rules of questions that question relates to the matters the minister is responsible for. Mr Barber in his supplementary question indicated by his own words that it was not in order under the rules of the house in relation to questions.

Mr Barber — On the point of order, President, the minister is administering a large number of programs. There is evidence that those programs are striking difficulty due to some laws. They are not laws that the minister is responsible for. I asked him to make representations to other members of his government to get those laws fixed so that his programs can be delivered efficiently.

The PRESIDENT — Order! I understand the logic of Mr Barber's question, but I am not sure that it is in order, given that the minister does not have direct responsibility. Therefore I rule it out of order.

Film industry: government initiatives

Ms HUPPERT (Southern Metropolitan) — My question is for the Minister for Innovation. Can the minister inform the house of how the Brumby Labor government is playing its part to ensure that Victoria remains the home for award-winning post-production, sound and visual effects companies and detail any new projects which will further boost Victoria's growing film and documentary sector?

Mr JENNINGS (Minister for Innovation) — I thank Ms Huppert. I know which question I am answering, but I heard the last supplementary question.

Beyond that, on the important issue Ms Huppert has invited me to talk about, which is the film industry and the important role it plays in Victoria, we have every reason to be pretty pleased with the growth in film activity in Victoria. Even though there has been a global downturn in activity across the sector, various elements of the film and TV industry in Victoria continue to be strong. Indeed, there has been growth of a significant order of magnitude in factual TV production in Victoria. Our government has supported nine projects, and they have led to about $4 million worth of economic activity.

Mrs Coote interjected.

Mr JENNINGS — I am very pleased that Mrs Coote is interested in this. Opposition members have clearly as a general rule given up. Look at that body language! This is a highly motivated opposition, I can assure you! They cannot get through even three question times in a week without falling apart. They need to lift their energy level and motivation a bit. Talk about scrutiny that is required! I will tell you what: you have to put a bit of heart in it to apply a bit of scrutiny. You cannot just fall apart 3 hours later. Question time is not so onerous!

The good news — and I thank Mrs Coote for her interjection to provide me with a launching place for an idea — is that $4 million worth of production has come out of those nine projects that we have funded. In the last week we have announced support for another six productions across Victoria. Our production companies will be giving life to new documentaries or factual stories that will, importantly, be telling the real, true life experience of Victorians and other Australians and sharing them with markets here and around the world. So, 360 Degree Films will be making two documentaries, named *Charles Bean's Great War* and *Kangaroo Mob*. December Films is making a story about a great zoologist who works in Australia, *Chris Humfrey's Wild Life*. There will be a major documentary series on second Australians, about the virtues, excitement and the diversity of our multicultural Australia. Jenny McMahon and David Bradbury will be making a documentary about Paul Cox, a very famous Dutch-Australian filmmaker who has a great film pedigree.

We in our government understand the importance of film production in Victoria. In terms of post-production capability, creative arts, the writing and the writers — everywhere along the chain of development of films — we have great talent in Victoria. It leads to not only great creative expression but also great economic benefit to our community. That is something we are supporting through the film industry.

I will conclude by saying that we on this side are interested in film and our stories, and we are happy to share our stories, whether or not opposition members listen to them.

Sitting suspended 12.57 p.m. until 2.03 p.m.

CRIMES LEGISLATION AMENDMENT BILL

Committee

Resumed discussion of clause 1 and Hon. J. M. MADDEN's amendment:

1. Clause 1, page 2, line 7, after "document" insert "and other matters".

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I place on record that the coalition will support this proposed amendment to the bill. We have agreed to expedite the passage of this amendment, given the sensitivity of the matter the minister referred to — that is, the bushfire royal commission.

I note the comments Mr Tee made during his second-reading speech, which I thought were unduly critical of the comments Mrs Petrovich made. I also note that while Mr Tee referred to the suppression orders pertaining to protecting certain victims of the bushfires of summer 2009, the reality is that the information that has been provided to the coalition and confirmed by the minister in his comments on this amendment and the breadth of matters covered by the suppression orders are more significant or broader than just protecting individual victims.

It relates to commercial-in-confidence matters as well. It is not merely, as Mr Tee suggested, the protection of individual victims of the fires; broader matters are covered by those suppression orders. Nonetheless the coalition has agreed to expedite the amendments. Accordingly we will support the minister's proposal.

Ms PENNICUIK (Southern Metropolitan) — We gave some thought to the amendments proposed by the government. We had some discussion and also noted similar provisions in jurisdictions around the country with regard to suppression orders or orders by the commissioner to prevent the publication of certain evidence, documents or information before the commissions.

We noted that that particular provision is in the legislation of virtually every other jurisdiction — that is, nationally and in New South Wales, Queensland and South Australia. As it stands at the moment, Victoria is the only jurisdiction which requires the commissioner to firstly issue an exclusion order in order to be able to issue a suppression order. That seems to be an anomaly in the Victorian legislation. On those grounds we are prepared to support the amendment.

Amendment agreed to; amended clause agreed to; clauses 2 to 10 agreed to.

The DEPUTY PRESIDENT — Order! As I indicated, from my point of view amendment 1 is a test for further amendments proposed by Mr Madden. That has been accepted in the context of the comments made by Ms Pennicuik and Mr Rich-Phillips.

Clause 11

Hon. J. M. MADDEN (Minister for Planning) — I move:

2. Clause 11, line 19, omit "9" and insert "11".

Amendment agreed to; amended clause agreed to; clauses 12 to 14 agreed to.

Clause 15

Hon. J. M. MADDEN (Minister for Planning) — I move:

3. Clause 15, line 19, omit "13" and insert "15".

Amendment agreed to; amended clause agreed; clause 16 agreed to.

New clauses

Hon. J. M. MADDEN (Minister for Planning) — I move:

NEW CLAUSES

4. Insert the following new clauses to follow clause 7 —

'**AA Exclusion and publication prohibition orders**

(1) **Insert** the following heading to section 19B of the **Evidence (Miscellaneous Provisions) Act 1958** —

"**Exclusion and publication prohibition orders**".

(2) In section 19B(2) of the **Evidence Act (Miscellaneous Provisions) 1958**, **omit** "to which an order under subsection (1) applies".

(3) After section 19B(2) of the **Evidence (Miscellaneous Provisions) Act 1958 insert** —

"(2A) The commissioner must not make an order under subsection (2) unless the commissioner is satisfied that the making of the order would facilitate the conduct of the inquiry by the commission or would otherwise be in the public interest.".

BB New section 164 inserted

After section 163 of the **Evidence (Miscellaneous Provisions) Act 1958 insert** —

"**164 Validation of certain orders**

An order of a commissioner presiding at a hearing of a commission purported to be made under section 19B(2) and purported to be in force immediately before the commencement of this section is, on and from that commencement, taken to have the same force and effect as it would have had if it had been validly made under section 19B(2).".'.

New clauses agreed to.

Reported to house with amendments.

Report adopted.

Third reading

Hon. J. M. MADDEN (Minister for Planning) — I move:

That the bill be now read a third time.

I thank members of the chamber for their contributions.

Motion agreed to.

Read third time.

ACCIDENT COMPENSATION AMENDMENT BILL

Second reading

Debate resumed from 9 March; motion of Hon. M. P. PAKULA (Minister for Public Transport).

Ms PULFORD (Western Victoria) — As I was saying when the clock ran down on Tuesday evening, it is absolutely the intention of the government with this legislation that any worker subject to bullying, harassment, victimisation, excessive monitoring or unreasonable management behaviour that results in an injury be entitled to workers compensation. Injuries incurred as a result of unreasonable management action will be compensable. It is important that this is clearly stated because I fear the notion that suddenly all stress claims are to be removed from the scheme may pose a risk of claim suppression. This was the initial experience after section 82(2)(a) was introduced into workers compensation legislation many years ago; there was a perception that stress injuries could not be claimed for, and it had the impact of suppressing claims. I would certainly hope that people do not get the wrong end of the stick in this respect.

The provision is intended to enable employers to effectively manage the people they need to manage and balance that with the need for people who are injured in their workplace and suffer a psychiatric or psychological injury to be rightly compensated, attracting all of the benefits that the scheme provides for people with a compensable injury. There has long been uncertainty around the interpretation of section 82(2)(a). This confusion creates unnecessary disputation in the system, and for a worker with any type of injury unnecessary disputation is a massive additional burden to place on them. Ensuring that the law is clear in this area is important, because any worker should have certainty around their rights to compensation. We certainly would not want to add to the stress levels of people, particularly those who are already suffering with a stress injury.

The introduction in 2004 of the Occupational Health and Safety Act for the first time specifically defined an inclusion of psychological health, so we have clearly articulated to employers the need to provide a safe workplace in every respect of health, including psychological health. Members will recall the tragic death of Brodie Panlock, which was the subject of considerable media attention in recent weeks. The successful prosecution of those involved in the workplace bullying incident that led to Brodie Panlock's death has caused a far greater level of awareness in the community about the risks of unsafe work practices and in particular bullying.

WorkSafe is renewing a focus on preventing workplace bullying and is supporting this through a range of activities, including a press campaign to continue the momentum that exists, providing a dedicated phone line and supporting and providing workshops for employers on how to identify and manage workplace bullying. WorkSafe has successfully concluded more bullying prosecutions than any other jurisdiction. The tragic circumstances leading to the death of Brodie Panlock have certainly served to highlight the very significant risks that workplace bullying can pose to some people.

WorkSafe inspectors receive training in dealing with bullying and are empowered to issue notices requiring employers to develop antibullying strategies, to investigate cases and to examine measures to prevent bullying in workplaces.

Acting President, as you did and Mr Rich-Phillips did, I have had the opportunity to make a long contribution on this matter that is of great importance. In conclusion, I would like to say that it is of the utmost importance that this legislation is passed in this place today. The

improved benefits will begin to flow to injured workers from 5 April if the house passes this legislation today.

There are around 30 000 Victorian workers injured each year, and we will continue to strive to bring that number down and to make our workplaces as safe as possible. For those who have been impacted by a workplace injury or may in future be impacted by a workplace injury, it is incredibly important that we continue to be vigilant and that the scheme be run in a manner that provides it with the capacity to return to injured workers benefits like those that come from this legislation — $90 million per annum of improved benefits to injured workers. This has been balanced, of course, with five successive premium reductions and complements improvements in workplace safety that have led to record low injury rates. I urge the house to support this legislation and to support Victorian injured workers.

Mr DALLA-RIVA (Eastern Metropolitan) — I am also pleased to make a contribution on the Accident Compensation Amendment Bill 2009, albeit, unlike the previous three speakers, I will take a lot less than 50 minutes. It is an important bill and a very detailed bill, for those who are listening elsewhere. There are somewhere in the vicinity of 350 pages of amendments. I think it goes to the very point that was raised by Mr Rich-Phillips that there was an opportunity, through the Peter Hanks review of the principal act, to have a look at the act.

Interestingly, Mr Hanks's first recommendation was a rewrite of the act in a logical and simplified format. I am quite amazed that the government has not seen fit to do that. I think it is probably the myki approach — that is to say, 'It is too difficult and we will try and muddle our way through'. Instead what the government has provided is 350 pages of amendments, essentially to a 677-page principal act, so there was a lost opportunity. I have a copy of a guide to Peter Hanks's Accident Compensation Act review and the final report. Again, that was a small report of 528 pages, and I have read that in detail. If you believe that, you will believe anything!

The report is very detailed and, for that reason, Mr Hanks was kind enough to produce a guide to his review report. I do not think it was made specifically for me, but obviously for those who did not want to bury themselves in essentially 677 pages of the principal act and then review 528 pages of the Hanks report, he has now provided a summary in the vicinity of 48 pages, to which the government has provided a response which goes on for another 30 pages. All up we have supported the printing industry in Victoria with this bill. I have been flippant about it because I think what it indicates is that there was a real opportunity for this government, with the amount of work, the amount of detail and the amount of history in this bill, in the principal act, for the legislation to be rewritten. We have had a very detailed review by Peter Hanks, a person with whom I had involvement in the EastLink case because he sat opposite me defending EastLink as its QC, so it is good to see he is still being engaged by the government. Nonetheless he did not get the outcome that he expected.

I do not wish to go into much detail. I can say that I have had some detailed involvement with the process of WorkCover and the ACCS (Accident Compensation Conciliation Service) and the way that the operation works. For the record, my mother-in-law has been a long-term WorkCover recipient, and I have to say that I have not found it on occasions to be an unsympathetic process. I think there have been times when it has been difficult, but there have been times when I have found the process to be quite streamlined.

There is no doubt that having a proper WorkCover system in Victoria and indeed around the world in all modern societies is essential. As I said, having seen my mother-in-law go through the process — she has just had another operation for a shoulder injury which she sustained in her workplace — I know the process. The WorkCover system has assisted in providing support and has been very sympathetic to her needs and to the needs of other workers.

I want to put on the record Ms Pulford's inference that we on this side of the chamber do not quite understand the issue. As I said, this has been an ongoing situation. As an employer or as a manager you are always sympathetic because you do not want your workers to be injured. I think there was an underlying inference that all managers and all employers are by default not sympathetic, and that is not necessarily the case. Yes, there are odd examples, and we know about those, but I think on the whole most people are supportive of what WorkCover tries to do.

There are a couple of things that I think need to be put on the record. Clause 40 of the bill excludes annual leave and redundancy or severance pay through clause 40 from the calculation of current weekly earnings. I think that is an anomaly given that somebody may through no fault of their own be made redundant and therefore have to go to Centrelink to get some form of payment, and Centrelink will take that redundancy or severance pay into account. You find often that people come to your office saying, 'I have just got three months redundancy pay. I am now five

months in and all of a sudden Centrelink has taken that three months severance pay into account and therefore is not going to pay'.

I think it is important to understand that there are some anomalies between what occurs nationally and what is occurring here. Whether that will add expenses, it certainly will add an extra benefit for the WorkCover recipient, but it also means that it may result in an increased premium for the employer.

There is this view that there is a $90 million slush fund and an opportunity for the government to be able to draw on that $90 million. The bill provides for a range of increases in premiums and benefits within the current break-even premium, and that may place upward pressure on premiums to maintain the future viability of the scheme, given the increases in benefits. I am not having a go at the increases in benefits, but if you increase the benefits and the opportunities for work recipients, there will have to be by default some increase borne by someone somewhere. I put that on the record.

I think the issue about deeming councillors is more about pacifying the Labor councillors perhaps, because it is not clear how they are going to define the scope of the coverage — in other words, the injury arising out of a course of employment, and also with respect to the council's obligation to provide return-to-work opportunities. For example, what happens if a councillor sustains a WorkCover injury a month before an election, there is a process of return to work but that councillor is not re-elected? Those circumstances do not fit what is provided for in the bill. I suppose the same could be assumed of Parliament. You could be elected here, go to the next election, sustain a WorkCover injury and I guess return to work. If you are not re-elected, it is pretty hard to slot you into seat 41 in the chamber if there only 40 seats available. That is something we need to consider. We have seen massive increases in the penalties by a factor of between 5 and 12, including for minor paperwork breaches, such as failing to lodge forms on time.

We note that there are substantial increases in fines for employers for things such as failing to notify WorkCover of a return to work. The employer can be fined $28 000 while the worker concerned can be fined $4600. We need to understand the reasoning behind such a huge anomaly between the fines for the same offence committed by an employer and by an employee. Again we are not having a go at one over the other, we are just seeking some clarity, and that will be raised in committee.

There are new fees. It appears that the Victorian WorkCover Authority is a bit hostile to self-insurers or those who seek to exit self-insurance and obtain insurance under the Comcare scheme. We believe the new fees of up to $47 570 will impose a substantial disincentive for employers seeking to become or remain self-insurers. These include organisations like Melbourne Water and the University of Melbourne. In fact there are currently 37 self-insurers in Victoria. That is not a huge amount, but we ask why there is this view of self-insurers being pariahs in that sector if they have the capacity to self-insure.

In summary, because I do not want to talk too long, we think overall the fundamental recommendation from the Hanks review was about creating a new simplified act. I think we are making the act more complex. We are amending a 677-page principal act with 350 pages of amendments following a 548-page review. The interesting thing is that in the government's response to the Hanks review's recommendation to 'Recast Victoria's accident compensation legislation into a comprehensive act, arranged logically and expressed in plain English' it said at page 1:

> Consistent with Hanks' recommendations, the government supports recasting the accident compensation legislation in stages.

It appears we are going to have a 350-page stage of amendments. How many stages are were going to go through? That is another question: when is it proposed that the principal act as outlined in the Hanks report will be totally complete?

I also note the government's response about the transparency of decision making and the efficient resolution of disputes. That relates to the process of the ACCS, which I spoke of before. I have on a number of occasions attended such conciliation disputes on behalf of my mother-in-law and have on the odd occasion filled out the forms. They are very easy to complete. Only two weeks ago somebody came into my office wanting to know how to deal with a WorkCover issue, and I said, 'The process is pretty easy. It is on the ACCS website, and you can sort it out pretty well'. As I said, I think the system works reasonably well under the circumstances, although I note the recent employment of 33 extra agents or conciliation officers to deal with those issues.

I note that in regard to chapter 10 of the Hanks review and the government's response to the issue of transparency in decision making and the efficient resolution of disputes that the government does not support recommendations 84 to 91; it supports 92 with modification; 93 it supports; 94 it does not support; 95

it modifies; 96 it does not support; 97 it supports; and the rest up to 115, apart from 99 and 107, it supports. That is quite a high level of positive responses. Most of the report reads 'Support', 'Support', 'Support', except when we get to the recommendations about transparency, where it talks about the dealings of the ACCS and some of the internal reviews. That stood out for me and made me realise that the government is really not keen to have this sort of open transparency in terms of the ACCS and WorkCover relationships. I hope that with the new processes and the appointment by the minister in the other place there will be a move towards ensuring that the system is maintained, as I have seen it operate in an effective and highly efficient manner.

Having said that — I do not want to talk for too long compared to the other speakers — it is a bill we will not be supporting. If there is not enough pain with the amount of paper being used, we look forward to the 199 amendments from the Greens.

Mr SCHEFFER (Eastern Victoria) — I too will make a brief contribution. It is a great privilege to be able to support legislation that promotes workplace safety and ensures that every employee who is injured while at work will be protected and provided with the best care and support possible. It is also a privilege to support legislation that promotes the fair and just compensation of the families of workers who lose their lives as a result of workplace accidents.

This bill introduces a number of important reforms to the act that will make a big difference to the 30 000 or so workers who are injured in the workplace each year. It will make a big difference to their dependents and families as well as to their workmates and of course their employers.

With this legislation, benefits to injured workers will be increased so that weekly payments will be 80 per cent of pre-injury income after workers have received payments for longer than 13 weeks. Injured workers will be entitled to have overtime and shift allowances factored into their compensation calculated over a longer period, which is increasing from the present 26 weeks to 52 weeks. Victoria will be the first state where an injured worker can have their compensation paid into their superannuation.

Under the reforms contained in this legislation workers suffering from severe injuries, or the families of workers who have died as a result of a workplace accident, will be eligible for the highest lump sum payments available anywhere in Australia. The provisions in the bill will also help improve the effectiveness of getting injured workers back to work through making sure that the duties of employers are clarified.

These amendments to the act introduce a new part VIIB that sets out the obligations of both workers and employers in getting workers back to work in an environment that respects their health and safety in the workplace.

The powers of return to work inspectors have been revised so that they will have stronger powers to promote compliance in the workplace by providing advice about the respective obligations of employers; where necessary, inspectors are empowered to issue improvement notices to employers. Under the provisions of this bill, it will be an offence for an employer not to comply with an improvement notice.

The bill provides an improved basis for better consultation so that plans can be developed and decisions made in a more direct and effective way. Section 23 makes it an offence to engage in discriminatory conduct. This section effectively prohibits employers from sacking a worker, threatening their working conditions or treating them in any way unfavourably if the worker pursues a compensation claim.

Importantly, a worker who feels he or she has been discriminated against can, under these amendments, request WorkSafe to take action against their employer or, where WorkSafe decides not to act, can make the request to the director of public prosecutions.

The origins of the amendments go back to an announcement in 2007 by the WorkCover minister, Tim Holding, and the commissioning of Peter Hanks, QC, to lead an inquiry into the act in conjunction with WorkSafe Victoria and the Department of Treasury and Finance.

The bill implements the recommendations of the Hanks review and introduces a whole range of changes to Victoria's workers' compensation scheme that update the Accident Compensation Act and the Accident Compensation (WorkCover Insurance) Act.

The Hanks review of the act provides a useful short history of Victoria's accident compensation legislation, and it is as well in this debate to remind ourselves of some of that history. Since the first Victorian legislation in 1914, the story of workers compensation for injuries arising out of and in the course of employment has been characterised by successes and setbacks. The long road the labour movement and Labor governments have

walked should not be forgotten as we deliberate on this bill.

Prior to 1914 and during the 19th century injured workers only had common-law remedies available. The system was loaded against them because they had to prove negligence on the part of the employer in a legal environment that held that employers were not legally liable for any injuries sustained by their employees. The law held that when a worker took a job, he or she implicitly assumed responsibility for the normal hazards of their employment, so all matters relating to the health and safety of employees were fundamentally a matter for the worker, not the employer. As members know, the organised response to this terrible state of affairs came from the union movement which grew out of the industrial development of the 19th century in Europe and the horrendous work practices that went with that industrialisation in the coal mines, on the land and in the factories.

During the last decades of the 19th century industrial expansion and the harsh working conditions strengthened the union movement and led to the establishment of the Australian Labor Party. This made it possible to successfully press for reform in an organised way, and this in turn led to the 1914 reforms and the rapid changes that followed. Workplace accident compensation is fundamental to the labour movement and the Australian Labor Party.

The new legal framework of 1914 was based on the principle of no-fault liability, and it has remained this way since then, even though in this country the right to pursue common-law damages for work-related injury has remained available in one way or another. Step by step, insurance by employers became compulsory, and mechanisms were put in place to streamline the hearing and resolution of disputed claims. The levels of weekly and lump-sum benefits have been at various times lifted and reduced; access to common law has been restricted, further restricted and then restored for certain circumstances; and various changes have been made to the effective operation of claims processes.

What is clear is that the changes introduced by the first Bracks Labor government shortly after its election in 1999 were landmark reforms. The Bracks government doubled the minimum lump-sum benefits, increased weekly benefits, improved the way that overtime and shift allowances were factored into benefit calculations, and increased the level of compensation for the death of a worker for surviving family members.

These were significant reforms, achieved after some years of work and consultation with the labour movement and employers, and the amendments in the bill build on the work that this government has done on a progressive basis. The further reforms contained in the bill will significantly improve benefits and rehabilitation support to injured workers. The provisions contained in the bill will also assist injured workers to return to work in a way that is safe, supported and informed.

I genuinely welcome this legislation because it marks a further step along the road to improve the welfare and security of Victorian workers.

Mr SOMYUREK (South Eastern Metropolitan) — The Accident Compensation Amendment Bill provides significant improvements in benefits to injured workers and their families. The increases are possible due to the sound financial management of the accident compensation scheme under this government, with Victoria having the second-lowest premiums of any state. Indeed the Victorian Employers Chamber of Commerce and Industry, in its submission to the Hanks review, had this to say about the performance and management of the scheme:

> VECCI acknowledges the continued improvements obtained in the management of the Victorian compensation scheme since 2000. Premium reductions have been possible due to the reduced number of compensation claims and the reduced continuance rate of claims. These reductions have allowed for substantial actuarial releases and four consecutive premium reductions of 10 per cent. The Victorian WorkCover Authority board and senior management are to be congratulated for these achievements.

The bill has come to the Parliament as a result of Peter Hanks's review of the Accident Compensation Act. The wide-ranging review received 150 submissions, conducted over 1000 hours of face-to-face consultation and made 150 recommendations. The review commenced in December 2007 and reported in August 2008.

Our first priority must always be safe workplaces, which is the fundamental right of every worker. The second priority for injured workers must be rehabilitation and a return to work, and workers need to be fully supported at all stages. The Hanks review places a strong emphasis on this. In *Accident Compensation Act Review — A Guide*, Peter Hanks had this to say:

> Improving return to work is the central objective. All stakeholders are united in supporting the importance of improving return to work for injured workers; and this has been a central consideration for me in assessing proposals for reform. An injured worker's return to work after workplace injury is much influenced by the worker's relationship with her or his employer and workplace, as well as by the worker's recovery from injury. Although that relationship is a

> workplace matter, it can be enhanced by the rights and responsibilities established by the legislation and can be compromised by the compensation system.

Thirdly, and as recommended in the Hanks review, there must be fair accessible benefits. I will now refer to several of them. For injured workers who suffer a permanent impairment the package must provide a 10 per cent no-fault lump sum benefit for workers with spinal impairments and a 25 per cent increase in the maximum benefits, increasing no-fault lump sum benefits for the most profoundly injured workers. There are also substantial increases for psychiatric impairment.

The psychiatric impairment provisions are, in a sense, a trade-off. On the one hand the bill retains the current statutory exclusion of compensation for permanent psychiatric impairment below 30 per cent and limits claims where psychiatric impairment predominantly arises from reasonable employer actions. On the other hand those with a psychiatric impairment over the 30 per cent threshold are given parity with injured workers with a psychiatric impairment, and there is a fivefold increase in benefits awarded to workers who suffer a serious psychiatric impairment.

These changes to the psychiatric impairment provisions ensure that workers who suffer a serious, long-term disability as a result of their employment, where the manager's actions are not reasonable, will be treated with dignity and properly compensated.

There are increased benefits for workers who receive weekly payments, including an increase in the rate of compensation from 75 per cent to 85 per cent of income after workers have received compensation for 35 weeks, and an extension to overtime and shift allowance from 26 weeks to 52 weeks.

Most importantly, superannuation is now provided for. In *Accident Compensation Act Review — A Guide* Peter Hanks said:

> Finally, a key priority should be income support for long-term injured workers. For that reason, I have recommended that Victoria become the first Australian jurisdiction to compensate long-term injured workers for the superannuation they would have accrued if they had been able to continue working.

The alternative would be to force long-time injured workers to rely on reduced incomes in their retirement and push them onto the welfare system.

Finally I need to mention that there are improvements for employers, including less red tape, increased transparency of the Victorian WorkCover Authority's decisions and the right for employers to request written reasons for agents' claims decisions and to appeal premium determinations.

I will conclude by again quoting VECCI, which said of the review:

> Some of these changes advantage employers and others are concerning.

This would indicate that we have got the balance right. I have much pleasure in supporting this bill.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

The DEPUTY PRESIDENT — Order! I have been given by Ms Pennicuik a list of a number of clauses in which she has an interest either by way of amendment or some questions that she wants to pursue.

Are there any clauses that Mr Rich-Phillips is specifically interested in?

Mr RICH-PHILLIPS (South Eastern Metropolitan) — In addition to clause 2 with the amendment which relates to clause 79, I seek your guidance that we can deal with those issues on clause 2. There are also clauses 40 and 42.

The DEPUTY PRESIDENT — Order! Clause 42 is already listed by Ms Pennicuik, so I will add clause 40 to the list. Mr Rich-Phillips might remind me when we get to the earlier matter, but I am happy to consider clause 79 as part of the discussion on the earlier clause with the minister's willingness to do so as well.

Ms PENNICUIK (Southern Metropolitan) — I am interested in the purposes clause — clause 1 — and I would like to go to clauses 1(b), 1(c) and 1(d) in particular. The minister could answer them all together or one at a time if he likes. Take, for example, clause 1(b) on which I would like a précis from the minister as to how the government sees that this bill provides for better rehabilitation and return-to-work outcomes.

Ms PULFORD (Western Victoria) — The bill seeks to streamline procedures and provide consistency with occupational health and safety legislation that

provides a range of specific requirements on parties involved in the development of a return-to-work plan.

Ms PENNICUIK (Southern Metropolitan) — Given that the bill softens or lessens the obligations on employers for return to work and removes the whole section on rehabilitation plans, how does the bill actually provide better rehabilitation and return-to-work outcomes?

Mr LENDERS (Treasurer) — I am more than happy to answer some of these questions from Ms Pennicuik, but I have a very strong view as a minister that when there are parliamentary secretaries, we should not always presume that the minister will answer, and I am happy to answer with Ms Pulford, who will answer on this clause.

The DEPUTY PRESIDENT — Order! I indicate that we had this discussion in respect of proceedings the other day, and like the minister I believe that in some cases parliamentary secretaries who have been intimately involved in the preparation or the prosecution of the legislation that comes in here are in a position to expedite the considerations of the committee.

A point of order was raised on that previous occasion by Mr Rich-Phillips about accountability in terms of the responses that might be given by a parliamentary secretary who is not a sworn member of the executive and the ability of that person therefore to represent a government view. I will re-establish the ruling, because on a number of occasions I have indicated that the proceedings of the committee can be taken into account in court proceedings as a matter of the intent of government in developing legislation.

My friend the Clerk, sitting to my right today, on the occasion earlier in the week when we dealt with a bill in committee went to the Interpretation of Legislation Act to verify what I was saying. Imagine how outraged I was that there was a question from the Clerk on a ruling; nonetheless, what was established by the act — and it is important to say it, particularly given the minister's comments today about parliamentary secretaries participating more fully in committee stages — is that all proceedings of the Parliament can be taken into account by a court.

It is not just the second-reading speech, as some might have suggested earlier; it is not even just the committee proceedings, to which I have alluded on a number of occasions, pointing out on each occasion that questions are often designed to establish the intent of particular clauses of legislation, and therefore they are very relevant to court interpretation of what the Parliament and the government expect the legislation to do.

As I said, according to the Interpretation of Legislation Act, the whole proceedings of the Parliament are relevant. In that context the contributions of parliamentary secretaries assume some greater merit when they have obviously been involved in the preparation of the legislation. Nevertheless, as I indicated the other day, I am keen to establish that, on occasions, the government, through a member of its sworn executive, will confirm to the Parliament and the house that the undertakings given or the answers to questions represent the government's view, not simply the view of somebody who has been involved in the promulgation of the legislation.

There will be occasions when I will seek ministerial comments on these matters even though I understand the minister's enthusiasm to involve other talented members of the Parliament who have a knowledge of the legislation and its working because of the work they have done in bringing the legislation to this place. As I said, I certainly recognise that in many cases those members are able to expedite the proceedings of the committee.

Ms PULFORD (Western Victoria) — The bill provides for a new return-to-work framework specifically. It is built on the success of the occupational health and safety framework which is very much driven by results and measurable outcomes, and specifically successful return-to-work outcomes for injured workers.

Ms PENNICUIK (Southern Metropolitan) — My question requires a more detailed answer. The bill makes substantial amendments to the current return-to-work regime and reduces or relaxes the requirements for employers to facilitate a return to work; and it removes the section of the current act on rehabilitation plans. Therefore I would like more details as to how, for those two things — including the removal of the rehabilitation plans — the bill achieves better rehabilitation and return-to-work outcomes?

Mr LENDERS (Treasurer) — It is a detailed question asked by Ms Pennicuik, but the simplest response to it is the establishment of a return-to-work inspectorate, which was not there previously, which is a new focus of the authority and clearly a focus that adds a significant difference to what was in existence in the previous regime.

Ms PENNICUIK (Southern Metropolitan) — On that point, and I foreshadow more discussion when we

get to clause 129, which goes into the detail of this, previously under the act there were obligations on employers to have return-to-work plans et cetera which are removed from the act by the bill. There are obligations on employers to have rehabilitation plans which are removed by the bill. Notwithstanding that there is an inspectorate, how does the removal of those requirements achieve better outcomes?

Mr LENDERS (Treasurer) — I think the simplest way to respond is to use a specific example. Under the old regime, if I were an employer there would be a responsibility, for argument's sake, for me to put in place a plan for someone who was severely injured or in a coma. That plan is not of particular assistance. With an inspectorate there is a much greater capacity for compliance and a much greater flexibility to achieve the actual intent of the bill. Rather than a paper-based reporting format this is an inspectorate, which has worked particularly well in other aspects of the regime.

Ms PENNICUIK (Southern Metropolitan) — If someone was still in a coma there would not need to be an immediate return-to-work plan. The minister uses an exceptional example to explain what I am talking about, which is the general provision which would apply to the majority of injured workers.

Mr LENDERS (Treasurer) — We are discussing this across the table, but we have moved from a time-based plan to a far more effective capacity or situation-based response under the proposed new arrangements. Again, if we go right back to the whole purpose of the Hanks review, it is to further reform and make the system more effective, and this is a practical example of making the system more effective.

Ms PENNICUIK (Southern Metropolitan) — I do not want to labour that point any longer except to comment that the minister has said he expects this will be a more effective regime. There is no evidence that that is the case, because we have not seen the regime in operation. It is just an expectation of the government that it will be more effective. I do not necessarily share that view, but I do not think there is much point in labouring the issue any further except when I go into more detail in regard to the specific new requirements in clause 129.

If I can go to clause 1(c) — and this is not meant to be a flippant question — how does the government see the bill will achieve greater transparency and accountability?

Mr LENDERS (Treasurer) — I will use two examples for Ms Pennicuik in relation to transparency. An employer will now have greater transparency in the setting of premiums and will be able get a view on how that is done. For the employee there is now, for example, a 28-day requirement for rejections to be made. There is greater certainty in those areas than there was under the previous regime.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister. There are four main purposes set out in this very large bill of 194 clauses and 350 pages, and transparency is one of the key purposes. Is that the only area where the government can say there is greater transparency and accountability? As I said, I do not mean this flippantly, but the government has said that is a purpose of this long bill and I struggle to find other examples. Is it the only example?

Mr LENDERS (Treasurer) — A lot of this depends on how many times Ms Pennicuik wishes me to get more information, and I am being quite open about this. We believe we have put significantly more examples of transparency into the bill, and I guess the issue becomes whether Ms Pennicuik wishes me to read them into the record here or whether we want to have a separate dialogue. Can we perhaps even postpone consideration of the clause and come back to it later when I can get a list of issues to her? It would probably be helpful to the committee in getting through this stage.

I have given two examples, one for an employer and one for an employee, but if she wishes I am certainly prepared to get a more extensive list to the committee. I suggest that if we defer discussion of the clause until later in our deliberations we may save some of the time of the committee.

Ms PENNICUIK (Southern Metropolitan) — I think that would be helpful, given that it is one of the main purposes of the bill. It is difficult for me to ascertain where it is the case.

I need some advice from the Chair. Are we proposing to defer discussion just on clause 1(c), or can we go then to clause 1(d)?

The DEPUTY PRESIDENT — Order! We will defer consideration of the whole of clause 1, if I take that step. I need to understand about the matters in respect of which the minister has undertaken to provide a list. I ask the minister if his advisers are clear on what the list will comprise.

Mr LENDERS (Treasurer) — Yes.

The DEPUTY PRESIDENT — Order! I ask Ms Pennicuik if she is seeking any additional

information that is relevant to this clause for when we come back to it.

Ms PENNICUIK (Southern Metropolitan) — Yes, Chair. It would be some information as to how the purpose in clause 1(d), which deals with improved operation of the legislation, is to be achieved given the comments made by everyone who contributed to the second-reading debate about the length and complexity of the existing act and the 194 amendments being made to it. It seems we will have a more complicated act. Would the minister provide some advice about that?

I have one more issue. In his contribution Mr Scheffer spoke about premium reductions of 10 per cent. I would like to know what the value of those premium reductions is in comparison to the $90 million in improved benefits to workers?

Mr LENDERS (Treasurer) — In relation to the first part of Ms Pennicuik's question about the recommendation, Mr Rich-Phillips and Mr Dalla-Riva said the same thing in their contributions. I must admit Mr Hanks was a very good criminal law lecturer when he lectured me at university.

The issue raised by Ms Pennicuik and Mr Rich-Phillips is one that is near and dear to my heart as a minister who is charged — wearing my Treasurer's hat — with reducing burden. The starting point of the government in all of this is particularly sympathetic to that issue. To illustrate where we are coming from I will use the example of the consolidation of the Occupational Health and Safety Act back in 2004. I had three very enjoyable days — and I will let Hansard put in the parenthesis for 'enjoyable' days — in committee with Mr Forwood and others over the details of the consolidation of a piece of complex legislation into plain language. Conceptually it is absolutely correct. Why can you not suddenly reduce this extraordinarily cumbersome piece of material down to something more manageable? I am in furious agreement both with Mr Rich-Phillips and Ms Pennicuik.

The reality is that when each clause has an extraordinarily rich history of interpretation about it — a rich history for employers and their legal advisers and for workers and their advocates and legal advisers — and when you seek to consolidate that into what on the face of it is plain English, it becomes far more complex than appears to be the case.

So I say in good grace to Ms Pennicuik that what she says has a logic, but I would suggest to her that the practicality of simplifying, as she puts it, a lot of the existing positions, of which multiple practitioners have varying interpretations, would mean reopening literally hundreds of policy questions. I am not exaggerating that. Certainly in the Occupational Health and Safety Act you would reopen hundreds of policy issues. On the face of it that is the answer to why there has not been more of an effort to rewrite this: because more policy questions would be opened than would be simplified by a reduction.

On the issue Ms Pennicuik raised, I will find an answer for her on the exact number. As she is aware, the minister on the advice of the WorkCover authority has recommended to Governor in Council on five of the last six years that there be a reduction in premiums. On four of those five occasions the recommended reduction was 10 per cent and on the fifth occasion it was 5 per cent. I will see if we have an exact figure as to what that premium reduction is.

I will confirm this in writing with Ms Pennicuik, but the advice I have at this moment is that a 10 per cent premium reduction is roughly in the order of the $90 million package she is suggesting and a 5 per cent reduction is roughly half of that. That is preliminary advice, and outside the committee, if she is satisfied with that, I will undertake to obtain for her a more definitive answer.

Clause postponed; clause 2 postponed; clause 3 agreed to.

Clause 4

The DEPUTY PRESIDENT — Order! I call on Ms Pennicuik to move her amendment 15, and I indicate to the committee that I consider this amendment to be a test for amendment 16 standing in her name.

Ms PENNICUIK (Southern Metropolitan) — I move:

15. Clause 4, lines 16 to 22, omit paragraphs (a), (b) and (c) and insert —

    (a) in subsection (1AA) —

        (i) **omit** "for the first 26 weeks after the death of the worker";

        (ii) for "that first 26 week period" **substitute** "the period when weekly payments are payable";

    (b) in subsection (1AB) —

        (i) **omit** "for the first 26 weeks after the death of the worker";

        (ii) for "that first 26 week period" **substitute** "the period when weekly payments are payable";

(c) in subsection (1A) (where secondly occurring) —

(i) **omit** "for the first 26 weeks";

(ii) for "that first 26 week period" **substitute** "the period when weekly payments are payable";'.

Clause 4 of the bill substitutes '26 weeks' for '52 weeks' regarding the period of payment of pre-injury average weekly earnings to injured workers. That is the proposal under the bill.

As has been mentioned during the second-reading speeches, including by me, that is certainly an improvement on the current situation, but my amendment would substitute for '52 weeks' the phrase 'the period when weekly payments are payable'. The effect of that would be that injured workers would be entitled to pre-injury average weekly earnings for the duration of the time that they are eligible for weekly payments as a result of an injury incurred at work.

The reason for this change is that I strongly believe the number of workers who remain injured and unable to work beyond 26 weeks is a minority and the number of workers who remain injured and unable to work and who are entitled to weekly payments beyond 52 weeks is an even smaller minority, but they are by definition the most seriously injured workers. Someone who is still unable to work after 52 weeks would by definition be suffering from a serious injury or ill health as a result of work. To have their pre-injury average earnings removed 52 weeks after their injury seems to me to be discrimination and an added disadvantage to them.

I have never agreed with any timing as far as this goes. I feel that if a person is injured at work, they should not also have to suffer financial loss on top of their injury or ill health, and that is the effect that time limits have. While the government has made a significant improvement by lengthening that time from 26 to 52 weeks, I am still of the view that there should not be a limit on that time.

If you would indulge me, Deputy President, I have here an example of how this time limit affects workers in such a situation. In this day and age normal weekly earnings for workers across the economy include piece rates, overtime, penalties, bonuses and allowances. They should be the basis for entitlements because many industries operate 24 hours a day, 7 days a week. Everyone knows that more and more industries do that. The wages of workers in those industries are based on their piece rates, penalties and allowances, and they are integral, not additional, to their take-home pay.

Studies of patterns of working life show that the average working week for workers has increased considerably and that penalties and overtime are relied on as an integral part of workers' incomes. For example, a butcher who permanently works from Monday to Friday at a supermarket would earn approximately $730 a week for his normal weekly earnings. A butcher who permanently works from Wednesday to Sunday earns approximately $1000 a week, because of weekend penalty rates. Both those workers would rely on their entire income for survival.

However, the definition of 'pre-injury average weekly earnings' will ensure that if the workers are seriously injured and have no work capacity after 52 weeks, under the bill the worker who worked from Monday to Friday will receive 80 per cent of his normal weekly earnings and the worker who worked from Wednesday to Sunday will receive 55 per cent of his normal weekly earnings.

Another example is of a worker who worked in the same workplace for 29 years. He worked night shift with a 25 per cent penalty rate and worked regular overtime. His hours ranged from 56 to 62 hours per week and often included weekends, paid at time and a half or double time. His average normal weekly earnings for the 12 months prior to his injury were $1379. His ordinary time base rate earnings were $625 per week but obviously bore no relationship to his actual earnings over 28 years. His injury occurred in the second half of 2007, when 95 per cent of his normal weekly earnings was $1310. For the first 13 weeks his weekly payments were $1210, because of the capping. After 13 weeks his weekly payments dropped to 75 per cent of $1379, which was $1034. Under the bill, after 26 weeks it would be 80 per cent, but it would still be a significant reduction.

After 26 weeks the worker's pre-injury average weekly earnings were dropped to $625, which, as I mentioned before, was his base pay. His weekly payments dropped to 75 per cent of that amount, which was $469.

Under the bill that would be 80 per cent, but that would be only another $45, say. He was also actually trying to stay at work and was working to his maximum capacity, 4 hours a day, four days a week. His current earnings of $279 plus WorkCover were $538 gross per week. Even though he was working to his maximum capacity, he was earning $840 a week less than he earnt before he was injured when the cut-off times and the percentages came into play.

That is how the time limit affects people, particularly low-income workers. We know that low-income

workers — and most workers in the country — do not have high savings, so they end up using all their savings.

My point is that there should not be any time limit on the pre-injury average weekly earnings, because it inflicts that sort of disadvantage and extra financial suffering and stress on an injured worker over and above the injury or illness they already suffer. That is the reason for my amendment. Because the provision would apply to only a small minority of very badly injured workers after 52 weeks, the government and the opposition should, in the interests of injured workers, support my amendment.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Obviously members of the coalition parties sympathise with the arguments that Ms Pennicuik is making about this provision. However, we recognise also that one of the key fundamentals of the WorkCover scheme is that we must maintain its viability. We recognise that it is not a perfect scheme and that it does not provide complete compensation for all injured workers in all circumstances. What Ms Pennicuik is advocating would result in an increase in weekly benefits. Ms Pennicuik gave a very good example of the consequences of the step-down and exclusion of traditional penalty rates for those workers who are in that type of work environment, but we need to be mindful of the overall impact on the scheme and the ability of the scheme to remain viable and the ability of employers to continue to pay for the scheme.

The coalition's overall position on this — as it will be on a number of Ms Pennicuik's proposed amendments which understandably seek to increase benefits to injured workers but do so at a cost, potentially a large cost, to the scheme — is that we must ensure that the scheme remains viable.

I guess if we had the opportunity to ask a question of Ms Pennicuik about her amendments it would be: does she have an assessment of the impact of these proposed changes on the scheme? I take her point about it being a small cohort of the total population of injured workers, but obviously in the longer term that can be a significant cost and we need to ensure that the scheme is viable not only for those workers who are claimants currently but also for those who will be claimants in the future. So there is a longer term impact to consider.

We are not inclined to support this amendment, but if Ms Pennicuik did have any information as to the cost of the impact on the scheme of her proposed amendments, we would certainly be interested in hearing that information.

Ms PULFORD (Western Victoria) — The point Ms Pennicuik makes about the impact of lost earnings in overtime and shift penalties over the duration of a long-term injury is one of the reasons why this provision is an essential feature of the legislation. The time for which pre-injury average weekly earnings will include shift penalties and overtime payments is being extended. That will cost around $11 million of the total $90 million package. Of course the government is very keen to ensure the viability of the scheme going forward, for the benefit of those who are in receipt of benefits now and those who will be in the future as well.

Ms Pennicuik mentioned also in passing the maximum weekly benefit. There is a further $5 million accounted for in providing that improvement as well. In part this legislation seeks very much to recognise and provide improved compensation for people who have been affected by losing income from shift penalties and overtime.

Ms PENNICUIK (Southern Metropolitan) — To answer Mr Rich-Phillips, I do not have a table of figures as to how many injured workers this affects currently or what their particular average weekly earnings might be according to their previous occupation. Suffice it to say that it is a small cohort of the 30 000 workers injured per year who go on to still be on weekly benefits after 52 weeks, and by definition they are the most seriously injured workers or those with the most serious workplace-caused illnesses.

I suppose my fundamental reason for moving this amendment is that it is so discriminatory against that already disadvantaged and suffering group of people to cut them off at 52 weeks. I understand the government is saying it is moving that time limit from 26 to 52 weeks, but the better thing would have been to remove the time limit altogether.

Mr Rich-Phillips's point about the viability of the scheme is a fundamental philosophical question. Do you make the scheme pay by denying injured workers their rights and due compensation, or do you make the scheme viable by raising premiums? Premiums should be raised for serial OHS (occupational health and safety) offenders, because the way to stop people from getting on compensation is to prevent them from being injured in the first place. Employers who are serial offenders should pay higher premiums to keep the scheme viable. The idea of keeping the scheme viable by reducing benefits to workers is anathema to me. I commend my amendment to the house.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — In terms of Ms Pennicuik's last point about reducing benefits — and far be it for me to defend the government's legislation — this bill is increasing benefits by changing the cap. It is not a reduction, as I know Ms Pennicuik is well aware. We have agreed to support that step, as we agreed to support the increase in other benefits under this bill. The overall position is that the scheme must remain viable.

Committee divided on amendment:

Ayes, 3

Barber, Mr (*Teller*)	Pennicuik, Ms
Hartland, Ms (*Teller*)	

Noes, 35

Atkinson, Mr	Lenders, Mr
Broad, Ms	Lovell, Ms
Coote, Mrs	Madden, Mr
Dalla-Riva, Mr (*Teller*)	Murphy, Mr
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Pakula, Mr
Drum, Mr	Petrovich, Mrs
Eideh, Mr	Peulich, Mrs
Elasmar, Mr	Pulford, Ms
Finn, Mr	Rich-Phillips, Mr
Guy, Mr	Scheffer, Mr (*Teller*)
Hall, Mr	Smith, Mr
Huppert, Ms	Somyurek, Mr
Jennings, Mr	Tee, Mr
Kavanagh, Mr	Tierney, Ms
Koch, Mr	Viney, Mr
Kronberg, Mrs	Vogels, Mr
Leane, Mr	

Amendment negatived.

Clause agreed to; clauses 5 to 11 agreed to.

Clause 12

Ms PENNICUIK (Southern Metropolitan) — I invite members to vote against clause 12, which foreshadows further amendments to clauses 13 and 14. Those three clauses go to the parts of the bill which preclude entitlement to compensation for workers with respect to an injury if the mental injury is caused wholly or predominantly by management action taken on reasonable grounds in a reasonable manner, a decision by the worker's employer to take or not take any management action, or any expectation of the worker that any management action would or would not be taken.

In my second-reading contribution I spoke for quite a long time about this issue, with regard to the preclusion of entitlements to compensation for workers suffering a mental injury or a stress-related injury or a psychological injury resulting from management action in the workplace. I suppose it goes to a philosophical question, which is: why should workers who are suffering a mental injury related to their workplace or work environment, and management action caused them to suffer that mental injury, be discriminated against under the law, whereas a worker who suffers a physical injury as a result of management action or management non-action in the workplace is not so discriminated against?

That is the principal objection to clause 12 in that it enshrines in law that workers who suffer one type of injury — that is, a mental injury caused by their work — are discriminated against under the act, whereas workers who suffer a physical injury are not so discriminated against. That is why I invite the committee to vote down the clause.

Mr LENDERS (Treasurer) — This has probably been the central theme of Ms Pennicuik's second-reading contribution. Certainly we are aware of that, as she indicated. Essentially I would respond to this on two measures.

We are trying to make the scheme an affordable one, a scheme that actually deals with injuries to workers and targets those issues to both workers and employers, so they are both appropriately targeted.

What obviously as a policy intent is being sought to be done on stress is, firstly, to make it one where the issues of bullying, harassment and all those issues in a workplace are clearly ones that should be taken into account with stress, but also where they are not part of a situation it should not be one size fits all. If those elements are not part of a decision by an employer, they should be removed; and when they are part of a decision that affects an employee, they should clearly be front and foremost. That is the policy intent behind the amendments in the bill which Ms Pennicuik is seeking to remove.

It is also worth pointing out that where she talks of discrimination, the act is full of cases where through policy intent, decisions have been made to treat injuries in a certain way. Whether it be heart attack issues or a range of others, the act is full of examples of where the Parliament has chosen to make exceptions to the general principles because there is a reason why the Parliament has done that over time.

The government will not support Ms Pennicuik's invitation. We think the bill is designed to deal with a very complex issue and unequivocally to deal in the act with issues of bullying and harassment, but not

categorise a whole range of things that should not be in that category.

Ms PENNICUIK (Southern Metropolitan) — I understand about the other discriminations in the act. In fact, with my previous amendment I tried to remove one of those. I do understand the discriminations around certain injuries, which, the minister would have to agree, have also been the subject of much controversy over the years. Perhaps if we had a week on this bill, I might have moved more amendments to fix up some of those problems, too. But this is more egregious because it targets a whole cohort of workers — those who are injured at work as a result of management action.

I know it says 'reasonable' in the bill, but reasonable from the point of view of a manager may not be reasonable from the point of view of the injured worker. The provision should be about the injury; if it was caused at work, then it should be compensable. That is the point, and that is why I am moving to have that clause removed — because it discriminates against a whole class of workers.

Committee divided on clause:

Ayes, 34

Atkinson, Mr	Lenders, Mr
Broad, Ms	Lovell, Ms
Coote, Mrs	Madden, Mr
Dalla-Riva, Mr	Murphy, Mr
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Pakula, Mr
Eideh, Mr	Petrovich, Mrs
Elasmar, Mr	Peulich, Mrs
Finn, Mr	Pulford, Ms
Guy, Mr	Rich-Phillips, Mr
Hall, Mr (*Teller*)	Scheffer, Mr
Huppert, Ms (*Teller*)	Smith, Mr
Jennings, Mr	Somyurek, Mr
Kavanagh, Mr	Tee, Mr
Koch, Mr	Tierney, Ms
Kronberg, Mrs	Viney, Mr
Leane, Mr	Vogels, Mr

Noes, 3

Barber, Mr (*Teller*)	Pennicuik, Ms
Hartland, Ms (*Teller*)	

Clause agreed to.

The DEPUTY PRESIDENT — Order! I indicate to members of the public gallery that the Parliament welcomes the interest of members of the public in the proceedings of the Parliament and is obviously very keen to see people coming along and sitting in the gallery to watch the proceedings. It is not permitted under the Parliament's rules for members of the public to make remarks to members of Parliament as they proceed in and out of the chamber or obviously to participate in other proceedings of the Parliament, so I ask people in the gallery to respect that, but we are pleased to see people taking an interest in the proceedings.

Clause 13

The DEPUTY PRESIDENT — Order! Ms Pennicuik had indicated she intended to move amendment 18, which I regard as directly linked to amendment 20. In her previous remarks, Ms Pennicuik indicated that she saw the next couple of amendments, 18 to 20 presumably, as being linked to the one just tested on the previous clause. Can I get an indication whether Ms Pennicuik now intends to proceed with amendments 18, 19 and 20?

Ms PENNICUIK (Southern Metropolitan) — If I could clarify that — —

The DEPUTY PRESIDENT — Order! If Ms Pennicuik can just tell me yes or no.

Ms PENNICUIK (Southern Metropolitan) — I think I will proceed with nos 18 and 19.

The DEPUTY PRESIDENT — Order! We are now dealing with Ms Pennicuik's amendment 18, and I will invite Ms Pennicuik to move the amendment. As I have said, in my view this is directly linked to amendment 20, which proposes the omission of clause 15, so she may wish to speak to both amendments at the same time. Whilst Ms Pennicuik is only at this point considering amendment 18, we will take debate in regard to the clause 15 proposition as well, because those two clauses are linked. The question will be that the amendment be agreed to. Does Ms Pennicuik want to formally move that amendment?

Ms PENNICUIK (Southern Metropolitan) — I seek a further clarification because it is somewhat confusing dealing with amendments. I think that amendments 20, 21, 22 and 23, which are to omit clauses 15, 16, 17 and 18, are related. And you are telling me, Chair, that amendment 18 is related to that?

The DEPUTY PRESIDENT — Order! Yes, that is right. I will test amendment 20 separately when we come to clause 15, but the matters raised by amendment 18, as I understand, would have an impact on or relate to the proposed deletion of clause 15, which is covered by amendment 20.

Ms PENNICUIK (Southern Metropolitan) — But they relate to clause 13.

The DEPUTY PRESIDENT — Yes.

Ms PENNICUIK (Southern Metropolitan) — Thank you, Chair. I move:

18. Clause 13, line 18, omit "Subject to 82A, 82B and 82C, if" and insert "If".

They are consequential amendments to numbering which relate to clauses 15, 16, 17 and 18, and those clauses relate to the changes to the regime with regard to workers who are charged with a drink-driving or drug-driving offence and how that may impact on their entitlement to compensation. Under the current act, if a worker was convicted of a drink-driving offence and had an alcohol blood level over .24, there is a reduction or a non-entitlement to compensation, which I think is problematic, but the new clauses that this bill is going to put in place would bring into place a sliding scale so that there would be a one-third reduction if a worker had a blood alcohol level of from more than zero up to .12 and further reductions for a level of from .12 or more up to .24 and for a level of more than .24.

The point about this new regime that the bill wants to put in place is that these matters are already dealt with under the Road Safety Act, and if a person is convicted of a drink-driving offence, they are prosecuted and dealt with under the Road Safety Act. The fact that they may have had an alcohol content or drug content when they were injured in a workplace accident may have nothing to do with that alcohol or drug content, on the one hand, and on the other hand should have no bearing and the person should not be punished twice. That is the advice that we and many others in the community take on this particular issue.

That is the rationale for omitting these clauses, which would have the effect of reverting to the existing position in the current Accident Compensation Act.

Ms PULFORD (Western Victoria) — I think it is incumbent on all of us to send a clear message to the community about drink-driving and drug-driving. What we currently have in place in Victoria is an inconsistency where, by way of example, an employee taxidriver with a blood alcohol content greater than .05 but less than .24 who is injured while transporting a passenger would have full access to entitlements under WorkCover, but if they were driving home at the end of their shift with the same blood alcohol content, and there was therefore a Transport Accident Commission claim for compensation, the benefits would be reduced by one-third.

Further to that, the reduction in payments is restricted in some respects and is confined to up to 130 weeks; it does not apply in circumstances where the worker sustains a severe injury and in circumstances where a conviction has been made for the offence.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — In response to Ms Pennicuik's general proposition in this area and her point about this amendment being related to the next three amendments, I accept her point that a person who is convicted of a drink-driving or drug-driving offence will be appropriately dealt with by the court for that offence, and I accept the point that it should not be double punishment.

There is a separate issue here, that of responsibility on the part of an employer and an employee for ensuring workplace safety. If, through an employee's actions in being drunk or drug-affected while driving, they have contributed to an injury in the workplace, then that should be reflected in the workplace legislation. We will not be supporting Ms Pennicuik's amendment.

Ms PENNICUIK (Southern Metropolitan) — I also draw the attention of the chamber to the fact that this may capture workers who are not necessarily on the road but are driving a vehicle in the workplace and who again may suffer an injury that has nothing to do with their particular blood drug or alcohol content levels and that there is no workplace alcohol limit; the only limits on alcohol is that you must have a reading under .05 if you are driving.

This provision talks about a zero blood alcohol limit up to 1.2 grams per 100 millilitres, then there is a drop of one-third of payments. That is completely arbitrary and is not based on any legal precedent. There is no precedent on which that is based.

I will also make the comment that many in the community have made about drug testing, including drug testing on the road: that it does not necessarily test for impairment but only detects whether somebody may have at some time in the past used a particular drug. But the only drug that can in any way be accurately tested to gauge impairment is alcohol, not other drugs. This is bringing into the workers compensation system a completely unwarranted regime which does not have a strong evidence base whatsoever. It is arbitrary; as I say, it is a double punishment, and that is why we would like to have those clauses removed from the bill.

Ms PULFORD (Western Victoria) — Again I make the point that the weekly payments would be reduced only once a worker had been convicted or found guilty of a drug-driving or drink-driving offence, so one can

only assume that the evidence would be well and truly tested in the course of that.

In response to the point about driving vehicles other than cars in the workplace, having spent a fair bit of time in warehouses with forklifts whizzing around I would certainly hope that employers would absolutely expect employees not to be in control of those types of vehicles while under the influence of alcohol.

We have well-established standards about at what point people's conduct is impaired after the use of alcohol, and I would certainly hope that all employees in the interests of their own safety would not be operating heavy machinery, other equipment or vehicles while intoxicated.

Ms PENNICUIK (Southern Metropolitan) — I think Ms Pulford and I are in furious agreement on that particular point. It should not be taken that I advocate that anybody should be operating machinery while under the influence of alcohol. The issue is how that is dealt with. I spent two years before I came to this place working on the issue of alcohol at work, so I am very familiar with that issue.

This is about bringing into the workers compensation regime a sort of punitive regime that does not have any evidence to back it up. In my view and in my experience it is an arbitrary extension of the current provision which again could argued to be unfair.

The DEPUTY PRESIDENT — Order! As members of the committee deal with Ms Pennicuik's amendment 18, if they support it they need to bear in mind her amendment 20, through which she will invite the committee to vote against clause 15.

Committee divided on amendment:

Ayes, 3

Barber, Mr (*Teller*)	Pennicuik, Ms
Hartland, Ms (*Teller*)	

Noes, 34

Atkinson, Mr	Lenders, Mr
Broad, Ms	Lovell, Ms
Coote, Mrs	Madden, Mr
Dalla-Riva, Mr (*Teller*)	Murphy, Mr
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Pakula, Mr
Drum, Mr	Petrovich, Mrs
Eideh, Mr	Peulich, Mrs
Elasmar, Mr	Pulford, Ms
Finn, Mr	Rich-Phillips, Mr
Guy, Mr	Scheffer, Mr
Hall, Mr	Smith, Mr
Huppert, Ms	Somyurek, Mr
Jennings, Mr	Tee, Mr
Kavanagh, Mr	Tierney, Ms
Kronberg, Mrs	Viney, Mr (*Teller*)
Leane, Mr	Vogels, Mr

Amendment negatived.

Clause agreed to.

Clause 14

The DEPUTY PRESIDENT — Order! In respect of clause 14, Ms Pennicuik had proposed amendment 19; however, it is my view that because her proposition to vote against clause 12 was not agreed to by the committee, it is not possible to proceed with amendment 19.

Ms PENNICUIK (Southern Metropolitan) — I suspected you might say that, Chair.

The DEPUTY PRESIDENT — Order! And I have not heard an argument to the contrary; therefore I will test clause 14.

Clause agreed to.

Clause 15

The DEPUTY PRESIDENT — Order! I invite Ms Pennicuik to deal with her amendment 20, which invites the committee to vote against the clause. I indicate to the committee that in my view there is a link between the omission of this clause and Ms Pennicuik's amendments 21 to 23, which propose the omission of clauses 16 to 18. Members may therefore wish to speak in relation to the principle underlying all of those proposed omissions in debate on this clause.

Ms PENNICUIK (Southern Metropolitan) — In dealing with my amendment 20 I invite members to vote against clause 15. As you have foreshadowed, Deputy President, and as I think I have earlier, amendment 21 invites the committee to vote against clause 16, amendment 22 invites the committee to vote against clause 17 and amendment 23 invites the committee to vote against clause 18. All of these clauses relate to the provisions in the bill to change the regime by which workers are not entitled to compensation should they be convicted of a drink-driving or drug-driving offence.

I think I have covered that issue in my contribution on amendment 18, which proposed to amend clause 13, so I do not propose to repeat what I said. However, I will say that the effect of these provisions could be that a person who may have imbibed some sort of drug substance but has not been impaired at the time of an accident — where the substance has had no bearing on the accident — will have their compensation reduced.

Likewise a person who has a very low blood alcohol limit — in fact a level that is not illegal — could also be caught up in this and have their entitlements reduced by one-third even though they have done nothing illegal.

As I mentioned, I think that is an unfair regime. The effect of the omission of these clauses would be to default to the current situation under the Accident Compensation Act. I commend my amendment to the house.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I reiterate that the issues canvassed by the amendment are largely the matters we have covered, and for the reasons already outlined, we will not be supporting the amendment.

Committee divided on clause:

Ayes, 35

Atkinson, Mr
Broad, Ms
Coote, Mrs
Dalla-Riva, Mr
Davis, Mr D.
Davis, Mr P.
Drum, Mr
Eideh, Mr
Elasmar, Mr
Finn, Mr
Guy, Mr
Hall, Mr
Huppert, Ms
Jennings, Mr
Kavanagh, Mr
Koch, Mr
Kronberg, Mrs
Leane, Mr
Lenders, Mr
Lovell, Ms
Madden, Mr
Murphy, Mr
O'Donohue, Mr (*Teller*)
Pakula, Mr
Petrovich, Mrs
Peulich, Mrs
Pulford, Ms
Rich-Phillips, Mr
Scheffer, Mr
Smith, Mr
Somyurek, Mr
Tee, Mr (*Teller*)
Tierney, Ms
Viney, Mr
Vogels, Mr

Noes, 3

Barber, Mr (*Teller*)
Hartland, Ms (*Teller*)
Pennicuik, Ms

Clause agreed to.

Clause 16

The DEPUTY PRESIDENT — Order! The proposition is that Ms Pennicuik is inviting the committee to vote against clause 16 standing part of the bill.

Committee divided on clause:

Ayes, 35

Atkinson, Mr
Broad, Ms
Coote, Mrs
Dalla-Riva, Mr
Davis, Mr D.
Davis, Mr P.
Drum, Mr
Eideh, Mr
Elasmar, Mr
Finn, Mr
Guy, Mr
Hall, Mr
Huppert, Ms
Jennings, Mr
Kavanagh, Mr
Koch, Mr
Kronberg, Mrs
Leane, Mr
Lenders, Mr
Lovell, Ms
Madden, Mr
Murphy, Mr
O'Donohue, Mr
Pakula, Mr (*Teller*)
Petrovich, Mrs
Peulich, Mrs
Pulford, Ms
Rich-Phillips, Mr
Scheffer, Mr
Smith, Mr
Somyurek, Mr
Tee, Mr
Tierney, Ms
Viney, Mr
Vogels, Mr (*Teller*)

Noes, 3

Barber, Mr (*Teller*)
Hartland, Ms (*Teller*)
Pennicuik, Ms

Clause agreed to.

Clause 17

Committee divided on clause:

Ayes, 35

Atkinson, Mr
Broad, Ms
Coote, Mrs
Dalla-Riva, Mr
Davis, Mr D.
Davis, Mr P.
Drum, Mr
Eideh, Mr
Elasmar, Mr
Finn, Mr (*Teller*)
Guy, Mr
Hall, Mr
Huppert, Ms
Jennings, Mr
Kavanagh, Mr
Koch, Mr
Kronberg, Mrs
Leane, Mr
Lenders, Mr
Lovell, Ms
Madden, Mr
Murphy, Mr
O'Donohue, Mr
Pakula, Mr
Petrovich, Mrs
Peulich, Mrs
Pulford, Ms
Rich-Phillips, Mr
Scheffer, Mr
Smith, Mr
Somyurek, Mr (*Teller*)
Tee, Mr
Tierney, Ms
Viney, Mr
Vogels, Mr

Noes, 3

Barber, Mr (*Teller*)
Hartland, Ms (*Teller*)
Pennicuik, Ms

Clause agreed to.

Clause 18

Committee divided on clause:

Ayes, 35

Atkinson, Mr
Broad, Ms
Coote, Mrs
Dalla-Riva, Mr
Davis, Mr D.
Davis, Mr P.
Drum, Mr
Eideh, Mr
Elasmar, Mr
Finn, Mr
Guy, Mr
Hall, Mr
Huppert, Ms
Lenders, Mr
Lovell, Ms
Madden, Mr
Murphy, Mr (*Teller*)
O'Donohue, Mr
Pakula, Mr
Petrovich, Mrs (*Teller*)
Peulich, Mrs
Pulford, Ms
Rich-Phillips, Mr
Scheffer, Mr
Smith, Mr
Somyurek, Mr

Jennings, Mr	Tee, Mr
Kavanagh, Mr	Tierney, Ms
Koch, Mr	Viney, Mr
Kronberg, Mrs	Vogels, Mr
Leane, Mr	

Noes, 3

Barber, Mr (*Teller*)	Pennicuik, Ms
Hartland, Ms (*Teller*)	

Clause agreed to.

Clauses 19 to 25 agreed to.

The DEPUTY PRESIDENT — Order! Ms Pennicuik has proposed amendments 24 to 27, which relate to clauses 26, 27 and 30; however, in my view these amendments involve consequential renumbering and do not need to be put because of other clauses being retained in the bill.

Clauses 26 to 36 agreed to.

Clause 37

Ms PENNICUIK (Southern Metropolitan) — I move:

28. Clause 37, lines 16 to 18, omit "for an aggregate period of 52 weeks (whether or not consecutive)".

This is an amendment to clause 37(b). The clause proposes to include superannuation contributions in the weekly payments of workers compensation, which the government is very proud of. The problem is that it does not come into play until a worker has been on weekly payments for 52 weeks, and as previously mentioned, that involves a very small cohort of workers. It means workers have to serve out a waiting period of 52 weeks before superannuation contributions are added to their weekly payments.

The other matter which should be raised in this respect is that it should always have been the case that superannuation contributions are included, because they are included when employers' premiums are calculated. Employers' premiums are calculated assuming they are paying superannuation. Their premiums take that into account, but workers never get the superannuation. Under this provision a worker will not get the contributions until they have been on weekly payments for 52 weeks. From my point of view that is completely unjust, particularly since that is already taken into account in the calculation of an employer's premiums. Employers get a bit of a premium holiday so far as that goes, but the money never makes its way into the workers' pockets where it should be. It means that as well as being injured or suffering a workplace illness workers have to forgo their superannuation payments for a full year.

It is welcome that the government is introducing the payments at all. I understand that is not the case in most, if not all, other jurisdictions, but that has been an ongoing injustice. It would have been better if the government had completely fixed this injustice by making it applicable for the term of the weekly payments. That is why I have moved the amendment.

Mr LENDERS (Treasurer) — The government stands by its proposed clause. There is a theme running right through the debate. In an ideal world of course everybody would support Ms Pennicuik and make benefits as generous as they can be, but we also need to have a system that is viable. In our discussions we must not lose sight of the fact that this clause actually increases the benefit. It puts in place a benefit that was not there before the bill was proposed. The status quo is no superannuation component. What we are proposing is a superannuation component after 52 weeks. That is affordable, and it is a significant improvement to the status quo.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I reiterate the comments I made about Ms Pennicuik's first substantive amendment, and they are largely similar to what the Treasurer indicated, and that is that the viability of the scheme must be preserved. We recognise this proposal is a welcome increase in benefits. Presuming we do not have any information as to the cost of extending the superannuation provision to the first 52 weeks of claim, we are unable to support the amendment.

Ms PENNICUIK (Southern Metropolitan) — The minister mentioned the viability of the scheme et cetera, which seems to be the theme running through all of this. Mr Rich-Phillips said I did not provide a costing. I can provide an in-principle costing, which is that the premium calculation whereby employers are deemed to be paying the superannuation contribution could be transferred straight into the pocket of injured workers, which is where it should go — —

Mr Barber — Revenue neutral.

Ms PENNICUIK — Rather than into the general revenue of the WorkCover scheme, which is where it is going.

Mr LENDERS (Treasurer) — I will respond to Mr Barber's interjection and to Ms Pennicuik's comments. It is fine to get up here and believe you can pull resources out of thin air. It is fine to do that, and if the Greens want to play to whoever they want to play to

then fine, they should do that. But firstly, I remind them that Ms Pennicuik says, 'Employers are paying it anyway'. Yes, they are. But the contributions also go into funding the WorkCover scheme, funding WorkSafe and funding the entire scheme that is in place. It is a very easy line, but if you wish to disaggregate parts out of the scheme, you also need to come up with what other part of the scheme you are going to dismember.

Secondly, I urge Ms Pennicuik to consider this: she keeps on talking about the scheme as if it is something that is unbelievably robust and will endure forever. If she looks around our country, including this state when the scheme has not been managed correctly, she will see that those who suffer are injured workers. If you do not manage the scheme correctly and it has to go into radical surgery — as has happened in this state on a number of occasions, and as has happened in many other jurisdictions across the country — if that is the path you want to go down, the first person to be affected by it is the injured worker.

We have had a debate here for several hours now, and the lines keep on coming that this is so easy to do, but I remind Ms Pennicuik and Mr Barber that ultimately if the scheme is not managed correctly, it is injured workers who will be the first to be penalised, and that is what this government does not want to happen.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister for his lecture, but I say to him that the viability of the scheme could easily be maintained by not continually reducing premiums. My philosophical argument is that if there is a problem with the viability of the scheme the government should not reduce a worker's benefits and it should not discriminate against workers in relation to how many weeks they have been injured when calculating what they are entitled to. At the same time the minister cannot stand up and lecture me when year after year the government is making reductions to premiums. If there is a problem with the income to the scheme, the government should stop introducing premium reductions.

Committee divided on amendment:

Ayes, 3

Barber, Mr (Teller)
Hartland, Ms (*Teller*)
Pennicuik, Ms

Noes, 35

Atkinson, Mr
Broad, Ms
Coote, Mrs
Dalla-Riva, Mr
Davis, Mr D.
Davis, Mr P.
Drum, Mr
Eideh, Mr (*Teller*)
Elasmar, Mr
Finn, Mr
Guy, Mr
Hall, Mr
Huppert, Ms
Jennings, Mr
Kavanagh, Mr
Koch, Mr
Kronberg, Mrs
Leane, Mr
Lenders, Mr
Lovell, Ms (*Teller*)
Madden, Mr
Murphy, Mr
O'Donohue, Mr
Pakula, Mr
Petrovich, Mrs
Peulich, Mrs
Pulford, Ms
Rich-Phillips, Mr
Scheffer, Mr
Smith, Mr
Somyurek, Mr
Tee, Mr
Tierney, Ms
Viney, Mr
Vogels, Mr

Amendment negatived.

Clause agreed to; clauses 38 and 39 agreed to.

Clause 40

Mr RICH-PHILLIPS (South Eastern Metropolitan) — The matter I wish to canvass with the Treasurer with respect to clause 40, and essentially this is related to clause 42, relates to the exclusion of annual leave and certain retrenchment benefits from the calculation of current weekly earnings and the flow-on effects that would ultimately have on weekly compensation payments and ultimately on employer premiums.

I seek an explanation from the Treasurer as to the reason why clauses 40 and 42 seemingly seek to remove those benefits, whether clause 45, which also pertains to this issue, is a counter to that and indeed whether that provision is changed by clause 45. I ask the Treasurer to clarify the effect of clauses 40, 42 and 45 with respect to the annual leave and severance payments being taken into consideration in the calculation of current weekly earnings and the flow-on consequences.

Mr LENDERS (Treasurer) — I thank Mr Rich-Phillips for his question. What is obviously a fairly complex series of clauses seeks to give an injured worker the same rights they would have as a non-injured worker over accrued leave and weekly payments so that they are given the same rights as a non-injured worker. That is the purpose of that series of clauses in clarifying that particular area.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I thank the Treasurer for that response. Is it not the case, though, that if an injured worker were to go onto annual leave, which seemingly is excluded — and the Treasurer did not counter that, and perhaps he could clarify whether clause 45 claws that back — ultimately an employer would be disadvantaged by having an employee going on annual leave rather than being on a part wage through work?

Mr LENDERS (Treasurer) — Mr Rich-Phillips is correct; it does put an extra burden on the employer. These things are always one of balance in the legislation. What this does is treat an injured worker the same way as an uninjured worker. He is correct; it does then put a further obligation on the employer to treat the injured worker exactly the same way as the uninjured worker.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Can I take from that that clause 45 does not seek to claw this back?

Mr LENDERS (Treasurer) — Yes, that is correct; it does not.

Clause agreed to; clauses 41 to 43 agreed to.

Clause 44

The DEPUTY PRESIDENT — Order! Ms Pennicuik has amendment 29 in respect of this clause, but I am of the view that that amendment need not be proceeded with because it simply involves consequential renumbering and is dependent on the previous amendments being agreed to.

Clause agreed to.

Clause 45

Ms PENNICUIK (Southern Metropolitan) — I invite members to vote against clause 45, and perhaps the Treasurer could explain the clause. I spoke to departmental officers about this, but I am still a little confused about the reasons for the clause being in the bill. It appears to provide that if a worker's employment is terminated, if they leave their employment or if they move interstate while they are on weekly benefits, then those weekly benefits will cease to be paid. In discussions with people about this, it does not seem that this provision has come out of the Hanks review or that there is a reason for it being in the bill at all.

Mr LENDERS (Treasurer) — Ms Pennicuik is correct; it is a very complex area. If a worker who is working part time and being compensated for injuries for part-time work volunteers to change their status to something lesser or different — this is a worker who is working part time and voluntarily does it for the longer term — the authority has the capacity to vary also for the future.

I guess the best example to use is: if I am working 25 hours a week, I am injured and I am being recompensed for those 25 hours, and down the track I voluntarily choose to go to something that is 10 hours a week, the authority can take that into account, but under no circumstances can it unilaterally reduce the benefits paid to an injured worker.

Ms PENNICUIK (Southern Metropolitan) — If the authority cannot unilaterally reduce the payments to a worker, what is the purpose of the clause? Why would a worker moving interstate have their weekly payments reduced when this has not been the case? I do not understand the rationale for it.

Mr LENDERS (Treasurer) — I guess the specifics for Ms Pennicuik are that there has to be a voluntary component or, in some exceptional circumstances, a misconduct component to it. The design of this is to provide for people who wish to change their circumstances. They can, but again it must have a voluntary or misconduct component; it cannot be simply a matter of an employer or the authority choosing to do that so as to reduce costs.

Ms PENNICUIK (Southern Metropolitan) — Let me explore that a bit. What if the uninjured partner of the injured worker is transferred to another state and they move interstate? The worker is still injured and is being paid weekly benefits. Why would they be captured by this clause and possibly have their weekly benefits reduced when the move has no effect on them? They are still injured, and they should be entitled to the weekly payments.

Mr LENDERS (Treasurer) — To use the example of a person following a partner interstate, as Ms Pennicuik did, in the end these are discretionary issues for the authority, only to the extent that there is an obligation to try to return to work. At the extreme of this example there is a discretion, but the objective is to assist the return to work unless a person wishes to voluntarily change the circumstances themselves. Presumably there are cases like that of a person moving interstate, but the starting point is that the objective is to get the person to return to their work, where possible.

Ms PENNICUIK (Southern Metropolitan) — I want to explore the issue a bit more. The minister mentioned in his last answer — and I did not follow it up then but I will now — the word 'misconduct'. I see the word 'misconduct' in the clause; it appears once; I could not see it before. What sort of misconduct would be envisaged under this clause?

Mr LENDERS (Treasurer) — As I said, we are talking about potentially a small number of exceptional cases. Ms Pennicuik's questions are thoroughly legitimate questions. We will explore these. There could clearly be a dismissal that happens because an

employee enters into a situation. Undoubtedly we can find examples of this. If I were an injured worker — to use an extreme case — and then I went back to my workplace and, for example, trashed the place, or whatever the situation was, there would obviously be grounds for dismissal. This relates to the actions of the individual employee we are talking about in these circumstances. That is the exception. The authority has the discretion in that particular area as if that were a voluntary situation. They are the sorts of extreme cases we are talking about which are on the fringe and are covered by this clause. There is no fundamental change of policy.

Ms PENNICUIK (Southern Metropolitan) — My question would be: given these extreme and very rare cases, has there been a demonstrated need for this in the past? How have these extreme and unusual cases been handled in the past?

Mr LENDERS (Treasurer) — I think the best and most succinct answer for Ms Pennicuik is that a Hanks recommendation tries to make this issue clearer. Previously there was not any transparency; it was out there in the ether in terms of calculations. This is an effort to make it more transparent. That is the answer.

Ms PENNICUIK (Southern Metropolitan) — I know the minister is trying to help, but this has not made it clearer. It is confusing and complicated, as the minister said. What concerns me is that the minister gave an example of a worker who is on weekly benefits and who trashes their workplace because of a workplace injury. Who knows why a worker might do that, but that is a hypothetical example that the minister has put forward. My view would be that such an incident would possibly be a matter for criminal prosecution. It would have nothing to do with whether the worker is still entitled to their weekly payments for their injury. I contend that it is not up to the WorkCover authority to become the police or the court system in regard to that issue.

Mr LENDERS (Treasurer) — I have answered as much as I can and have given as much advice as I can at this juncture. If Ms Pennicuik wishes to explore the clause further, perhaps we could defer discussion on this clause to allow me to come back to the chamber with more details at the end of the committee stage, if that assists. I suggest that through you, Chair.

Ms PENNICUIK (Southern Metropolitan) — I am happy to give the minister the opportunity to do that; we could defer the clause.

The DEPUTY PRESIDENT — Order! I need to understand whether there is further information Ms Pennicuik requires. The minister has indicated he feels he has answered the question.

Ms PENNICUIK (Southern Metropolitan) — If the minister feels he has answered the question, then I have to say I still do not feel there is a rationale for this clause, which was my reason for proposing that it be omitted from the bill. If the minister thinks he has answered the question — although I am not satisfied — we can proceed with voting on the clause.

The DEPUTY PRESIDENT — Order! Yes, there is no point postponing clauses just because members cannot agree on them. That is what voting is for.

Committee divided on clause:

Ayes, 35

Atkinson, Mr	Lenders, Mr
Broad, Ms	Lovell, Ms
Coote, Mrs	Madden, Mr
Dalla-Riva, Mr	Murphy, Mr
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Pakula, Mr
Drum, Mr (*Teller*)	Petrovich, Mrs
Eideh, Mr (*Teller*)	Peulich, Mrs
Elasmar, Mr	Pulford, Ms
Finn, Mr	Rich-Phillips, Mr
Guy, Mr	Scheffer, Mr
Hall, Mr	Smith, Mr
Huppert, Ms	Somyurek, Mr
Jennings, Mr	Tee, Mr
Kavanagh, Mr	Tierney, Ms
Koch, Mr	Viney, Mr
Kronberg, Mrs	Vogels, Mr
Leane, Mr	

Noes, 3

Barber, Mr (*Teller*)	Pennicuik, Ms
Hartland, Ms (*Teller*)	

Clause agreed to.

Clauses 46 to 78 agreed to.

Clause 79

Ms PENNICUIK (Southern Metropolitan) — I invite members to vote against this clause, clause 79 of the bill. It provides that the appointment of a person as a conciliation officer is to be made on the advice of the senior conciliation officer. The current act provides that the Governor in Council would appoint conciliation officers who are independent officers, and that advice on the appointment of those officers can be sought from anybody, including a senior conciliation officer. My concern with this clause is that it limits the advice on the appointment of those independent officers to come from the senior conciliation officer only and that by

virtue of that clause conciliation officers are put in a position vis-a-vis the senior conciliation officer that did not previously exist. It could somewhat curtail their independence in terms of their relationship with the senior conciliation officer, and it changes that relationship from what it was before, from one of independence to dependence for their appointment or reappointment on their relationship with the senior conciliation officer. I do not think that is a healthy thing. That is why I think the clause should be deleted.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Clause 79 is the clause to which my amendment relates, being the proposed amendment to clause 2, the purpose of which would be to bring forward the commencement of clause 79 from the proposed date of 5 April to what I am proposing as 1 March 2010. It relates to some similar issues raised by Ms Pennicuik as to the independence of the Accident Compensation Conciliation Service. I am hoping through our discussion on this clause that I can obtain from the minister some information as to the current status of conciliators appointed to the ACCS. My understanding is that there are 33 conciliators on the ACCS, whose terms of appointment expire at the end of March. Any appointment or reappointment prior to 5 April would not be covered by this requirement in the bill that the senior conciliator be consulted, and obviously any appointment after that would be covered. Given the looming expiration of the current appointments I wonder if the Treasurer can inform the committee of the status of reappointments of those conciliators, the timing of that and the process around that, which goes to the reason we are moving our amendment.

Mr LENDERS (Treasurer) — In response to both Ms Pennicuik and Mr Rich-Phillips, firstly, the policy reason is that it adds clarity and transparency to a process. I can recall that when I was the Minister for WorkCover and the TAC and I recommended a series of appointments of conciliation officers to the Governor in Council at the time there was quite a debate, to use that as an example, over 'What was the process used?' and 'Was the senior conciliation officer consulted?'. The policy proposal the government has here is that that is a good process and a transparent process. There are clearly contrary points of view that Ms Pennicuik is raising, but in the end in an organisation for the senior conciliation officer to have a capacity to make those recommendations is clearly one that will be of value to a minister. That is the government's position.

Responding to Mr Rich-Phillips, as I understand it the Governor in Council did approve earlier this week the series of most recent appointments of conciliators, and the advice has gone to those individuals and to the organisations. In response to Mr Rich-Phillips's proposed amendment that any current appointments go through this process, I think the horse is well and truly out the door on that one, and the process, to the extent that the individual applicants have been advised and the organisation has been advised, as I understand, has been completed.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I thank the Treasurer for that response. Obviously one of the concerns with this amendment is that we do not want to be in a situation of invalidating appointments that have been made. At the time the amendment was flagged and the chamber debated this matter on Tuesday, no appointments had been announced in the *Government Gazette*. Given the fact that the Treasurer now indicates that the Governor in Council has signed off on those appointments, I wonder if the Treasurer can explain to the chamber what process was followed in those appointments being recommended to the Governor in Council.

This goes to the essence of the amendment. While I certainly agree with Ms Pennicuik that the independence of the conciliators on the ACCS is very significant, and Ms Pennicuik views that as independence from the senior conciliator, we also view it as the independence of those conciliators from government. If it were a case of the lesser of two evils — having those appointments subject to the support of a senior conciliator, as distinct from under the yoke of government — we would prefer the senior conciliator, and hence the reason for the amendment.

If the Treasurer is in a position to explain the basis on which recommendations were made to the Governor in Council on those new appointments, that would advance this debate.

Mr LENDERS (Treasurer) — I hope Mr Rich-Phillips was tongue in cheek when he was talking about the yoke of government, because we have had a fairly long debate here about responsibility and accountability to Parliament in the last few days. The fact that a minister needs to make recommendations and be accountable for them I think is a check and a balance. But the government is recommending that the minister clearly has to take into account the recommendations of the senior conciliator. That is part of the process.

I am not being evasive here, but it is just a fairly standard part of cabinet practice that I am not about to get up and outline the process of what a minister did before he made a recommendation to cabinet and, after that cabinet process, made a recommendation to the

Governor in Council, other than to say that clearly the WorkCover minister formed a view that the list of nominees was suitable in accordance with the act. The nominees had the skill sets.

There had been a process. The positions were advertised; there was an interviewing process. Recommendations, I presume, had come to the minister, and he certainly, on the basis of the information available to him, made recommendations to cabinet and onwards to the Governor in Council, so it is a usual process for these things.

But what we are proposing here is that, in addition to that, is that the role of the senior conciliator gets clearly and formally inserted into the process, which certainly on some previous occasions — I will only speak of my time as WorkCover minister — was clearly an important part of the advice received by the minister before making his recommendations.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Can the Treasurer inform the house whether the senior conciliator was party to preparing the list of recommendations that went to the minister — in this instance, the appointments that have just been made — and whether all the names that went to the minister were in fact recommended to the Governor in Council for appointment, or did the minister pick from among a pool of people, exercising his discretion?

Mr LENDERS (Treasurer) — As I thought I outlined in my secondary response to Mr Rich-Phillips, I am not prepared to seek that advice from the minister on the basis of the long-established cabinet practice that deliberations within cabinet are things about which I am not about to change the Westminster system and go forward. But I will say that the minister is responsible for recommending those positions at the moment.

Certainly during my time — and I am happy to talk of my time as a minister — clearly the role of the senior conciliator was a key source of advice in making these decisions, and what the minister in a policy sense is asking the Parliament to do is to require that role to be taken. The intent of the government is clearly to have the senior conciliator being a formalised senior part of this role, but ultimately a minister has to accept those recommendations and bring them forward to cabinet and the Governor in Council for it to happen. In the end the minister is accountable for those decisions. The government's intent is clearly to make the role far more formalised than it has ever been before.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — To approach the matter another way, can I ask the Treasurer — given that the existing appointments to the service are to expire on 31 March of this year — why this provision, which requires consultation with a senior conciliator, is not, under his legislation, going to come into effect until 5 April of this year? Why were these appointments not required to be done under this?

Mr LENDERS (Treasurer) — Firstly, there is a policy proposal being brought to the Parliament seeking its support for that to be a formal insertion into the requirement of what the minister brings to cabinet and the Governor in Council. Government has stated a clear policy intention that this is important, and I would put it to Mr Rich-Phillips, without contradicting my previous answer, that if it is the intent of the government to require ministers to do it — and this is being brought to the Parliament on a recommendation from a government which has just gone through a process of presenting a series of conciliators — I do not think it is that long a bow to say that this practice was probably followed. But I will not go any further than that.

The other thing as to the timing, and I do smile in saying this to Mr Rich-Phillips, is that one thing I do not think we can ever be accused of in this place anymore — and we once were accused of it — is treating it like a sausage machine and taking it for granted. This house has a mind of its own, so the timing of this piece of legislation and others going forward is not necessarily in the hands of the government.

I could give a great litany of bits of legislation I have been responsible for over the last several years that have taken, in some cases, many months to get through, that in other cases have got through with amendments to them that the government did not want, and that in other cases have not survived passage through the Legislative Council.

So government gets on with the existing administrative arrangements. If we wish to have legislative amendments, we present them to the Parliament, but short of the annual budget bill itself there is very little that you can take into this house with any confidence that you can control its timing. In a sense this is a policy proposal for the future. There is an existing round of conciliator appointments that have been dealt with under the existing legislation, and it is coincidence that there is almost a correlation between the timing that Mr Rich-Phillips has identified.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — The Treasurer might be inclined to call me a cynic, but I note and take his point about the timing not always being in the hands of the

government, and I assume that is for the reason that this bill in its commencement clause has a number of dates set down for particular sections to come into operation. Some are deemed to have come into operation on 3 December 2003, some are deemed to have come into operation on 12 December 2007, others on 17 June 2009, yet more on 10 December 2009 and others on 1 January 2010. This particular provision, which we would assume would have applied to the appointments expiring on 31 March, has for some reason been delayed until 5 April.

I am wondering if the Treasurer can explain why that one, given its relevance, has been delayed until after those appointments were due.

Mr LENDERS (Treasurer) — I think the simplest add-on to the original answer I have given is I am advised that the earliest date that the authority thought it could put the new benefits out if the time line went through was the April date that Mr Rich-Phillips referred to.

The reality is that the effluxion of time from the existing appointments was 31 March; that was set when the original appointments were done three years ago, and whilst we may be accused of having long-term sinister plans I can assure Mr Rich-Phillips that when the appointment of the accident commission conciliators was made and taken to Governor in Council a bit over three years ago, it was not part of some sinister and cunning plan to get around the Legislative Council and the clause in this legislation three years later.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am not quite sure that I follow the minister's answer in tying the dates the benefits apply from. How is that relevant to the appointment of the conciliation officers?

Mr LENDERS (Treasurer) — My basic answer remains, but the only point is that there is a series of timings in this legislation, in the Accident Compensation Act — the effective days for a series of events in these dates — and one of the earliest possible dates for benefits has been one of the considerations, but the fundamental of the appointment of the conciliators is that their terms expire and there is a process for getting them up and running which has no connection to the other.

Those dates were set when the terms expired. They were done when the original appointments were made three years ago, so that is quite a separate process from the benefits which start here; hence there are a series of different start-up dates in the bill.

Ms PENNICUIK (Southern Metropolitan) — I take the Treasurer's point that perhaps how the conciliators were appointed was very mysterious and murky, or on what advice they were appointed up until now was mysterious and murky, but bearing in mind that the senior conciliator was not precluded from the process, my concern is that by trying to fix one problem — the lack of transparency — we are introducing a new problem, which is that conflict between the independence of the conciliators from the senior conciliator. In particular if there turns out to be a disagreement between a conciliator and a senior conciliator — and remember, these people are independent and not the employees of the senior conciliator; they are independent actors — they are put in the position of relying on the advice of the senior conciliator for their reappointment.

I am putting to the government that in trying to fix one problem another problem is being introduced. Perhaps a better way to do it would have been to look at having an independent member panel to receive the applications and to sort them out according to criteria and to make recommendations to the minister rather than introducing what I think is another problem, which could cause difficulties further down the track regarding the appointment and reappointment of independent conciliators.

Mr LENDERS (Treasurer) — I could be mischievous and suggest that I note Ms Pennicuik suggested that government be less transparent, but that would be unfair because she did propose another means. We have proposed this as a way forward because we think this makes the issue more transparent. As a policy and on balance we think that is an appropriate guideline, and therefore we support our clause in the bill.

Committee divided on clause:

Ayes, 35

Atkinson, Mr	Lenders, Mr
Broad, Ms	Lovell, Ms
Coote, Mrs	Madden, Mr
Dalla-Riva, Mr (*Teller*)	Murphy, Mr
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Pakula, Mr
Drum, Mr	Petrovich, Mrs
Eideh, Mr	Peulich, Mrs
Elasmar, Mr	Pulford, Ms
Finn, Mr	Rich-Phillips, Mr
Guy, Mr	Scheffer, Mr
Hall, Mr	Smith, Mr
Huppert, Ms (*Teller*)	Somyurek, Mr

Jennings, Mr	Tee, Mr
Kavanagh, Mr	Tierney, Ms
Koch, Mr	Viney, Mr
Kronberg, Mrs	Vogels, Mr
Leane, Mr	

Noes, 3

Barber, Mr (*Teller*)	Pennicuik, Ms
Hartland, Ms (*Teller*)	

Clause agreed to.

The DEPUTY PRESIDENT — Order! Some of the amendments circulated by Ms Pennicuik refer to some clauses numbered between 80 and 128, but they were contingent on the passage of previous amendments. As those amendments were not passed, I propose that these amendments should lapse. The amendments I refer to are amendments 33 to 38.

Clauses 80 to 128 agreed to.

Clause 129

The DEPUTY PRESIDENT — Order! I invite Ms Pennicuik to move her amendment 39; I indicate that I regard that as a test for her amendments 40 and 41.

Ms PENNICUIK (Southern Metropolitan) — I move:

39. Clause 129, page 246, line 20, omit "of 52 weeks".

This simple amendment to clause 129 deletes the words 'of 52 weeks' and has the effect of continuing the obligation on an employer to provide return to work or employment for an injured worker for as long as the period that the worker is on weekly benefits or for as long as the worker is injured and needs to come back to work, and ensures the obligation does not cut out after 52 weeks.

When we are talking about workers that have been injured for 52 weeks, by definition we are talking about the most seriously injured, the ones who have been injured the worst or made most ill by an accident, incident or exposure to a substance, for example, in the workplace and which has caused them an illness.

To then allow the obligation on their employer — who has had the duty of care to provide a safe workplace and prevent the workplace injury in the first place — to these most injured of workers to expire after 52 weeks is severely discriminatory against those workers. They will have already suffered as a result of their injury or illness, then by their payments being reduced to 80 per cent after 26 weeks under the previous legislation and 52 weeks under this bill. They are suffering a financial disadvantage; they have also been out of the workplace for a year or longer, so it would be difficult for them to find a job in another workplace because of that.

For all of these reasons it is unfair and discriminatory to remove the obligation from the employer, who is the employer of the injured worker in the workplace where the worker was injured. That is why I have moved this amendment.

Mr LENDERS (Treasurer) — This just goes to some of my earlier comments. I think everyone in the chamber would share Ms Pennicuik's sentiment, that the more broadly you can extend this scheme the better, but from the amendment and her contribution you would think the committee was being asked to take away something that was already in place.

This is interesting. As I mentioned in my earlier comments to Mr Rich-Phillips and Mr Dalla-Riva about codifying and clarifying the act, this clause is completely the status quo. It is just that this section has been rewritten and therefore the status quo is simply being restated. I respond to Ms Pennicuik by saying nothing is being taken away. The status quo is maintained completely by this clause.

The government will not be supporting her amendment, but I reiterate that there is no change, no disadvantage or penalty and nothing is being taken away from injured workers. This is simply the status quo being codified.

Ms PENNICUIK (Southern Metropolitan) — I understand it is the status quo but I am taking the opportunity of having this bill before us to fix the status quo. The status quo is unfair to injured workers who have been injured for more than 52 weeks. It leaves them with no obligation on their employer to assist or facilitate their return to work in that particular workplace, which further disadvantages them — on top of the other disadvantages I have already explained. So the status quo is unfair, and for the Treasurer to say that we are going to maintain the unfair status quo is not acceptable to me, and I am taking the opportunity to make it fair for injured workers.

Mr BARBER (Northern Metropolitan) — I do not get to watch much TV these days, but when I see those WorkCover ads they are all about Jacko or Mary who has been injured and who we are giving the opportunity to go back to work. Jacko is coming back with his arm in a sling and people at the workplace say, 'It's all right; it's great to have you back. We're going to put you in the tool shop for a while'.

Mr Lenders said everybody in the chamber supports the sentiment. I think the sentiment is what is at play when

the government runs those ads; it gets everybody nodding and thinking that is a great procedure. There should be a little asterisk at the bottom of that ad next to the words, 'By the way, tough luck if you've been off for more than 52 weeks'. I think it is a rip-off.

Mr LENDERS (Treasurer) — I will respond to Mr Barber and to the earlier comments he made about the scheme. There are two things I will say. Firstly he is having a go at WorkSafe advertising schemes which have been both an incredibly important part of acceptance and change of behaviour by employers and a very important part of our community's having a change of culture and accepting that people returning to work is a good thing and something for the community to support. We have also used those ads to reduce injuries in workplaces. For the record, it is no coincidence that we have improved benefits on multiple occasions — during the life of this government this Parliament has been asked to improve benefits — and we have also cut premiums.

It should also not escape us that these are two parts of the one equation. The reason we have a large number of jobs in the state of Victoria is that we have made this a competitive place for people to do business; but we have not lost sight of the fact that you need also to assist injured workers at every step of the way.

The Greens political party can come in here and lecture the government; and good on it for doing it — of course it will do that. It will talk about all these extra things we should put in the scheme. I have in front of me, of all the bizarre things, a $10 billion Zimbabwean note, worth about 10 Australian cents. I say to the Greens political party that if it wants to trash this scheme by putting unreasonable demands and expectations upon it, we will go down the path — and Ms Pennicuik is going to have a go at me for lecturing her again — of New South Wales and South Australia. Both of those jurisdictions have had to cut back severely on benefits because their schemes were not managed adequately.

We will also have to go back down the path of Victoria, where we had to cut back on benefits to get this scheme working. We are in a situation where again and again we have managed to improve benefits. Almost every second or third year there has been another package of benefits. This one, as Ms Pennicuik herself acknowledged, is worth $90 million to injured workers — an extra benefit package. We can bring that in because this is a scheme that is managed well and that is also built on a foundation of getting community support for safety in the workplace and of making workplaces safer — the entire culture.

We can even talk about the Occupational Health and Safety Act and how back in 2005 we as a government made it possible for a WorkSafe inspector to go into a workplace and advise the workplace on how to make that workplace safer. Before that we had this absolutely artificial constraint where an inspector could not go into a workplace and say, 'How can we make it safer?'. All they could do was throw a provisional improvement notice at someone.

The Greens will undoubtedly continue to make their snide remarks about this scheme, but if they wish to make the scheme unsustainable, be it on their heads when injured workers are the first to be affected when a government of the day — whether it be the Labor Party or their mates in the Liberal Party, who they vote with 69 per cent of the time in this chamber when they have the choice — winds back the scheme!

The DEPUTY PRESIDENT — Order! I do not know whether Ms Pennicuik is concerned about the lecture or not, but I am concerned about the minister's prop. I do not think it is appropriate to introduce props. However, I am prepared to buy the note off the minister afterwards, because I am a coin collector!

Ms PENNICUIK (Southern Metropolitan) — The Chair is very prescient: I was going to thank the minister again for his lecture on my unreasonable behaviour — my unreasonable behaviour in coming in here and suggesting that an employer should have an obligation to a worker who has been injured in that employer's workplace for the full time that the worker is injured. It is so unreasonable of me to put that proposition forward!

I say again that this is not really a cost on the employer; it is an obligation on the employer to facilitate the return to work of its worker who was injured in their workplace. There is nothing unreasonable about that. What is unreasonable is that that obligation somehow disappears after 52 weeks. I am saying it is not reasonable that the most disadvantaged, the most injured, the most ill workers are being further disadvantaged by this particular provision. I know it reflects the status quo. It has always concerned me that that is the status quo, and I am taking this opportunity of being in the Parliament now to at least try to do something about it, because it concerned me for the whole time I worked in the area of occupational health and safety. I am not some fly-by-nighter who has just come in here and suddenly become interested in health and safety; I worked in that area for a long time, as the minister well knows.

Committee divided on amendment:

Ayes, 3

Barber, Mr (*Teller*)
Hartland, Ms (*Teller*)
Pennicuik, Ms

Noes, 35

Atkinson, Mr
Broad, Ms
Coote, Mrs
Dalla-Riva, Mr
Davis, Mr D.
Davis, Mr P.
Drum, Mr
Eideh, Mr
Elasmar, Mr
Finn, Mr
Guy, Mr
Hall, Mr
Huppert, Ms
Jennings, Mr
Kavanagh, Mr
Koch, Mr
Kronberg, Mrs
Leane, Mr
Lenders, Mr
Lovell, Ms
Madden, Mr
Murphy, Mr
O'Donohue, Mr
Pakula, Mr
Petrovich, Mrs
Peulich, Mrs (*Teller*)
Pulford, Ms
Rich-Phillips, Mr
Scheffer, Mr
Smith, Mr
Somyurek, Mr
Tee, Mr (*Teller*)
Tierney, Ms
Viney, Mr
Vogels, Mr

Amendment negatived.

The DEPUTY PRESIDENT — Order!
Ms Pennicuik's amendment 42 also relates to this clause. In my view that amendment also tests her further amendments 43 to 45.

Ms PENNICUIK (Southern Metropolitan) — I move:

42. Clause 129, page 247, lines 22 and 23, omit "to the extent that it is reasonable to do so" and insert "unless to do so would cause unjustifiable hardship to the employer".

My amendment would substitute words that the bill puts in place at proposed section 194(2). The wording of that particular obligation is:

(2) An employer must, to the extent that it is reasonable to do so, provide to a worker for the duration of the employment obligation period —

(a) suitable employment if the worker has a current work capacity; and

(b) pre-injury employment if the worker no longer has an incapacity for work.

I propose to change the wording through this amendment, because the obligation on the employer is more stringent under the bill than through the substitution of those words with 'to the extent that it is reasonable to do so'. The bill waters down, reduces or lessens the obligation of the employer to provide suitable employment or pre-injury employment. The effect of this is to reinstate the current provision that exists under the act, because nothing I saw, read or heard from departmental staff when I discussed the matter with them — and I take this opportunity to thank them for the advice they gave me on this bill; I just do not agree with it — leads me to think there is no justifiable rationale for watering down that obligation on the employer. I have covered that matter in my contribution to debate on the last amendment to this clause.

Mr LENDERS (Treasurer) — Similarly to the last clause, the government sees this as the status quo being rewritten in plain English and will not support the amendment.

Ms PENNICUIK (Southern Metropolitan) — I cannot let that comment go unremarked, because it is not a rewriting in plain English. I can assure the Treasurer that I understand plain English as well as he or anyone else does, but no-one who knows anything about the English language would say the phrase 'unless to do so would cause unjustifiable hardship' means exactly the same thing as the phrase 'to the extent that it is reasonable to do so'. One phrase clearly imposes less of an obligation than the other.

Committee divided on amendment:

Ayes, 3

Barber, Mr (*Teller*)
Hartland, Ms
Pennicuik, Ms (*Teller*)

Noes, 34

Atkinson, Mr
Broad, Ms
Coote, Mrs
Dalla-Riva, Mr
Davis, Mr D.
Davis, Mr P.
Drum, Mr
Eideh, Mr
Elasmar, Mr (*Teller*)
Finn, Mr
Guy, Mr
Hall, Mr
Huppert, Ms
Kavanagh, Mr (*Teller*)
Koch, Mr
Kronberg, Mrs
Leane, Mr
Lenders, Mr
Lovell, Ms
Madden, Mr
Murphy, Mr
O'Donohue, Mr
Pakula, Mr
Petrovich, Mrs
Peulich, Mrs
Pulford, Ms
Rich-Phillips, Mr
Scheffer, Mr
Smith, Mr
Somyurek, Mr
Tee, Mr
Tierney, Ms
Viney, Mr
Vogels, Mr

Amendment negatived.

The DEPUTY PRESIDENT — Order!
Ms Pennicuik has proposed a further amendment 46 to this clause. It is a separate issue to those that have been judged in previous amendments proposed for this clause.

Ms PENNICUIK (Southern Metropolitan) — I move:

46. Clause 129, page 253, after line 9 insert —

"197A Risk management program

(1) An employer who has certified, or in respect of whom there has been assessed, total remuneration of less than $2 000 000 for all workplaces of the employer in respect of the preceding policy period must within 3 months of the certification or assessment establish and maintain a risk management program.

(2) An employer of a worker who has an incapacity for work that was caused by, or that was materially contributed to by, an injury must within 3 months after the relevant day establish and maintain a risk management program.

(3) The relevant day is whichever of the following 2 days occurs later —

(a) the day on which the earliest of the following events occurs —

(i) a claim by the worker for weekly payments in respect of the injury is accepted;

(ii) a Conciliation Officer gives a direction that weekly payments are to be paid in relation to such a claim;

(iii) a Conciliation Officer makes a recommendation that weekly payments be paid in relation to a claim and the recommendation is accepted by the employer or the Authority or the self-insurer (as the case may be);

(iv) such a claim is determined by a court in favour of the worker;

(b) the day on which the employer becomes aware, or ought reasonably to have become aware, that the worker's period or periods of incapacity caused, or materially contributed to, by the injury is likely to exceed 20 days.

(4) The following classes of employers, to the extent indicated, are exempt from the requirements under subsections (1) and (2) —

(a) employers (including owners corporations within the meaning of the **Owners Corporations Act 2006**) who employ domestic or similar workers otherwise than for the purposes of the employer's trade or business (but only to the extent that such workers are concerned);

(b) employers who hold owner-builders' permits under the **Building Control Act 1981** (but only to the extent that the workers employed for the purposes of the work to which the permit relates are concerned);

(c) employers (being corporations) who only employ workers who are directors of the corporation;

(d) employers who only employ workers who are members of the employers family;

(e) employers who only employ workers who only perform work while outside Victoria;

(f) employers of workers who are pupils at a school within the meaning of Part IVA of the **Education Act 1958** employed pursuant to a work experience arrangement under that Part in respect of those workers.

(5) For the purposes of this section, a risk management program is a program that provides for the steps to be taken after an injury has occurred in the workplace to, as far as is practicable, reduce the risk of subsequent injury of that kind.".

This amendment effectively reinstates an existing provision in the act which is a requirement for an employer to have a risk management program. That provision would be removed by this bill so that there would no longer be a requirement for an employer to have a risk management program.

The purpose of the act is to improve risk management, and therefore without that provision risk management in the workplace would not be improved. The purpose of the risk management program is to ensure that the employer takes steps to improve the circumstances that led to the injury of the worker so that it will not be repeated in the workplace.

Mr LENDERS (Treasurer) — The government will not be supporting the amendment. There is a recommendation from Hanks that essentially this is an area that replicates existing provisions in the Occupational Health and Safety Act and will not change the situation but will clarify it, and it is a replication of procedures already in that act. Therefore we will support the bill but will not support the amendment.

Committee divided on amendment:

Ayes, 3

Barber, Mr (*Teller*)	Pennicuik, Ms
Hartland, Ms (*Teller*)	

Noes, 35

Atkinson, Mr	Lenders, Mr

Broad, Ms	Lovell, Ms
Coote, Mrs	Madden, Mr
Dalla-Riva, Mr	Murphy, Mr (*Teller*)
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Pakula, Mr
Drum, Mr	Petrovich, Mrs
Eideh, Mr	Peulich, Mrs
Elasmar, Mr	Pulford, Ms
Finn, Mr	Rich-Phillips, Mr
Guy, Mr	Scheffer, Mr
Hall, Mr	Smith, Mr
Huppert, Ms	Somyurek, Mr
Jennings, Mr	Tee, Mr
Kavanagh, Mr	Tierney, Ms
Koch, Mr (*Teller*)	Viney, Mr
Kronberg, Mrs	Vogels, Mr
Leane, Mr	

Amendment negatived.

Ms PENNICUIK (Southern Metropolitan) — Division 5 of the bill talks about compliance codes and the regime by which the return-to-work aspects of the bill and the workers compensation system are going to work. This is what I presume the return-to-work inspectorate will be enforcing.

However, it is not clear from the bill what it is the return-to-work inspectorate is actually going to be enforcing. As I think Ms Pulford mentioned in her contribution, it is about outcomes and it is about performance, but I am not quite sure what outcomes and what performance measures are going to be used. What I am really asking is whether the minister can explain how compliance will be achieved under the bill, and in particular, given it is my understanding there will not be any compliance codes under which employers will be deemed to be complying with the act until next year, in the absence of those codes how will the return-to-work inspectorate or anybody else understand whether employers are complying with the act?

Mr LENDERS (Treasurer) — Ms Pennicuik is correct. The codes are voluntary, but the inspectorate enforce the obligations set out in the bill.

Ms PENNICUIK (Southern Metropolitan) — What specific obligations are there in the bill that the employer has to enforce? In particular, how will the return-to-work inspectorate interpret the phrase 'to the extent that it is reasonable to do so'?

Mr LENDERS (Treasurer) — I think Ms Pennicuik is enjoying a bit of testing here because with her experience in the area she knows there are multiple obligations in the bill that need to be undertaken. Certainly an example is the requirement to consult.

Ms PENNICUIK (Southern Metropolitan) — The requirement to consult is only to the extent that it is reasonable to do so. How is it enforced, and when is it decided that it is or is not reasonable? I think the minister used a good example because it is very important that in terms of a return to work there is consultation with a worker about that return to work. Under the existing act it is a much stronger obligation unless it is unjustifiably hard for an employer to do so, and it is only to the extent it is reasonable. How is that going to play out practically in the workplace? It is not a frivolous question; it is an important question.

Mr LENDERS (Treasurer) — There is a threshold issue here. If Ms Pennicuik is arguing we should not legislate to have an inspectorate enforce the obligations of an act in a workplace, she should say so. What is being proposed here is to have an inspectorate enforce obligations. I have given an example of some of the obligations that are in place. To me the threshold question here is: if Ms Pennicuik thinks we should not have an inspectorate enforcing obligations in an act, she should say so. If she is seeking examples of what the obligations are and how the inspectorate will work, I believe I have outlined those to the committee.

Ms PENNICUIK (Southern Metropolitan) — I am sure the minister knows he is misrepresenting me when he says I would suggest I would be opposed to a return-to-work inspectorate. I made it clear in my contribution to the second-reading debate that I am not. What I am trying to work out here is how the inspectorate will practically enforce the act in the absence of a compliance code. Another question I would ask of the minister is: when compliance codes come into play at some stage in 2011, and the bill says an employer will be deemed to be complying with the act if they comply with the code, what if an employer does not comply with the code? How would an inspector deem an employer is complying if they are not complying with the code? How would they prove they are complying to an equal extent or a higher extent than the code requires?

Mr LENDERS (Treasurer) — I think I have answered the question already. The voluntary components of the code are ones that an inspector can have a view on, but clearly the main obligation of the inspectorate is for obligations under the act. I think I have already answered that question.

The DEPUTY PRESIDENT — Order! Is there any further debate?

Ms PENNICUIK (Southern Metropolitan) — It is more a comment, because obviously the minister feels he has answered my question. But I have to put on record that there are a lot of people in the community

who are concerned about this whole section of the bill. Rather than making things clearer, it has made things fuzzier. It is not clear how the inspectorate is going to enforce the obligations under this bill. All I can do is make that comment, given that if I ask the question again, the minister is going to give me the same answer.

Clause agreed to.

The DEPUTY PRESIDENT — Order! Ms Pennicuik's proposed amendments 47 to 199 involve renumbering within the bill, which would have related to the omission of clauses she proposed earlier. As those clauses have remained in the bill, I do not believe we should be pursuing any of those amendments 47 to 199. Some of those amendments relate to clauses I am now about to test. As I understand it, there is nobody else who wants to discuss clauses 130 to 144, therefore I will put those clauses to the test.

Clauses 130 to 144 agreed to.

Clause 145

Ms PENNICUIK (Southern Metropolitan) — Clause 145 is a definitional clause. It reads:

> Insert the following definition in section 5(1) of the Accident Compensation Act 1985 —
>
> "WorkSafe Victoria means the Victorian WorkCover Authority.".

I ask the minister: why all of a sudden is WorkSafe Victoria — which refers, as far as I understand it, to the occupational health and safety regulatory statutory authority — now going to mean the Victorian WorkCover Authority, which is the workers compensation authority or the insurance authority?

Mr LENDERS (Treasurer) — As I understand, with regard to definitions WorkSafe is a group within the Victorian WorkCover Authority that carries out a series of obligations. WorkSafe is accountable to the CEO and board of the Victorian WorkCover Authority, so in a definitional sense — and I take Ms Pennicuik's point — it has been the trading name for the authority and it has been a group of employees and officers of the authority who have carried out tasks. But this is a definitional term that does not affect the day-to-day operations.

Ms PENNICUIK (Southern Metropolitan) — Is it not the case that those employees have carried out the tasks under the Occupational Health and Safety Act in terms of regulation of occupational health and safety?

Mr LENDERS (Treasurer) — This does not change any of the arrangements at the Victorian WorkCover Authority.

Ms PENNICUIK (Southern Metropolitan) — The question is to the minister: why is the government proposing that what has previously been known as the Victorian WorkCover Authority, which the community understands is the workers compensation authority or the workers compensation arm which deals with workers compensation, be now incorporated under the name WorkSafe, which the community understands deals with occupational health and safety and the regulation of same in workplaces?

Mr LENDERS (Treasurer) — The functions of the authority are to administer acts of Parliament, of which, clearly, the Accident Compensation Act is one. The Occupational Health And Safety Act is another. The authority is set up under its board. It has a series of officers and staff who are employed by that board. This is how it is described. I would suggest to Ms Pennicuik that from time to time authorities brand themselves in certain ways. A message is communicated by the very concept of WorkSafe being a descriptor rather than the WorkCover authority or WorkCare, or whatever its predecessors at various times have been. The activities and the acts administered are unchanged and it is how it is described. This is simply a matter of flexibility in the descriptor of an organisation; it does not change the board, does not change its function and does not change the rights or obligations of anybody.

Ms PENNICUIK (Southern Metropolitan) — Why then is the name changing? Why is this name change being implemented under this bill?

Mr LENDERS (Treasurer) — I think I have genuinely answered that question; organisations move and change. What WorkCover has done under its charter over a number of years is to make our workplaces safer by adopting extraordinary or better practices than most other jurisdictions in dealing with that. That is exactly what the clause says.

Ms PENNICUIK (Southern Metropolitan) — I understand the minister is going to repeat his answer if I ask the question again, but it is not just a question of naming. There is a concern long held by many in the community, including in the union movement, and perhaps even amongst employers and employer groups — and certainly this is the Greens policy and it is my personal view — that it is an issue that these bodies are so close together already and they are going to come closer together by being branded under the same name.

The occupational health and safety regulator should be separate from the compensation authority, because what is regulated by the occupational health and safety arm should not be unduly influenced by compensation claims, for example, which is the case. When there is too close an arrangement, the WorkSafe arm, the regulator arm, tends to focus on reducing claims rather than on the injuries or illnesses, particularly illnesses, that are a result of work, for which people do not necessarily make claims. As I mentioned in my contribution, people do not necessarily claim compensation for stress very much, even though this bill focuses on reducing stress claims. Claims by those suffering from work-related stress are not high in comparison to the number of workers who suffer from it, and they are not high in terms of the cost to the scheme overall.

There are also other things, such as long-term exposure to chemicals which cause disease, but they do not show up in these claims. They are not being regulated by the occupational health and safety regulator because they are not showing up in claims. There is already too close an arrangement between these two arms of the system. I contend that actually putting these two bodies under the WorkSafe name and not having two different names is a bad move. I am cynical as to why it is happening. I am sure it is happening as a branding exercise. I am concerned for the reasons I have just outlined that that is occurring, and I do not support it.

Committee divided on clause:

Ayes, 35

Atkinson, Mr	Lenders, Mr
Broad, Ms	Lovell, Ms
Coote, Mrs	Madden, Mr
Dalla-Riva, Mr	Murphy, Mr
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Pakula, Mr
Drum, Mr	Petrovich, Mrs
Eideh, Mr	Peulich, Mrs
Elasmar, Mr	Pulford, Ms (*Teller*)
Finn, Mr (*Teller*)	Rich-Phillips, Mr
Guy, Mr	Scheffer, Mr
Hall, Mr	Smith, Mr
Huppert, Ms	Somyurek, Mr
Jennings, Mr	Tee, Mr
Kavanagh, Mr	Tierney, Ms
Koch, Mr	Viney, Mr
Kronberg, Mrs	Vogels, Mr
Leane, Mr	

Noes, 3

Barber, Mr (*Teller*)	Pennicuik, Ms
Hartland, Ms (*Teller*)	

Clause agreed to.

Clauses 146 to 194 agreed to.

The DEPUTY PRESIDENT — Order! The Treasurer was to provide some additional information. Is Mr Rich-Phillips proceeding with his proposed amendment to clause 2?

Mr RICH-PHILLIPS (South Eastern Metropolitan) — In view of the indication from the Treasurer before that those positions have been assented by the Governor in Council, we are unlikely to proceed with the proposed amendment to clause 2.

Postponed clause 1

Mr LENDERS (Treasurer) — Ms Pennicuik asked for some examples of the transparency and accountability that are referred to in clause 1(c) of the purposes clause. I have five examples for her, in addition to the ones that came before.

Clause 21 requires that written reasons are provided to workers for claim rejections. Clause 31 clarifies the method of calculating weekly payments. Clause 43 gives an employer the right to request reasons for certain decisions. Clause 80 provides for increased reporting requirements of the senior conciliation officer on activities based on the Accident Compensation Conciliation Service criteria. Clause 126 introduces specific criteria used by the Victorian WorkCover Authority to assess the management by self-insurers by their long-tail claims. They are five examples in addition to the ones given earlier. That is as comprehensive as I can be in the time. Hopefully that is of assistance to Ms Pennicuik.

Ms PENNICUIK (Southern Metropolitan) — I thank the Treasurer. I appreciate the effort he has made.

Clause agreed to.

Postponed clause 2

The DEPUTY PRESIDENT — Order! The committee will recall that one of the reasons for postponing consideration of clause 2 was that Ms Pennicuik had proposed a number of amendments to this clause. Those amendments related to the committee agreeing to other more substantive amendments that Ms Pennicuik proposed to clauses further on in the bill. As none of those amendments proposed by Ms Pennicuik succeeded, it is my view that Ms Pennicuik's remaining proposed amendments to clause 2 lapse.

I ask Mr Rich-Phillips for guidance on whether he wishes to proceed with the proposed amendment to clause 2 standing in his name, which has ramifications for clause 79.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — As foreshadowed in the second-reading debate, it was my intention to move an amendment that would have brought forward to 1 March the deemed commencement date of clause 79, with the intent of ensuring that the reappointment or subsequent appointment of conciliation officers that expired on 31 March would be covered by the requirement that those subsequent appointments be on the advice of the senior conciliation officer. That was for the reason that we have concerns about the continuing independence of the Accident Compensation Conciliation Service. Certainly suggestions that appointments that I believed were about to be made and the Treasurer has confirmed have been made were not made with the support of the senior conciliation officer and indeed may have breached the independence of the ACCS by the appointment of people with close association with the Victorian WorkCover Authority. It was my intention to move that amendment, which would have required those appointments to be made in consultation with the senior conciliation officer.

In view of the Treasurer's earlier advice that those appointments have now been made by Governor in Council and advice that I obtained from parliamentary counsel that indicated that this amendment would invalidate appointments that had been made after 1 March and before the passage of this bill, it is my intention to not proceed with this amendment but to reiterate that we have concerns about the way that the appointments have apparently been made and the way that they apparently undermine the independence of the ACCS.

Clause agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Mr LENDERS (Treasurer) — I move:

That the bill be now read a third time.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I am of the opinion that the third reading of this bill requires to be passed by an absolute majority. I ask the Clerk to ring the bells.

Bells rung.

Members having assembled in chamber:

The PRESIDENT — Order! I am of the opinion that the third reading of this bill requires to be passed by an absolute majority. In order that I may determine whether the required majority has been obtained, I ask those members who are in favour of the question to stand where they are.

Required number of members having risen:

Motion agreed to by absolute majority.

Read third time.

Sitting suspended 6.34 p.m. until 8.13 p.m.

LIVESTOCK MANAGEMENT BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. M. P. PAKULA (Minister for Public Transport) on motion of Mr Jennings.

Statement of compatibility

For Hon. M. P. PAKULA (Minister for Public Transport), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Livestock Management Bill 2009 (the bill).

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

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

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

provide for compliance with the adopted standards;

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

address issues and complaints regularly received by government related to aspects of livestock management,

particularly animal welfare, biosecurity and traceability, which cannot be resolved via the application of current legislation and are often the basis for significant community attention or concern; and

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

Human rights issues

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

The bill engages five human rights protected by the charter.

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

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

Two enforcement regimes

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

Section 13: privacy and reputation

Section 13 establishes the right for an individual not to have his or her privacy, family home or correspondence unlawfully or arbitrarily interfered with and the right not to have his or her reputation unlawfully attacked.

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

Entry and search provisions

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

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

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

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

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

Section 20: property rights

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

This right is engaged by clause 41 of the bill that allows an inspector to take samples of livestock products and materials. This right may only be exercised in clearly defined circumstances and purposes, as the sample can only be taken for the purposes of either determining whether the act, regulations, standards or specifics in the letter of approval have been, or are being, complied with or where the inspector

has a reasonable belief that there has been non-compliance with the standards that has resulted in or is likely to result in an emergency that threatens animal welfare, human health or biosecurity. Also the power may only be exercised where there is consent, or where a warrant has been issued by a magistrate or where an inspector has a reasonable belief that there has been non-compliance with the standards that has resulted in or is likely to result in an emergency that threatens animal welfare, human health or biosecurity. In relation to the seizing of documents, clause 39 provides that an inspector must provide the person with a certified copy of the seized documents within 21 days of the seizure, which is deemed of equal validity to the original document.

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

Section 25: rights in criminal proceedings

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

Offence provisions

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

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

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

Section 15: freedom of expression

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

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

Conclusion

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

Martin Pakula, MLC
Minister for Industry and Trade

Second reading

Ordered that second-reading be incorporated on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The introduction of nationally consistent standards for livestock management will provide government with the ability to ensure acceptable standards of livestock management are adopted, and to focus and address issues and some of the aforementioned risk areas. This legislation will consequently provide greater assurance to the community and national and international markets. The first set of standards intended to be referenced in regulations under the proposed bill are the Australian standards and guidelines for the welfare of animals (land transport) and the pig code (Victorian standards for the welfare of pigs). These will be followed by other standards currently being developed nationally, including the Australian standards and guidelines for the welfare of animals (sheep) and the Australian standards and guidelines for the welfare of animals (cattle).

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

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

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

Through an 'approval process', government will establish a relationship with the controlling authorities of these programs that will allow government to identify the livestock operators

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

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

Livestock operators engaged within an approved quality assurance scheme that embraces the standards, will be deemed compliant in the first instance and be recognised as part of the co-regulatory mechanism. Livestock operators that are not participating in an approved quality assurance system will be subject to a level of inspection sufficient to demonstrate compliance. All entities will be subject to inspection for the purpose of assessing, verifying and enforcing the standards; however, government policy will ensure that the focus of its inspectors is directed to operators that have no approved compliance arrangement in place.

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

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

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

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

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

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

I commend the bill to the house.

Debate adjourned for Mr VOGELS (Western Victoria) on motion of Mr Koch.

Debated adjourned until Thursday, 18 March.

SEVERE SUBSTANCE DEPENDENCE TREATMENT BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Statement of compatibility

Mr JENNINGS (Minister for Environment and Climate Change) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Severe Substance Dependence Treatment Bill 2009.

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

Background

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

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

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

Overview of bill

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

The following features of the bill are noteworthy:

Eligibility for a detention and treatment order

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

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

Process for making a detention and treatment order

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

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

Scope of a detention and treatment order

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

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

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

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

Safeguards during detention

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

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

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

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

Human rights issues

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

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

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

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

Evidence-based policy

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

The 2007 *Turning Point Alcohol and Drug Centre Report* on compulsory treatment prepared for the Australian National Council on Drugs (ANCD research paper 14, Pritchard, Mugavin and Swan) found that while the Australian and international civil commitment legislation has not been

evaluated for its long-term effectiveness, there is evidence that compulsory treatment can be an effective harm reduction mechanism for some people.

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

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

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

The rights engaged by the bill are:

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

Section 12 — freedom of movement

Section 13 — privacy

Section 21 — liberty and security of person

Section 24 — fair hearing.

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

The bill may also engage the following additional rights:

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

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

Section 9 — right to life.

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

Section 17 — protection of families and children.

Section 19 — cultural rights.

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

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

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

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

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

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

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

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

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

Reasonableness of the limitations

Detention and treatment orders

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

(a) The nature of the rights being limited

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

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

(b) The importance of the purpose of the limitation

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

(c) The nature and extent of the limitation

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

(d) The relationship between the limitation and its purpose

The bill restricts a person's freedom of movement and liberty by detaining a person subject to a detention and treatment order in a treatment facility. The purpose of the limitation is to protect a person with severe substance dependence where urgent treatment is required to save the person's life or to prevent serious damage to a person's health. This purpose is rationally connected to the purpose of limiting rights — namely, detention is necessary for the treatment to occur.

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

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

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

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

(f) Conclusion

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

Restraint and sedation

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

(a) The nature of the rights being limited

This is discussed above.

(b) The importance of the purpose of the limitation

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

(c) The nature and extent of the limitation

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

(d) The relationship between the limitation and its purpose

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

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

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

(f) Conclusion

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

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

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

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

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

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

The requirement that any interference with a person's privacy must not be 'unlawful' imports a requirement that the scope of any legislative provision that allows an interference with privacy must specify the precise circumstances in which an

interference may be permitted. The requirement that an interference with privacy must not be arbitrary requires that any limitation on a person's privacy must be reasonable in the circumstances and should be in accordance with the provisions, aims and objectives of the charter.

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

Reasonableness of the limitations

(a) The nature of the right being limited

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

(b) The importance of the purpose of the limitation

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

(c) The nature and extent of the limitation

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

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

(d) The relationship between the limitation and its purpose

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

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

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

(f) Conclusion

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

Right to privacy (section 13)

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

Entry powers

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

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

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

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

Searches

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

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

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

Right to a fair hearing (section 24)

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

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

Conduct of hearing

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

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

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

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

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

Private hearing

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

Conclusion

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

Gavin Jennings, MLC
Minister for Environment, Climate Change and Innovation

Second reading

Ordered that second-reading speech be incorporated on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

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

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

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

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

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

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

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

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

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

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

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

less restrictive options in preference to detention and treatment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I now turn to the parts of the bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Importantly, the senior clinician must discharge a person from a detention and treatment order if at any time the criteria no longer apply to the person. This provision has been included in recognition that a person's health and capacity to make decisions about their substance use will improve with treatment, and that it is possible the criteria for detention and treatment may cease to apply at some time during the 14-day period of the order.

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

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

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

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

Part 5 of the bill provides repeal and transitional provisions.

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

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

I commend the bill to the house.

Debate adjourned on motion of Mr D. DAVIS (Southern Metropolitan).

Debate adjourned until Thursday, 18 March.

STATUTE LAW AMENDMENT (NATIONAL HEALTH PRACTITIONER REGULATION) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Statement of compatibility

Mr JENNINGS (Minister for Environment and Climate Change) 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 Statute Law Amendment (National Health Practitioner Regulation) Bill 2010.

In my opinion, the Statute Law Amendment (National Health Practitioner Regulation) Bill 2010, 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

This bill makes various consequential amendments to Victorian legislation following the enactment of the Health Practitioner Regulation National Law (Victoria) Act 2009 ('national law'). The national law establishes a new national scheme for the accreditation and registration of health practitioners.

Health practitioners in 12 health professions in Victoria are currently regulated by the Health Professions Registration Act 2005.

Health practitioners in all but two of those health professions will be regulated by the national law as of 1 July 2010. Chinese medicine and medical radiation practitioners will be included in the national scheme on 1 July 2012.

It is necessary to amend the Health Professions Registration Act 2005, and other acts, as a consequence of the new national scheme.

The bill:

amends the Health Professions Registration Act 2005 to take account of the enactment of the national law, in particular, references to definitions of various registered health practitioners;

makes consequential amendments to other Victorian legislation as a result of the national law, including provisions in the Drugs, Poisons and Controlled Substances Act 1981 which authorise persons to have possession of poisons or controlled substances; and

provides for transitional arrangements to give effect to the national law.

Human rights issues

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

While the national law engages rights protected by the charter, this bill does not do so. The rights engaged by the national law were addressed in the statement of compatibility accompanying the Health Practitioner Regulation National Law (Victoria) Bill 2009.

Consideration of reasonable limitations — section 7(2)

As the bill does not engage any rights protected by the charter, it is not necessary to consider reasonable limitations.

Conclusion

I consider that the bill is compatible with the charter as no provisions of this bill engage human rights.

Gavin Jennings, MLC
Minister for Environment, Climate Change and Innovation

Second reading

Ordered that second-reading speech be incorporated on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Statute Law Amendment (National Health Practitioner Regulation) Bill 2010 seeks to make transitional and consequential amendments to Victorian legislation, to allow for the full implementation of the Health Practitioner Regulation National Law (Victoria) Act 2009 and for the operation of the national registration and accreditation scheme for the health professions to commence on 1 July 2010.

In addition, the bill provides for an ongoing regulatory framework, under the existing Health Professions Registration Act 2005, for Chinese medicine and medical radiation practitioners in Victoria until they join the national scheme on 1 July 2012.

The Health Practitioner Regulation National Law (Victoria) Act establishes the regulatory framework for the national scheme for the health professions and creates a single registration and accreditation scheme for 10 health professions from 1 July 2010. The professions of Aboriginal and Torres Strait Islander health practitioners, Chinese medicine practitioners, medical radiation practitioners and occupational therapists will also join the scheme from 1 July 2012.

The commencement of the national scheme is significant for the Australian health-care system. The national scheme will provide additional safeguards for the community and practitioners, and improve workforce flexibility and mobility.

This bill contains three categories of amendments. These are:

1. minor amendments, technical in nature, to be made to the Health Practitioner Regulation National Law (Victoria) Act to allow for national consistency;

2. transitional and consequential amendments to the Health Professions Registration Act 2005; and

3. transitional and consequential amendments to other Victorian legislation.

The amendments to the Health Practitioner Regulation National Law (Victoria) Act are minor amendments to ensure national consistency in the legislation for the national scheme. The first amendment removes the Public Records Act 1973 from the list of excluded legislation under the national law. Initial advice was that the public record matters would be addressed through a national approach, however it has now been determined that state and territory legislation should continue to apply.

The second amendment includes a regulation-making power in the act. This is a standard legislative approach which will provide an additional safeguard by enabling Victorian regulations to be made should they be necessary for carrying out or giving effect to the national scheme. This regulation-making power is only to be used for minor transitional changes to give effect to the national scheme in Victoria and can not be used to make any substantive changes.

The amendments to the Health Professions Registration Act represent the main amendments of this bill. These allow for the regulation of Chinese medicine and medical radiation practitioners to continue unchanged until they join the national scheme on 1 July 2012.

The bill contains provisions that allow for the continued operation of the Pharmacy Board of Victoria for the purpose of pharmacy premises regulation until such time as the new Victorian Pharmacy Authority is established. The government intends to introduce a bill in May 2010 to establish the new authority, the Victorian Pharmacy Authority Bill. Passage of this bill would allow for the Victorian Pharmacy Authority to be established prior to 1 July 2010.

In addition, a transitional provision has been included to allow for the current state health profession registration boards to continue in operation beyond 1 July 2010 solely for the purpose of finalising their financial reports for the year ending 30 June 2010 (in accordance with Victorian financial management legislation).

Finally, there are a number of Victorian acts which require minor consequential amendments as a result of the Health Practitioner Regulation National Law (Victoria) Act. These amendments relate mainly to definitions, for example those of 'medical practitioner' or 'nurse'. Other specific amendments are also required to the Victorian Civil and Administrative Tribunal Act 1998 and the Drugs, Poisons and Controlled Substances Act 1981.

The VCAT act requires amendment to ensure that VCAT can continue to carry out its functions in relation to Chinese medicine and medical radiation practitioner boards under the Health Professions Registration Act and also carry out the same role under the Health Practitioner Regulation National Law (Victoria) Act in relation to the national boards.

And finally, the Drugs, Poisons and Controlled Substances Act requires amendment to ensure that the current rights of health practitioners to possess, sell or supply poisons are maintained under the national scheme. Amendments have been made to replicate the current powers to possess, sell or supply poisons that exist under the Drugs, Poisons and Controlled Substances Act for medical practitioners, dentists, pharmacists, nurse practitioners and endorsed optometrists and podiatrists. This bill also amends the Drugs, Poisons and Controlled Substances Act to allow for the minister to authorise, under certain conditions, registered nurses who are endorsed as being suitably qualified by the National Nursing and Midwifery Board to possess, sell or supply poisons.

The Statute Law Amendment (National Health Practitioner Regulation) Bill is an integral part in the implementation of the national scheme for the health professions.

I commend the bill to the house.

Debate adjourned on motion of Mr D. DAVIS (Southern Metropolitan).

Debate adjourned until Thursday, 18 March.

LIQUOR CONTROL REFORM AMENDMENT (ANZAC DAY) BILL

Second reading

Debate resumed from 25 February; motion of Hon. J. M. MADDEN (Minister for Planning).

Mr GUY (Northern Metropolitan) — I rise to speak on the Liquor Control Reform Amendment (ANZAC Day) Bill 2010, and on behalf of the coalition parties indicate that we will be supporting this bill. In doing so I note that the purpose of the bill is to amend the Liquor Control Reform Act 1998. We are talking about liquor licensing and liquor control in Victoria. Before I make some comments on the bill at hand I will just say that the issue of liquor licensing is one that is very important in Victoria today and one that the government does not have a very strong record on. In fact this is possibly the — am I right in saying this? — second or maybe the third bill in relation to liquor licensing that we have debated in this Parliament in the last couple of months.

Mr Koch — The third.

Mr GUY — That is quite right, Mr Koch, it is the third bill we have debated in this Parliament in relation to liquor licensing across Victoria, with the first two having some pretty catastrophic impacts upon small businesses across the metropolitan area and regional Victoria and pretty catastrophic outcomes for the live music scene across the state of Victoria.

It should be remembered that this government has not had a strong record on liquor licensing over the last couple of months. We are happy to say, though, that the bill before us today is one that has the support of the coalition parties, and it does so for a number of decent, up-front reasons. The bill will impose restrictions on the supply of alcohol under a licence or permit system on Anzac Day. Licences or BYO permits that would otherwise allow the supply of alcohol between 3.00 a.m. and noon on Anzac Day will be subject to a new provision that prohibits the supply of alcohol during those hours. Those licensees that only operate from 5.00 a.m. will be subject to the prohibition from 5.00 a.m. until noon.

It is getting more and more obvious that there is a serious problem with alcohol abuse in our community. Anyone who denies that has not been looking at the media and looking around our city and around regional Victoria properly, and after hours, for some time. It is clear that there is an issue. Unfortunately, and pretty disgracefully, a few years ago that spilled over into Anzac Day at what is possibly the most solemn time for

this country — that is, the Anzac Day dawn service. I understand there was an incident to some degree. It was not major but was one that in itself would lead a government to move this kind of legislation, which would receive the support of the Liberal and National parties, to ensure that we maintain, in this case, the solemnity and dignity of the Anzac Day dawn service. I say again that I think all of us would agree that the dawn service on Anzac Day is one of the most moving and poignant times when this country remembers the fallen and those who have served this country, and it should not be marred in any way by people who have spilled out from clubs or pubs or wherever disrupting any of these services. Therefore the coalition supports the principle of the bill before us today.

The main provisions of the bill include some exemptions from the restriction. Those exemptions include licences held by the RSL or sub-branches of the RSL; duty free shops, which is pretty self-explanatory; liquor supplied for purchase and consumption on an aircraft; pre-retail licences, which do not supply liquor to the public; residents or guests of a licensed premises; wineries or business activities of a winery owned or occupied by the licensee; and where the director of liquor licensing grants an exemption to a major event licensee, a temporary limited licensee or a renewable limited licensee for an event that will occur in connection with Anzac Day commemorative activities and will be consistent with the solemn observance of that day.

As I said from the start, it is important that we maintain its commemoration. I personally believe that is exceptionally important as the years pass and the major conflicts this country has been involved in become further away in terms of the number of years since they occurred. While we obviously all hope there will be not in the future be any conflicts even remotely similar to what we have experienced in the past, we as a Parliament and as a people must make sure that those who served and those who fell in those events are remembered and are shown the dignity and respect they deserve.

Having laws like the one before us today will guarantee that we will not have a situation where those people who find it necessary to go out and drink until 4.00 a.m. or 5.00 a.m. then spill out into remembrance services. As I said, the coalition supports the bill, but we do have some concerns. The legislation is well-intentioned, and we recognise that and support it, but there is the prospect of unintended consequences arising from the inconsistencies. There may be adverse impacts on some activities that do not detract from the commemoration of Anzac Day. I note one example that was pointed out in the lower house. A centenarian may be celebrating their 100th — obviously — birthday on 25 April and may want to toast this birthday with a champagne brunch at a hotel on Anzac Day. Obviously they would be prohibited from doing so under these laws. Also, tourist attractions other than wineries will be unable to serve alcohol until noon. A restaurant operated by a winery would not be subject to this prohibition but a cafe next-door would be.

There are also the more general issues as to whether the prohibition which is designed to stop drunks from spilling out of nightclubs and pubs and disrupting the dawn service should target licensed venues such as golf clubs, restaurants or florists which make up hampers that include bottles of wine. But we on this side of the house clearly accept that, while there will be unintended consequences, the crux of the bill is necessary. The solemnity and dignity of Anzac Day needs to be supported at every turn. Unfortunately if that means acting legislatively to ensure that that occurs, then we need to do so, and we support that. I hope the common sense of those people who stay out until all hours of the night will prevail when they come out of venues and that they do not see fit to disrupt Anzac Day services. Unfortunately that has not been the case in the past and therefore these laws have become necessary.

The coalition strongly supports our veteran community and the importance and sanctity of Anzac Day. We have said that genuinely a number of times; we absolutely believe that, but, as I said, the bill contains anomalies and inconsistencies and we will continue to discuss them and ensure the legislation is working well and that no major problems are caused by those anomalies and inconsistencies. We do not wish to place a hindrance on this bill achieving what it needs to do, which is to ensure that Anzac Day is not disrupted by people who see fit to act in an inappropriate way. As such, the Liberal and National parties will be supporting this legislation.

Ms HARTLAND (Western Metropolitan) — I thank Mr Guy for going through the technicalities of the bill, and I will not cover that ground. Anzac Day is obviously a time to reflect and pay respect to the men and women who have sacrificed so much in times of war, and their efforts must be treated with absolute respect. The Greens believe it is a day to be remembered and to honour those who have been killed or injured in war, including millions of civilians, such as those killed in the current Iraq conflict. Anzac Day is also a day when we remember the futility of war, and when we say ‘Lest we forget’ we should also not forget the brutality of it.

Last Anzac Day and over the last several years I have attended a number of Anzac Day functions, and I always find these incredibly moving. The events I attended were free from disturbance of any alcohol-affected, disrespectful persons, for which I am very grateful. Such disturbances are a factor cited for the need for this bill, alongside efforts to better commemorate Anzac Day across the board. It is of concern to the Greens that such alcohol problems are in our communities, and Greens members have spoken of these concerns on a number of occasions. It is not surprising that alcohol problems are so widespread when you look at the number of liquor licences that are in operation, allowing the sale of alcohol during the 3.00 a.m. to 12 noon time frame. We are talking roughly of 1178 individual liquor licences being in operation, most of which are nightclubs and bars operating into the early hours of the morning. That is an extraordinarily large number of venues pumping out alcohol in the early hours of the morning.

This week, too, we were quite shocked that the Victorian Civil and Administrative Tribunal overturned the wishes of the police, the director of liquor licensing and the government on having a 24-hour bottle shop in the middle of the city. People should read the VCAT decision because it is quite disturbing as to how economic benefit for the hotel should be taken into consideration when we are trying to stem the tide of alcohol-related violence.

It is unfortunate that alcohol-affected persons have directly clashed with Anzac Day commemorations. It is our understanding, however, that we are in fact speaking about a handful of alcohol-affected individuals exhibiting extremely poor behaviour when in the vicinity of Anzac Day commemoration events, as occurred last year at the Shrine of Remembrance.

For the great majority of the community, fortunately, great respect is expressed for Anzac Day, although I would have to say that we need to be cautious of any unintended and potentially undesirable consequence of the act's implementation. We have seen over the last six months that the government for good reason has attempted to change the liquor licensing regime, but it has caused problems that the government either did not foresee or hoped would go away.

In the research for this bill we have been in contact with a number of people and organisations. One of those is Restaurant and Catering Victoria. It has alerted us to the fact that the Melbourne Food and Wine Festival was having a great deal of difficulty obtaining licences. When I spoke to it today, it sent me an email. I would like to read part of it. This goes to the issue about changing the legislation. I would still say that changing the liquor licensing regime has been a good thing, but we have been without the resources to implement it and without the resources to issue appropriate licences.

I will read from the email I received from the Melbourne Food and Wine Festival:

> The changes to liquor licensing has led to an increase in workload for the festival production team as we have spent many days trying to get information about the new application process, chasing paperwork and approval letters from specific departments. Some events have not changed in format and yet the associated paperwork has doubled.
>
> The changes have led to a direct increase in costs to maintain compliance, particularly in the area of security.
>
> The changes have not led to the cancellation of a festival-produced event; however, the approval process was a time-consuming exercise and has led the festival to be concerned that we will have to cancel events; the festival is still awaiting approval for licences for an event that is on Monday.
>
> From our experience, it appears the liquor licensing department was not properly prepared for the changes, nor was it adequately resourced. The staff seem to be too few and we have been told not to use email where possible (which leads to delays in response as we wait days for paperwork to be posted).

It has to be remembered that the Melbourne Food and Wine Festival has been going for years, so these are people who well understand what is required. The email continues:

> When we called in November to ask for advice about the changes, we were told to call back in January as they didn't have any information. When we applied in January, we were told we should have applied earlier.
>
> The festival met with Vic Police to ensure events were planned for best practice implementation of alcohol management. This did not seem to streamline the process.

About half an hour ago I received another email from the festival organisers saying that in other years they have held a cellar door function with small boutique wineries. The festival would get the licence for all those wineries. Now each of the wineries has to seek its own licence, and apparently those liquor licence applications have not moved from the liquor licensing commission to the Melbourne City Council's planning department — yet this event is to be held next week. The festival organisers are really concerned about whether this event will have to be cancelled if they do not have the appropriate licences.

The other unforeseen issue in the recent changes to liquor licensing, and I am certainly again hoping that it does not affect this bill that we are dealing with, is the issue of Swords Wines, a company that operates at a number of sites, two of which are Prahran Market and

Queen Victoria Market. Because the Swords outlet starts operating at 6.00 a.m. in accordance with its lease with the market, the cost of its liquor licence has risen dramatically to about $5000 for each site. The outlet is perceived to be high risk because of the time of day it starts business.

As someone who has shopped at the Vic market for over 25 years — and I know that Swords Wines has been there for about nine years — I have never noticed particularly intoxicated people coming to the market at 6 o'clock in the morning to buy another bottle.

What concerns me is that we were always told there would be a great deal of flexibility in dealing with these issues, and that does not seem to have occurred. We think this Anzac Day bill is extremely important, because it goes to the issue of respect for Anzac Day and making sure that nothing interferes with Anzac Day. We hope the liquor licensing commission has enough staff and resources to make sure that licences and changes of licences that will need to occur as a result of this bill can occur promptly.

Mr LEANE (Eastern Metropolitan) — I rise to support the Liquor Control Reform Amendment (ANZAC Day) Bill 2010. In supporting the bill, Mr Guy gave very comprehensive coverage of its mechanics, the purpose of which is to further show respect to our veterans on Anzac Day and to not have similar offences occur as we had in the past where people who stayed in late-night venues into the early hours spilled into commemorative services and affected those services adversely. It is a simple bill: it is all about respect and further respect for our veterans who have served in a number of conflicts overseas to defend our country.

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

STANDING ORDERS COMMITTEE

Reporting date

Mr DALLA-RIVA (Eastern Metropolitan) — By leave, I move:

> That the resolution of the Council of 10 September 2008, as amended on 13 November 2008, 31 March 2009, 30 July 2009, 13 October 2009 and 27 November 2009, requiring the Standing Orders Committee to inquire into and report by 11 March 2010 on the establishment of new standing committees for the Legislative Council be further amended so as to now require the committee to present its report by 15 April 2010.

Motion agreed to.

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE BILL

Second reading

Debate resumed from 25 February; motion of Hon. J. M. MADDEN (Minister for Planning).

Mr HALL (Eastern Victoria) — I have been given the task this evening of presenting to the chamber an analysis of a piece of legislation which comprises two volumes because of the quantity of the legislation itself. It contains 800 clauses and 6 schedules, by necessity printed in two volumes, as I said. Within those two volumes there are 169 pages of explanatory memorandum, 39 pages of index printed twice — once in each volume — and 967 pages of clauses. My intent is not to go through this bill clause by clause, line by line, but my task is to present to the chamber a view on this substantial piece of legislation.

An honourable member interjected.

Mr HALL — As I say, this is a challenge. I will endeavour to do so as succinctly as I can.

Nevertheless it is an important piece of legislation because what it does in part, as well as providing a regulatory framework for exploration and eventually utilisation of geological gas storage sites, is re-enact the Petroleum (Submerged Lands) Act of 1982, an important piece of legislation that has provided the legislative framework particularly for exploration and extraction of natural gas and petroleum products in Victorian waters.

Right from the outset it is important to say that offshore petroleum and gas exploration and extraction are subject to Victorian law if that activity is undertaken within 3 nautical miles of the shoreline, and beyond those 3 nautical miles that activity is governed by commonwealth legislation.

As I said, at present the exploration for gas and petroleum products is governed by the Petroleum (Submerged Lands) Act 1982 but with a greater possibility now of geosequestration — that is, the storage of gases, particularly those that may be captured as the by-product of the electricity generation process — there is also a great possibility that cavities within geological structures underground and those

offshore, potentially those that have been vacated with gas, petroleum or oil having been extracted from them, could be used for the storage of gas products. So it is that we have a new bill here that sets up a framework for the exploration for and the extraction of gas and oil and the potential geosequestration of gases within Victorian waters into the future. That is essentially what this bill is about.

We are told that this legislation is complementary to that already developed by the commonwealth government for the same sort of activities in commonwealth waters. I take the word of the government for that, not having the resources to check both the commonwealth and Victorian legislation. In a nutshell this bill establishes a system for greenhouse gas storage site exploration similar to offshore petroleum exploration and recovery, with broadly corresponding permits, visas and licences.

A permit will allow the holder to explore and identify possible locations for sequestering gases under the ocean. That probably, in one sentence, is a description of what the bill does. In its consideration of this bill the coalition identified a couple of issues that it wanted to raise in the course of the debate. One of those is the limitation on liability from the Victorian point of view, which is different from what we understand to be the commonwealth position.

We understand the commonwealth act provides that, 15 years after a greenhouse gas injection operation can be closed, all liabilities, including common-law liabilities, are transferred to the Crown. We also understand that is not the case with this piece of legislation — that is, if this activity is conducted in Victorian waters, then no such limitation applies. When the commonwealth legislation was developed there was no limitation on liabilities. It was only after a House of Representatives committee explored this matter that it was deemed important to introduce some limitation on liability.

We understand the Victorian legislation has no limitation on liability and the commonwealth legislation has a 15-year limitation on liability, hence we wonder why there is a difference. I am sure that somebody who made use of storing greenhouse gases in geological features would find a limited liability far more attractive than an unlimited liability. As I said, we struggle to understand, when these two pieces of legislation are essentially the same, why they are divergent in that respect.

The other issue I want to raise is essentially that of regulations. The legislation also provides for regulations for activities that are undertaken in this area. Those regulations are not available for the Parliament to consider. It would have been more helpful if those regulations had been developed, at least in part, so we could understand what those regulations are intended to look like. It would have been helpful for all to see them during the consideration and passage of the bill. Nevertheless, that is not of sufficient concern to stand in the way of this bill being passed tonight.

Those are some of the issues. I just want to make a couple of comments on the industry in a more general sense. As we all know, Victoria is very much reliant on brown coal for the production of electricity. More than 90 per cent of electricity produced in this state comes from brown coal. Of course there are other forms of generation, in particular gas, which is important to satisfy our peak needs. We also have some significant electricity production through hydro power and limited solar and wind production, and of course geothermal energy is in its infancy. There is some experimentation in other forms of renewable energies. One project which I know of and have been involved with in my electorate is electricity generation through tidal power.

Nevertheless, for the foreseeable future, Victoria will remain largely dependent on the utilisation of brown coal reserves to generate and meet its electricity needs. Consequently, it is important that further work be undertaken in developing clean coal technologies. All sectors of the industry recognise that and all governments recognise that, and significant effort is being put now into further developing some of those clean coal technologies.

Just part of that clean coal technology is the potential for carbon capture and storage. That has been around for a little while, and we have seen legislation about this in the past, and we have legislation relating to that before us today. We have been talking about geosequestration of those carbons captured during the process of electricity production and the potential to inject them, either in gaseous or liquid form, into geological crevices. Many of those would be offshore, and that is why we have this legislation before us tonight.

Geosequestration is neither a simple nor cheap process. My understanding is that the process of sequestering carbon underground is a power intensive and expensive operation. No doubt some of the research and development currently taking place will help us resolve some of those issues with respect to the power and cost required to do it, but there are other forms of sequestration of carbon products that we should not dismiss.

What is termed biosequestration offers a great deal of potential for utilising clean coal technology in the future. At a recent Gippsland major projects summit that I attended there was a presentation by a company called MBD Energy Ltd. Its representatives spoke about carbon capture, but instead of storing carbon underground they were looking to use the carbon that was captured essentially as a fuel source for the growing of an agricultural product — algae — and growing the algae to a point where the product of that growth could be harvested and utilised for a number of different things, not the least of them being the production of biodiesel and oils, the use of some of the fibre from that as meal options for perhaps the livestock industry and perhaps as fertilisers as well.

The whole concept of biosequestration is of taking CO_2, which we know is a plant food — it is required for plant growth — and using it to generate greater plant growth and further refining those plants to produce things like oils, food sources, perhaps even for human consumption as well as for animal consumption, and fertilisers.

I was most impressed by that project. When we look at these technologies which will become commonplace in the future, our horizons should not be limited at all. We should look towards what might seem inconceivable to some of us now, but which, with the appropriate research and development in the future, could become very important mechanisms for addressing some of the environmental issues associated with the use of the brown coal which is in such abundance in Victoria. I wanted to mention that because, although this bill is about geosequestration and carbon gas storage underground, we should also look at the bio-related storage of carbon, as described in my reference to the project I discussed earlier.

As I said, this is a very significant piece of legislation. Essentially it establishes a framework for the exploration for and extraction and storage of gas in underground storage areas located offshore. It is an important matter. There are a few issues associated with it, as I have mentioned, but overall we think this is an important plank in addressing the whole challenge of the problems we have in the use of brown coal reserves. It is consequently an important step forward. We are prepared to add our support to the bill this evening, notwithstanding some of the issues I have raised which are of concern from the coalition's point of view.

Mr BARBER (Northern Metropolitan) — This ain't the curiosity show, this ain't where we pull out our chemistry set and run a few little experiments on the table, and this is not where we get excited about just over the horizon, gee whiz technologies. This is where we deal with political and economic reality, and what this bill represents is techno-optimism breaking out into complete techno-arrogance.

We previously had a bill for the regulation of land-based carbon capture and storage (CCS). Now we have another one that deals with ocean-based storage, at least for the 3 miles between the coast and where Australia's waters become the commonwealth's responsibility. Admittedly it is estimated there are very few likely storage sites in that area, so perhaps the issues here are not as crucial as they were in the concurrent federal bill, but it still amazes me that we are getting this legislation, which does not regulate in any significant way the process of creating and maintaining for the long term, the indefinite term, these carbon landfills that the government is proposing to set up where it can bury away all its unwanted rubbish.

The federal bill, as Mr Hall noted, handed liability for the CO_2 back to the federal government at the end of 15 years. The Greens in the federal Parliament proposed a series of amendments to get rid of that liability and were unsuccessful. Here at least the state government is accepting the Greens logic as we put it forward in the federal Senate, in being unwilling to take on, at least in the 15-year timescale, the liability for carbon dioxide that has been pumped into the ground and that for all intents and purposes needs to stay there forever.

This bill is racing up the notice paper. We still have not seen the government's much-vaunted, long-promised comprehensive climate change bill which is going to set out the state of Victoria's regulatory framework and future direction for solving the climate change problem. We get bills like this and like the one to arrest protesters, ridding us of our responsibilities for renewable energy facilitation and handing that off to the federal government. We saw what a disaster that was. All those sorts of things seem to move along quite steadily, but we still do not know from the government what its overarching framework response to climate change is going to be.

In late 2008 the International Energy Agency (IEA) published a paper called *CO_2 Capture and Storage — A Key Carbon Abatement Option*. It states, in part:

> The regulatory framework necessary to support CCS projects also needs to be further developed. Despite important progress, especially in relation to international marine protection treaties, no country has yet developed the comprehensive, detailed legal and regulatory framework that is necessary effectively to govern the use of CCS.

If it was true then, it is probably true now that Australia may very well be one of the first places in the world that is developing a framework. I do not know whether the IEA would judge it as comprehensive and detailed. Compared to all the other environmental legislation I have seen, it does not look very comprehensive or detailed at all.

Very rarely does the legislation say what the minister must do. It does not seem to set minimum standards or require protections for the public, let alone the global atmosphere; it is more of a structure by which the minister can go ahead and hand out these licences willy-nilly. If anybody believes in carbon capture and storage (CCS) as a good future option, they need to make no mistake: there are going to need to be a lot of such facilities. By one estimate I saw, for CCS to make a real difference to our emissions — if we are to allow those emissions to continue growing — the world will need to open one of these new facilities every fortnight for a very long time to come. Clearly we are nowhere near there yet.

Whatever framework we might want to put around this, we keep coming back to the same problem — that is, who is going to bear the risk and bear it in the long term? Earlier tonight we debated a bill around the WorkCover legislation and fund. The Treasurer delivered to us a series of little potted lectures about economic responsibility and how we could not be too freewheeling with the way we offered benefits to workers because of importance at the end of the day was that the fund remained solvent.

With this proposal we are dealing with the ultimate in long-tailed risk profiles, making the probability of those future risks almost impossible to assess and thereby making it almost impossible to define the degree and costs — most importantly costs — of any necessary remedial activity. Therefore how do you monetise them? How do you decide who is going to pay? The government has said, 'We are not going to be responsible at year 15', but there is still that very live question as to how long an entity — necessarily a private entity — can remain in existence so that it can bear the liabilities?

Commentators are basically saying that at a certain point governments are going to have to assume the long-term liabilities, given that governments are the only organisational entities that are likely to be in existence over the sorts of timescales we are talking. We need to clarify the extent of this transfer and the exact circumstances when this transfer of responsibility occurs. For example the proposed European Union CCS framework envisages that the transfer of liabilities to individual member states will occur when:

> … all available evidence indicates that the stored CO_2 will be completely contained for the indefinite future.

Until such time we should never consider transferring those liabilities over to a government, but the longer time goes on, the harder and harder it is in practical reality to keep those liabilities with the guy who paid to stick the CO_2 down there in the first place. You only need to think of this in simple terms. If 50 years from now a tonne of CO_2 in the atmosphere is going to cost $100, then a million tonnes of CO_2 down there under the earth is a $100 million liability should it ever escape. If any futurists around the chamber tonight think this is a great idea, think it is going to be widespread and think it will solve our problems, then what they are really saying is, 'The liabilities will just keep piling up and up', but we are talking about geological considerations on geological timescales. Governments around the world are grappling with these problems, and they are not getting any answers. Australia is leaping ahead, but the framework I see here is nothing to give me any real confidence.

The industry's hope for carbon capture and storage has come from a project that is currently burying carbon in the North Sea, in what is called the Sleipner gas field, and it is far more progressed than almost any other project around the world. In Australia we have a pilot project in a depleted gas field in the Otway Basin, which is out west of Warrnambool.

Mr Koch — It is east of Warrnambool.

Mr BARBER — Thank you, Mr Koch; east of Warrnambool. Some 65 000 tonnes have been injected into the ground so far, and the whole project has cost about $40 million. That comes to about $611 a tonne so far. People are going to say, 'Ha ha! It was only a pilot project; what do you expect?'. Yes, it was. However, I point out that when we start injecting CO_2 — if it comes to pass — we will be using the best, the most easily available and the most likely looking fuels first. If members think this is something we will be doing forever, they should consider the fact that as time goes on we will be moving towards using more remote, more difficult, less certain, more risky and more costly underground containers. Members should just think about that while they are considering going down this path.

In the departmental briefing on the legislation the government told us that while it is not adopting the federal government's Mr Vegas-style bet on taking on liabilities after 15 years, it is the common law that will

deal with the allocation of risks from hereon in. When the house has finished the second-reading debate and moved into the committee stage, we will go to clause 1 of the bill and ask the minister to confirm that there is no provision in the bill for the transfer of risk from the injector back to the state government. We will ask for an explanation about the common-law framework on which the government will be relying to protect the Victorian community and the global community from the as yet unknown and untested risks associated with this scheme.

Ms HUPPERT (Southern Metropolitan) — I am pleased to rise to make a contribution in support of the Offshore Petroleum and Greenhouse Gas Storage Bill 2010. As I am sure you, Acting Speaker, will be pleased to hear, considering the time of day, it will be a brief contribution. I thank Mr Hall, who has kindly covered a number of the main issues that are dealt with by the legislation.

I point out that the bill replaces the Petroleum (Submerged Lands) Act 1982, provides for the regulation of petroleum operations in the Victorian offshore area and regulates the geological storage of carbon dioxide and other prescribed greenhouse gases in offshore Victoria.

As I am sure all members are aware, 95 per cent of Victoria's energy is generated by brown coal. While it is a relatively low-cost method of power production, it produces more than half Victoria's greenhouse gas emissions. The Brumby Labor government is committed to the reduction of those greenhouse gas emissions over time. One method identified as a potential means of reducing greenhouse gas emissions by bodies such as the Intergovernmental Panel on Climate Change is carbon capture and storage, which involves capturing carbon dioxide emissions and storing them safely and securely underground.

This bill, which deals with offshore storage, is broadly consistent with the Greenhouse Gas Geological Sequestration Act 2008, which deals with onshore sequestration.

As members would be aware, in November 2008 the commonwealth government passed legislation that provides for a regime for regulating the underground storage of greenhouse gases in deep seabed formations within the commonwealth offshore jurisdiction. The changes brought about by this bill substantially mirror the commonwealth legislation.

Mr Hall and Mr Barber both referred to the differences between this bill and the commonwealth legislation. In particular Mr Hall asked for clarification on why the bill does not transfer liability to the government after 15 years, as the commonwealth legislation does. Perhaps I can explain this for members of the opposition. The reason is that the government is seeking to better protect hardworking Victorians instead of big business, which would benefit from such a transfer of liability. The bill mirrors the treatment of liability in the onshore act to which I previously referred. It means that the Victorian public will not take on liability for a company's negligence. This will be an advantage for the state's economic situation.

In summary, the bill provides an efficient and credible regime for the assessment, approval and operation of carbon capture and storage, which is a necessary precondition for encouraging and sustaining investment in this possible new means of limiting carbon emissions. I commend the bill to the house.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Mr BARBER (Northern Metropolitan) — In the briefing it was stated that there is no transfer of liability from the operators of an injection facility to the government. As far as I can see, the bill is basically silent on any transfer of liability. Can the minister confirm that means no liability is being transferred in a statutory sense and therefore by omission, we fall back on the common law as the source of any future liability?

Hon. M. P. PAKULA (Minister for Public Transport) — Yes, I confirm that. As Mr Barber correctly points out, the bill does not provide for the transfer of liability to the state. In those circumstances liability remains with the operator, and the extent of any liability in any future action will be determined by the common law.

Mr BARBER (Northern Metropolitan) — I am interested in exactly what aspects of the common law are likely to be brought to bear on a facility that is, for want of a better word, failing. Common law arose over a very long time. This is a brand-new piece of technology. I am sure there is no specific case law around this. Can the minister tell me what aspects of common law the government believes are likely to be brought to bear should things go wrong?

Hon. M. P. PAKULA (Minister for Public Transport) — It is difficult to answer to the extent Mr Barber is asking me to predict the future. The common law, as Mr Barber rightly points out, is judge-made law, it is case law, it evolves over time, but as an example, one aspect of the common law that one might imagine potentially being relied on by someone in the future may be, for instance, the law of negligence.

The law of negligence would be, as one understands it, that certain things need to be established by a litigant in a negligence action. The litigant needs to demonstrate proof of negligence and all the various elements that have been built up by case law and the common law over a period of many years. Beyond that it would be a case of imagining what circumstances might give rise to an action in the future.

Mr BARBER (Northern Metropolitan) — That is, in fact, the exact thing I am trying to imagine. Let us imagine we have got a geosequestration deposit 2 kilometres offshore from the coast, it is leaking slowly, CO_2 is bubbling up through the water and landing out in the atmosphere. I cannot imagine whether or not that is likely to become a liability for Australia, the country, in the sense that it now has a CO_2 reduction goal that it is not meeting. Is the minister suggesting that the Australian government would then become the litigant against these operators?

Hon. M. P. PAKULA (Minister for Public Transport) — I do not know. Would the Australian government 15 years from now launch an action against the operators? It might sound trite, but you would have to ask that government. It is impossible for me to predict who a litigant might be. It might be the Australian government or it could potentially be a private citizen, and the cause of action could be negligence or it could be otherwise. The common law is well established. There is case law in a range of torts, and some or all of them could potentially be the basis of a cause of action in the future, but to ask me to predict who an individual litigant might be and what their cause of action might be is asking me to crystal ball gaze to an extent that I am not comfortable to do.

Mr BARBER (Northern Metropolitan) — I feel exactly the same way, and that is why I am completely uncomfortable about this bill. We are in an interesting circumstance here where we are passing a piece of state legislation, and the power to regulate under this piece of legislation is given to a federal regulatory body. It may just be me, but that sounds like a novel constitutional approach. Clearly though, a state government is not going to have the interest in suing a bad operator, because a state government does not really have an interest in CO_2 emissions. A federal government does; a global player does. We do not have a well-established global common law in relation to this sort of atmospheric pollution. We do have some cross-border international law. It would be more normal for a jurisdiction such as a state or federal government to regulate its risks away.

We do not have that here. We have some federal regulations that we are waiting on. We have a bill that empowers a state minister to plug or close off to the satisfaction of that minister the wells that are vacated, to restore the area to the satisfaction of the minister and to make good any damage to the seabed to the satisfaction of the minister. We do not really have a regulatory regime here. We are waiting on some commonwealth regulations that a commonwealth body will enforce on our behalf, and at best a state or federal government may try to use common law to sue somebody somewhere down the track. Governments get involved when there is a public interest; they get involved in all sorts of things: food standards, road standards, vehicle standards, health standards.

Ms Pennicuik interjected.

Mr BARBER — And occupational health and safety, which is a favourite topic of Ms Pennicuik's. Governments get involved because they believe there is a public interest at stake, but what we are doing here is getting involved simply to create something that may be a problem, and then we will rely on suing them if it turns out to be a problem. It almost turns the logic of public interest on its head.

This technology is going to be so expensive that you would need a carbon dioxide price somewhere around $100 before this stuff even starts to get viable, and that is on existing technologies. I believe the entire bill and the technology are pie in the sky as we stand here. It concerns me that if we are going to be passing laws, the laws should actually regulate something.

I have no further questions or matters that I want to debate. I thank the minister and the Chair for their assistance.

Clause agreed to; clauses 2 to 800 agreed to; schedules 1 to 6 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

That the bill be now read a third time.

I thank all members for their contributions to the debate.

Motion agreed to.

Read third time.

BUSINESS OF THE HOUSE

Adjournment

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

That the Council, at its rising, adjourn until Tuesday, 23 March 2010.

Motion agreed to.

ADJOURNMENT

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

That the house do now adjourn.

Mr Finn — On a point of order, Deputy President, I seek perhaps not from yourself but from the President a ruling with regard to a matter that has come to my attention today. I would like to know what recourse members have if they have responses from ministers to matters that have been raised in the adjournment and those responses are demonstrably wrong.

I refer particularly to a response I received today to a matter I raised on 26 November last year. It is a response from the Minister for Planning, Justin Madden, who tells me the proposal and the questions I raised are:

… currently under assessment and my decision will take into account the comments of Brimbank council.

That is a quote from the minister's response to me. But on 22 December last year, just before Christmas, he put out a press release which states:

Planning minister Justin Madden has approved the housing development …

We are talking about a social housing development in Dickson Street, Sunshine. We have a situation where the minister is today telling me in response to an adjournment matter that the matter is under his consideration when in fact three days before Christmas last year he issued a press release telling the world, presumably, that he had approved the housing development.

I wonder, Deputy President, what recourse we as members have in that situation.

The DEPUTY PRESIDENT — Order! I thank Mr Finn. As with questions without notice in this house, he would appreciate that the Chair is not in a position to direct a minister on how he ought to respond to matters that are brought before him by way of the adjournment. In other words, we are not in a position to direct or in fact to modify or request a minister to revisit an answer to a matter raised on the adjournment. All the facilities as a member of Parliament are available to him to prosecute an issue where he believes that he has not received a satisfactory answer. I am sure that ministers bear that in mind when they provide answers to members of Parliament.

As I said, the Chair is not in a position to actually provide any direct recourse to the member in the context of a minister responding, in his view, unsatisfactorily to an adjournment debate.

Lockwood Primary School: land purchase

Ms LOVELL (Northern Victoria) — The matter I wish to raise is for the attention of the Minister for Education and regards Lockwood Primary School and the purchase of adjoining land. For over a year Lockwood Primary School has been engaged in tedious negotiations with the Department of Education and Early Childhood Development over the purchase of a piece of land that adjoins the school. Unfortunately negotiations remain unresolved. My request of the minister is to finally assist Lockwood Primary School with funding to allow for the purchase of church land which adjoins the schoolgrounds.

Due to a considerable portion of Lockwood Primary School's current land being taken up by a large, fenced-off dam, the area available for students to play in has always been limited. Some years ago an agreement was made with the adjoining Anglican Church to lease its land to supplement the school's play area, and a large playground was constructed on the church land. The school has been approved for a new multipurpose classroom as part of the Rudd government's Building the Education Revolution, and this will further erode the school's limited play area. Enrolments this year are

the highest they have been since the school started, so the school needs this land now more than ever.

The land had previously been leased by the department of education for the school, but due to the owner's urgent need to sell and the department's unwillingness to cooperate, the school council was forced to engage a benefactor who purchased the land from the church as an interim solution. Unfortunately the school's acquisition of the land from the benefactor has floundered due to the minister's failure to assist the school with funds.

If the church land had been purchased by another party, the education department would have been liable for about $30 000 worth of works to relocate the school's playground and fence off the area. Despite this, the department has refused to take responsibility for any costs associated with the purchase of this land. This is incredible, given the department previously leased the land from its original owner.

The member for Bendigo West, the Minister for Police and Emergency Services, has known about this issue since November 2008, yet he has refused to lobby his colleague for funding to help the school purchase this land. Mr Cameron does not listen and does not care about providing important play space for Lockwood Primary School students. My request of the minister is that she finally assist Lockwood Primary School with funding to allow for the purchase of church land which adjoins the schoolgrounds

Rail: station information

Mr BARBER (Northern Metropolitan) — My local railway station is Brunswick station, where there are a whole bunch of those perspex noticeboards; there are probably five or six of about A1 size. When I went down there the other day all the material that was on those noticeboards had been taken away, and signs had been put up saying, 'Myki is coming', 'Myki is here', 'This is how to use your myki card', blah, blah, blah. One of things that was taken off the boards was the train timetable. A map of the network, which I am familiar with, had also been removed.

I and, I am sure, a lot of other people regularly refer to the timetable. I would like what I think everyone should have available on every railway station — that is, a copy of the timetable for that railway station.

This may seem like a trivial matter, but I suspect if the minister gets into the reasons as to how this happened — why it happened, who in particular has responsibility for these perspex boards versus who thinks they have, who is really responsible for the provision of information to citizens and why in this case there does not seem to have been any rationale for reducing information — I think he may discover in that tiny little instance some of the broader issues that are plaguing the minister's particular group of services.

Police: Geelong

Mr KOCH (Western Victoria) — My issue is for the Premier and relates to the level of dissatisfaction among Geelong residents with state-administered services under successive Labor governments over the last decade. The *Geelong Advertiser* surveyed readers concerning issues in their communities, with more than 1400 people responding. A staggering 85 per cent of people believed that Geelong is less safe now than it was five years ago. Almost 80 per cent of respondents believed that, despite their best efforts, our police force is losing the war against crime. Over 60 per cent said they had reported a crime to police. Almost 90 per cent of the community believed that police need more officers to fight crime.

For over 10 years Labor has ignored the Geelong community's pleas to properly resource police in this region. The staffing issues at Geelong, Corio, Surf Coast and Bellarine police stations have been well documented through local media and in the Parliament over recent years. That the government has been reluctant to increase the number of police patrolling the streets, despite its full knowledge of the rising rates of crime, is alarming. The state government has been soft on crime, particularly violent crime, and this is reflected in responses collated by the *Geelong Advertiser*.

Not surprisingly, 93 per cent of respondents said the sentences imposed by Victorian courts do not reflect the crime. In many cases this involved the inappropriate use of suspended sentences. The Surf Coast and Bellarine Peninsula are amongst the fastest growing regions in the state. A new suburb, Armstrong Creek, will attract more people to the region.

Transport links to Melbourne remain an important issue. The unreliability of trains between Geelong and Melbourne is not acceptable to commuters. Growing suburbs and new residential developments will continue to strain transport infrastructure that has been neglected for far too long. According to the survey, over 65 per cent of the community believes that V/Line services to Melbourne have not improved over the last five years and almost 40 per cent rated the service as poor. As qualified by V/Line's own statistics, this is a blight on the state government, which has failed to improve transport links between Geelong and Melbourne.

Parking at train stations, including Marshall, South Geelong, Geelong and North Geelong, remains an ongoing issue that this government refuses to acknowledge or correct. The government's lacklustre attitude to public transport between Geelong and Melbourne is reflected in two-thirds of those surveyed saying they were more likely to use public transport if the service was improved and timely.

My request is for the Premier to recognise these genuine community concerns as well as the facts that support them and assure the Geelong community that these situations will be corrected immediately — something that his ministers have thus far been unwilling or unable to achieve.

Hon. M. P. Pakula — On a point of order, Deputy President, I let Mr Koch go on, but the President has made rulings about the nature of the adjournment debate on a number of occasions. The adjournment debate is an opportunity to direct a matter to a minister, to outline an issue and to seek an action. I put it you and I seek your guidance, Deputy President, that to simply ask the Premier to address concerns is not seeking an action within the confines of the adjournment.

The DEPUTY PRESIDENT — Order! Could Mr Koch repeat the action as he saw it?

Mr KOCH — My request is for the Premier to recognise these genuine community concerns as well as the facts that support them and assure the Geelong community that these situations will be corrected immediately — something that his ministers have thus far been unwilling or unable to achieve.

The DEPUTY PRESIDENT — Order! I have some concerns about that action. I will give Mr Koch an opportunity to rephrase the action, to seek something specific from the Premier. Perhaps he could pick up the issues from earlier on in his comments and specifically ask the Premier to address one of those rather than to have him recognise an issue. There was some posturing as distinct from an action in there; I think it is important for Mr Koch to become a bit more specific; I will give him a chance to rephrase his request.

Mr KOCH — A very small preamble: this is in relation to a survey in Geelong across many issues. I am very happy to raise the matter for either the Minister for Public Transport — —

Honourable members interjecting.

The DEPUTY PRESIDENT — Order! I would want his request to continue to be directed to the Premier, given that that was how it was phrased originally.

Mr KOCH — My request is for the Premier to recognise the genuine community concerns as well as the facts supporting them. I ask that the issue of rail services between Geelong and Melbourne be brought to the attention of the Minister for Public Transport.

The DEPUTY PRESIDENT — Order! I ask the member to supply me with a copy of his notes, and I will make a decision when I have read them.

Racing: government initiatives

Ms TIERNEY (Western Victoria) — My adjournment matter is for the Minister for Racing. It relates to the safety of horses and jockeys whilst racing and training. On 26 February the minister issued a media release, and I was pleased to learn that new plastic running rails will be installed at the track used by the Hamilton Racing Club. The plastic rails replace the current aluminium rails, and they elevate, spring and bend when they are contacted, significantly increasing the safety for horses and jockeys. They were invented by a Melbourne plumber and they are manufactured in Victoria, creating jobs in addition to improving safety standards at our racing tracks.

The Hamilton Racing Club is a very important facility in country Victoria. It is important to the regional economy, particularly in western Victoria. There are 10 TAB meetings held at the course each year, with an excellent primary event, the Hamilton Cup, held in April each year.

The Brumby Labor government recognises the importance of horse racing and horse racing facilities in Hamilton and regional Victoria, with the minister officially reopening the upgraded harness racing track in Hamilton last month. Over $1 million was spent on upgrading the track surface and on other race day amenities to increase safety and facilities for all participants — jockeys, horses, trainers and spectators alike.

My request is that the minister extend the installation of plastic running rails to other racing tracks in western Victoria. This is an excellent initiative which again sets standards for horse racing safety around the world.

Kindergartens: federal policy

Mr VOGELS (Western Victoria) — Before I raise my adjournment matter I want to state that yesterday during the debate on the motion of no confidence in the Minister for Planning I was the subject of fierce

interjections from members of the government and I commented that I thought Mr Viney had had too many drinks. I want to apologise for that remark.

Hon. M. P. Pakula — Can Mr Vogels indicate which minister his adjournment matter is directed to?

The DEPUTY PRESIDENT — Order! I am sure he is coming to that.

Mr VOGELS — I just want to apologise to Mr Viney because I should not have said that. I withdraw that comment I made yesterday.

I raise an issue for the Minister for Children and Early Childhood Development, Maxine Morand. It concerns the federal government's policy that by 2013 all four-year-olds must have access to 15 hours of kindergarten programs per week. It is my understanding that four-year-olds are presently being provided with 10 hours per week.

When I was in Mildura recently council officers expressed the opinion that this directive would lead to the closure of kindergartens for three-year-olds because the council did not have the infrastructure in place to provide the extra 5 hours per week for four-year-olds while continuing the program for three-year-olds. Since then the Northern Grampians Shire Council has found itself facing the same quandary, as no doubt will most other councils across the state. I have no doubt that other providers such as church and community groups as well as private entities will be faced with the same problem.

Three-year-old kindergartens are very popular with parents, and it would be a great pity if they were to close. The action I seek from the minister is that she ensure that the state government accepts some responsibility for the added cost which will accrue to providers because of this federal government directive. It is important that our kindergartens continue the great work they do. Early childhood development sets up a child's life and is important for educational opportunities going forward.

Francis Street and Somerville Road, Yarraville: truck curfew

Ms HARTLAND (Western Metropolitan) — My adjournment matter tonight is for the Minister for Roads and Ports. I refer the minister to media coverage over the last week regarding the height-activated cameras that were supposed to catch truck drivers breaking the night-time and weekend truck curfews on Francis Street in Yarraville.

A VicRoads internal office memo obtained under freedom of information by the Maribyrnong Truck Action Group shows that curfew cameras along Francis Street, Yarraville, could not be relied on in 2007 to prosecute offending trucks because they could not clearly identify numberplates. VicRoads was also unable to locate documents detailing camera faults between January 2007 and December 2009. As a result, in the three years of the camera operations only two fines have ever been issued — to the same truck driver on the same day.

I clearly remember when those cameras were installed at a cost of $300 000. The government proclaimed them to be the answer to the ongoing problems of trucks flouting the curfews. There was considerable scepticism from the community as to whether they would be effective, and that was completely warranted scepticism as it has turned out. Mr Pakula, then the Parliamentary Secretary for Transport, loudly proclaimed in a media release in March 2007 that the cameras had encouraged transport operators to observe the truck curfew along Francis Street on weeknights and weekends. This is clearly not the case.

Enforcement of the truck curfews is as big a problem as ever. When the curfews were introduced in March 2002 there was an immediate drop in truck numbers to only 60 per cent of pre-curfew levels but the numbers have continued to rise since then. Truck numbers are now only 16 per cent less than they were in 2002. What the community wanted in 2002 and 2007 and wants now is the same residential streets free from trucks, free from diesel pollution and free from noise and vibrations.

The only solution to the problems associated with trucks on residential streets in Yarraville is to remove the trucks. The planned on and off ramps from the West Gate Freeway to Hyde Street, Yarraville, will allow this to occur. I understand the business case for these ramps has been given to government. I support the installation of these ramps as long as the alignment chosen for them has minimal impact on the nearby Stony Creek reserve. The action I ask of the minister is to acknowledge that the cameras are not functional and to commit to funding the on and off ramps in this year's budget regardless of whether federal funding is available for them.

Keilor Cemetery Trust: investment

Mrs PEULICH (South Eastern Metropolitan) — I wish to raise a matter for the attention of the Minister for Local Government. My pet topic in my relentless focus on having this important sector cleared of the culture of bullying and intimidation forced the minister to provide proper oversight to ensure that the operations

of local government are accessible, transparent and working in the interests of the community.

This is some fallout from the involvement of a particular committee of the Brimbank council, which has now been dismissed. It has to do with the former Keilor Cemetery Trust, the trustees having been mostly councillors of the City of Brimbank. I understand that the Keilor Cemetery Trust has subsequently been amalgamated into the new Greater Metropolitan Cemeteries Trust.

I understand that at the time I am referring to one of the trustees and the chairman of the Keilor Cemetery Trust was Cr Stuart Miller. The investment of the substantial trust money of $1 million, which had come to the end of its investment life, was the responsibility of the manager. When it was time to reinvest and appropriate tenders were sought to decide how to best reinvest that money, the advice of the manager was to reinvest it in the Bank of Cyprus, which offered the best accessibility to funds at the best return.

I understand that at the June-July 2009 meeting of the cemetery trust the responsible manager produced a letter recommending the reinvestment with the Bank of Cyprus. Subsequently the letter was taken home for perusal by the chairman, Cr Stuart Miller. At the next meeting of the trust Cr Miller overturned the manager's recommendation and directed the manager to invest the money in one of the four big banks — in this instance, the Commonwealth Bank of Australia, in particular the Keilor Village branch. What was not known to the trustees at the time, of course, was that a key person in this transaction was the chairman's wife, who was actually an employee at that branch of the bank. I understand that as a result of that investment of money with the Commonwealth Bank and her bringing to the bank a substantial account of more than $1 million in value the wife of Cr Stuart Miller, Virginia Tachos, was rewarded with a promotion, initially to the Deer Park branch of the Commonwealth Bank and then subsequently to a larger and more senior position at the Moonee Ponds branch.

What I am asking the minister to do is instigate the appropriate investigation to establish the accuracy of this and what action can be taken to deal with this most serious conflict of interest, which has not been dealt with, and to take the appropriate action to make sure that a very loud signal is sent to every single councillor that their responsibilities are to the ratepayers they represent, not their own personal interests, as appears to have been the case in this instance.

Public transport: myki ticketing system

Mr FINN (Western Metropolitan) — I wish to raise a matter for the attention of the Minister for Public Transport, and I am delighted to see that he is the minister on duty this evening. He may remember that some weeks ago I raised in this house the matter of a young lady, Sarah, who had approached me having placed $10 on her myki card as something of an experiment, I suppose; I am assuming we are very much into the experimental stage of myki. The myki card ate her $10 and when she went to use it she was informed that there was no money at all on her card. She was obviously somewhat distressed to discover that the $10 she had previously placed on the card was just not there at all. She contacted myki, quite understandably, after contacting me and received the following response:

> Thank you for contacting myki.
>
> As per your conversation with the resolutions manager on 10.02.10, your $10 has been reimbursed to your myki as myki money.

I am not going to speculate on what the exchange rate might be on myki money, but she has got her $10 back at least. This next bit is a killer:

> Should you now require a refund, the attached refund and reimbursement form will need to be completed and returned with your myki. Please note, an administration fee of $9.80 will apply.

A $9.80 administration fee for a $10 refund! The email concludes:

> If you need further information, please visit myki.com.au or call 13 6954 (13 myki).
>
> myki — it's your key.

That is the slogan at the end of the letter. I wonder how much that little slogan cost.

> Regards
>
> myki customer care team

In anybody's language this is a blatant rip-off. I ask the minister to perhaps counsel those who are in control of myki, if indeed anybody is in control of myki just at the minute, and to ensure that refunds such as the one that Sarah is seeking for her $10 that disappeared be provided without outrageous fees and charges such as the one I have described. To charge a $9.80 administration fee for a $10 refund surely beats even the banks. It is a disgrace; it is something that we should not tolerate in this Parliament or in this state.

Mr D. Davis — A 25-cent phone call would take care of it.

Mr FINN — Indeed you could not even afford the phone call: 20 cents does not get you far these days. I ask the minister to take action that will fix this problem forever.

Bushfires: fuel reduction

Mr P. DAVIS (Eastern Victoria) — I raise a matter for the attention of the Minister for Environment and Climate Change about a complaint I have received from the Mitchell group of fire brigades in East Gippsland about a departmental decision to reduce the area of fuel reduction burning in the region under the fire operations plan for the period from 2009–10 to 2011–12. At a recent meeting of the Mitchell group members observed that the Department of Sustainability and Environment had last year shown it maps that designated a large area of planned burning in East Gippsland.

However, the Mitchell group has now been advised that there has been a substantial reduction in the burning plan for the region. When the question was raised, the group was told funding for the program has been redirected to the Melbourne urban interface areas.

It would seem the focus has shifted from traditional fire-prone areas in East Gippsland to areas closer to Melbourne and areas that have received much publicity in the past year. The group believes the department should actually increase fuel reduction burning in East Gippsland to cover a larger area than was set out in the original operations plan.

My own investigations show the department plans to conduct burns over 32 968 hectares under the fire operations plan for the Bairnsdale region in the current period to 2012. However, a perusal of the department's amendments to the Bairnsdale plan reveal that this is a reduction in the original burning program by some 10 370 hectares, or almost 30 per cent.

This about-turn underlines the government's lack of commitment to fuel reduction burning, as indicated in its indifferent response to the threefold increase in prescribed burning recommended in the Environment and Natural Resources Committee's report on bushfires last year.

The government's response — that it would support the recommendation in principle — shows clearly it intends to treat the recommendation only with contempt. That goes against not only the committee's considered view but the position that a range of experts have put to the bushfires royal commission. Various scientific experts have put cases to the commission that prescribed burning should be increased by anywhere from three to five times.

I therefore ask the minister to act to review and revise the planned burn targets for the whole of East Gippsland, including Bairnsdale, the Orbost and Swifts Creek operation areas, and the Heyfield operation area in light of the view of local fire brigades that a substantial increase is warranted.

City of Casey: councillor

Mr DALLA-RIVA (Eastern Metropolitan) — My adjournment matter tonight is for the Premier. It relates to the Ombudsman's report tabled today entitled *Whistleblowers Protection Act 2001 — Investigation into the Disclosure of Information by a Councillor of the City of Casey*. This particular councillor has been identified in the report that was tabled today — his name is Cr Kevin Bradford. He is a former long-term staffer of the Premier's parliamentary secretary Luke Donnellan, the member for Narre Warren North in the Assembly. Cr Bradford has been investigated by the Victorian Ombudsman. He was found to have leaked confidential information about a media deal for a major tourism event in the city of Casey.

From reading the report I understand the Ombudsman has found that Cr Bradford breached the Local Government Act and the City of Casey's code of conduct by disclosing confidential details to help a rival bidder's attempts to win the sponsorship rights to the Motorcycle Riders Association Cranbourne GP Run. In his report the Ombudsman cites an email sent by the unsuccessful bidder minutes after the contract was lost:

> Our man's just come back to us. Says we've gone in too high … at this stage we've lost out …
>
> He says a bid of $1400 may save it.
>
> I don't think our man saw the vote including the input of three officers …

This was an email sent by Peter Straughan, the editor of the *Leader* newspaper in that region.

The Ombudsman's report also found that Cr Bradford made several inappropriate attempts to obtain sensitive information and pushed successfully to get on the tender selection panel.

The government only last year increased the penalty for a serious breach of conduct in the relevant act to $60 000 or five years imprisonment. Jail terms now disqualify councillors from their duties. This is the

second time Cr Bradford has been investigated for improper behaviour.

I am worried there may be a concern amongst the councillors of ongoing bullying and intimidation coming from the person who was identified in the report. My request is for the Premier to sack Kevin Bradford from the Casey City Council for corrupt activities. First he broke the law by inappropriately disclosing council information. Then he lied to the Victorian Ombudsman in an attempt to cover his tracks. He must go, and the Premier must act to remove him immediately.

The DEPUTY PRESIDENT — Order! I direct the minister not to answer Mr Dalla-Riva's matter because I do not believe the office of Premier has any power to directly sack a local government councillor. There are other processes which the Ombudsman's report and recommendations might address.

Had the matter been directed to the Minister for Local Government, the member might have had some more sympathy from the Chair, but it is not appropriate for the Premier to intervene in this matter; it is not within his purview. I direct the minister not to address that matter.

Mrs Peulich — On a point of order, Deputy President, I respect your ruling; however, I would like to point out that numerous concerns have been raised in this chamber in various debates about a lack of action on the part of the Minister for Local Government, who is appointed by the Premier. I suggest to you, Deputy President, that the lack of action on the part of the Minister for Local Government needs to be overseen by the Premier. I believe Mr Dalla-Riva went precisely to the heart of this matter.

The DEPUTY PRESIDENT — Order! Had the action requested been to in some way have the Premier intervene with the Minister for Local Government about his performance, I might have had more sympathy for the item. The action sought was that the Premier sack a councillor in local government. There is no process available to the Premier to do that. There are other processes addressing what Mr Dalla-Riva, and indeed the Ombudsman, might see as shortcomings of a particular individual, and they might well have been addressed. I do not accept that the Premier is the appropriate person to have that matter addressed to, so the ruling stands.

Arbuthnot Sawmills: red gum supply

Mr DRUM (Northern Victoria) — My adjournment matter is for the Minister for Environment and Climate Change, Gavin Jennings. It has to do with a letter the minister received on 24 February, which he is yet to respond to. It is an urgent matter in relation to the Arbuthnot Sawmills based out of Koondrook, which is supplying the port of Echuca with new red gum timber for the development of its wharf.

With 17 stages outlined for the building of the wharf, 3 of the 17 sections have been completed. The sawmill is currently milling timber for a further 5 sections, which will be enough to cover the existing order placed by the Shire of Campaspe. New funding has become available from government to complete the next stage of the wharf and the Shire of Campaspe has contracted Arbuthnot Sawmills to supply the remaining 9 sections of the wharf. The shire has now requested Arbuthnot to give time lines as to when it might expect to have the timber available for the works to be completed.

However, recent changes in the Riverina red gum area led to a Victorian Environmental Assessment Council inquiry in effect taking away up to 90 per cent of the timber which was previously available to Arbuthnot, for selective harvesting. The sawmill simply does not have the capacity to provide such a huge amount of red gum timber at the one time. Under the heritage status of the wharf all the replacement timber must be the same species as the original wharf, which of course is red gum. Due to the recommendations of the National Research Council report in New South Wales, and also the pressure applied from the National Parks Association of New South Wales across the river, Arbuthnot has had diminished access to suitable quality logs in New South Wales. The situation is creating great pressure on the sawmill to provide the timber that it needs for the job.

The whole upgrade of the wharf will be placed in jeopardy unless the minister is able to intervene. In light of the iconic heritage structure of the wharf, he needs to make an exception to enable Arbuthnot Sawmills to go back into the Gunbower and Barmah national parks to take advantage of some ecological thinnings, which will give it the ability to provide the necessary red gum logs so that the iconic wharf at Echuca can be completed. My request is that the minister respond to the letter in his possession, and give Arbuthnot Sawmills an opportunity to provide the necessary timber.

Mr Dalla-Riva — Further to the point of order, Deputy Speaker, in reference to your previous ruling, I

want to clarify exactly why I asked the Premier for a response to my adjournment matter. It was purely on the basis that I do not believe in the circumstances of the case reported and tabled in Parliament today. Concerns have been raised with me by certain councillors about the intimidation and bullying. I am of the view that the Minister for Local Government would not have the capacity to deal with the concern so I raised it specifically for the attention of the Premier. While I respect your ruling that there are laws that are appropriate to the Minister for Local Government, the Premier specifically has the overarching rule of the government.

As you would know, Deputy President, in the other place questions are asked of the Premier on all portfolios. He is not immune from particular areas of responsibility. I do not have any faith in the local government minister, and I think the matter is appropriately directed at the Premier.

The DEPUTY PRESIDENT — Order! I have been in the chair for a fair while today and I guess I am at a stage where I am fairly benevolent, but I am not that benevolent. The reality is that had Mr Dalla-Riva sought to redirect his matter to the Minister for Local Government, I would have asked the minister to respond. But on this occasion the member sought to debate the ruling rather than to raise a point of order. He might not have confidence in the Minister for Local Government discharging his duties; nevertheless the item he raised was not within the jurisdiction of the Premier, and my ruling stands.

I advise Mr Koch that I have had a look at the item he raised on the adjournment. Mr Koch has given me an opportunity to consider some alternative words that he would suggest as an action, and I am prepared to admit those alternative words.

Police: Geelong

Mr KOCH (Western Victoria) — Thank you, Deputy President, for your consideration.

My request is for the Premier to recognise the shortfalls in policing in the Geelong district and to make more resources available for policing to service a community that continues to suffer increased crime and violence, as Minister Cameron has failed to achieve the community security anticipated.

Mr Finn — On a point of order, Deputy President, given the extremely serious nature of and potential effects if action is not taken on the matter raised by Mr Dalla-Riva, and acknowledging the very benevolent nature of your good self, might it be appropriate that Mr Dalla-Riva be given the opportunity to redirect that matter at this point in time?

The DEPUTY PRESIDENT — Order! I conveyed that suggestion to him by carrier pigeon, Mr Finn, but the opportunity was not taken.

Responses

Hon. M. P. PAKULA (Minister for Public Transport) — The first matter tonight was raised by Ms Lovell and was for the Minister for Education. She sought funding for the purchase of land adjoining the Lockwood Primary School. I will convey that matter to the Minister for Education.

The second matter was raised by Mr Barber for me. It was in regard to the content of the perspex noticeboards at Brunswick station. I will undertake to Mr Barber to look into that matter myself.

Mr Barber interjected.

Hon. M. P. PAKULA — I might even go further than that, Mr Barber; I might seek to have the material that you think should be there returned, if it has indeed disappeared.

Mr Koch raised a matter for the Premier in regard to increased police resources in Geelong. I will convey that matter to the Premier.

Ms Tierney raised a matter for the Minister for Racing in regard to the installation of plastic running rails at racecourses in the Western District in addition to the Hamilton racecourse, where they have already been installed. I will convey that matter to the Minister for Racing.

Mr Vogels raised a matter for the Minister for Early Childhood Development seeking that the state government accept some funding responsibility for the additional cost associated with the federal directive with regard to 15 hours of kindergarten for four-year-olds by 2013. As the parent of a child who did three-year-old kinder last year and is doing four-year-old kinder this year, I am also keen and interested in that matter and I will convey that matter to Minister Morand.

Ms Hartland raised a matter for the Minister for Roads and Ports with regard to the truck action plan and the construction of on and off ramps on the West Gate Bridge and asked that the minister commit funding for that in this year's budget. I will convey that to the Minister for Roads and Ports.

Mrs Peulich raised a matter for the Minister for Local Government seeking an investigation into the actions of the chairperson of the Keilor Cemetery Trust with regard to the placing of certain moneys in a Commonwealth Bank bank account. I will convey that matter to the Minister for Local Government.

Mr Finn raised a matter for me, and he is a cheeky boy. I have read this email, and I will make this offer to Mr Finn. If he provides me with the full name of this constituent or the email trail, I will look into the matter personally. It appears to me from this email that the refund and the reimbursement are two different matters. In other words, the $9.80 administration fee does not apply to the matter of the $10 reimbursement.

Mr Finn — It is myki money.

Hon. M. P. PAKULA — That is what it appears to be from this email. It is difficult for me to have a clearer view of that without seeing any previous emails. My offer to Mr Finn is that if he provides me with the email trail and full name of this particular constituent, I will take up that matter with the Transport Ticketing Authority.

Mr Philip Davis raised a matter for the Minister for Environment and Climate Change in regard to a complaint he has received from the Mitchell group of fire brigades about an increase in burn targets for fuel reduction. I will convey that matter to the Minister for Environment and Climate Change.

Mr Drum also raised a matter for the Minister for Environment and Climate Change concerning the work at the port of Echuca wharf and whether or not the Arbuthnot Sawmill can have access to additional red gum stock, and particularly whether the minister could reply to a letter dated 24 February about that issue. I will convey that matter to the Minister for Environment and Climate Change.

The DEPUTY PRESIDENT — Order! The house now stands adjourned.

House adjourned 10.07 p.m. until Tuesday, 23 March.